



# Defending Human Rights & Due Process

## ICE's Detention Reforms Need More Alternatives, Fewer Jails

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) did not meet its deadline in 2010 to create a national alternatives-to-detention (ATD) plan that would help make the U.S. immigration system more humane and cost-effective. Instead, the agency detained record numbers of people in fiscal year 2010 and is making plans to build new detention centers.

**ICE must realign its priorities to fulfill its commitment to implement a nationwide ATD program.** This policy brief provides recommendations for ATD expansion and highlights potential models.

**Focusing more resources on ATDs would help end the unnecessary detention of individuals who pose no threat to the community,** including asylum seekers and vulnerable populations, such as people who suffer from medical or mental illness. **ATDs would improve access to lawyers** for thousands of people who suffer due process violations because ICE detains them in isolated facilities far from legal services. In fiscal year 2010, only 11 percent of asylum seekers without representation succeeded in their cases compared to 54 percent for those with counsel.<sup>1</sup>

### ATDs save taxpayers billions of dollars:

- ICE's figures state that the most expensive ATDs cost \$14 per person per day, compared to the more than \$100 cost per day to hold an individual in a detention facility.<sup>2</sup>
- A pilot program by the Vera Institute of Justice from 1997 to 2000 found that ATD programs saved the federal government almost \$4,000 per person. Appearance rates rose to 91% at all required hearings and to 93% for asylum seekers.<sup>3</sup>
- The cost of a 1999 community-release program piloted by the Immigration and Naturalization Service (INS) and the Lutheran Immigration and Refugee Service for 33 asylum seekers was found to be just 3% of the cost of detaining the group for a year. Lawyers were able to secure shelter through community agencies for 25 of the program's participants, all of whom attended all their scheduled appearances before INS and the courts.<sup>4</sup>

Despite the economic benefits of ATDs, ICE spent more than \$1.77 billion in fiscal year 2010 to detain more than 380,000 people. Only \$69.9 million went toward ATD programs for about 23,000 people.<sup>5</sup> ICE has budgeted \$1.9 billion for detention beds in fiscal year 2011 and has requested bids to build new "civil" detention centers, but requested only \$72 million from Congress for ATD programs.<sup>6</sup> Building new jails will not make the immigration system more humane if it is not accompanied by an expansion of ATD programs that will significantly reduce the size of the detention population.



## How Alternatives to Detention Work Now

ICE has the authority to refer individuals into ATD programs designed to be less restrictive than traditional detention. Individuals placed into ATD programs may be subject to various levels of supervision. In most cases, ICE uses technology to track and monitor the movement of these individuals.

### ICE's Current ATD Programs

#### Intensive Supervision Appearance Program (ISAP II)

In 2009, ICE combined two of its ATD programs—the Intensive Supervision Appearance Program (ISAP) and the Enhanced Supervision/Reporting Program (ESR)—into the “ISAP II” program, which it contracts out to the private company BI Incorporated. BI monitors ISAP II participants through telephone check-ins, ankle bracelet monitors, global positioning systems, and unannounced home visits. Approximately 24,000 individuals cycled through the ISAP II program in fiscal year 2010.<sup>7</sup>

**Compliance Rates:**  
91% for ISAP  
96% for ESR

**Cost:**  
\$14/day/person

#### Electronic Monitoring

ICE officers oversee the Electronic Monitoring program, which uses technologies such as telephone reporting, ankle bracelets, and GPS monitoring. Approximately 5,000 people have participated in this program since December 2007.<sup>8</sup>

**Compliance Rate:**  
93%

**Cost:**  
30¢ to \$5/day/person

### Release Options Outside the ATD Program

#### Order of Supervision

The lowest level of supervision is an order to report periodically to an immigration officer and to meet other requirements, such as obtaining advance permission to travel out of state and keeping immigration officers advised of any address changes.

#### Bond

Individuals in removal proceedings pay a sum of money determined by the court to ICE as a guarantee that they will attend court hearings and comply with any conditions of release. Once a case is complete and conditions fulfilled, ICE returns the bond money.

### NIJC's Experience: Unnecessary and Costly Detention

National Immigrant Justice Center (NIJC) detention attorneys frequently see individuals in detention facilities who have lived for years in the United States as lawful permanent residents, but were detained by ICE due to minor, non-violent offenses such as petty theft or simple drug possession. In many of these cases, an immigration judge grants relief and ICE declines to appeal the ruling—after an individual has already spent more than four months in jail. By this time, the estimated cost of detention has reached \$12,000. If ICE placed these individuals—most of whom have strong community ties and U.S. citizen spouses and children—in secure ATD programs, taxpayers would have saved more than \$10,000 per person.



An NIJC client shows off family pictures following his release after eight months in detention.

## Recommendations for a More Effective National ATD Program

### 1. ICE should count ATDs as a form of custody under mandatory detention laws

Mandatory detention provisions under the 1996 Immigration and Nationality Act require ICE to hold nearly all individuals with criminal records in some form of detention, even if their convictions are for minor offenses which may be waived by an immigration judge. The criminal justice system treats probation or parole as a form of custody. ICE should likewise treat ATD programs as a form of custody for individuals subject to mandatory detention. This would allow ICE to employ ATDs in appropriate cases where detention is unnecessary. ATDs reduce detention costs and long-term detention for people who pose no threat, but whose cases are complicated and may take substantial time to resolve.

### 2. ICE should implement less-invasive ATD programs

ICE's current ATD programs are not true alternatives. Ankle bracelet and GPS monitoring systems are invasive and disproportionate measures to ensure compliance with court orders. Community-based release programs are more humane means of achieving high compliance rates, and have proven effective both in the United States and internationally. In fact, some local ICE field offices already use their discretion to release individuals to local shelter programs while their immigration proceedings are pending. Shelters in Detroit, Boston, and Buffalo provide shelter, food, English classes and health services to immigrants in judicial proceedings.

### 3. ICE should request adequate funding to expand community-based ATDs nationwide

ICE's appropriations request of \$72 million for ATDs in fiscal year 2011 is vastly disproportionate from the amount the agency plans to spend on detention beds. The agency must shift its budget priorities in order to expand ATD programs nationwide. Congress should require ICE to work with non-governmental organizations to develop a pilot community-based ATD program.

## Community-Based Alternatives That Work

### Australia's Community Detention Program

Australian immigration authorities notify the Australian Red Cross before they release someone from detention. A Red Cross caseworker then visits the detention center, assesses the individual and develops a "case plan" based on the client's housing options, income, health, education, and access to community support. A government case worker acts as a liaison between the Red Cross and the immigration department to monitor the individual's ongoing development. Some people may be allowed to live independently but may be restricted to a designated residence and subject to visits by immigration officials. Red Cross caseworkers respond to health and welfare needs.<sup>9</sup>

**Compliance Record:**  
Between 2006 and 2009,  
Australian ATD programs  
yielded a 94% compliance rate

### Canada's Toronto Bail Program

The government-funded Toronto Bail Program offers to supervise immigrants who have no family or other eligible guarantors to pay bond. The program requires individuals to check in regularly and makes unannounced visits to their residences. Homeless shelters may volunteer their addresses at bail hearings for those with nowhere to live. The shelters ensure that immigrants have legal counsel and provide some social services, but do not play any surrogate enforcement role.<sup>10</sup>

**Compliance Record:**  
91.6% of Toronto Bail Program  
participants complied with program  
requirements in 2002 to 2003

Shelters hosting up to 3,600 people  
have achieved higher than 95% compliance,  
even without the intensive supervision of the Toronto Bail Program

## Take Action

**Tell Congress to fund low-cost community-based alternatives-to-detention (ATD) programs instead of costly, inhumane detention.**

**Congress should include language in the next Department of Homeland Security (DHS) appropriations bill requiring ICE to contract with community-based organizations to develop secure, cost-effective ATD programs.**

**Call (202) 224-3121 and ask to speak to your senators and representative. Tell them to support ATDs in the next DHS appropriation bill.**

### Sources:

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5. U.S. Immigration and Customs Enforcement, "ICE Fact Sheet: ICE Fiscal Year 2010 Enacted Budget," November 5, 2009, p.2 at [www.ice.gov/doclib/news/library/factsheets/doc/2010budgetfactsheet.doc](http://www.ice.gov/doclib/news/library/factsheets/doc/2010budgetfactsheet.doc)
6. Department of Homeland Security, "Congressional Budget Justification FY 2011," p S&E-60 at [www.dhs.gov/xlibrary/assets/dhs\\_congressional\\_budget\\_justification\\_fy2011.pdf](http://www.dhs.gov/xlibrary/assets/dhs_congressional_budget_justification_fy2011.pdf)
7. Department of Homeland Security, p. S&E-62.
8. Donald Kerwin and Serena Yi-Yang Lin, *Immigrant Detention – Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* September 2009, p.32 at [www.migrationpolicy.org/pubs/detentionreportSept1009.pdf](http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf)
9. Heartland Alliance's National Immigrant Justice Center, *Creating 'Truly Civil' Immigration Detention in the United States: Lessons from Australia*, May 2010, p. 6 at [www.immigrantjustice.org/policy-resources/policydocs/australia.html](http://www.immigrantjustice.org/policy-resources/policydocs/australia.html)
10. U.N. High Commissioner for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees*, April 2006, p. 26 at [www.unhcr.org/refworld/docid/4472e8b84.html](http://www.unhcr.org/refworld/docid/4472e8b84.html)

## More Resources

*Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*, Heartland Alliance's National Immigrant Justice Center, September 2010, [www.immigrantjustice.org/isolatedindetention](http://www.immigrantjustice.org/isolatedindetention)

*Community-Based Alternatives to Immigration Detention*, Detention Watch Network and Mills Legal Clinic, August 2010, [www.detentionwatchnetwork.org/ATDReport](http://www.detentionwatchnetwork.org/ATDReport)

*Creating 'Truly Civil' Immigration Detention in the United States: Lessons from Australia*, Heartland Alliance's National Immigrant Justice Center, May 2010, [www.immigrantjustice.org/australiacivildetention](http://www.immigrantjustice.org/australiacivildetention)

*Alternatives to Detention Programs, an International Perspective*, Lutheran Immigration and Refugee Services, June 2009, <http://idcoalition.org/lirs-alternatives-to-detention-programs-an-international-perspective/>

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*Alternatives to Detention of Asylum Seekers and Refugees*, U.N. High Commissioner for Refugees, April 2006, [www.unhcr.org/refworld/docid/4472e8b84.html](http://www.unhcr.org/refworld/docid/4472e8b84.html)



**Heartland Alliance's National Immigrant Justice Center (NIJC)** is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education. NIJC gratefully acknowledges the U.S. Human Rights Fund for its support of this publication. The National Immigrant Justice Center is solely responsible for the content of this document.

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