

New models for alternatives to detention in the US

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While there is growing recognition of the value of community-based alternatives to detention in the US, shortfalls in funding and political will are hindering implementation of improved services and best practice.

The United States' immigration enforcement system sees deterrence as the most sustainable means of maintaining control of migrant populations, regardless of push/pull factors. Within this framework, forced migrants may face federal criminal prosecution, prison sentences, and deportation for being in the US without authorisation. While the sole purpose of immigration detention is to ensure compliance with immigration court proceedings and judicial orders, its overuse demonstrates how the philosophy of deterrence has permeated the system by shifting towards the most restrictive and seemingly punitive enforcement mechanisms. While deterrence holds little value in the context of forced migrants who flee their countries of origin to survive or who are desperate to reunite with family, the US government does not distinguish forced migrants from other migrants when making decisions regarding detention.

Detention of children

Since 2002, the US Office of Refugee Resettlement (ORR) has had responsibility for the care and custody of unaccompanied children apprehended by immigration enforcement agencies. Previously, such children were detained in adult detention facilities and were not treated according to child welfare standards. Now they are placed in child-specific immigration detention facilities where they are screened for risk of absconding and danger to the community if released from custody, as well as their need for protection. These screenings guide ORR's decisions to keep the child in detention or refer him/her to a community-based alternative – as they do with the majority of children – vis-à-vis foster care or release to a sponsor, commonly a family member. An estimated 70% are released to a family

member or other sponsor, such as a family friend, and about 20% are placed in a foster-care system managed by a network of NGOs.

While the treatment of children in ORR custody has made great strides by recognising the value of community-based alternatives to detention, the emerging models overlook the need to build capacity for community-based services. The 'Post-Release Services' programme, funded by ORR and implemented by NGOs, is intended to facilitate access to legal, medical, mental health, educational and other social services for the minor and the caregiver. Unfortunately, only 20% of the children released to a family member or other sponsor are matched with a case worker to facilitate these 'wraparound' services, and there is also a lack of low-cost or free counselling and legal services. Many children struggle to adjust to their new US lifestyle and family circumstances; the long-term cost of the outcomes that can result – such as abuse, homelessness or crime – are likely to exceed what communities would pay up-front for the wraparound services and alternatives to detention that would promote protection and family unity, and improve compliance and integration outcomes.

With funds in short supply, new policies implemented from April 2013 permit the expedited release of children to a parent or legal guardian without requiring a fingerprint check on the sponsor or verifying that the sponsor has a stable income, home address or ability and willingness to care for the child. This same push to expedite the release of children also puts detention staff and case managers under additional pressure, squeezing the time available in which to make critical recommendations for each child's care.

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Detention of adults

Immigration and Customs Enforcement (ICE), the agency charged with managing custody of adults, reported an all-time high of 429,000 individuals detained for immigration purposes in 2011 at a cost of nearly \$166 per person per day. The government maintains 34,000 adult detention beds on a daily basis. This overreliance on detention has fuelled the for-profit private prison industry, which now lobbies legislators to maintain strict immigration enforcement laws to fill more detention beds.

Individual assessments are critical for determining who needs to be detained, who would be better off placed in an alternative to detention, and what assistance an individual needs while detained or to comply with conditions of release. Historically, the US has failed to conduct assessments but in early 2013 the government launched a new risk assessment classification tool nationwide that will – for the first time – require ICE to conduct individual assessments based on a number of factors, including a history of trauma. However, the classification assessment is designed to recommend either detention or release but not to determine the type and level of services an adult needs to navigate the courts, comply with conditions of release (especially reporting requirements) and integrate into the community. This lack of information will continue to undermine outcomes for forced migrants who are not sufficiently connected to the appropriate wraparound services post-release. Like those for children, the alternatives to detention for adults fail to build capacity for community-based services.

Community-based alternatives

US NGOs have been advocating for and piloting community-based alternatives to detention since the 1990s. The most recent model is coordinated by Lutheran Immigration and Refugee Service (LIRS)¹ and implemented by more than 20 local NGOs in seven communities nationwide. It aims to build infrastructures of available, accessible, acceptable and high-quality community-based

interventions to support compliance with conditions of release (e.g., appearances at removal hearings) in a manner that is more cost-effective than detention, respects human rights, improves integration and improves client health and welfare.



Eloy Detention Center, Arizona, US.

It has faced challenges in three main areas: conducting both fundraising and community outreach to garner funds and volunteers to assist with service delivery; collecting data to measure the impact of the community-based approach and to inform recommendations; and connecting clients with scarce services for legal, medical and mental health care, visitation, housing, education and employment. These challenges could be overcome with increased funding, especially from the US government which currently offers no funding for civil-society-led alternatives. However, the political will to shift resources away from detention is being undercut by the drive to deter future migration – a formidable barrier to expanding effective and humane community-based alternatives to detention.

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1. See LIRS *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, October 2011 <http://tinyurl.com/LIRS-unlocking-liberty-2011>