Alternatives to Detention

Rapid growth in the U.S. immigration detention system has resulted in the prolonged detention of thousands of individuals including vulnerable populations such as survivors of torture, families with small children and those with serious illnesses. To ensure that detention is used only when necessary, the American Immigration Lawyers Association (AILA) supports the creation of community-based alternatives to detention programs that allow individuals, including vulnerable populations, to be released from detention.[1] Congress has appropriated funds to the Department of Homeland Security (DHS) to pursue alternatives to detention programs and the Department has initiated a number of new programs. However, DHS has focused on the creation of programs that focus only on populations who are already eligible for release and the programs have focused almost exclusively on the most restrictive methods available to ensure program compliance including electronic monitoring and home visits. The unnecessary use of restrictive alternatives programs for people who are already eligible for release substantially reduces the cost-savings to the Department.

Even though DHS currently only permits individuals to participate in alternatives programs if the individual has already demonstrated that they are not a flight risk or danger to the community, the Department generally uses restrictive measures such as electronic devices to monitor participants. Electronic monitoring devices are very restrictive: a recent court decision found that electronic bracelets cause the loss of a 'great deal' of an individual's liberty and require confinement in a specific space such as a private dwelling for approximately 12 hours per day. Moreover, program participants often complain that family members may be forced to move away from the home because they are frightened by the intrusive nature of current alternatives programs that require DHS 'house visits' and other forms of monitoring. Currently, all of DHS's alternatives to detention programs rely heavily on electronic monitoring devices which seriously restrict an individual's freedom of movement— thereby converting the program into an alternative from of custody rather than an alternative to detention.

DHS's current alternatives to detention programs have not yet taken advantage of community-based alternative programs run by non-governmental, state or local agencies that utilize less restrictive means to ensure program compliance. Community-based alternatives programs that provide case management services, legal orientation for participants and facilitate access to counsel have been shown to substantially increase program compliance without the extensive use of electronic monitoring.

Electronic monitoring devices should be reserved for individuals who would otherwise be detained and who require additional monitoring to ensure compliance with the terms of the individual's release. It is not necessary to electronically monitor all individuals who are paroled from detention or released on their own recognizance. DHS should pursue community-based alternatives to detention program that ensure program compliance through intensive case management, access to attorneys and education about U.S. laws.

---

[1] The average cost of detaining an immigrant is approximately $95 per person per day while alternatives to detention often cost as little as $12 per day. These alternatives to detention programs still yield an estimated 93 to 98% appearance rate before the immigration courts.

Detention deprives individuals of their most fundamental right to liberty and for many immigrants and asylum-seekers, this extreme measure is often unnecessary.

The creation of robust alternatives to detention programs that focus on case management through partnerships with community organizations rather than the use of restrictive electronic monitoring should help to reduce the numbers of individuals in detention and ensure that individuals with strong ties to the community are not needlessly separated from their families.