

Frequently Asked Questions about the U.S. Immigration Detention System

"On an average day, roughly 33,400 detainees are housed ... at as many as 350 detention facilities nationwide."¹

What is immigration detention?

Immigration detention refers to the institutional housing of non-citizens by the Department of Homeland Security (DHS). Despite the civil nature of immigration detention, DHS uses a combination of its own facilities, federal Bureau of Prisons facilities, and privatized prisons to detain non-citizens. DHS also rents beds from over local and county jails where detainees are mixed with the local prison's inmate population. Following the prison model, movement is restricted and detainees are often required to wear prison uniforms.

Who is in immigration detention?

Any non-citizen who arrives at the border seeking asylum or violates civil immigration regulations² may be held in detention while the immigration courts review their cases. *Survivors of torture, asylum seekers, families with small children and individuals with serious*

mental health and medical conditions such as HIV/AIDS, are routinely locked up in jails or under jail-like conditions, which poses a serious threat to the psychological health of the individuals in detention.

Is it necessary to detain non-citizens?

Detention is an extreme measure which, in most cases, unnecessarily poses a financial and emotional burden on families U.S. communities and families. It is just one tool that the government can use to reduce the risk that a non-citizen will fail to appear for immigration hearings or deportation. It is also a tool used to control non-citizens who pose a threat to national security. As an expensive and invasive government act, the decision to use detention must be closely scrutinized one a case by case basis. The current detention system wrongly presumes that all non-citizens subject to detention pose a threat to national security and public safety. In fact, *the vast majority of people in detention pose no security threat.* Likewise, the current system wrongly presumes that non-citizens categorically pose a flight risk. There is no individual assessment of flight risk that distinguishes a mother of five U.S. citizen children from a known fugitive. *Under human rights law, detention should only be used when necessary - and it is only necessary when a) the government demonstrates that the individual poses either a threat to security or a risk of fleeing, and b) there is no alternative means to manage the risk(s).*

¹ Testimony of Secretary Napolitano before the Senate Committee on the Judiciary, "Oversight of the Department of Homeland Security" (May 2009). http://www.dhs.gov/ynews/testimony/testimony_1241706742872.shtm

² Some examples include: overstaying a visa, being convicted of a crime (minor crimes like shoplifting a candy bar or jumping a subway turnstile can trigger immigration consequences), or living in the U.S. without documentation of an authorized entry.

What are alternatives to detention?

Alternatives to detention are designed to provide a proportional means to meet the government's goals while avoiding arbitrary violations of individual liberty. There are many types of alternatives. Some alternatives extend the government's custodial or supervisory control, such as the use of ankle bracelets, curfews with telephonic monitoring, or regular visits to a supervisory officer. However, these measures, like detention, are often more restrictive than necessary.³ Other methods use incentives to encourage compliance, including bond payments that are returned when full compliance is established. In many cases, the threat of an automatic deportation order when a non-citizen skips a hearing is sufficient – without further measures – to ensure court appearances.

Are alternatives fiscally responsible?

According to Congressional findings, alternative programs contribute to more effective enforcement of immigration laws at far less cost (averaging \$22/person per day) than for detention (averaging \$95/person per day).⁴ Despite this significant difference, alternative programs have long been under-funded by Congress and under utilized by DHS. In 2010, the DHS allocated over half of its detention and removal budget to house people in detention, at a cost of \$1.77 billion dollars, but less than 3% to implement alternative programs.⁵

³ Detention Watch Network and Stanford Law School Immigrants' Rights Clinic, *Community-Based Alternatives to Immigration Detention* (August 2010). http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/DWN%20ATD%20Report%20FINAL_08-25-2010.pdf

⁴ H. Rept. 109-476 (2006), p. 38.

⁵ DHS Fact Sheet, "ICE Fiscal Year 2010 Enacted Budget" (November 2009). Available at <http://www.ice.gov/doclib/news/library/factsheets/doc/2010budgetfactsheet.doc>

Are alternatives to detention effective?

Pilot alternative programs have proven successful and cost-efficient. Between 1997 and 2000, the Vera Institute of Justice coordinated alternative program with a 93% appearance rate of asylum seekers in court for just half the cost of detention.⁶ Participants were required to report to the Vera Institute and were provided with legal information, referrals and court date reminders.

Why are alternatives important?

Because detention deprives individuals of their most fundamental right to liberty, this extreme measure may only be justified when it is both necessary and proportional. Holding individuals longer than necessary is not only inhumane, but fiscally irresponsible. Avoiding the unnecessary use of detention would also repair the integrity of the immigration court system which is plagued by inequities. Attorneys appear in only 16% of the detained immigration cases versus 62% of the non-detained cases.⁷ Thus, alternatives enable DHS to enforce immigration laws in a more humane, lawful, and cost-effective manner than detention.

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⁶ Vera Institute for Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (August 2000). Available at <http://www.vera.org/download?file=615/finalreport.pdf>

⁷ These numbers were derived by applying the statistic presented by Karen T. Grisez in July 2010 on behalf of the ABA, testifying that 84% of detainees in removal proceedings are unrepresented (available at <http://judiciary.house.gov/hearings/pdf/Grisez100617.pdf>), to EOIR FY 2009 statistics that 144,763 of the 290,233 total cases completed in FY 2009 were detained and that 176,146 of 290,233 cases had no legal representative (available at <http://www.justice.gov/eoir/statspub/fy09syb.pdf>)