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Policy Brief

Case Management: An Effective and Humane Alternative to Detention

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Introduction

In the United States, immigration enforcement has become synonymous with images of people in orange jumpsuits and handcuffs. The detention of migrants as they are processed under the myriad of immigration laws has become the norm and supports a lucrative private prison industry. It also comes with a heavy and exacting price. There is the economic cost and a moral cost to depriving people of their liberty, their ability to communicate with their loved ones, and making them wholly reliant on facility staff to care for their physical and mental needs.¹

For two decades, the Department of Homeland Security (DHS) has experimented with alternatives to detention (ATD) to ensure compliance with immigration law in a more humane and less costly manner than physical incarceration. AILA supports ATDs as a solution when used appropriately as a means to mitigate flight risks or safety concerns in lieu of detention.² However, DHS' primary form of ATD, the Intensive Supervision Appearance Program (ISAP), deviates dramatically from internationally recognized best practices and is too frequently imposed unnecessarily with the main goal to facilitate future deportation orders.³ A far better approach is for Congress to fund case management programs operated by community-based non-profit organizations. Case management promotes the government's interest in ensuring compliance with immigration requirements while also helping migrants more successfully navigate their removal proceedings.

U.S. Immigration Alternatives to Detention (ATD)

In the twenty years since DHS first announced ISAP, the program has grown immensely in enrollment numbers and scope from an initial level of 200 participants to nearly 300,000 people today.⁴ In the past year, ISAP enrollments have increased 260 percent.⁵ In February 2022,

¹ Read AILA's Policy Brief: [Moving the Nation Forward by Leaving Immigration Detention Behind](#), Mar. 25, 2021.

² AILA, WRC, LIRS, NIJC, and Migration and Refugee Services, "[The Real Alternatives to Detention](#)," June 18, 2019; *see also* International Detention Coalition, "[There Are Alternatives A Handbook for Preventing Immigration Detention](#)," 2015; International Detention Coalition, "[Gaining Ground: Promising Practice to Reduce and End Detention](#)," May 2022.

³ [ATD Fact Sheet Infographic](#), accessed on Nov. 2, 2022.

⁴ As of September 29, 2022, there are 316,700 individuals enrolled in ICE's alternative to detention program. ICE is required to provide data on enrollment and generally publishes bi-weekly information on the following page: <https://www.ice.gov/detain/detention-management>.

⁵ Border Report, "[Record number of DHS phones, tracking devices assigned to migrants](#)," Oct. 3, 2022.

Immigration & Customs Enforcement (ICE) requested additional funding to expand ATD enrollments to 400,000 migrants.⁶

One justification for ATDs is the expectation that these programs would be deployed on individuals who would otherwise have been held in detention. For example, individuals who may have initially presented a flight risk that could be mitigated by some form of additional supervision over being released on their own recognizance. The expectation has been largely unmet with immigration detention funding growing even as ATD funding increased.⁷ The result is that asylum seekers and migrants who are neither a flight risk nor a security risk, can still be detained or put into ISAP. For example, even though Congress has not funded family detention, those same families' head of households are routinely enrolled into ISAP.⁸

Even though the program consistently reports very high court appearance rates (during certain years as high as 94%), ICE largely measures their success by whether someone complies with removal orders or other restrictions.⁹ It should be noted that individuals who are not in ISAP also consistently have high court appearance rates (83% for non-detained and 96% for those with attorneys).¹⁰

To ensure compliance, ICE has leaned heavily into technology and electronic monitoring programs operated by private companies to achieve removals with targeted accuracy.¹¹ Known available modalities include ankle monitors, phone applications with geo-location abilities, and face and voice recognition technology. Together, these modalities allow ICE to direct immigrants' movements even outside of physical detention, compel certain data and information sharing, and conduct virtual check-ins whenever the agency deems necessary. This is in addition to ICE and their sub-contractor's ability to require in-person check ins and visits to migrants' homes and places of work.

Case Management under ISAP

ISAP also has a case management component in which non-citizens meet with private subcontractor employees or with ICE officers to receive referrals for legal services, housing, and other social services. Unfortunately, ISAP falls far short of the fundamental goals of case management and provides only the illusion of support for migrants. It has also created much of the current confusion around what DHS' ATD program does and does not do for immigrants enrolled in ISAP.¹² While the case management component exists, it is secondary to the program's main goal of facilitating removal. Any support offered is overshadowed by the supervision and reporting built into ISAP. Case managers also do not provide direct services

⁶ [Congressional Budget Justification Fiscal year 2023](#), Immigration & Customs Enforcement, Mar. 25, 2022.

⁷ TRAC Immigration, "[Growth in ICE Detention Fueled by Immigrants with No Criminal Conviction](#)," Nov. 26, 2019.

⁸ DHS, "[Intensive Supervision Appearance Program: Fiscal Year 2020 Report to Congress](#)," April 11, 2022.

⁹ ICE ATD Fact Sheet Infographic, <https://www.ice.gov/doclib/detention/atdInfographic.pdf>; see also GAO Report, "[Alternatives to Detention Data: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness](#)," Nov. 13, 2014.

¹⁰ American Immigration Council, "[Measuring In Absentia Removal in Immigration Court](#)," Jan. 28, 2021.

¹¹ The Markup, "[Meet SmartLINK, the App Tracking Nearly a Quarter Million Immigrants](#)," June 27, 2022.

¹² American Immigration Council, "[Alternatives to Immigration Detention: An Overview](#)," Mar. 17, 2022.

under the ISAP contract. Instead, they fulfill the case management contract's requirements by providing referrals to programs that are largely not funded by the federal government and may not have capacity to provide for the migrants' needs.¹³ For example, if a migrant wishes to find an immigration attorney, instead of navigating the search with them, case managers give migrants the same list of legal service providers given to everyone in immigration court or in immigration detention. In comparison, case managers are often relentless in requiring that noncitizens obtain and surrender a passport in order to facilitate removal at the end of immigration court proceedings. ISAP's case management program also suffers from an inherent contradiction. A program designed to help immigrants ostensibly secure long-term stability in the U.S. is overseen by the same agency responsible for removing migrants from the country and in some cases, physically detaining them. For these reasons, AILA recommends that ICE shift entirely away from the direct implementation of case management and instead support the rapid expansion of community-based organizations to implement these vital programs.

AILA's Recommendations on Alternatives to Detention

1) Alternatives to Detention Should Be Used to Reduce Physical Jail-Like Detention

ICE's ATD programs should not be funded to expand monitoring of immigrants who would otherwise be released on parole, released on their own recognizance with minimal ICE reporting or check-in requirements, or released upon payment of a bond.

- Funding for any alternatives to detention program, whether within DHS or outside of DHS, must be made with the explicit goal that programs be used for individuals who would have otherwise been detained. Congress should include this directive as part of any future DHS appropriations bills and as it conducts oversight of ICE's use of appropriated funds.
- In future appropriations bills, Congress should adopt the language in the FY23 draft Senate DHS appropriations bill, emphasizing that ICE has a continuum of options for holding someone in legal or physical custody for individuals subject to civil custody under our nation's immigration laws.¹⁴ Notably, it should also underscore that ICE should use the least restrictive methods after an individualized review of their circumstances.

2) Fund Pilots Operated by Non-Profit Organizations That are Trusted by Immigrant Communities

The federal government should build upon the local networks and infrastructure created by non-profit religious organizations and other non-profit groups that have established trust within immigrant communities. Ideal case management services would include group legal orientations

¹³ DHS, "[Intensive Supervision Appearance Program: Fiscal Year 2020 Report to Congress](#)," April 11, 2022.

¹⁴ Committee Print, [Appropriations Act for the Department of Homeland Security for Fiscal Year 2023](#), Senate Committee on Appropriations, July 25, 2022.

and individual legal consultations, mental health services, housing assistance, and if needed, repatriation support.

- Congress should expand implementation of community-based case management ATD programs, which are less burdensome on individual liberty and have been shown to achieve high levels of compliance at reduced costs.¹⁵ For example, Congress has innovated in this space by funding the Case Management Pilot Program (CMP), a proof of concept for the very programs AILA has long supported.¹⁶ CMP is operated by the Federal Emergency Management Agency (FEMA) and the Office for Civil Rights and Civil Liberties (CRCL) and managed by a national board. In CMP, federal funding is provided to organizations who directly provide the critical services they know from their years of experience that migrants navigating our immigration process need. Such services include legal orientations, mental health services, trafficking screening, cultural orientation programs, connection to social services, and departure planning and reintegration services.
- Congress should also expand upon the model developed in the draft FY23 Senate DHS appropriations bill entitled “Asylum Seeker Case Management Program,” that would be funded through Health & Human Services (HHS).¹⁷ This pilot would allow ICE to refer to the Office of Refugee Resettlement within HHS certain single parent households for case management services after ICE has determined that detention is not necessary or appropriate.

3) ICE Should Be Required to Operate ISAP with Additional Transparency

Until case management pilots become more established, Congress can provide oversight and urge changes to address advocates and stakeholders concerns with ISAP.

- DHS should establish stricter, national guidelines for when more intrusive forms of supervision within ISAP are used. Electronic monitoring is a major intrusion on individual’s liberty and needs to be justified by individual case factors, limited in most circumstances, and regularly reviewed.
- Past Congressional funding bills have included language requiring ICE to publish guidance related to their ATD policies and data.¹⁸ While information about enrollment numbers and type of monitoring used is publicly available, attorneys and migrants subject to ISAP enrollment operate largely by trial and error. The burden should be on ICE to demonstrate that enrollment in ISAP is a necessary condition of release from custody to mitigate flight risk or security concerns.

¹⁵ AILA’s Position Paper: [Alternatives to Detention](#), July 3, 2008.

¹⁶ [Case Management Pilot Program Website](#)

¹⁷ Committee Print, [Appropriations Act for the Department of Homeland Security for Fiscal Year 2023](#), Senate Committee on Appropriations, July 25, 2022.

¹⁸ Department of Homeland Security Appropriations Act, 2022, [Joint Explanatory Statement](#), Mar. 9, 2022.

For more information, go to: [**Featured Issue: Immigration Detention and Alternatives to Detention**](#)