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Calli Schmitt  Feb 9 3 min read

The Reality of America's Inhumane Alternatives to Detention Program

Since 2004, U.S. Immigration and Customs Enforcement (“ICE”) have heavily relied on alternatives to detention (“ATDs”) to monitor individuals on the non-detained docket in attempts to decrease the use of immigrant detention and ensure appearances in legal proceedings.[1] Commonly utilized ATDs include ankle monitors, SmartLINK (tracking/surveillance application), or voice reporting systems.[2] As studies show the harmful effects of ATDs, it is proven that ATDs are no more effective at ensuring appearances than community-based support services.[3]

ICE created ATDs through the Intensive Supervision Appearance Program (“ISAP”),[4] a monitoring program for individuals in immigration proceedings created initially to provide community-based alternatives,[5] but ISAP is a subsidiary of one of the largest private prison contractors, GEO Group (“GEO”).[6] This conflict of interest caused ICE’s contract with ISAP to move beyond immigration and become primary financial beneficiaries resulting in significant profits to the private prison industry.[7] Twenty-eight percent “[o]f GEO’s revenue came from ICE detention contracts” with a revenue of \$1.37 billion between 2019 and 2020.[8]

To determine the efficiency of ATDs, one should assess if ATDs decrease the number of individuals in immigrant detention.[9] Daily population of detained immigrants increased from 19,000 to over 50,000 with the budget simultaneously increasing,[10] while participants in ATDs steadily increasing with budgets concurrently skyrocketing.[11] In 2017, Congress provided \$126 million for ATDs to monitor 53,000 daily participants[12] while in 2021, Congress provided \$353.9 million to monitor 120,000 participants.[13]

Individuals in ATDs suffer similar harms to those in immigrant detention. A study shows “[ISAP] damages one’s physical and psychological health, creates social isolation, inflicts financial hardships, and undermines the security of families and entire communities.”[14] The study reports 90% of participants experiencing harm to physical health, 97% facing social isolation, 88% describing ankle monitors negatively impacting mental health, and 74% reporting negative impacts on families/communities.[15] The invasive surveillance inflicting severe harm is not necessary[16] because ISAP is no more effective at ensuring appearance than legal representation and community support services.[17]

The Biden Administration stated intentions to break private prison contracts within the criminal system, but there are no similar commitments regarding ATDs.[18] Nonetheless, there are currently 157,761 families and single individuals in ATD programs.[19] Although the numbers are staggering, there are possible humane

solutions to halt the increasing participants in ATDs because ATDs are most effective when rooted in respecting human dignity and supplying social/legal support services to its participants.[20]

[1] U.S. Citizenship and Immigration Serv., Detention Management (Jan. 20, 2022),

<https://www.uscis.gov/news/news-releases/uscis-updates-policy-guidance-for-special-immigrant-juvenile-classification>.

[2] John Holmes, *Dismantling Detention – International Alternatives to Detaining Immigrants*, Human Rights Watch, (Nov. 3, 2021), <https://www.hrw.org/report/2021/11/03/dismantling-detention/international-alternatives-detaining-immigrants>.

[3] Tosca Giustini et al., Benjamin N. Cardozo Sch. of L. Immigr. Just. Clinic, Christina Fialho, Freedom for Immigr., and Brittany Castle & Leila Kang, Immigr. Def. Project, *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, at 3 (July 2021) (hereinafter “Cyber Prisons”), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/60ec661ec578326ec3032d52/1626105377079/Immigration+Cyber+Prisons+report.pdf>.

[4] Justice for Immigrants, *The Real Alternatives to Detention* (June 2019),

<http://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/real-alternatives-detention/>.

[5] GEO News, *Geo Group Announced Five-Year Contract with U.S. Immigration and Customs Enforcement for Intensive Supervision Appearance Program* (Mar. 24, 2020), <https://www.geogroup.com/News-Detail/NewsID/593>.

[6] Livia Luan, *Migration Policy Institute, Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention* (May 2, 2018), <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>.

[7] Giustini et al., *Cyber Prisons*, *supra* note 3, at 8.

[8] Eunice Cho, *More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration* (Oct. 5, 2021), <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration/>.

[9] Detention Watch Network, *Government Alternatives to Detention* (2020)

<https://www.detentionwatchnetwork.org/issues/alternatives>.

[10] *Id.*

[11] U.S. Immigration and Customs Enforcement, *Congressional Budget Justification, Fiscal Year 2020 at ICE-10 and O&S-16-17* (2019).

[12] Dep’t. of Homeland Security, *Budget in Brief: Fiscal Year 2017* (2017),

https://www.dhs.gov/sites/default/files/publications/FY2017_BIB-MASTER.pdf.

[13] Dep’t. of Homeland Security, *Budget in Brief: Fiscal Year 2021* (2021),

https://www.dhs.gov/sites/default/files/publications/fy_2021_dhs_bib_web_version.pdf.

[14] Giustini et al., *Cyber Prisons*, *supra* note 3, at 21.

[15] *Id.* at 3.

[16] *See Id.*; see also Rutgers School of Law Immigrant Rights Clinic & American Friends Service Committee, *Freed but Not Free: A Report Examining the Current Use of Alternatives to Immigration Detention* (July 2012)

(<https://www.afsc.org/sites/default/files/documents/Freed-but-not-Free.pdf>; see also United Nations High Commissioner for Refugees, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions* (May 2011), <https://www.unhcr.org/536a00576.pdf>).

[17] Giustini et al., *Cyber Prisons*, *supra* note 3, at 3.

- [18] Jesse Franzblau, *Phase Out of Private Prisons Must Extend to Immigration Detention System*, Nat'l Immigrant Justice Ctr., (Jan. 28, 2021) <https://immigrantjustice.org/staff/blog/phase-out-private-prisons-must-extend-immigration-detention-system/>.
- [19] TRACImmigration, *Immigration Detention Quick Facts*, (Jan. 1, 2022), <https://trac.syr.edu/immigration/quickfacts/>.
- [20] Alice Edwards, *Legal and Protection Policy Research Series - Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum Seekers, Stateless Persons, and Other Migrants*, United Nations High Commissioner for Refugees (Apr. 2011), <https://www.unhcr.org/4dc949c49.pdf>.