

April 2014

Catch-and-Detain: The Detention Bed Quota and the United States' Overreliance on Detention as a Tool for the Enforcement of Immigration Laws

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I. Introduction

Background

For many years, immigration policy in the United States has stirred countless debates both at the national and state levels. It is not an isolated issue, but one that involves economics, foreign relations, national security, considerations of race and class, and the very idea of what it means to be American. As legislators struggle with finding a way to reform the immigration system, one fact is clear: the system no longer aligns with the needs of American society. While this conversation unfolds, Immigration and Customs Enforcement (ICE) detains nearly 34,000 non-citizens¹ every night to comply with what it interprets as a congressional quota.² The obscure quota,³ which originates from language that first appeared in the 2010 DHS Appropriations Act, costs taxpayers over \$5 million a day and approximately \$1.4 billion dollars per year.⁴

Immigration detention has become the fastest growing detention system in the United States.⁵ An overwhelming majority of the detainees affected by the detention bed quota poses no threat to society or risk of flight.⁶ Conditions in many of these detention centers are poor,⁷ often exposing detainees to sexual assault, forced labor, verbal and physical abuse and in-

“For one true measure of a nation is its success in fulfilling the promise of a better life for each of its members. Let this be the measure of our nation.”

—Special message to the Congress, February 27, 1962, *Public Papers of the President: John F. Kennedy, 1962*

adequate basic services. Even though less expensive and more humane alternatives to detention are similarly effective,⁸ the quota remains in place. For legislators who need to show a tough stance on immigration enforcement, the quota has become an easy fix to an ever-evolving problem.⁹ How the government will continue to deal with the 11 million undocumented immigrants living in the shadows—and the more who are yet to come—is a question that lies at the very heart of America as a nation.

Thesis

This paper argues that the detention quota should be eliminated in favor of individualized risk assessments that determine whether institutional detention or alternatives are more appropriate. First, at \$5 million dollars a day—and almost \$2 billion dollars a year—the quota is incredibly expensive to fulfill compared to viable alternatives at a fraction of the cost.¹⁰ Second, Alternatives to Detention (ATD) programs are more humane and compara-

tively effective. Third, the quota prevents DHS from focusing on detention decisions based on its priorities and needs—namely focusing on noncitizens who are dangerous or have no ties to the community.¹¹ Finally, with two thirds¹² of the detainee population contracted out to private prisons and state and local jails, the quota fuels an industry that imposes heavy costs on society by hurting American families and jobs at taxpayers' expense.

The goal of immigration detention is not to punish but to protect the public and ensure that detainees appear in court and comply with final removal orders.¹³ So why does the United States detain so many noncitizens? While some undocumented immigrants—especially those considered a public threat—should be detained, for many others, institutional detention is an unnecessary and drastic waste of funds.

*For most of United States immigration history, detention was the exception, not the norm. It wasn't until 1892, when the first federally operated immigration detention center was opened on Ellis Island, New York, that the federal government began to detain immigrants who sought entry to the United States.*¹⁴

II. Development

Detention as the default approach for immigration enforcement

For most of United States immigration history, detention was the exception, not the norm. It wasn't until 1892, when the first federally operated immigration detention center was opened on Ellis Island, New York, that the federal government began to detain immigrants who sought entry to the United States.¹⁴ Once detention did become a common practice, it was a fairly brief process—a quick screening tool to protect national security.

Pursuant to the Immigration Act of 1893, detained immigrants were held briefly—between three and five hours—for the limited purpose of conducting an inspection.¹⁵ The inspection was meant to ensure the detainee was in good health and would not become a public burden.¹⁶ The Supreme Court recognized that immigration detention without trial was permissible,¹⁷ and even necessary, to find out whether the detainee was entitled to remain in the United States or to otherwise make arrangements for their deportation.¹⁸ Except for those who were considered a threat to national security or an enemy of the U.S. government, detention was a routine administrative procedure in those early years.¹⁹

In 1952, Congress eliminated the practice of detaining immigrants, except for those deemed to be dangerous to society or a flight risk.²⁰ While the Attorney General was vested with statutory discretion to deny bail to aliens in deportation proceedings, the Board of Immigration Appeals (BIA) had “long interpreted that statutory grant of discretion to conform to due process requirements, holding that aliens should not be detained unless they

posed either a risk of flight or a danger to the national security.”²¹

The closure of Ellis Island in 1954 appeared to have symbolized the demise of immigration detention.²² In fact, for the following decades, only a few individuals were detained during immigration proceedings.²³ The detention system was eventually resurrected in the 1980s with the opening of new detention centers to house refugees arriving from Cuba, Haiti and Central America.²⁴ This large influx of unauthorized migrants created public and congressional animosity that influenced “the adoption of a U.S. policy favoring the detention of more aliens.”²⁵

Animosity and concerns about public safety rose. In 1988, Congress responded by enacting the first mandatory detention legislation provisions into law. This legislation requires that a specific class of noncitizens, those who had been charged with—but not necessarily found guilty of—committing “aggravated felonies,”²⁶ be detained without bond.²⁷ Because of mandatory detention, individuals who had been charged with committing “aggravated felonies” could no longer apply for relief from deportation, such as cancellation of removal, asylum or naturalization. Since then, the list of aggravated felonies has been expanded beyond recognition. Today, an offense no longer needs to be aggravated, nor a felony, to qualify as an “aggravated felony” for immigration purposes.²⁸

Congress believed that the Immigration and Naturalization Service (INS)—the agency in charge of immigration at the time—was ineffective at identifying and deporting removable noncitizens.²⁹ Specifically, Congress was concerned that noncitizens who had committed violent crimes might be released from criminal

custody³⁰ before INS could deport them.³¹ Congress also had little trust in the agency's decision-making ability regarding the release of some of these detainees, and therefore suspended INS' discretion to release this type of noncitizen on bond.³² When this legislation came about, over 20 % of non-detained criminal immigrants in deportation proceedings were failing to appear at their deportation hearings.³³ Thus, some legislators concluded that mandatory detention of noncitizens in removal proceedings who had been charged with certain crimes would be the best way to ensure their compliance with removal orders.³⁴

The government's desire to keep dangerous people out of the United States was further reinforced by two terrorist attacks—The World Trade Center bombing in 1993 and the Oklahoma City bombing in 1995—which understandably raised national security concerns.³⁵ As a result of these events, U.S. immigration law shifted dramatically in the 1990s.³⁶ In 1996, Congress passed two pieces of legislation that significantly changed immigration detention in the United States.³⁷ Through this legislation, Congress further expanded the list of offenses that would trigger mandatory detention without the possibility of bond.³⁸

Besides aggravated felonies, Congress included other automatic triggers—namely drug offenses,³⁹ two or more crimes of “moral turpitude,”⁴⁰ and pending final removal orders.⁴¹ Additionally, Congress also created “Expedited Removal of Arriving Aliens,” a process that allows immigration officials to summarily⁴² deport immigrants arriving without proper documents.⁴³ Finally, Congress increased the budget for immigration detention.⁴⁴ The combination of the expansion of mandatory detention, expedited removal, and additional funds

***Detention has become the primary means of immigration law enforcement, regardless of security threat or risk of flight.*⁴⁷**

for immigration detention resulted in an explosion in numbers of immigrant detainees.⁴⁵ To this day, a large percentage of these detainees who are mandatorily detained never undergo an individual assessment to determine their risk of flight or danger to the community.⁴⁶

Detention has become the primary means of immigration law enforcement, regardless of security threat or risk of flight.⁴⁷ Bed space capacity increased from 7,500 daily beds in 1995 to over 30,000 in 2009.⁴⁸ As direct response to the September 11 attacks, the U.S.A Patriot Act of 2011 radically revised the rules governing immigrant detention.⁴⁹ This policy shift—and consequent expansion of the detention system—led to a sharp increase in immigration detainees.⁵⁰

A Tough Stance on Immigration Enforcement

Immigration detention is now the responsibility of Immigration Customs Enforcement (ICE)—the main investigative arm of the Department of Homeland Security (DHS).⁵¹ ICE detains a variety of noncitizens, including those who: 1) entered the U.S. without proper documents; 2) overstayed their visas, 3) have been charged or convicted of crimes that make them removable, 4) have been deported or ordered to leave the country but returned or remained in the U.S., and/or 5) are seeking asylum. Most of these detainees are not subject to mandatory detention and would be eligible for release if ICE determined—after an individualized assessment—that they are not dangerous or a flight risk.⁵²

Until 2009, ICE was not subject to an immigration detention quota. The late Senator Robert Byrd, a Democrat from West Virginia, introduced the requirement in the

2010 DHS Appropriations Act.⁵³ Senator Byrd—then Chairman of the DHS Appropriations Committee—and other lawmakers were concerned that, under President Bush’s administration, ICE was failing to enforce immigration laws.⁵⁴ Pursuant to the “catch-and-release” enforcement policy, non-Mexican undocumented immigrants who were apprehended at the border were released with instructions to appear in immigration court at some later date.⁵⁵ The policy was highly unsuccessful due to the large amount of released noncitizens that absconded.⁵⁶

The appropriations bill that created the quota proposed additional funding for detainee beds as a way to control the inflow of undocumented immigrants.⁵⁷ The quota was presented as a matter of national security.⁵⁸ Nevertheless, the overwhelming majority of ICE detainees is not dangerous and has never committed violent offenses that would be punishable by incarceration.⁵⁹ Supporters of the quota, however, argue that violating immigration law—an administrative, not criminal, matter—constitutes grounds for detention for an unspecified length of time.⁶⁰

The increase of funding for detention beds, along with the hiring of additional Border Patrol agents, was presented as a reason for the rise in removals of noncitizens.⁶¹ However, statistics reveal no correlation between the number of apprehensions and the number of detainees.⁶² It is not that the U.S. government, with increased funding for beds, began to apprehend more noncitizens; it’s that it began to detain a larger percentage of those apprehended than before.⁶³ In the last few years, though, the number of undocumented immigrants in the United States has been declining.⁶⁴ The amount of detainees, however, continues to rise.⁶⁵

A Smarter Way to Achieve Immigration Detention Goals

Because the goals of immigration detention are to ensure compliance with final removal orders and protect public safety, institutional detention is only necessary for some noncitizens. The decision to take a person’s liberty—perhaps the most precious of American values—and to pay over one hundred dollars for it per day should be well founded.⁶⁶ If after an individualized assessment, a noncitizen is deemed to not present a flight risk or any danger to the community, there is no justification for taking his liberty and squandering taxpayer dollars.

Alternatives to Detention (ATD) programs were created to address detainees who are not legally subject to mandatory detention, are not dangerous and present a low flight risk.⁶⁷ A perfect candidate for ATD programs would be someone with strong ties to the community and no history of violence—a criteria met by many people lingering in detention centers today. Through ATD programs, ICE can monitor non-criminal immigrants for a fraction of the cost of institutional detention without wasting taxpayer dollars or disrupting families.⁶⁸ These programs cost up to \$17 dollars per immigrant per day—about thirteen times less than the cost of institutional detention.⁶⁹ If the detention bed quota was removed, taxpayers could save over \$1.4 billion dollars per year.⁷⁰ The federal criminal system, as well as the criminal systems of every state in the United States, has used ATD programs to some extent, with great success.⁷¹

Alternative to Detention programs can include a combination of the following monitoring mechanisms: 1) supervised release to non-governmental organizations, 2) release on bail to an individual citizen, 3) reporting requirements by phone or

A recent study found that the U.S. government “spends more on immigration enforcement than all its other principal criminal federal law enforcement agencies combined.”⁹²

in-person, 4) open center detention, or 5) community release.⁷² DHS created three different ATD programs: the Intensive Supervision Appearance Program (ISAP), the Enhanced Supervision Reporting (ESR) program and Electronic Monitoring (EM) program. The first two—ISAP and ESR—are run by contractors and have experienced high success rates.⁷³

Since 2004, contractors have supervised detainees in ISAP through multiple approaches including telephonic reporting, radio frequency, GPS tracking, and unannounced home visits.⁷⁴ By October 2009, ISAP had served 13,000 participants and experienced a success rate of 87%.⁷⁵ ESR, a program that uses all the same supervising mechanisms as ISAP, was created in 2007.⁷⁶ This program yielded a very high success rate—even higher than ISAP—of 96%.⁷⁷ Electronic Monitoring is the only program that is actually run by ICE. Created in 2009, EM is only available in states where ISAP and ESR are not.⁷⁸ It uses only three supervising techniques: telephonic reporting, radio frequency, and GPS tracking, and experienced a success rate of 93%.⁷⁹ While it could be argued that any program that is not 100% successful would not be an adequate substitute for institutional detention, these programs could be improved by greater investment. ISAP’s successor, ISAPII, yielded between a 96% and 99% success rate.⁸⁰

Other ATD programs were designed by DHS in partnership with community-based organizations, and are then run by those organizations. The first example of this type of program was the Appearance Assistance Program—a pilot program developed between ICE and the Vera Institute of Justice, a non-profit organization.⁸¹ The Appearance Assistance Program (AAP) was very successful for the three years that it was intended to run, between

1997 and 2000.⁸² Through the AAP, DHS tested out “different methods and levels of supervision to learn how to increase rates of court appearance and compliance with adverse rulings.”⁸³ Supervision under AAP was made through a combination of in-person reporting, required phone-ins and home visits, resulting in 91% success rate. The key to its success was the participation of community-based organizations that supervised and provided resources to detainees.⁸⁴

A second example of a community-based ATD program was the partnership between DHS and the Lutheran Immigration and Refugee Service (LIRS). In 1999, DHS and LIRS came together to release 25 Chinese asylum seekers from detention into open shelters around the country.⁸⁵ Not unlike AAP, this program was also very successful; 96% of the participants appeared at their hearings. A third community-based ATD program was the collaboration between DHS and the Catholic Charities of New Orleans to address 39 asylum seekers released from detention and 64 “indefinite detainees” who were not legally removable from the U.S..⁸⁶ Again this program—which ran between 1999 and 2002—proved to be very successful (97% success rate).⁸⁷ Finally, another option could be release on bail or home electronic monitoring (ankle bracelets).⁸⁸

Liberal and conservative organizations alike—including the Heritage Foundation, the International Association of Chiefs of Police, the National Conference of Chief Justices, the American Bar Association and the Council on Foreign Relations—support ATD programs.⁸⁹ However, even though ATD programs are inexpensive, more humane and efficient to run, ICE still depends mainly on institutional detention—as less than 5% of detainees are supervised through ATD programs.⁹⁰ ATD

programs are also almost as effective as institutional detention even though the U.S. government invests significantly less on them.⁹¹

Unsound Policymaking

The policy behind the detention bed quota is unsound. First, satisfying the quota through institutional detention is tremendously expensive, especially when compared to its alternatives. A recent study found that the U.S. government “spends more on immigration enforcement than all its other principal criminal federal law enforcement agencies combined.”⁹² According to ICE, for fiscal year 2014, institutional detention of immigrants cost American taxpayers \$119 per immigrant per day—a figure that does not account for operational costs.⁹³ Conversely, Alternative to Detention programs cost only between 70 cents and 17 dollars per day.⁹⁴

Second, ATD programs are almost as effective as institutional detention. As previously stated, the goal of immigration detention is not to punish, but to protect the public and ensure that detainees appear in court and comply with removal orders. For noncitizens who are not dangerous and do not present a risk of flight, ATD programs provide more cost-effective ways to ensure their appearance in court and compliance with removal orders.⁹⁵ Research supports this conclusion: up to 99% of active participants in ATD program ISAPII appeared at their immigration hearings.⁹⁶ While the success rate of other ATD programs has been somewhat lower, those programs can be improved with increased investment.

ATD programs are not only more cost-effective than detention, but also more humane. Detainees in institutional detention are many times commingled with actual criminals in state and local jails.⁹⁷

Nevertheless, immigration detention facilities resemble prisons, and detainees are treated no different than criminals.¹⁰⁶

Even those held in private detention centers are treated like criminals.⁹⁸ Immigrant detainees include already vulnerable populations like asylum-seekers, torture survivors, victims of human trafficking, the sick, the disabled, the elderly, and pregnant women.⁹⁹ They also suffer sexual assault,¹⁰⁰ physical and emotional violence, and do not have access to adequate food, health care or outdoor recreation. Some facilities even subject immigrant detainees to forced labor.¹⁰¹ The effects of this treatment are devastating. A 2003 study found that 86% of detainees were depressed, 77% suffered from anxiety, and 50% from Post Traumatic Stress Disorder.¹⁰² There have also been instances of segregation and solitary confinement in detention centers and county jails.¹⁰³ As a result of that treatment, immigration detainees have suffered grave physical and psychological harm, including death.¹⁰⁴

Human Beings as Commodities

Since noncitizens who have committed crimes are first processed, adjudicated, and punished through the criminal system, the goals of immigration detention are non-punitive. In fact, immigration detention is legally classified as “civil” detention.¹⁰⁵ As opposed to jail or prison, the purpose of immigration detention is to hold noncitizens who pose a risk of flight or threat to public safety while their immigration case is being decided. Nevertheless, immigration detention facilities resemble prisons, and detainees are treated no different than criminals.¹⁰⁶ Additionally, due to immigration adjudication backlogs, many noncitizens spend several months in immigration detention waiting for the resolution of their cases.¹⁰⁷

The U.S. government’s overreliance on detention as a *de facto* mechanism for the enforcement of immigration laws, and the increase of contracts with third parties

for detention operations has transformed immigration detention into an industry. In the hands of third parties, this industry has an incentive to treat human beings like commodities to increase profits.¹⁰⁸

ICE detains immigrants in three types of facilities: Service Processing Centers,¹⁰⁹ state and local jails, and private detention facilities. Over two thirds of the immigrant detainee population is held in private detention centers and state and county jails.¹¹⁰ In fact, there are approximately 350 detention facilities used by ICE, but only eight of those are ICE-owned and operated.¹¹¹

Most private immigration detention centers are owned by two large corporations: Corrections Corporation of America (CCA) and GEO Group, Inc.¹¹² The relationship between DHS and these two corporations began in the 1980s. ICE first contracted with CCA in 1983, and with GEO in 1987.¹¹³ Before, undocumented immigrants were dealt with exclusively within the civil system, but in 2005, “Operation Streamline” began to criminalize undocumented immigrants and implemented a zero-tolerance policy that drastically increased immigration detainee populations.¹¹⁴ The immigration detainee population has been steadily growing ever since. In 2002, over 3,300 immigrants were sent to private prisons under two \$760 million contracts between the Federal Bureau of Prisons and CCA.¹¹⁵ By 2012, ICE was paying private companies \$5.1 billion to hold more than 23,000 criminal immigrants under 13 contracts.¹¹⁶

Placing a large portion of the U.S. immigration detention system in the hands of private companies is dangerous when we consider the human costs. Besides profiting from federal funds, private detention centers—like those run by CCA—force

detainees to work for between \$1 and \$3 a day.¹¹⁷ These corporations then charge detainees to access basic services—the money earned by those detainees is re-invested into the prison to pay for exorbitant phone call rates, or other necessities like toothpaste and soap.¹¹⁸ Another important disadvantage of third party detention is the diminished transparency and accountability.¹¹⁹ Once detention is placed in the hands of third parties, ICE can no longer directly monitor human rights abuses and compliance with U.S. law and policy as effectively.¹²⁰

The amount of detainees is not only growing—it is growing with increasing speed. In 1996, the U.S. government detained approximately 70,000 noncitizens, and in 2012, a staggering 400,000.¹²¹ Between 2001 and 2010, the amount of detainees almost doubled, from 209,000 in 2001 to 392,000 in 2010.¹²² The number of immigration detainees grew at a faster rate than privately-held state or federal prisoners during that time.¹²³ As the numbers of detainees grow, the immigration detention industry continues to become more profitable. Federal government contracts to detain 1,000 or more immigrants are common and have sparked a new wave of private prisons, especially in the Southwestern states.¹²⁴

Tailoring Detention Practices to Meet Immigration Detention Goals

Like any other federal government agency, ICE has discretion to prioritize its goals and allocate funds according to those priorities. ICE should be able to focus its limited resources on meeting the goals of immigration detention.¹²⁵ Specifically, ICE prioritizes the detention of “serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind, known gang members...and individuals

ICE can only afford to remove 400,000 noncitizens per year—under 4% of the estimated undocumented population in the United States.¹⁴²

with an egregious record of immigration violations.¹²⁶ Conversely, ICE does not focus on undocumented immigrants who are seriously ill, disabled, elderly, pregnant or nursing, are primary caretakers of children or an infirm person, or whose detention is not otherwise in the public interest.¹²⁷ However, a lot of detainees fall into those categories because the quota is an arbitrary number that makes no distinction between detainees.¹²⁸

By requiring that a detention quota be filled every day, Congress is interfering with DHS' prosecutorial discretion. Prosecutorial discretion is the authority of an agency to decide to what degree to enforce the law against a specific person.¹²⁹ Like all other federal government agencies, DHS has prosecutorial discretion over subjects within its jurisdiction.¹³⁰ Unlike any other enforcement agency, however, ICE has a detention quota—unheard of in any other U.S. law enforcement agency.¹³¹

In exercising prosecutorial discretion, ICE must consider certain factors such as its civil immigration enforcement priorities, how long that person has been in the United States, how they arrived, their level of education, whether they or their family members have served in the U.S. military, their criminal history, their immigration history, their ties/contributions to the community, etc.¹³² These types of careful considerations are similar to those made in the criminal system. They ensure that enforcement agencies are using their resources in a way that best benefits society by protecting it from dangerous individuals and keeping communities together. DHS should be able to make detention decisions without an arbitrary quota that detracts from its case-by-case assessments about the usefulness and impact of detention over each specific individual, while also taking into account its budget

and priorities.

A Quota That Sticks

In 2013, the Deutch-Foster Amendment—which proposed to eliminate the detention bed quota—failed to pass¹³³ in the House of Representatives, despite having earned the support of 189 members of Congress, including eight Republicans.¹³⁴ In September 2013, Representatives Deutch and Foster, along with 63 of their colleagues, sent a letter to the Obama administration requesting that it remove the bed quota from the administration's FY2015 budget request.¹³⁵ In early 2014, the two congressmen again renewed their amendment to no avail.¹³⁶

While no other such legislative efforts have been made, there have been other instances from both sides of the aisle questioning the need for an immigration detention quota. Representative David Price, the ranking Democrat in the House Homeland Security Appropriations Committee, has been trying to strike the quota since it was first introduced.¹³⁷ During a House Judiciary Committee hearing, Rep. Bachus (R-AL), questioned the efficiency of the quota and advocated for the use of alternatives to detention.¹³⁸ Representatives Schakowsky, Price, Polis, Quigley, and Roybal-Allard all spoke against the quota on the house floor during the debate over the DHS appropriations act of 2014.¹³⁹ From within DHS, there is also opposition to the quota and a preference for ATD programs. Former DHS Secretary Janet Napolitano spoke out against the quota calling it an "arbitrary" requirement.¹⁴⁰ Julie Myers Wood, former ICE Assistant Secretary, believes that ATD programs are more sensible than institutional detention.¹⁴¹

Efforts to eliminate the quota have been few and ineffective. Supporters of the quota believe that institutional detention is the best way to make sure that

noncitizens appear in court and comply with final removal orders. They maintain that the quota does not force ICE to detain more noncitizens than its caseload requires. However, though the quota may be the most effective way to ensure that noncitizens comply with their Notice to Appear or final deportation orders, this 100% effectiveness comes at too great an expense. ATD programs, which are almost as effective, are less expensive and keep families together. While institutional detention breaks families apart—including families whose members are American citizens or lawful permanent residents—ATD programs are able to protect the integrity of the family unit. Institutional detention forces detainees to stop working, which, in turn, causes financial strain on their families and American communities.

ICE can only afford to remove 400,000 noncitizens per year—under 4% of the estimated undocumented population in the United States.¹⁴² The former ICE Acting Director of Detention and Removal Operations admitted that even though detention is the surest way to hold people, it would be fiscally impossible to detain everyone.¹⁴³ The requirement to detain 34,000 a day is arbitrary, a number that is not based on need or predicted need, and it obstructs ICE's ability to detain when it is necessary.

III. Conclusion

Eliminating the U.S. government's overreliance on immigration detention is a necessary step towards meaningful immigration reform. The requirement that ICE detain an arbitrary number of people every day without regard to their propensity for risk of violence or flight is not only fiscally unsound, but morally questionable. Detaining 34,000 people every day is expensive and wasteful in view of Alternatives to Detention pro-

grams that have been successful across the country and cost ten to thirteen times less. Aside from fiscal savings, these programs would treat noncitizens as human beings rather than commodities, and allow them to continue to be productive members of society while they await their day in immigration court.

The detention bed quota—an unprecedented requirement in the law enforcement context—should be eliminated. Fiscally, this decision would free up funds for ICE to allocate according to its priorities and needs. Even without the quota, noncitizens subject to mandatory detention would still be detained. But for those who do not need to be statutorily detained, ICE would be able to employ the combination of monitoring mechanisms that is most appropriate for that particular person after performing an individualized risk assessment. In so doing, ICE would be able to manage its funds in the most efficient way possible to protect national security and public safety, while ensuring compliance with immigration law and saving taxpayer dollars.

A portion of the millions of dollars in savings that would result from the elimination of the quota should be re-invested into ATD programs—which are efficient, humane, and keep communities and families together. Improving the U.S. immigration system, and the laws and policies that dictate it, is a complex and arduous endeavor. However, eliminating the quota should not be. The United States is a nation of immigrants. It is still a beacon of hope, bright with the promise of a better life for people from all corners of the world.

Endnotes

- 1 Some detainees are Legal Permanent Residents (“green card” holders). ICE detainers have also been placed on U.S. citizens. See Transactional Records Access Clearinghouse (TRAC) Immigration, ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents, available at <http://trac.syr.edu/immigration/reports/311/> (noting that between FY2008 and FY2012, ICE placed detainers on 834 U.S. Citizens and 28,489 Legal Permanent Residents). An ICE detainer (or “hold”) is a notice that ICE issues to local, state and federal law enforcement agencies to turn over suspected noncitizens to ICE.
- 2 The DHS Appropriations Act provides funds to maintain 34,000 immigration detention beds per day. It does not specifically say that those beds must be filled. However, ICE interprets it as a quota because that is how Congress meant it. When ICE released 2,200 detainees to save money, and the detainee population fell to 30,773, Republican Congressman Michael McCaul reminded ICE officials that they were “in clear violation of the statute.” William Selway and Margaret Newkirk, Bloomberg, Congress Mandates Jail Beds for 34,000 immigrants As Private Prisons Profit, Sep. 24, 2013 available at <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html>.
- 3 The quota is known most commonly as the “detention bed mandate” but the terms are interchangeable. I use the term quota to avoid confusion between “bed mandate” and “mandatory detention,” two very different, but related terms. Mandatory detention is explained below.
- 4 Sources differ as to the cost of immigration detention. Figures range from \$119 to \$164 per detainee per day and between 1.7 to 2 billion dollars per year. For FY2014, the National Immigration Forum calculated that immigration detention costs taxpayers \$159 per detainee per day for a total of \$5.05 million per day. See National Immigration Forum, The Math of Immigration Detention, August 2013, at 2, note 5 available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (noting that \$159 per bed per day is a more accurate figure than \$119 because the latter does not account for operational costs); Ted Robbins, National Public Radio, Little-Known Immigration Mandate Keeps Detention Beds Full, November 19, 2013 available at <http://www.npr.org/templates/transcript/transcript.php?storyId=245968601> (“every day he was in detention cost taxpayers at least \$120... [a]dd up all the nation’s detention centers, and that’s more than \$2 billion a year.”); Tabassum Zakaria, Reuters, U.S. Agency Says Average Cost of Immigrant Detention \$119 Per Day, February 28, 2013 available at <http://www.reuters.com/article/2013/03/01/us-usa-fiscal-immigration-idU.S.BRE92001120130301> (citing \$119 as the daily amount per detainee according to ICE). For more figures on immigration detention cost, see generally National Immigrant Justice Center, Media Coverage for ICE Detention Bed Quota, January 22, 2014 available at <http://immigrantjustice.org/sites/immigrantjustice.org/files/Media%20Coverage%20Detention%20Bed%20Quota%202014.01.22.pdf>.
- 5 Anthony Tangeman, In Defense of the Alien Vol. 24, (2001), pp. 25-30, Immigration Detention: The Fastest Growing Incarceration System in the United States available at <http://www.jstor.org/stable/23141397>, Chris Kirkham, The Huffington Post, Private Prisons Profit From Immigration Crackdown, Federal and Local Law Enforcement Partnerships, November 26, 2013 available at http://www.huffingtonpost.com/2012/06/07/private-prisons-immigration-federal-law-enforcement_n_1569219.html (immigrant detainees are the “fastest growing segment of the American prison population”); Lutheran Immigration and Refugee Service, Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy, available at <http://www.lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>; Univision News, Immigration Detention: Fastest Growing Incarceration System in the United States, September 29, 2011 available at <https://www.youtube.com/watch?v=9xwq3oPIG88>.
- 6 “A 2009 ICE report found that only 11% of immigrant detainees had committed a violent crime. The majority of these detainees were ‘characterized as low custody, or having a low propensity for violence.’” Luz C. González Fernández, The Harvard Journal of Hispanic Policy, Immigration Detention in America: Civil Offense, Criminal Detention, December 3, 2013 available at <http://www.harvardhispanic.org/immigration-detention-in-america/>; National Immigration Forum, The Math of Immigration Detention, August 2013, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>. In more than two thirds (77.4%) of ICE detainers issued between FY2008 and FY2012, the individual who had been identified had no criminal record. Within the remaining 22.6% who had a criminal record, only 8.6% of the charges were classified as a “Level 1” offense. Though Level 1 offenses are serious offenses, level 1 offenders often include those who have been charged with traffic offenses or immigration offenses. Transactional Records Access Clearinghouse

- (TRAC) Immigration, Who Are The Targets of ICE Detainers, available at <http://trac.syr.edu/immigration/reports/310/>; Julie Myers Wood & Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/> (“About half of all immigrant detainees have no criminal record at all, and almost ninety %have never been convicted of a violent crime.”).
- 7 See generally American Civil Liberties Union (ACLU), Immigration Detention available at <https://www.aclu.org/immigrants-rights/immigration-detention>; Detention Watch Network, Conditions in Immigration Detention available at <http://www.detentionwatchnetwork.org/node/2383>; Jack Rockers & Elizabeth Troutman, University of Carolina School of Law, Dangerous Detention: Human Rights Standards and Enforcement in Immigration Detention, May 2009 available at <http://www.law.unc.edu/documents/clinicalprograms/dangerousdetention.pdf>; Sarah Childress, PBS Frontline, Why Immigrant Detainees Still Aren't Safe from Abuse, November 20, 2013 available at <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/why-immigrant-detainees-still-arent-safe-from-abuse/>; ACLU, Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards, March 28, 2012 available at <https://www.aclu.org/immigrants-rights/aclu-statement-hearing-titled-holiday-ice-us-department-homeland-securitys-new>; Michael McLaughlin, Detention Watch Network, Expose and Close Reports on 10 of the Worst Immigrant Prisons in the U.S., available at http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose_and_close_one_year_later.pdf.
- 8 According to Julie Myers Wood, former Assistant Secretary of Homeland Security, undocumented immigrants tracked in Alternatives to Detention programs appeared for administrative hearings more than 90% of the time and complied with final orders 84% of the time. The Madness of U.S. Immigration Policy, Bloomberg, Sept. 26, 2013 available at <http://www.bloomberg.com/news/2013-09-26/the-madness-of-u-s-immigration-policy-continued.html>.
- 9 Andy Sullivan, Reuters, Insight: Congress Keeps Detention Quota Despite Immigration Debate, Jul. 8, 2013 available at <http://www.reuters.com/article/2013/07/08/us-usa-immigration-detention-insight-idU.S.BRE96711920130708> (When asked about the quota, Congressman David Price stated
- that it “becomes kind of a proxy to show how tough one is on immigration.”); William Selway and Margaret Newkirk, Bloomberg, Congress Mandates Jail Beds for 34,000 immigrants As Private Prisons Profit, Sep. 24, 2013 available at <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html> (“[A]dding beds for illegal immigrants became political shorthand for taking a strong stance on protecting U.S. borders.”).
- 10 ATD programs cost anywhere from 70 cents to \$22 per person per day, depending on the program. See generally National Immigration Forum, The Math of Immigration Detention, August 2013, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (70 cents per person per day); Julie Myers Wood & Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/> (\$9 a day per person); Nick Miroff, The Washington Post, Controversial Quota Drives Immigration Detention Boom, October 13, 2013, available at http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html (under \$10 per person per day); Ali Noorani, Reuters, Focus U.S. Immigration Detention Costs, March 4, 2013, available at <http://blogs.reuters.com/great-debate/2013/03/04/focusing-u-s-immigration-detention-costs/> (no more than \$12 a day per person); Lutheran Immigration and Refugee Service, Alternatives to Detention (ATD): History and Recommendations, available at <http://lirs.org/wp-content/uploads/2013/04/LIRS-Backgrounder-on-Alternatives-to-Detention-3-12-13.pdf> (\$22 per person per day).
- 11 National Immigrant Justice Center, Eliminate the Detention Bed Quota, available at <https://www.immigrantjustice.org/eliminate-detention-bed-quota#Uv5xixYVzHg> (“The bed quota prevents ICE from exercising [prosecutorial] discretion.”); Robert M. Morgenthau, Daily News, Immigrants Jailed Just to Hit a Number, January 19, 2014, available at <http://immigrantjustice.org/sites/immigrantjustice.org/files/Media%20Coverage%20Detention%20Bed%20Quota%202014.01.22.pdf> (“Then Homeland Security Secretary Janet Napolitano objected [to the quota], telling Congress, ‘we ought to be detaining according to our priorities, according to public-safety threats, level of offense, and the like, not an arbitrary bed number.”).
- 12 William Selway and Margaret Newkirk, Bloomberg, Congress Mandates Jail Beds for 34,000 immigrants As Private Prisons Profit, Sep. 24, 2013 available at <http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html>.
- 13 Zadvydas v. Davis, 533 U.S.678, 690 (2001) (“The [immigration] proceedings here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.”).
- 14 Stephanie J. Silverman, Immigration Detention in America: A History of its Expansion and a Study of its Significance, Center on Migration, Policy and Society, Working Paper No. 80, University of Oxford 2010 available at <http://www.compas.ox.ac.uk/publications/working-papers/>.
- 15 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 140 (2012) (citing Immigration Act of 1893 § 5, Ch. 206, 27 Stat. 569, 570 ([I]t shall be the duty of every inspector of arriving alien immigrants to detain for a special inquiry...every person who may not appear to him to be clearly and beyond doubt entitled to admission.”); Ellis Island – FREE Port of New York Passenger Records Search available at http://www.ellisland.org/genealogy/ellis_island_history.asp (“If the immigrant’s papers were in order and they were in reasonably good health, the Ellis Island inspection process would last approximately three to five hours.”).
- 16 Ellis Island – FREE Port of New York Passenger Records Search available at http://www.ellisland.org/genealogy/ellis_island_history.asp
- 17 *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid.”).
- 18 *Wong Wing v. United States*, 163 U.S. 228, 233 (1896).
- 19 Stephanie J. Silverman, Immigration Detention in America: A History of its Expansion and a Study of its Significance, Center on Migration, Policy and Society, Working Paper No. 80, University of Oxford, 2010 available at <http://www.compas.ox.ac.uk/publications/working-papers/>; Ellis Island – FREE Port of New York Passenger Records Search available at http://www.ellisland.org/genealogy/ellis_island_history.asp

- 20 Detention Watch Network, The History of Immigration Detention in the U.S., available at <http://www.detentionwatchnetwork.org/node/2381>.
- 21 Sarah Gryll, Immigration Detention Reform: No Band-Aid Necessary, 60 Emory L.J. 1212, 1224-25 (2011).
- 22 Frances M. Kreimer, Dangerousness on the Loose: Constitutional Limits to Immigration Detention As Domestic Crime Control, 87 N.Y.U. L. Rev. 1485, 1486 (2012).
- 23 Frances M. Kreimer, Dangerousness on the Loose: Constitutional Limits to Immigration Detention As Domestic Crime Control, 87 N.Y.U. L. Rev. 1485, 1486 (2012).
- 24 Frances M. Kreimer, Dangerousness on the Loose: Constitutional Limits to Immigration Detention As Domestic Crime Control, 87 N.Y.U. L. Rev. 1485, 1487-92 (2012).
- 25 Sarah Gryll, Immigration Detention Reform: No Band-Aid Desired, 60 Emory L. J. 1212, 1225 (2011).
- 26 The list of offenses that qualify, pursuant to the Immigration and Nationality Act, is extensive. In addition to the more obvious dangerous crimes such as Murder, Rape, or Sexual Abuse of a Minor, Arson, and Explosive Materials Offenses, to name a few, many other less dangerous offenses qualify as aggravated for immigration purposes. Theft offenses, including receipt of stolen property, failure to appear before a court pursuant to a court order, criminal contempt are among some of the offenses that qualify as aggravated felony. More importantly, the person does not need to be found guilty of committing such offense, for merely being charged is enough to trigger the statute. See 8 U.S.C. §1101(a)(43).
- 27 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 147 (2012).
- 28 See *United States v. Winston C. Graham*, 169 F.3d 787 (3rd Cir. 1999) (holding that a class A larceny, a misdemeanor, qualifies as an “aggravated felony” for immigration purposes).
- 29 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 149 (2012).
- 30 Undocumented immigrants who are convicted first serve their sentence in criminal detention and are then turned over to ICE, but only when there is an ICE detainer in place. Otherwise, they are released.
- 31 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 147 (2012).
- 32 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 149 (2012).
- 33 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 149 (2012) (citing *Criminal Aliens in the United States*, S Rep No 104-48, 104th Cong., 1st Sess. 2 (1995)).
- 34 Hearing on HR 3333 before the Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, 101st Cong., 1st Sess. 52-54 (1989).
- 35 Sarah Gryll, Immigration Detention Reform: No Band-Aid Desired, 60 Emory L. J. 1212, 1225 (2011).
- 36 Sarah Gryll, Immigration Detention Reform: No Band-Aid Desired, 60 Emory L. J. 1212, 1225 (2011).
- 37 See Rutgers School of Law- Newark Immigrants Rights Clinic & American Friends Service Committee Freed But Not Free, July 2012 available at <https://law.newark.rutgers.edu/files/Freed%20but%20not%20Free%20Final%20lo%20res.pdf> (“The Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) expanded the number of individuals subject to mandatory detention by eliminating the possibility of a bond hearing for certain categories of immigrants and increased the crimes for which Legal Permanent Residents and other noncitizens could lose their legal status, thereby dramatically increasing the number of individuals potentially subject to immigration detention.”).
- 38 Detention Watch Network, The History of Immigration Detention in the U.S., available at <http://www.detentionwatchnetwork.org/node/2381>
- 39 Anti Terrorism and Effective Death Penalty Act of 1996 (AEDPA) §440(c), Pub. L No. 104-132, 110 Stat. 1214, 1277, amending INA §242(a)(2), codified as amended at 8 U.S.C §1252.
- 40 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) §303(a), Pub. L No. 104-208, 110 Stat. 3009, 3009-585, amending INA §236(c).
- 41 INA §241(a)(2), 8 U.S.C §1231(a)(2).
- 42 Meaning without a prior hearing.
- 43 INA §254, 8 U.S.C §1155; Detention Watch Network, The History of Immigration Detention in the U.S., available at <http://www.detentionwatchnetwork.org/node/2381>.
- 44 Migration Policy Institute, Immigration Enforcement Spending Since IRCA, available at http://www.migrationpolicy.org/ITFIAF/FactSheet_Spending.pdf. Appropriations for detention and removal jumped 64% (\$399 million) between 1996 and 1997.
- 45 Detention Watch Network, The History of Immigration Detention in the U.S., available at <http://www.detentionwatchnetwork.org/node/2381> (“In 2001, the U.S. detained approximately 95,000 individuals. By 2010, the number of individuals detained annually in the U.S. had grown to approximately 390,000. The average daily population of detained immigrants has grown from approximately 5,000 in 1994 to 19,000 in 2001, and to over 33,000 by the end of 2010. ICE’s stated goal is to deport 400,000 non-citizens each year.”); See also Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 159 (2012).
- 46 Alina Das, Immigration Detention: Information Gaps and Institutional Barriers to Reform, 80 U. Chicago L. Rev. 137, 159 (2012).
- 47 Sarah Gryll, Immigration Detention Reform: No Band-Aid Necessary, 60 Emory L.J. 1212, 1225 (2011).
- 48 Sarah Gryll, Immigration Detention Reform: No Band-Aid Necessary, 60 Emory L.J. 1212, 1225-26 (2011).
- 49 The Act allows the detention of an alien if the Attorney General has reasonable grounds to believe that the alien is engaged in terrorist activity or any other activity endangering national security. Because “terrorist activity” is defined as broad as to include “the use of, or threat to use, a weapon with intent to endanger a person or property,” it would encompass a permanent resident alien who brandished a kitchen knife in a domestic dispute with her abusive husband, or an alien who found himself in a barroom brawl, picked up a bottle, and threatened another person with it.” Sarah Gryll, Immigration Detention Reform: No Band-Aid Necessary, 60 Emory L.J. 1212, 1230 (2011).
- 50 Sarah Gryll, Immigration Detention Reform: No Band-Aid Necessary, 60 Emory L.J. 1212, 1224 (2011).

- 51 Cody Mason, The Sentencing Project, Dollars and Detainees: The Growth of For-Profit Detention, July 2012 available at http://sentencingproject.org/doc/publications/inc_Dollars_and_Detainees.pdf.
- 52 Luz C. González Fernández, The Harvard Journal of Hispanic Policy, Immigration Detention in America: Civil Offense, Criminal Detention, December 3, 2013 available at <http://www.harvardhispanic.org/immigration-detention-in-america/> (“A 2009 ICE report found that only 11% of immigrant detainees had committed a violent crime. The majority of these detainees were ‘characterized as low custody, or having a low propensity for violence.’”); See also National Immigration Forum, The Math of Immigration Detention, August 2013, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>. In more than two thirds (77.4%) of ICE detainees issued between FY2008 and FY2012, the individual who had been identified had no criminal record. Within the remaining 22.6% who had a criminal record, only 8.6 % of the charges were classified as a “Level 1” offense.
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- 57 DHS Appropriations Act, 2010, Conference Report (Senate – October 20, 2009) available at <http://beta.congress.gov/congressional-record/2009/10/20/senate-section/article/s10542-3/?q=%7B%22search%22%3A%5B%22dhs+appropriations+act%22%5D%7D> (“We are making significant progress in terms of our border protection and going after these illegal aliens.”); DHS Appropriations Act, 2010, Conference Report (October 13, 2009) available at <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr298&dbname=111&>.
- 58 DHS Appropriations Act, 2010, Conference Report (Senate – October 20, 2009) available at <http://beta.congress.gov/congressional-record/2009/10/20/senate-section/article/s10542-3/?q=%7B%22search%22%3A%5B%22dhs+appropriations+act%22%5D%7D> (“Full funding is provided for border security. This includes funds to support 20,163 Border Patrol agents, 21,124 Customs and border protection officers, and 33,400 detention beds.”).
- 59 Dora Schriro, ICE, Immigration Detention Overview and Recommendations, page 2, October 6, 2009 available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (Reporting that, of the aliens in detention in FY2008, only 11% had committed violent crimes and that “the majority of the [detainee] population is characterized as low custody, or having a low propensity for violence.”).
- 60 Suzy Khimm, The Washington Post, Many immigrants Facing Deportation Must Wait 550 Days For Their Day In Court, February 22, 2013, available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/02/22/manym-immigrants-facing-deportation-must-wait-550-days-for-their-day-in-court/>.
- 61 DHS Appropriations Act, 2010, Conference Report (Senate – October 20, 2009) available at <http://beta.congress.gov/congressional-record/2009/10/20/senate-section/article/s10542-3/?q=%7B%22search%22%3A%5B%22dhs+appropriations+act%22%5D%7D> (“[A]dditional agents and detention beds have allowed U.S. Immigration and Customs Enforcement to increase total removals of aliens from nearly 247,000 removals in fiscal year 2005 to approximately 347,000 in fiscal year 2008.”).
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- 69 ATD programs cost anywhere from 70 cents to \$22 per person per day, depending on the program. See generally National Immigration Forum, The Math of Immigration Detention, August 2013, available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (70 cents per person per day); Julie Myers Wood & Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013, available at <http://www.washington-times.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/> (\$9 a day per person); Nick Miroff, The Washington Post, Controversial Quota Drives Immigration Detention Boom, October 13, 2013, available at http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html (under \$10 per person per day)
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- 73 Success in this context means that the detainees complied with their Notice to Appear by appearing in court, and with their removal orders. An 87% success rate means that 87 out of 100 active participants in the program complied appeared in immigration court or otherwise complied with removal orders.
- 74 U.S. Immigration and Customs Enforcement, ICE Fact Sheet- Alternatives to Detention, October 23, 2009 available at <http://www.ice.gov/pi/news/factsheets/alternativesto-detention.htm>
- 75 U.S. Immigration and Customs Enforcement, ICE Fact Sheet- Alternatives to Detention, October 23, 2009 available at <http://www.ice.gov/pi/news/factsheets/alternativesto-detention.htm>
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- 80 Human Rights First, Immigration Detention: How Can the Government Cut Costs? available at <http://www.humanrightsfirst.org/uploads/pdfs/immigration-detention-fact-sheet-jan-2013.pdf> (“99% of active participants in ISAP II appear for their final hearing”); Julie Myers Wood and Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013 available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/> (“In 2011, 96 %of active participants in the full-service ISAP II programs showed up for their final hearing, and 84 %complied with final [removal] orders.”).
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- 82 AILA, The Use of Electronic Monitoring and Other Alternatives to Institutional Detention on Individuals Classified Under INA §236(c), August 6, 2010 available at www.nilc.org/document.html?id=94
- 83 Vera Institute of Justice, The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision available at <http://www.vera.org/sites/default/files/resources/downloads/aap.pdf>
- 84 Detention Watch, Alternatives to Detention Fact Sheet available at <http://www.detentionwatchnetwork.org/sites/detention-watchnetwork.org/files/background%20fact%20sheets.pdf>; Oren Root, Vera Institute of Justice, The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings available at http://www.vera.org/sites/default/files/resources/downloads/aap_speech.pdf
- 85 Lutheran Immigration and Refugee Service, Alternatives to Detention: History and Recommendations, 2013 available at <http://lirs.org/wp-content/uploads/2013/04/LIRS-Backgrounder-on-Alternatives-to-Detention-3-12-13.pdf>
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- 88 Though I would argue that those methods are alternative forms of detention and not alternatives to detention.
- 89 Julie Myers Wood and Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013 *available at* <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.
- 90 In FY2010, 4% of the 380,000 that ICE detained were in ATD programs.
- 91 Committee Report, Department of Homeland Security Appropriations Bill, 2014, May 29, 2013, *available at* <http://www.gpo.gov/fdsys/pkg/CRPT-113hrpt91/pdf/CRPT-113hrpt91.pdf>. For FY2014, Congress appropriated a total of \$38.99 billion dollars for DHS, of which \$5.34 go to ICE. A little over half of ICE's budget is destined to detention operations (\$2.83 billion). For Alternatives to Detention programs, which are subsumed within the detention operation budget, Congress recommends \$96.4 million.
- 92 Doris Meissner, *et al.*, Immigration Enforcement in the United States: The Rise of a Formidable Machinery, Migration Policy Institute, January 2013 *available at* <http://www.migrationpolicy.org/pubs/pillars-report-in-brief.pdf>.
- 93 See National Immigration Forum, The Math of Immigration Detention, August 2013, at 2, note 5 *available at* <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (noting that \$159 per bed per day is a more accurate figure than \$119 because the latter does not account for operational costs—payroll costs for employees operating the detention system).
- 94 See generally National Immigration Forum, The Math of Immigration Detention, August 2013, *available at* <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf> (70 cents per person per day); Julie Myers Wood & Steve J. Martin, The Washington Times, Smart Alternatives to Immigrant Detention, March 28, 2013, *available at* <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/> (\$9 a day per person); Nick Miroff, The Washington Post, Controversial Quota Drives Immigration Detention Boom, October 13, 2013, *available at* http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html (under \$10 per person per day); Ali Noorani, Reuters, Focus U.S. Immigration Detention Costs, March 4, 2013, *available at* <http://blogs.reuters.com/great-debate/2013/03/04/focusing-u-s-immigration-detention-costs/> (no more than \$12 a day per person);
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