



Alternatives to Detention February 2010

Background to Alternative to Detention programs in the United States

The United States currently detains approximately 33,000 noncitizens on a given day, a 60 percent increase from just four years ago.¹ Numerous recent studies have shown that this vast increase in the use of detention has led to a deterioration of due process and human rights for immigrants. In its efforts to reform the immigration detention system, the Department of Homeland Security (DHS) should create secure alternatives to detention (ATD) programs to ensure that detention is used as a last resort.

A number of ATD programs have been piloted in the United States with great success.² The programs have court appearance rates of more than 90% and involve significant cost savings for the U.S. government. These programs have strong Congressional support.³ However, to date DHS has declined to draw from these pilot projects to develop a strong ATD program.

The most comprehensive ATD program was a pilot project conducted by the Vera Institute of Justice in the late 1990s. In the Vera Appearance Assistance program, program participants received legal information and referral to lawyers and other social service agencies. Participants were required to check in regularly by phone and in person. Vera provided participants with reminders about upcoming court hearings, as well as cautions regarding the consequences of failing to comply with U.S. immigration laws. Vera reported an appearance rate of 93% for asylum seekers in its program and a cost-savings of over 50%.⁴

DHS's Current Policy

In 2009, DHS combined its programs for noncitizens who are released from detention into the new Intensive Supervision Appearance Program II (ISAP II). DHS currently contracts with Behavioral Interventions, Inc., to manage ISAP II. Under this contract, Behavioral Interventions monitors noncitizens through the use of telephone check-ins, radio frequency and global positioning systems, employment verification, curfews, and unannounced home visits. Although

¹ Dr. Dora Schriro, special advisor on ICE Detention and Removal, *Immigration Detention Overview and Recommendations*, Department of Homeland Security Immigration and Customs Enforcement, October 6, 2009, available online at http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

² Human Rights First, *In Liberty's Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security*, 2004, pp. 42, available on-line at http://www.humanrightsfirst.org/asylum/libertys_shadow/Libertys_Shadow.pdf. See also Lutheran Immigration and Refugee Service, in partnership with the Detention Watch Network, *Alternatives to Detention Briefing Materials for the United Nations Special Rapporteur report*, available on-line at <http://www.immigrantsolidarity.org/Documents/DWN/12.%20Alternatives%20to%20Detention%20UNSR%20Materials.pdf>, (discussing programs in Detroit, MI, York, PA, and Boston, MA.)

³ See the current legislative proposals listed below.

⁴ Human Rights First, *In Liberty's Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security*, 2004, pp. 41-44, available on-line at http://www.humanrightsfirst.org/asylum/libertys_shadow/Libertys_Shadow.pdf.

ISAP II is a relatively new program, it is very similar to previous ICE supervision programs, which had success rates ranging from 87% to 96%.⁵

Problems with DHS's Current Policy

Although DHS characterizes ISAP II as an ATD program, it does not constitute meaningful alternatives to detention. For example, DHS often uses electronic monitoring on noncitizens – including asylum seekers – who do not pose a security threat or flight risk and who could be released on their own recognizance. Decision-making authority about whether to release a detainee from custody are made by local DHS's Immigration and Customs Enforcement (ICE) authorities with little training or guidance as to the criteria for placing an individual in an ATD program, or for evaluating the appropriateness of such a program. Although DHS's release policies and training needs could be enhanced through collaboration with nongovernmental organizations (NGOs), like Vera and Heartland, DHS has failed to collaborate with the NGO community in the development and implementation of its programs.

Recommendations for Meaningful ATD Programs in the United States

A true ATD program could help secure the basic human rights of noncitizens in the United States. Such a program should include the following:

- An alternatives to detention program that is implemented nationwide and that includes a community-based release model. The program should be developed in consultation with NGOs, including community organizations and immigrant advocacy organizations, as well as with academic experts in the immigration and criminal justice fields.
- ATD training and guidelines for local DHS offices, developed in collaboration with NGOs that are knowledgeable about resources available for immigrants released from detention.
- An effective risk assessment tool to determine noncitizens' eligibility for release from custody. In order to prevent delays in detention, DHS should assess noncitizens for risk within 72 hours of apprehension. DHS's custody decision should be provided to the noncitizen in writing and in the language that they speak. DHS should also provide the noncitizen with notice of the right to appeal such determination to an immigration judge. The noncitizen should have the right to appeal a detention decision to an immigration judge. In addition, an individual who is in detention or who is placed in a secure alternatives program should have her status reviewed every month by an immigration judge or other independent authority.
- Legal orientation presentations through the Department of Justice's Executive Office for Immigration Review should be provided to all noncitizens who are apprehended.
- DHS should contract with NGOs and social service agencies to conduct group and individual screening regarding legal issues and other concerns, such as health conditions in detention.

⁵ See ICE Fact Sheet: Alternatives to Detention for ICE Detainees, October 23, 2009, available on-line at <http://www.ice.gov/pi/news/factsheets/alternativestodetention.htm>.

- Vulnerable populations – such as children, pregnant and nursing women, and individuals with mental health needs or disabilities – should be released, either on parole, a reasonable bond or on their own recognizance.
- Noncitizens who do not qualify for release on parole, bond or recognizance should be provided with the opportunity to enter into a secure alternatives to detention program, unless the individual is a flight risk or would create a risk to others or national security.
- For released individuals, DHS should contract with legal aid and other social service agencies to provide services, including legal orientations and assistance with housing, social services, and other needs.
- DHS should ensure allocation of funds to conduct an independent review of the ATD program to evaluate the program.

Legislation Currently Pending in Congress

Many of the recommendations outlined above are included in the Immigration Oversight and Fairness Act (H.R. 1215),⁶ introduced by Representative Lucille Roybal-Allard and co-sponsored by 63 members of Congress. Other draft legislation that includes provisions requiring DHS to implement a meaningful ATD programs are the Secure and Safe Detention and Asylum Act (S.1594),⁷ introduced by Senators Joseph Lieberman and Daniel Akaka, and the Protect Citizens from Unlawful Detention Act (S.1549),⁸ introduced by Senators Robert Menendez and Kirsten Gillibrand.

⁶ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1215ih.txt.pdf.

⁷ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1594is.txt.pdf.

⁸ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1549is.txt.pdf.

Heartland Alliance’s National Immigrant Justice Center provides direct legal services to and advocates for immigrants, refugees, and asylum seekers through policy reform, impact litigation, and public education. For further information, see www.immigrantjustice.org or contact: Helen Harnett, director of policy, National Immigrant Justice Center, (312) 660-1363, hharnett@heartlandalliance.org or Mary Meg McCarthy, executive director, National Immigrant Justice Center, (312) 660-1351, mmccarthy@heartlandalliance.org.