



Mass Detention of Migrant Families is Unnecessary and Inefficient

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The administration's turn toward mass detention of asylum seekers and migrants flies in the face of numerous empirical studies, including the government's own statistics, that show such policies to be highly unnecessary and inefficient.

On Friday, the Department of Justice filed a "notice" informing the judge in the Flores case that the United States "will detain families together during the pendency of immigration proceedings when they are apprehended at or between ports of entry." The notice claims that longer detentions of families are necessary due to another court's June 26 ruling ordering the reunification of families separated by the Trump administration's "zero tolerance" policies.

Like the President's June 20 executive order, this false choice narrative – family separation or family detention – conspicuously omits other migration management strategies that are effective, proven, and far less costly and cruel. In recent years, the government has developed and dedicated (albeit limited) resources to alternative programs and tested new methods for supporting appearance for immigration hearings and removal. These new programs, along with recent comprehensive studies and analyses of governmental statistics, have generated data that is crucial in examining effective strategies for managing asylum seekers and other populations in removal proceedings.

At Human Rights First, we provide pro bono legal representation to refugees seeking asylum. From this experience, we know that asylum seekers who are afforded accurate information and legal representation overwhelmingly appear for their immigration removal hearings. Recent government data, published by Syracuse University's Transactional Records Access Clearinghouse (TRAC), reveals that 97% of represented mothers whose cases were initiated in 2014 were in compliance with their immigration court hearing obligations three years later, as Human Rights First detailed in a February 2018 analysis of that data. A new comprehensive statistical study, conducted by Professor Ingrid Eagly and colleagues, reveals that 86 percent of families appeared for their hearings and 96 percent of families seeking asylum attended all their hearings. With legal representation, 97 percent of asylum seekers appeared for all hearings.

In cases where people need some appearance support, there are other options, as my colleague Robyn Barnard and I pointed out in our summary of the Top 10 Reasons Family Incarceration is Not a Solution. For instance, ICE operated a Family Case Management Program that resulted in 99% attendance for ICE check-ins and appointments, as well as 100% attendance at court hearings. The program used professional social workers to provide education about participants' responsibilities, individualized family service plans and other case management support. Launched by ICE, the program was operated by GEO Group, the private prison company which also operates many immigration detention facilities. Despite the program's successes, ICE mysteriously canceled the program last year.

Faith-based groups have also initiated case management programs that are community-based. For example, Lutheran Immigration and Refugee Service (LIRS) and the U.S. Conference of Catholic Bishops' Migration and Refugee Services (MRS) piloted small, privately-funded community-based models, showing promising initial results with program compliance rates of 96 to 97 percent.

DHS's own advisory committee recommended expansion of community-based case management programs rather than family detention. Concluding that detention is "never in the best interest of children," the committee recommended DHS "discontinue the general use of family detention, reserving it for rare cases when necessary following an individualized assessment of the need to detain because of danger or flight risk that cannot be mitigated by conditions of release." The DHS Advisory Committee specifically recommended that "[i]f necessary to mitigate individualized flight risk or danger, every effort should be made to place families in community-based case-management programs that offer medical, mental health, legal, social, and other services and supports, so that families may live together within a community."

As the CATO Institute's Alex Nowrasteh explains, another ICE program, an intensive supervision program operated by BI Incorporated, a wholly owned subsidiary the GEO Group Inc, resulted in a 99.6% appearance rate at immigration court hearings, and a 91.1% compliance rate with court orders, meaning these participants either left the country as ordered or earned legal status. The "full service" program involved both case management and monitoring through the use of technology and visitation, while "technology assisted" programs use only monitoring by technology – including electronic ankle monitors.

Critics of electronic ankle monitors note that these devices, referred to as "shackles" by many asylum seekers, can be stigmatizing and effectively criminalize people for administrative migration management purposes as Human Rights First detailed in a 2015 report. In a letter to the Department of Homeland Security, the American Bar Association advised that immigrants made to wear these devices "are subjected to audible broadcast messages and may be required to spend hours tethered to an outlet charging the device each day" and that "[s]ome wearers also report adverse physical effects such as swelling of the ankle, tingling sensations and a burning sensation on the skin." The DHS advisory committee summarized many of the concerns raised by non-governmental organizations about the use of these punitive devices, as well as ICE's decision to select for-profit subsidiaries of prison contractors to operate these programs.

In the absence of individualized assessment of clear flight risk or danger, the DHS advisory committee recommended that families generally be released on their own recognizance, or on reasonable bonds where warranted, and that the imposition of ankle monitors or other supervision programs be imposed only after an individualized determination of danger or flight

risk, and with clear standards and timeframes for eliminating these controls, especially removal of ankle monitors. The [American Bar Association](#), [Human Rights First](#) and other groups have urged that any use of ankle monitors be limited to cases where case management supervision is determined — based on an individualized assessment—to be insufficient to ensure appearance at hearings.

Earlier last week President Donald Trump's former homeland security adviser, Tom Bossert, dismissed case management and monitoring programs in an [interview](#) with ABC's George Stephanopolous. He claimed – alternatively, and in apparent confusion – that less than 60 percent appear or that less than 60 percent return to their countries. President Trump recently claimed falsely that only 3 percent of immigrants appear for their immigration court hearings – implying that 97 percent do not. The immigration courts' most recently published [statistics](#) indicate that about 25 percent of people in removal proceedings failed to appear in fiscal 2016, and as noted above, Professor Eagley's research revealed that 86 percent of families and 96 percent of asylum seeking families appear for all hearings.

Moreover both ICE's intensive supervision and family case management programs [reported](#) high rates of compliance with deportation for those ultimately ordered removed. The CATO analysis explains that the BI program reported a deportation order compliance rate of about 91 percent – which included participants who were deported as ordered as well as participants who were ruled eligible for asylum or some other status. The Family Case Management program [reported](#) that 99 percent attended ICE check-ins, which included appearances for deportation. The CATO analysis reports that only 2 percent of participants in this program absconded after receiving removal orders.

Perhaps Bossert, or whoever gave Bossert this misinformation, perversely counts asylum grants as “failures” since an asylum seeker who is determined to be a refugee under U.S. law cannot be deported back to his or her country of persecution? Regardless, Bossert's claims about the empirical record do not reflect well on the White House if what he said at all represents the information and ideas circulating among the President's closest advisers. (Bossert was brought on to discuss the topic [because](#) he “was part of the team responsible for the president's immigration policies.”)

The success of these programs is well-known, and has been for years, as has their tremendous fiscal savings. The Family Case Management Program [cost around \\$12 per person, per day](#). Family detention costs over \$300 dollars per person, per day. Other alternative programs cost as low as [30 cents to \\$8.04 per person, per day](#). Many non-governmental organizations have supported the use of case management programs, though some are deeply concerned that “alternative to detention” programs are used by ICE to supplement high levels of detention rather than as actual alternatives to the massive overuse of detention.

Family detention is not a solution. It is just another fiasco in the making. The incarceration of families for many weeks, months and more was a major policy failure for the Obama administration as Human Rights First documented in reports issued in [June](#), [August](#), and [October](#) 2015. The [American Academy of Pediatrics](#) and other American health care professionals have repeatedly warned that immigration detention is harmful to children. Harsh policies are also not ultimately effective deterrents. Reflecting on his attempts to use detention to deter families from fleeing to the United States, former DHS Secretary Jeh Johnson, explained in [interviews](#) and an [op-ed](#) last month, that attempts at deterrence will not work over the longer

term as long as we fail to address the powerful “push factors” – conditions “as bad as in war torn areas” – driving people to flee Honduras, Guatemala and El Salvador.

Holding people in immigration detention for the duration of their immigration proceedings violates U.S. commitments under the Refugee Protocol and the International Covenant on Civil and Political Rights. The UN Refugee Agency, which has repeatedly explained that families fleeing these Central American countries are in need of protection, recently reported a significant increase in the numbers seeking refuge in Panama, Costa Rica, Belize, and Mexico as well as the United States. (In other words, the key factor driving people to seek protection is not U.S. laws and border policies, but rather conditions in home countries.) Not only is the detention of children “never in their best interests,” but family detention may also “constitute cruel, inhuman or degrading treatment” in violation of the Convention Against Torture.

The bottom line though is that the administration wants to penalize and punish people seeking asylum in an illegal attempt to deter them from seeking protection in this country. For that, the President apparently wants cages, jails, criminal prosecutions, military bases and lengthy detentions. Instead, Americans should demand effective, humane and fiscally prudent migration management strategies that are consistent with America’s ideals and human rights commitments, and do waste taxpayers’ dollars.