Reimagining Immigrant Detention: Alternative Policy Tools and Lessons from Abroad

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Immigration detention has become a central facet of immigration enforcement over the last several decades, acting as a primary form of deterrence for unauthorized entries at the U.S. border. The population of those in detention has skyrocketed, with more than half a million individuals booked into detention facilities during fiscal year 2019. As detention needs have increased, Immigration and Customs Enforcement has increasingly turned to private contractor-run facilities and leasing of space in county jails to accommodate the surge. Congress directed the Department of Homeland Security to reduce the population in detention to 40,050 by the end of FY2019, yet ICE held over 50,000 in detention at the end of the year and had an average daily population of more than 50,000 that same year.

The United States is expected to spend $4,137,380 on detention in FY2021, per the president’s budget. The daily cost of detaining one adult in 2021 is estimated to be $125 per day, with the cost of detaining a mother with her child(ren) being $232 per day. However, a 2018 report from the Government Accountability Office found “a number of inconsistencies and errors” in ICE’s calculation methods for its congressional budget justifications that deflate the actual cost of detention.
Alternatives to detention (ATDs) are policies that allow for the monitored release of immigrants from detention while their cases are pending. The intention of ATDs is to minimize the number of people being detained, limiting it to only those believed to pose high flight risks or threat to society. While the United States does utilize some alternatives to detention—primarily in the form of ankle monitoring bracelets, or “Intensive Supervision.” DHS under the Trump administration has maintained that the current ATD programs should “not be considered removal programs or a substitute for detention.”[https://fas.org/sgp/crs/homesec/R45804.pdf] Instead, DHS claims ATD programs have enhanced ICE’s ability to monitor more intensively another subset of foreign nationals who are released into communities.

As the federal government transitions to the Biden administration, there have been increased calls to reduce the population of those detained and utilize ATDs instead. ATDs are used around the world in place of detention, offering the United States examples of policy alternatives to its current program.

**ICE’s Current ATD Program**

ICE’s [current ATD program](https://fas.org/sgp/crs/homesec/R45804.pdf), Intensive Supervision Appearance Program III (ISAP III) utilizes a combination of face-to-face and telephonic meetings, unannounced home visits, scheduled office visits, and court appearances to maintain surveillance of program participants. Additionally, technology is used for location tracking in the form of telephonic reporting, GPS tracking through ankle monitors, and through a smartphone application known as SmartLINK that allows participants to confirm their identities with facial recognition software. ICE reports high levels of compliance within the ISAP program.

Ankle monitors have gained traction as a popular ATD method for immigration enforcement in the United States and are used extensively in the criminal justice system. Ankle monitors allow migrants to be released from detention while giving ICE constant access to their location. Costing as little as $4.50 per day, they are far [less expensive](https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/) than the $200 to $300 per day for detention. First established as a program in 2002, ankle monitor usage increased after 2014 when significant numbers of families and unaccompanied children arrived at the border seeking asylum. As arrivals began to outpace the capacity of family detention centers, and court cases limited the detention of families and minors, ICE increased ankle
monitor usage. By 2018, there were more than [https://apnews.com/article/dfc047306e154753a526c04706df45d6] 84,000 participants in ISAP and approximately 45% of those were assigned GPS ankle monitors. The bracelets are maintained and monitored by ICE-contracted private companies, although in 2020 one Virginia company [https://www.washingtonpost.com/local/prise-by-nexus-immigrants-settlement-virginia/2020/11/30/82b66e8e-24f9-11eb-860d-f7999599cbe2_story.html] settled with state regulators that restricted its ability to operate. ICE has also used data from the ankle tracking devices to initiate worksite raids [https://www.nbcnews.com/news/us-news/gps-tracking-immigrants-ice-raids-troubles-advocates-n1042846].

However, immigration advocates have raised concerns [https://www.washingtonpost.com/news/theworldpost/wp/2018/09/05/trump-immigrants-2/] that electronic monitoring is inhumane. Questions have arisen about the health impacts of the constant wearing of ankle monitors, as continual wearing has been linked with inflammation, bleeding, and numbness around the foot and leg. Additionally, devices need to be charged numerous times throughout the day while remaining attached to the body, requiring the wearer to remain near electrical outlets. Migrants who wear ankle monitors have reported feelings of social stigma due to the monitors, as they are similar to those placed on pre- and post-trial offenders in the criminal justice system. At the same time, ICE states that they are not effective as an alternative to detention, saying in 2018 that as many as 3 in 10 [https://www.washingtonexaminer.com/news/ice-3-in-10-illegal-immigrant-family-units-cut-off-ankle-bracelets-after-being-released-from-custody] families cut off their bracelets, particularly if they were ordered deported.

**Community-Based Alternatives to Detention**

ICE funded a pilot program of community-based alternatives to detention from 2016-2017 known as the Family Case Management Program (FCMP). Originally intended to be a five-year pilot, the program was ended by ICE [https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/] less than halfway through the intended period. FCMP was created for families with vulnerabilities not compatible with detention: young children, pregnant or nursing women, victims of domestic violence, and individuals with health considerations. The program utilized a comprehensive case management strategy that was supported by community-based organizations and was facilitated by a private contractor. Each family received a case manager who assisted them in accessing resources including legal counsel, English language training, and food and medical assistance, and ensured that they attended all meetings and hearings in their removal cases. Families met regularly with ICE Enforcement and Removal Operations, and managers updated families on their cases regularly.
Due to its early termination, data on FCMP is incomplete. However, the available data [https://fas.org/sgp/crs/homesec/R45804.pdf] suggests high rates of compliance, with 99% attendance at immigration court proceedings and 99% compliance with ICE monitoring requirements. During the life of the program, only 4% of participants absconded. However, a majority of the participants were still in immigration proceedings when the program was terminated, leaving uncertainty with what would have been the final rates of compliance. When ICE ended the program in June 2017, it stated that rates of compliance for FCMP were consistent with ISAP III but at a much higher cost. In terms of cost, FCMP remained significantly cheaper than detention. In FY2016, FCMP cost $38.47 per family per day, as opposed to the $237.60 per day for family detention. Other forms of ATDs that did not provide the same number of community resources, particularly ISAP III, were reported to cost less than FCMP in 2016. The cost of ISAP III was reported to be $4.40 per person.

Forms of Alternatives to Detention From Other Countries

Regular Reporting

Regular reporting involves frequent, scheduled communication between immigration authorities and immigrants waiting for their cases to process. Although regular reporting is part of the ISAP program currently run by ICE, other countries use it as the primary means of monitoring migrants subject to additional process, often using technology.

Canada [https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/atip-ajprp/atd-srd-eng.html] participates in a voice reporting program, in which immigrants can authenticate their identities to the government by phone using voice recognition. Individuals who enroll in the program are required to consent to share their location, verified by GPS. Individuals provide voice samples that are stored in an information system and compared against future voice samples. Once enrolled, an individual is required to call at regular intervals. To verify the identity of the person calling, voice reporting collects personal information, including name, address, contact details, and other related information. The program allows immigrants who are not deemed a security risk to move freely while their immigration cases are being processed. However, critics of the program argue that voice recognition technology is not accurate enough to prevent fraud and verify identities.

In Sweden [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/27a-sweden_detention_study_august2014_en.pdf], individuals may be subjected to a supervision order in place of detention, which requires individuals to regularly provide documentation and report to the Swedish Migration Board or police
stations on a regular basis. The process is individualized, with the required frequency of reporting being determined on a case-by-case basis. The average frequency of required reporting is typically weekly or biweekly; however, individuals determined to be a high flight risk may be required to report daily. Individuals who fail to follow regular reporting are assessed again, with detention being used as the last resort only if the individual is unable to follow regular reporting and has a high risk of absconding.

**Open Centers/Facilities**

Open centers provide immediate housing, support, and registration to undocumented migrants as they navigate the immigration system of the host country. While often used for individuals applying for asylum, open centers can also shelter migrants returning to their country of origin. Open centers can be operated by governments or community organizations.

[**Greece**](https://greece.iom.int/en/open-centre-migrants-registered-assisted-voluntary-return-reintegration-ocavrr), in collaboration with the European Union, offers an open center for migrants registered for assisted voluntary return and reintegration (OCAVRR). The OCAVRR provides a safe, voluntary environment for migrants awaiting their departure, along with access to meals, showers, and medical services.

[**Belgium**](https://emnbelgium.be/sites/default/files/publications/be_report_emn_study_detention_and_alternatives_to_detention_2014_-_final_0.pdf) also offers open housing facilities for families who apply for asylum at the border or who are ordered to leave the country. Public transportation, schools, and shops are all within close proximity, and families are assigned to a case manager employed by the Belgian Immigration Department to provide holistic tailored support through intensive casework and explore all options to remain in the country legally. Families are regularly updated on their case status, and the average length of stay in open housing facilities is 24 days. Belgium reports high rates of voluntary return and low rates of absconding, with almost all families who were deported departing independently.

**Bridging Visas**

A bridging visa is a temporary visa granted to non-citizens who would otherwise be unlawfully in the country. Bridging visas give temporary lawful status while individuals arrange to leave the country or apply for another visa.

[**Australia’s**](https://www.kaldorcentre.unsw.edu.au/publication/immigration-detention) bridging visas are available to individuals who originally entered the country with a visa and either overstayed their visa or had their visa cancelled. In November 2011, the Australian government
implemented a policy to allow individuals who arrived without visas to apply for bridging visas if they are identified and referred to the Minister of Immigration. However, most people who enter Australia without a visa are detained and cannot apply for a bridging visa.

In order to receive a bridging visa, individuals must demonstrate that they are making arrangements to leave Australia. However, bridging visas offer limited oversight and surveillance opportunities when compared to other ATDs.

**Conclusion**

The available data suggests that ATDs have high rates of compliance and cost less than detention. However, more data is necessary to analyze the full scope of effectiveness. Pilot programs offer an opportunity to collect data on a smaller scale, but preemptively terminating them leaves us with inconclusive data sets. Importantly, they must be assessed on their potential to scale if they are to meaningfully act as alternatives to physical detention.

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