



# Lutheran Immigration and Refugee Service

## Backgrounder

### Alternatives to Detention (ATD): History and Recommendations

The use of detention for immigration enforcement has grown dramatically in recent years. In Fiscal Year (FY) 2013, the Department of Homeland Security's Immigration and Customs Enforcement (ICE) **detained an all-time high number of 441,000 individuals.**<sup>1</sup> Current immigration detention costs taxpayers approximately **\$123.54 per person per day** for adults and **\$342.73 per person per day** for families.<sup>2</sup> For context, in FY 1994 the federal government detained fewer than 82,000 migrants.<sup>3</sup> Immigration detention is a civil authority, despite the use of penal institutions. The sole purpose of immigration detention is to ensure compliance with immigration court proceedings and judicial orders.

**For many migrants in ICE custody, detention is not legally required.** In these cases, ICE has the discretion to decide whether a person should be detained, released, or placed into an alternative to detention (ATD) program. Historically, ICE has not always exercised this discretion, resulting in the needless detention of hundreds of thousands of people, and costing taxpayers billions of dollars. Recently, ICE developed and deployed a risk assessment tool to make informed detention decisions based on individual circumstances. However, because current appropriations language requires ICE to maintain 34,000 daily detention beds, individualized detention decisions may be overridden by the requirement to meet a detention quota.

ATDs are a proven and highly cost-effective approach for ensuring that individuals appear at immigration proceedings. There are a range of options that ICE can utilize to encourage compliance. Some options, like release on recognizance or bond, carry little to no cost; many detained individuals pose no risk of flight or danger to the community and could be released on bond or their own recognizance, costing the government \$0 for supervision and monitoring. More intense forms of supervision and monitoring, such as enrollment in an ATD program carry slightly higher costs. **Current ATDs range in cost from pennies to \$7 per person per day**<sup>4</sup>, depending on the type of monitoring involved. In FY 2016, ICE estimates that the average cost per ATD participant will be \$6.33.<sup>5</sup> Compared to the billions spent each year on detention operations, ATDs represent a smarter, cheaper, and more humane way to ensure compliance

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<sup>1</sup> *Immigration Enforcement Actions: 2013*, Office of Immigration Statistics, Policy Directorate, [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf) (Sept. 2014)

<sup>2</sup> U.S. Immigration and Customs Enforcement Fiscal Year 2016 Congressional Budget Justification, the Department of Homeland Security, [http://www.dhs.gov/sites/default/files/publications/DHS\\_FY2016\\_Congressional\\_Budget\\_Justification.pdf](http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification.pdf).

<sup>3</sup> *Statement of Paul Grussendorf, Committee on the Judiciary, U.S. Senate, "Building an Immigration System Worthy of American Values,"* <http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf> (March 20, 2013)

<sup>4</sup> Senate Committee on Appropriations, Summary of Emergency Supplemental Funding Bill, <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill> (Jul. 2014).

<sup>5</sup> U.S. Immigration and Customs Enforcement Fiscal Year 2016 Congressional Budget Justification, the Department of Homeland Security, [http://www.dhs.gov/sites/default/files/publications/DHS\\_FY2016\\_Congressional\\_Budget\\_Justification.pdf](http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification.pdf).

with U.S. immigration laws. ATDs may also be more appropriate for detainees with certain vulnerabilities. Of particular concern are asylum seekers, torture survivors, the elderly, individuals with medical and mental health needs, and other vulnerable groups.

### **Recent Trends in ICE's Use of ATDs**

ICE's current ATD programming is known as ISAP II (Intensive Supervision Assistance Program), which is a contractual program. Beginning in June 2004, Behavioral Interventions Incorporated (BI), a for-profit firm, operated ISAP for ICE. It now runs ISAP II. BI was acquired by the GEO Group, a major player in the private prison industry, in 2010. BI relies on the use of electronic ankle monitors, installation of biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. ISAP II offers only rudimentary case management services and has been unable to develop trust with immigrant participants.<sup>6</sup>

### **Policy Recommendations**

Congress should require any deprivation of liberty to be the least restrictive form of custody necessary based on individualized assessment and proportionate to meet government interests. Congress should also direct additional funding for ICE to contract with non-profit organizations to create a broader spectrum of ATD programs. Community-based non-profits are best suited to build trust with migrant participants, identify the needs of individuals, address those needs with available resources, and build resilience in the individuals to face the range of potential outcomes in their legal cases. Non-governmental organizations are mission-driven and generate more community resources because of their ability to attract volunteers and donations of goods and services.

The following are examples of effective community-based ATD programs:

- In 1999 the legacy Immigration and Naturalization Service (INS) partnered with Lutheran Immigration and Refugee Service to assist 25 Chinese asylum seekers released from detention. INS released the asylum seekers into open shelters around the country, where they received housing, food, medical care, and continuous case management. Participants had a 96% appearance rate and the annual program costs were just 3% of what it would have cost to detain them.<sup>7</sup>
- From 1999 – 2002, INS collaborated with Catholic Charities of New Orleans to work with 39 asylum seekers released from detention and 64 “indefinite detainees” who could not be removed from the United States. The court appearance rate for participants was 97% and the program cost \$1,430 per year per client, a fraction of the cost of detaining them.<sup>8</sup>
- Funded by INS, the Vera Institute of Justice's Appearance Assistance Project conducted a study based on a supervised release and assistance program implemented from 1997 – 2000. It studied over 500 participants in three groups: asylum seekers, people convicted of crimes and facing removal, and undocumented workers from detention facilities. The risk assessment instrument and case management contributed to the program's success. The program saved taxpayers \$4,000 per participant and boasted a 91% appearance rate at required hearings, including a 93% appearance rate for asylum seekers.<sup>9</sup>

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<sup>6</sup> *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, Lutheran Immigration and Refugee Service, October 27, 2011, available at [www.lirs.org/dignity](http://www.lirs.org/dignity).

<sup>7</sup> Ibid.

<sup>8</sup> *A More Human System: Community-Based Alternatives to Immigration Detention (Part 2)*, Sue Weishar, Just South Quarterly.

<sup>9</sup> *The Appearance Assistance Program, Attaining Compliance with Immigration Laws Through Community Supervision*, Vera Institute of Justice, 1998, [www.vera.org/download?file+211/aap.pdf](http://www.vera.org/download?file+211/aap.pdf).