Freed but not Free

A Report Examining the Current Use of Alternatives to Immigration Detention

Rutgers School of Law-Newark
Immigrant Rights Clinic

In conjunction with the
American Friends Service Committee

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Authors & Acknowledgements

A. Organizations

a. Rutgers School of Law–Newark Immigrant Rights Clinic

The Clinical Program at Rutgers School of Law–Newark is designed to provide law students the opportunity to work on actual cases and projects and to learn essential lawyering skills, substantive and procedural law, professional values, and applied legal ethics. The program is one of few free legal service providers in New Jersey. All of the legal clinics help fill large voids in service coverage for low-income and underrepresented persons and communities throughout Newark and the greater New Jersey area.

Launched in January 2012, the Immigrant Rights Clinic (IRC) at Rutgers School of Law–Newark serves the local and national immigrant population through a combination of individual client representation and broader advocacy projects.

Under the supervision of Professor Anjum Gupta, students in the IRC represent immigrants seeking various forms of relief from removal, including asylum; withholding of removal; relief under the Convention Against Torture; protection for victims of human trafficking; protection for battered immigrants; protection for victims of certain types of crimes; protection for abused, abandoned, or neglected immigrant children; and cancellation of removal. Students also engage in broader advocacy projects on behalf of organizational clients, primarily immigrant rights organizations. This report is the result of one such project.

Working under the supervision of Professor Gupta, and on behalf of the American Friends Service Committee, the following law students assumed primary responsibility for the production of this report: Nicole D. Finnie, Roman Guzik, and Jennifer J. Pinales.

b. American Friends Service Committee Immigrant Rights Program

The American Friends Service Committee (AFSC) is a Quaker organization that has worked for over 90 years to uphold human dignity and respect for the rights of all persons. AFSC is committed to social justice, peace, and humanitarian service. Since its inception, AFSC has worked on behalf of immigrants and refugees around the world. AFSC's Immigrant Rights Program, based in Newark, New Jersey, addresses the needs of the most vulnerable immigrants and promotes the protection of human rights. AFSC has been active in New Jersey since the 1990s, providing legal representation and bringing the voices of immigrants to the forefront of community organizing around local, state, and national immigration policies.

B. Acknowledgements

The authors would like to thank Amy Gottlieb, Esq., Program Director of the Immigrant Rights Program at the American Friends Service Committee, for her invaluable insight and guidance. We would also like to thank Paul Abels and Stephanie Robins for providing legal research and editing assistance and Megan Bremer of Lutheran Immigration and Refugee Service for providing helpful comments on a draft of the report. We also thank Janet Donohue and Alexis Moore for their assistance with dissemination of the report.

The IRC and AFSC are very grateful to all of the immigrant rights attorneys, advocates, and service providers who shared their expertise and experiences regarding the implementation and enforcement of alternative to detention (ATD) programs. The authors also extend their gratitude to the Newark Immigration and Customs Enforcement (ICE) Enforcement Removal Operations representatives for meeting with us and answering questions about ATD programs.

Lastly, we thank all of the ATD program participants who took the time to interview with us and share their stories.

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Executive Summary

A. Background & The Need for this Project

In May 2011, the White House released a report entitled, "Building a 21st Century Immigration System."[1] In recognition of the need to balance the valuable economic contributions made by immigrants with the need to secure the nation's borders, the Obama Administration detailed its "blueprint" to remedy issues related to unlawful immigration as well as to strengthen the economy.[2] The document also included other proposals for change, such as creating a more humane immigration system, providing clearer compliance guidance, and improving the immigration court system.[3] Among its many outlined solutions, the Obama Administration made clear its desire to remedy critical detention issues, including expanding the capacity of alternative to detention (ATD) programs.[4] As the use of ATD programs increases, the need to examine such programs to ensure they are being carried out fairly and effectively also becomes greater.

As set forth in further detail in the report, immigration detention is costly, and it is unnecessary except in rare cases. For this reason, many advocates have called for an increase in alternatives to detention. Despite the proven effectiveness of many alternatives to detention, as this report makes clear, the capacity of the current ATD system is insufficient. At present, many individuals who are released from detention are placed on an Order of Release on Recognizance (ROR) or an Order of Supervision (OSUP), under which participants are required to check in periodically with Immigration and Customs Enforcement (ICE), among other requirements. Some of those individuals are subject to the Intensive Supervision Appearance Program (ISAP), which includes an electronic monitoring component and is administered by a private company.

This report attempts to examine the use, enforcement, restrictions, and human impact of the existing ATD programs in New Jersey and nationally. For the thousands of individuals that ICE places on supervisory programs—many of whom have been determined to be neither a flight risk nor a danger to the community—ATD programs can be both liberating and debilitating. This report highlights the economic, psychological, emotional, and physical toll faced by individuals under ATD programs and proposes some recommendations for reform.

B. Summary of Flaws in the Current System

- Despite their designation as "alternatives to detention," many ATD programs are used on individuals who have been released from detention or who were never detained in the first place, rather than individuals who would otherwise be detained in a detention facility and for whom the government's goals of ensuring compliance with removal orders and court appearances could be accomplished with alternative measures.

- ICE officers lack clear and up-to-date guidance with regards to current ATD programs. The lack of program enforcement guidelines and the sometimes random exercise of discretion have created the potential for abuse and the arbitrary placement of individuals into certain ATD programs.

- Insufficient information is being disseminated to the public regarding the placement, reporting, and restriction decisions affecting ATD program participants. No clear guidance or standardized assessment tool has been created by which program participants can confirm their reporting schedules or to aid individuals in proving their own compliance with the program requirements.

- There is an overarching need for consistency at check-ins. Some ATD participants have reported that they did not meet with the same officer every time they reported for a check-in. The lack of consistency at check-ins creates uncertainty amongst those placed in ATD programs and furthers the lack of transparency between ICE and its ATD program participants.

- The frequency, location, and duration of check-ins are financially burdensome. The frequent check-in requirements hinder individuals' ability to maintain gainful employment. In addition to the subsequent loss of wages, there are financial expenses associated with traveling to the various check-ins. Those subject to ISAP face additional burdens because they are required to check in not only with ICE, but with its subcontractors.

- ATD program participants, particularly those placed on ankle monitors, have expressed feelings of being criminalized. Ankle monitors are also physically debilitating, due to their weight, and restrict the wearer's travel.

- Because individuals who have been granted relief under the Convention Against Torture (CAT), Withholding of Removal, or Temporary Protected Status (TPS) are nonetheless technically subject to an order of removal, ICE has chosen to place some of those individuals under an OSUP. Given the past psychological and/or physical trauma experienced by many of these individuals, the placement of these individuals is often inhumane. Supervision of these individuals is also often unnecessary, given the low likelihood that they will be removed. Supervision of stateless individuals and others who are unlikely to be removed is similarly unnecessary.

C. Summary of Recommendations

- ICE should discontinue its use of private contractors in the administration of ATD programs in favor of community-based models. The benefits of transitioning to community-based models include decreasing costs to the government; decreasing unnecessary burdens on program participants; increasing access to critical legal, medical, and social services for participants; and increasing compliance among program participants.

- The enforcement and implementation of the ATD programs should be more transparent. Increased and consistent guidance for ICE officers, program participants, attorneys, and the public is required. The guidance should include a description of eligibility requirements for the ATD programs and clarify field terminology. The guidance should also clearly delineate check-in requirements for various classes of ATD participants.

- A clear grievance procedure for ATD program participants should be put in place and information about the grievance procedure disseminated to the public.

- In addition to the standard operating documentation, program participants and their attorneys should be provided with sufficient documentation proving their compliance with ATD program requirements.

- A more user-friendly system should be put in place, as the current ATD system does not take into account the human impact of compliance on program participants. Enforcement and Removal Operations (ERO) and ISAP offices should be located in safe areas easily accessible by public transportation. The wait times for program participants attending check-ins should be shortened. A specific case load should be assigned to each ICE officer on check-in duty. Interpreters for a wider range of languages should be provided at check-in offices.

- Due to backlogs in the immigration court system, individuals are often subject to ROR orders for lengthy periods of time. We recommend that ATD program participants' cases receive higher priority in the immigration court system than they currently receive, so that individuals are subject to the burdensome requirements of ROR orders for a shorter period of time.

- Although, given the problems outlined above, the authors do not condone the use of ankle monitors, to the extent they are currently being used, they should be considered custody for immigration detention purposes, and, as such, a viable alternative to detention even for those subject to mandatory detention under the Immigration and Nationality Act (INA).

- Ultimately, Congress should make clear that ATD programs should be used as true alternatives to detention by increasing funding for ATD programs while simultaneously decreasing funding for detention in detention facilities.

Introduction to the Project and Its Purpose

A. Immigration Detention and the Need for Alternatives

Prior to 1996, generally only those noncitizens considered to be a security threat or flight risk were detained.[5] 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.[6] The daily detention capacity in 1996 was 8,279 beds.[7] Ten years later, in 2006, the "daily capacity had increased to 27,500 with plans for future expansion."[8] The current detention capacity is 33,400 beds.[9] The increase in detention beds is made possible by the increase in funding allocated to the expansion of detention facilities.[10]

Alternative to detention (ATD) programs provide a cost effective approach to monitoring noncitizens, while allowing Immigration and Customs Enforcement (ICE) to fulfill its law enforcement responsibilities. Immigration detention will cost American taxpayers over $2 billion in the 2012 fiscal year alone.[11] ATD programs will cost less than 5% of that amount.[12] Detention in secure facilities costs $166 per day per detainee, while the cost of ATD programs ranges from $0.30 to $14 per day per individual.[13]

In addition to being expensive, detention causes severe mental and physical anguish. One study found that 86% of detainees exhibited symptoms of depression, 77% exhibited symptoms of anxiety, 50% exhibited symptoms of post-traumatic stress disorder, and approximately 25% reported suicidal thoughts.[14] Furthermore, there are other long-term costs associated with detention, "such as the impact on health services, integration problems and other social challenges."[15] These problems with detention have led governmental and non-governmental organizations to advocate for increased use of alternative to detention programs.[16]

ICE is "the largest investigative agency in the Department of Homeland Security." ICE's Enforcement and Removal Operations (ERO) unit is responsible for the enforcement of immigration laws.[17] According to ICE, ATD programs are appropriate for those noncitizens "whose detention is not required by statute, who present a low risk of flight, and who pose no danger to the community."[18] The aim of ATD programs is to ensure attendance at hearings and compliance with removal orders through "an appropriate level of supervision."[19] By design, alternatives to detention "provide a proportional means to meet the government's goals while avoiding arbitrary violations of individual liberty."[20]

In recognition of the benefits of ATD programs and the need to expand such programs, in the past few years, Congress has significantly increased the amount of funding designated to alternatives to detention.

B. The Need to Monitor Alternative to Detention (ATD) Programs

Along with calls for expansion of ATD programs comes the need for oversight of the administration of these programs. The ICE officers administering the various ATD programs have broad discretion to make decisions on matters such as the frequency of required check-ins and other conditions to which program participants are subjected.[21] As set forth in more detail below, this level of discretion has led to a lack of uniformity in the administration of the ATD programs. For example, we have learned that some individuals have seen their check-in requirements increased (e.g., from once every three months to once a month) without explanation.[22] Other individuals who have fully complied have been arbitrarily threatened with increased requirements.[23]

Aside from a lack of uniformity in the administration of the programs, there are numerous other problems with the current ATD system. As described in further detail below, the system lacks consistency and transparency. Program participants receive insufficient information regarding reporting and the level of restrictions imposed upon them. In addition, program participants have complained that they are provided with insufficient proof of compliance. The for-profit supervision system has led to an overuse, and an inconsistent application, of electronic monitoring. This system in turn has led to a physical, psychological, and an economic toll on the program participants, as well as their families. Further, this system is being used to

monitor individuals who are unlikely ever to be deported—such as those granted immigration relief or stateless individuals—without any explanation of the rationale for supervising such individuals.

While significant attention has been paid to flaws in the detention system and the need for alternatives, we are unaware of any study devoted solely to examining the current alternative to detention programs. This report attempts to fill that gap.

C. METHODOLOGY

This project seeks to shed light on how ATD programs are implemented and enforced by ICE. The authors conducted direct in-depth interviews with ATD program participants regarding their experiences attending ICE check-ins, the manner in which they are treated by ICE officers, and the human costs associated with participating in ATD programs. We also interviewed attorneys, advocates, and nongovernmental organization employees from the greater New Jersey and the New York Metropolitan areas as to their and their clients' experiences with the Newark ICE ERO office. To gain the governmental perspective, the authors met with officials from the Newark ICE ERO Office. The authors also filed a Freedom of Information Act (FOIA) request with ICE regarding information on ATD programs at the Newark, NJ; Marlton, NJ; and New York City, NY, ICE offices. As of the publication of this report, the results of the FOIA request have not been received.

We attended a check-in at the Newark ERO and an Intensive Supervision Appearance Program (ISAP) check-in at the office of the private contractor working for ICE, Behavioral Interventions, Inc. (B.I.). Both times we accompanied one of our interview subjects. The authors researched and reviewed current case law, as well as primary and secondary sources. In addition, we obtained program documentation from current and former program participants. We also gathered ICE documentation regarding ATD programs, including, but not limited to, memoranda, field manuals, and contracts with current and former ISAP operators.

Part I: Overview of Current ATD Programs

A. Legal Authority for Alternative to Detention Programs

The Immigration and Nationality Act (INA) § 236(a), 8 U.S.C. § 1226(a) provides for the release of noncitizens arrested for immigration violations, pending their removal proceedings, on bond or on Order of Release on Recognizance (ROR). Those subject to mandatory detention due to criminal or terrorist grounds specified in INA § 236(c)(1), 8 U.S.C. § 1226(c), are not eligible for such release.

Orders of Supervision (OSUP), which pertain to noncitizens who are ordered removed, are authorized under INA § 241, 8 U.S.C. § 1231 ("Detention and Removal of Aliens Ordered Removed"), and the regulatory authority is provided in 8 C.F.R. § 241.5. If, after being ordered removed, a detained noncitizen cannot be removed within a reasonable time, the noncitizen must be released from detention.[24] At that point, Immigration and Customs Enforcement (ICE) may place him or her under an OSUP. Should a noncitizen be released under OSUP, the noncitizen may be granted employment authorization.[25]

B. The Current System and Its Capacity

In 2003 Congress appropriated $3 million to create and develop pilot programs aimed at increasing ICE's ability to supervise nondetained individuals.[26] The Intensive Supervision Appearance Program (ISAP) has been in operation since 2004 and was intended to ensure that the noncitizens subjected to supervision complied with their removal orders.[27] Between 2009 and 2012, there was an incremental increase of $9.7 million for alternative to detention (ATD) programs.[28] Most recently, for fiscal year 2013, Congress has appropriated $111.59 million exclusively for ATD programs, representing nearly $40 million in increased funding from the $72.4 million appropriated in fiscal year 2012.[29]

On October 6, 2009, Department of Homeland Security (DHS) Secretary Janet Napolitano and ICE Director John Morton announced a round of proposals under the Obama Administration's immigration detention reform plan.[30] The DHS referred to five different principles for long-term reform, and stated that its fifth goal is to "ensure Alternatives to Detention (ATD) are cost effective and promote a high rate of compliance with orders to appear and removal orders."[31] These reforms were precipitated by the increasing costs of detention and the rising need to implement a nationwide plan regarding ATD programs.[32] This announcement also corresponded with the release of the 2009 report of Dr. Dora Schriro, then Director of the Office of Detention Policy and Planning, which recommended increasing the use and management of ATD programs.[33]

In his March 2012 testimony to DHS in a Senate Committee hearing on Homeland Security and Governmental Affairs, ICE Director John Morton discussed DHS's priorities for enforcing and administering immigration laws for fiscal year 2013.[34] According to Director Morton, ICE intends to continue to focus its efforts and resources on high priority cases, and the agency anticipates enhancing its ATD programmatic effectiveness.[35] He went on to state that "to ensure the most cost-effective use of Federal resources, the Budget includes flexibility to transfer funding between immigration detention and the ATD program, commensurate with the level of risk a detainee presents."[36]

In this era of increased fiscal accountability and as the Department of Homeland Security approaches its tenth anniversary, the government has been increasingly urged to prioritize its spending, while retaining quality and effective federal programs.[37] Yet, despite this rhetoric, the current administration has detained record numbers of noncitizens.[38]

In the 2012 fiscal year, the agency was granted an increased level of funding to support an additional 2,500 low risk enrollees in ATD programs;[39] however, rather than moving those enrollees out of the current detained population and eliminating the beds (and the costs associated with them), that increase in funding for ATD programs was used to place new detainees in those 2,500 beds.[40]

In 2011, 89 percent of those placed in ATD programs were individuals ICE considered to be non-violent.[41]

C. A Closer Look at the Current System

a. Orders of Supervision (OSUP)

Statutory authority for OSUP is provided in § INA 241, 8 U.S.C. § 1231 ("Detention and Removal of Aliens Ordered Removed"), and the regulatory authority is provided in 8 C.F.R. § 241.5. The statute was enacted on June 27, 1952,[42] and has taken on a greater role as two U.S. Supreme Court decisions, *Zadvydas v. Davis*[43] and *Clark v. Martinez*,[44] have limited the amount of time an individual can be held in a detention facility, leading to a greater number of individuals released on OSUP. 8 C.F.R. § 241.5 addresses the requirements of OSUP, which include (but are not limited to) check-ins with ICE; efforts to obtain travel documents; physical or mental examinations; obtaining advance approval of travel; and providing written notice of any change of address. Additionally, the regulation authorizes the posting of a bond for the issuance of the order of supervision, as well as the discretionary issuance of employment authorization.[45]

Orders of Supervision apply only to individuals subject to final orders of removal, including those individuals who are awaiting removal, and those noncitizens, such as stateless individuals, whom ICE is unable to remove.[46] An individual who is placed on an OSUP is issued a Form I-220B, Order of Supervision.[47] The Form I-220B lists the conditions under which the individual is released, most of which are covered in 8 C.F.R. § 241.5.[48] The Form I-220B also contains an addendum listing other possible conditions of the individual's release, one of which is "that [the individual] comply with ICE's electronic monitoring devices at ICE's discretion."[49] Additionally, the Form I-220B contains a Continuation Page, which consists of a Personal Report Record. The record contains the individual's name, date of birth, current address, photo and fingerprint, and also includes space in which an ICE officer may record an individual's check-in.

Over the past several years there has been a limited number of internally issued ICE directives intended to guide case officers as to the enforcement and implementation of Orders of Supervision. One such directive is a memorandum issued on November 12, 2004 by Victor X. Cerda, Acting Director, U.S. Immigrations and Customs Enforcement, to ICE Field Office Directors.[50]

The purpose of the November 2004 memorandum was to standardize the reporting requirements for those aliens released from detention under an OSUP or an ROR. The directive arose out of the need to provide consistent check-in requirements, and for ICE to have more precise information regarding the address and activities of the released individuals. The memorandum provided a reference table of suggested check-in frequencies to be used as a guide, though it did not prevent stricter reporting requirements based on specific circumstances.[51] The reference table has been reproduced below.[52]

Non-Criminal (EWI[53], LPR[54], Overstay, etc.)[55]	Once every 3 Months
Criminal (Non-LPR)	Once Every Month
LPR (1 or 2 CIMTs)[56]	Once Every 2 Months
Asylum Applicant	Once every 6 Months

In direct conflict with the check-in frequencies listed in the November 2004 memo is Chapter 17 of *The Detention and Deportation Officer's Field Manual,* which states that "initial release conditions may require weekly reporting for a period of time to be determined by each field office. If satisfactory appearances are made, reporting may be extended to monthly intervals. In no circumstance will the frequency-of-reporting requirement be less than once every three months."[57]

The November 2004 memo also required full disclosure to participants regarding the requirements of OSUP. Officers should conduct a query of the National Crime Information Center (NCIC) in order to ascertain if the alien has been arrested or convicted or has any outstanding warrants issued since the last reporting date. Case officers should ask for at least two types of documentation to verify the noncitizen's identity and obtain current and up-to-date addresses. During these meetings the case officer is also to advise the noncitizen as to the status of his or her immigration case and required next steps.[58]

On September 28, 2006, Gary Mead, Executive Associate Director for ICE Enforcement and Removal Operations (ERO), reissued the November 2004 memo to the Field Office Directors, asking them to "[p]lease ensure all staff are aware of and continue to follow the guidance and reporting requirements in the [November 2004] memorandum regarding aliens released on Orders of Supervision and Orders of Release on Recognizance."[59]

Under 8 C.F.R. § 241.13(i)(2) an OSUP can be revoked and an individual be taken into custody and detained if the Department of Homeland Security has reason to believe that it is significantly likely that it will be able to remove the individual from the United States.

b. Order of Release on Recognizance (ROR)

The INA Section 236(a), 8 U.S.C. § 1226(a), provides for the release of noncitizens who were arrested for immigration violations on bond or on Order of Release on Recognizance (ROR). Unlike OSUP, ROR is only available to individuals pending their removal proceedings.[60] Those subject to mandatory detention due to criminal or terrorist grounds specified in INA § 236(c)(1), 8 U.S.C. § 1226(c), are not eligible for such release. Once a noncitizen is taken into custody, the local ICE office makes the determination as to whether to release the individual from custody on bond. The decision as to whether or not to release someone from detention on an ROR order lies within the District Director's discretion.[61] Once that determination is made, the District Director sets the appropriate conditions for release.[62] Those conditions may include a requirement that the individual report periodically with ICE.[63]

Under the regulations, to be released, a noncitizen "must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."[64] The regulation further states that ICE officers should consider the following factors in making such a determination: family ties, community ties, criminal history, immoral acts, ability to post bond, and the manner of entry and length of time in the United States. The regulations further state that a noncitizen may appeal ICE's decision on custody and bond to an Immigration Judge.[65]

Unlike OSUP, individuals under ROR orders are not issued authorization to work, unless they have an independent basis for receiving work authorization. INA § 2368, U.S.C. § 1226, states that when the agency releases a noncitizen on an order of ROR, the agency "may not provide the alien with work authorization (including an 'employment authorized' endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization."[66] In practice, this distinction means that if a noncitizen is ordered removed and placed on an OSUP, but then is successfully able to get his or her case re-opened, that individual might be transferred from an OSUP to an ROR order. In that case, eligibility for work authorization may be lost.

c. Intensive Supervision Appearance Program (ISAP)

The Intensive Supervision Appearance Program is in operation in a limited number of jurisdictions.[67] Before the program can be fully described, some history is necessary.

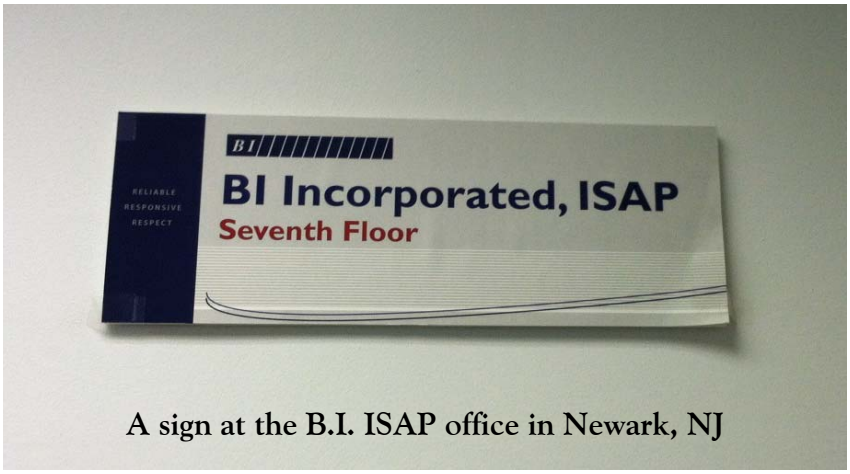
Prior to the inception of today's ATD programs, the Vera Institute of Justice (Vera) operated its Appearance and Assistance Program (AAP), a pilot program based in New York City, from 1997 to 2000.[68] In September 1996, Vera was contracted by the Immigration and Naturalization Service (INS)[69] to develop, implement, and evaluate a three-year pilot supervision program based in New York City.[70] The program was intended as a true alternative to detention, in that the Vera Institute screened detained immigrants in New York and New Jersey to determine eligibility for release from detention and acceptance into the program. The program assessed its 500 participants individually to determine the best methods of supervision in order to ensure appearance for court hearings and compliance with removal orders.[71] For example, to become eligible for the intensive supervision component of the program, program participants were screened for criteria relating to "their community ties, their record of compliance in previous proceedings, and their threat to public safety. After compiling information from INS files, interviews, and follow-up investigation, AAP staff use[d] a point scale to determine if the person [was] eligible for the program."[72]

Beyond its individualized supervisory components, AAP also focused on individualized support services using a case management system.[73] Case managers assisted program participants with obtaining legal services, interpretation services, transportation to and from hearings, and other social services such as medical care and housing assistance.[74]

Over the course of three years, the Vera pilot program reportedly saved the federal government an estimated $4,000 per individual participant.[75] Beyond being cost-effective, the AAP showed remarkable success in its goal of ensuring attendance at hearings. The program boasted some major successes. For example, 90 percent of all program participants attended their immigration hearings compared to 71 percent of those nonparticipants out on bond or parole.[76] The program was especially effective for asylum seekers, people facing deportation because of criminal convictions, and unlawful workers.[77]

AAP successfully ran from 1997 to 2000, but after September 11, 2001, governmental priorities shifted in favor of enforcement and homeland security measures.[78] By 2002, Congress had appropriated $3 million for ATD programming, but the community-based approach, complete with individualized support services, endorsed by the Vera Institute was mostly abandoned.[79] Subsequently, we are left with today's ATD programs that focus solely on the supervision aspect of previous pilot programs.

Following the success of the Vera Institute's AAP pilot program, in 2004, ICE introduced the Intensive Supervision Appearance Program (ISAP)[80] and the Electronic Monitoring Device (EMD) program[81] as two distinct monitoring programs. The programs were piloted in eight cities.[82] While the EMD program would be consolidated into a later ISAP contract,[83] both programs initially functioned toward the common goal of ensuring compliance with removal orders. Significantly, unlike Vera's AAP program, ISAP was not targeted at those individuals in detention who might be good candidates for release; rather, it was targeted at individuals who were not in detention at all. The program is restricted to adult individuals residing within a certain radius of an ISAP Office.[84]



A sign at the B.I. ISAP office in Newark, NJ

In 2004, ICE awarded the ISAP contract to a private company called Behavioral Interventions, Inc. (B.I.), which based its supervision model on electronic monitoring.[85] B.I. was awarded the contract over Volunteers of America, an organization that proposed a supervision system with a low staff-to-caseload ratio, specialized assistance and counseling for torture victims and traumatized individuals, and free legal services.[86] The Vera Institute also put in a bid for the contract, offering to replicate its successful AAP model; nevertheless the contract was awarded to B.I.[87]

The EMD program, which was operated by ICE, functioned as a supplement to ISAP, particularly in geographical areas where B.I. was not operational.[88] Unlike ISAP, which used electronic monitoring (commonly known as ankle monitors), the EMD program used a combination of telephonic reporting (using voice recognition software) and a home curfew system (using radio frequency monitoring). In 2008, the DHS announced the creation of another ATD program, Enhanced Supervision Reporting (ESR), which, according to the DHS, was less intensive than ISAP. The ESR contract was awarded to another private company, Group 4 Securicor.[89]

In 2008, Congress urged ICE to consolidate these programs into a single contract,[90] resulting in B.I. being awarded a contract to operate and implement one comprehensive ATD program.[91] The result is ISAP II. According to B.I.'s website, the company aims to provide technological solutions to "help federal, state and local agencies to supervise a range of individuals—from low- to high-risk offender populations."[92] B.I. claims to use "evidence-based treatment and counseling programs" to monitor individuals, but came under criticism in 2009 for alleged falsification and bolstering of its compliance rates.[93] The following year, B.I. was acquired by the GEO Group, the second largest ICE contractor (Corrections Corporations of America is the largest.)[94] The ISAP II contract is currently in effect.

The 2009 consolidation of the ESR and ISAP programs represents ICE's attempt to create cost-effective programming in a one-size-fits-all package. According to ICE, "ISAP II is a core community-based supervision and in-person reporting program," that uses case specialists as well as electronic monitoring to ensure compliance among program participants.[95] The ISAP II individual service plan (ISP) was designed to be a part of a shift toward supervision with a case management emphasis. According to program requirements, an ISP should include the following: a supervision plan, authorized schedule, legal plan, transportation plan, translation plan, and departure plan.[96] In reality, however, the ISP provides little information on each participant's case. For instance, one interviewee's ISP consisted of only enough information to identify her as a program participant.[97] Furthermore, advocates have criticized the program for mislabeling and falling short on its promise to include case management services geared toward the individualized needs of immigrants.[98]

Today, ISAP operates as a condition of release imposed by ICE on some individuals subject to OSUP or ROR orders.[99] Individuals may only be placed on ISAP if they reside up to 85 miles from an ISAP office.[100] According to ICE, individuals

should be carefully screened in order to determine eligibility for the program as well as level of supervision.[101] A program participant should be "assigned conditions of supervision according to an assessment of the alien's flight risk and danger to the community. In practice, however, assignment to a program is determined in part by residency."[102] If one fails to comply with the program's intensive supervisory requirements, he or she may be subjected to increased supervision requirements or even be returned to a detention facility.[103] As of 2011, 17,454 people were enrolled in the ISAP program.[104]

ISAP consists of five stages of supervision: pre-order; post-order; appeal; post-order custody review - local release stage; and post-custody review - headquarters release.[105] Each stage of supervision corresponds to a program participant's current stage in his or her immigration proceedings.[106] The following is a list of program requirements, based on the participant's stage in ISAP:[107]

- **The Pre-Order Stage**: program participants are subjected to biweekly in-person reporting meetings at the ISAP office as well as unannounced home visits;
- **The Post-Order Stage**: program participants are subjected to reporting in-person twice every two weeks at the ISAP office as well as unannounced home visits;
- **The Appeal Stage**: program participants are subjected to reporting in-person once every four weeks as well as unannounced home visits;
- **The Post-Order Custody Review - Local Release Stage**:[108] program participants must report in-person twice every two weeks and are subject to unannounced home visits;
- **The Post-Order Custody Review - Headquarters Release Stage**:[109] program participants must report in-person once every eight weeks and are subject to unannounced home visits.

We accompanied an individual to her ISAP check-in on March 15, 2012.[110] The local ISAP Office, located at 972 Broad Street, Newark, New Jersey, had two case specialists available. The brief check-in procedure involved the program participant signing-in and having her ISAP identification card scanned. The case specialist then reported to the local ICE ERO field office that the program participant had complied with her check-in requirements.[111] At the check-in, the program participant was never asked whether she had any issues, concerns, or questions regarding her program requirements or conditions. Furthermore, at no time did any of the case specialists consult her ISP or speak with the participant regarding her employment, immigration proceedings, or transportation.[112] The ISAP case specialist merely informed the individual of her next check-in appointment. It is worth noting that ISAP case specialists have some flexibility in the assignment of a program participant's future check-ins. For example, if a program participant has an immigration interview, hearing, court appearance, or OSUP check-in scheduled in the near future, that person may request to have his or her ISAP check-in scheduled on the same day in order to consolidate appearances and ease the burden of travel and time off from work.

B.I. may notify ICE ERO officers of any of the following: unauthorized absence from a participant's residence; GPS zone violations (including failure to return home from a scheduled trip as well as curfew violations); equipment malfunctions; equipment tampering; loss of battery power; inability to verify a participant's location; and a participant's failure to answer calls from the monitoring office.[113] Each program participant is required to stay within a prescribed GPS zone, and failing to stay within that zone constitutes violating an order.[114] While the ankle bracelet is the principal method used by B.I. to track and monitor program participants, the company also sometimes employs the use of voice recognition software to ensure that a person is in his or her home during specified hours.[115]

d. Community-Based Models

In a 2011 comparative study of alternative to detention programs, one scholar stated, "the label [ATD] is not a legal one, but rather refers to the range of measures employed by states that fall short of full deprivation of liberty or confinement in a closed space. . . ."[116] Indeed, referring to the supervision programs described above as "alternatives to detention" may be inappropriate, given that those programs have not been used as true alternatives for individuals who would otherwise be detained; rather, they have been used as additional enforcement measures for individuals who are legitimately living outside of a detention facility. ICE's so-called ATD programs are a far cry from the original model designed and developed by the Vera Institute of Justice, which was aimed at individuals who were detained but for whom community-based alternatives might be better suited.

Today, there is virtually no public funding dedicated to using community-based organizations as providers of intensive case management services for those who would otherwise be detained. Nevertheless, we find it appropriate to describe some

community-based models that have been proposed or that are in existence, in order to lay the groundwork for our recommendation below that ICE transition to a community-based approach to ATDs.

One proposal for a true community-based alternative to detention program was presented by the Reformed Church of Highland Park-AHC (RCHP) and its Pastor, Seth Kaper-Dale, through Who Is My Neighbor, Inc., the RCHP's community development corporation.[117] The proposal was originally submitted to Dr. Dora Schriro, then Director of the Office of Detention Policy and Planning, and Jon Corzine, then Governor of New Jersey, in the summer of 2009.[118] The RCHP proposal, entitled, "Community Supervision and Services: An Alternative to Detention for Asylum Seekers—A Proposal for a Pilot Program in Middlesex County, NJ" details not only its rich history of over 118 years of service to the surrounding community but, most notably, its dedication to its congregants seeking asylum.[119] The RCHP proposed an alternative model that allows asylum seekers to enter a supervisory system that would provide non-institutional housing and supportive services. RCHP offered to pilot a replicable local model at the low rate of approximately $33 per day per program participant. This rate included food, shelter, and other services as needed. The pilot also proposed case management services such as English as a second language classes, emotional and psychological counseling, and assistance with legal issues. Under RCHP's proposal, these services would be continued until the program participant was granted asylum or, in the alternative, removed. Despite the low cost of the program as compared to detention in a facility, the proposal was rejected for governmental funding.

Despite the lack of government contracts, some entities have undertaken to institute community-based services for noncitizens in removal proceedings that include housing components. One local example is Seafarers & International House's Guest House program, located in New York City, which has eighty-four rooms to accommodate asylum seekers, refugees, and immigrant victims of domestic violence, among other guests.[120] Seafarers aims to provide a "home away from home" through its urban ministry that provides not only lodging, but also needed social services, to its guests.[121] Another local example is Christ House, located in New York City. The Bronx-based facility offers asylum seekers and refugees transitional services upon release from detention.

Other domestic examples of community-based ATD programs include Casa Marianella, located in Austin, Texas, and Freedom House, located in Detroit, Michigan. Casa Marianella has an emergency shelter specifically geared toward adult immigrants, offering lodging, English as a second language classes, legal services, and intensive case management services.[122] Freedom House offers asylum seekers housing, food, clothing, legal aid, medical care, mental health care, education, English as a second language classes, job preparation, transportation, and transition housing after asylum is granted.[123]

D. The Effectiveness and Benefits of ATD Programs

ATD programs provide a cost effective solution to detention. Whereas detention costs an average of $122 per day per detainee, current alternatives to detention range in cost from $0.30 to $14 per day per individual.[124]

In addition to being cost effective, ATD programs have a very high compliance rate among participants. In fiscal year 2010, ATD programs exceeded the target for appearance rates for immigration hearings by 35.8 percent.[125] The target appearance rate was 58 percent and the actual fiscal year 2010 rate was 93.8 percent.[126]

ATD programs allow ICE officials to meet their law enforcement objectives, while avoiding the pitfalls and human costs associated with detention in secure facilities.[127] Furthermore, ATD programs increase access to justice in Immigration Court. Individuals in ATD programs are able to exercise more control over their cases than are detained individuals. Reports show that detention in a facility significantly reduces a noncitizen's chances of obtaining legal counsel, yet legal representation is one of the strongest determining factors regarding success in immigration court proceedings. [128] Instead of being forced to represent themselves, or depend on family members to access legal assistance, individuals in ATD programs are able to seek legal representation themselves. They are also freer to obtain necessary documentary evidence to support any claims for relief, as detention in a secure facility can make it difficult, if not impossible, for individuals to obtain evidence, particularly from abroad.[129]

Part II: The Need to Reevaluate the Current ATD System

A. Three Stories

To illustrate the impact of current alternative to detention (ATD) programs on participants, we have highlighted the stories of three such individuals. We provide below some background information regarding these individuals; their particular experiences with ATD programs will be detailed later in the report.

a. "Jaime"[130]

Like many noncitizens undergoing removal proceedings, Jaime's story is complex. When Jaime was just a young child, her family emigrated to the U.S. from a South American country in an effort to gain social mobility and realize the "American Dream." Upon her initial arrival to the U.S., Jaime and her family were able to obtain legal permanent residence (LPR) status. Jaime has lived in the U.S. for over twenty-five years and is a member of the LGBT community. Today, Jaime finds herself in removal proceedings due to a history of non-violent criminal convictions.

In April 2011, after returning to the U.S. from a trip to South America, U.S. Customs and Border Protection officers detained Jaime at the airport upon her entrance into a major southern U.S. city. At the time, Jaime did not have any pending criminal charges or actions filed against her, nor did she have any warrants for her arrest. Though she had been charged with some non-violent criminal offenses in the past, those charges had been adjudicated over seven years prior. Jaime was released the same day, but not before having her green card confiscated and being verbally harassed by customs officers due to her LGBT status.

Following this incident, Jaime was informed that she would be issued a formal notice of her obligation to appear for immigration court proceedings by mail; however, she never received this notice due to a clerical error. Consequently, when Jaime appeared in New Jersey Superior Court, Criminal Division, for another unrelated, non-violent criminal issue, New Jersey Immigration and Customs Enforcement (ICE) officials apprehended her based on the removal order. For humanitarian reasons, rather than detain her, the ICE officers made the decision to release Jaime on an Order of Supervision (OSUP), and they made enrollment in the Intensive Supervision Appearance Program (ISAP) one condition of her supervision. Jaime was placed on an ankle monitor. Today, Jaime is seeking asylum, yet is still subject to these orders. Before her immigration case was reopened, Jaime was required to report biweekly to the B.I. office for her ISAP check-ins, and monthly to the ICE office for her OSUP check-ins. While commutable by public and private transportation, the ICE Enforcement and Removal Operations (ERO) office and ISAP office are located six miles apart, requiring Jaime to travel the distance between each site when her check-ins are scheduled on the same day. Since her case reopened, the frequency with which Jaime must check in with the ISAP office has been reduced to less than once per month. She continues to report to ICE monthly.

b. "Santoso"[131]

Santoso is an Indonesian immigrant in his mid-forties who arrived in the United States on a tourist visa in 1998 in an effort to escape religious persecution. Santoso states that he looks much older than his age due to the hardships and stress he has suffered from being forced to leave his home country and then fighting to not be returned. He is married and is taking care of his wife and three children. His wife is out of status and could be removed at any time, further adding to Santoso's stress. Santoso suffers from a health condition that resulted from his work at the site of the World Trade Center disaster. In September of 2011, although he had no lawful status, he voluntarily turned himself in to ICE so that he could be placed on an OSUP. He wished to stop hiding and to be able to work legally. Santoso has a fear of deportation and spends his time praying not only for himself but for ICE as well. According to Santoso, "the

Santoso's Ankle Monitor

government has to remember that because god is love, the government has to show love and mercy to all, not just Christians."[132]
Although he has no criminal history, Santoso has been placed on OSUP with an ISAP electronic ankle monitor enhancement. Santoso's reporting requirements include a monthly ICE check-in, a weekly ISAP check-in, and a biweekly house visit. He has been on OSUP since September of 2011 and on ISAP since January of 2012.

c. "Komi"[133]

Komi is originally from a West African country, and he entered the United States in 2003 with a visitor's visa. Upon arrival in the U.S., Komi applied for asylum based on political persecution; however, his asylum petition was denied. Komi has never had an encounter with the police, nor any criminal charges filed against him, and he has maintained a job with the same employer for the last eight years. Even so, Komi was apprehended by ICE at his job in 2010 due to the denial of his asylum application. Subsequently, Komi was placed on an OSUP. As part of his OSUP, Komi initially had to report to the ICE office once every three months. His reporting requirement was then decreased to once every six months and most recently his reporting requirement was increased to once every month. Komi was granted a six-month stay of removal, which will expire in August 2012.

At this time, Komi does not have any immigration relief available to him, and he fears removal to his home country. He is constantly preoccupied with the realities of his impending removal. Komi has two United States citizen daughters, ages six and four, for whom he has been the sole provider.

Being placed on an OSUP has made Komi feel criminalized. According to Komi, since the day he was placed on an OSUP he has been unable to sleep. He is very concerned about the future of his children and with his inability to return to his native country, due to his fear of being killed there.

B. FLAWS IN THE CURRENT SYSTEM

a. Potential for Abuse and Error

Over the past thirty years, there has been a steady increase in the number of noncitizens subject to detention, regardless of whether an individual poses a threat to the community or is a flight risk.[134] Alongside the enactment of an immigration law requiring the mandatory detention of large numbers of noncitizens,[135] there has been a rise in the discretionary placement in detention of individuals who are not subject to mandatory detention.[136]

In the past two years, however, ICE has made clear its intention to use prosecutorial discretion to prioritize the detention and removal of those it deems to be the most dangerous criminal noncitizens. This section describes the relationship between discretion and alternatives to detention.

i. Role of Discretion

Prosecutorial discretion is the authority of an agency or officer charged with enforcing a law to decide what charges to bring and how to pursue a particular case.[137] As a law enforcement agency, ICE has the ability to exercise its prosecutorial discretion favorably and "not assert the full scope" of its enforcement powers on certain groups. "In the civil immigration enforcement context, the term 'prosecutorial discretion' applies to a broad range of discretionary enforcement decisions, including but not limited to . . . deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition."[138]

In a June 17, 2011, memo to all ICE Field Officers, ICE Director John Morton proposed a new policy for prioritizing and de-prioritizing deportation for certain groups of noncitizens based on criminal histories and ties to the community.[139] The memo presented a non-exhaustive list of 19 factors that ICE officers should consider when deciding whether or not to proceed with removal.[140] A second June 17, 2011, memo states that in cases involving the protection of an individual's civil rights and liberties, "ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice." [141] The release of the June 17, 2011, memos signals the agency's shift toward encouraging discretion in enforcement decisions. This shift was precipitated by the need to apply cost-effective enforcement tools in a humane manner.[142] Since no statute or regulation codifies the memos, they could be amended or abandoned at any time.[143]

Moreover, a report published by the American Immigration Lawyers Association (AILA), which includes information from 28 ICE offices nationwide, shows that most ICE offices have not implemented the two memos issued June 17, 2011.[144] The discrepancies that were reflected by the AILA report demonstrate the need for ICE and Department of Homeland Security (DHS) leadership to issue additional guidance.[145]

The broad discretion held by ICE agents also applies to decisions such as whether to release a noncitizen and place him or her on an ATD program, yet the memos do not give specific guidance as to the role of prosecutorial discretion in decisions regarding placement in ATD programs or conditions of supervision. Because ICE officers are given such wide latitude in applying discretion, there is enormous potential for abuse of discretion in determining: (1) which individuals should be placed in an ATD program; (2) what level of supervision that individual should be placed under; and (3) what conditions of supervision should be imposed. Given this broad discretion, there is a troubling lack of training and guidance provided to those officers regarding such decisions.

ii. Insufficient Training and Guidance for ICE Officers

In her 2009 report, Dr. Dora Schriro, former Director of the Office of Detention Policy and Planning, specifically recommended that field offices, "should have access to timely, clear and complete written guidance about [the detention system's] critical functions—such as determining an alien's bond amount, eligibility for parole, or suitability for placement in an ATD program—so as to ensure effective staff performance and case processing."[146] However, we have been able to find only five memos that deal with the ATD programs. These memos, issued between November 2004 and June 2005, lack sufficient guidance and are outdated.[147]

As set forth in more detail above, in a November 12, 2004, memo, Victor X. Cerda, then Acting Director of ICE, discussed the need to standardize the reporting requirements for individuals placed under an OSUP or Order of Release on Recognizance (ROR) and issued recommended check-in frequencies.[148] A December 10, 2004, memorandum primarily pertains to the recovery of program violators, such as those who fail to report.[149] This memo also introduced the Electronic Monitoring Device (EMD) program and ISAP programs as being "operated under contract as alternatives to physical detention."[150] The memo does not provide clarification of what a violation might entail, only that the "fugitive operations teams can be used as a tool in the recovery of aliens who violate the conditions of their participation in the alternatives to detention programs."[151]A March 8, 2005, memorandum specifies that "ISAP. . . requires its participants to report to the contractor on a frequent schedule."[152] The memorandum does not elaborate on the reporting schedule, but notes that "ISAP participants are not required to report to [ICE] unless directed to by the local field office."[153] It is worth noting, however, that all of the ISAP program participants we interviewed stated that they had to report to the ERO office in addition to reporting to the ISAP office.[154]

The stated purpose of a May 11, 2005, memorandum is to "specify eligibility criteria for enrollment of an individual into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program." [155] However, the memo itself does little to specify the eligibility criteria. Finally, a June 28, 2005, memorandum follows the pattern of the previous memoranda in stating that ISAP is a "specific condition of release [the Office of Detention and Removal Operations] may require in order for an alien to be released from custody."[156] The memorandum also states that ISAP is not a program "requiring an alien to volunteer to participate," and that ICE may require individuals to participate in the programs as a condition of release from detention.[157] This statement contradicts documents given to noncitizens concerning their placement in the ISAP program, which state that placement is voluntary.[158]

These scant memos provide insufficient guidance as to eligibility and reporting requirements for the various ATD programs.

b. Lack of Transparency and Consistency

i. Insufficient Information Regarding Placement, Reporting, and Restrictions Decisions

8 C.F.R. § 241.4 sets forth the criteria for placing a person under an OSUP. An individual is eligible to be placed under an OSUP if that individual: (1) "is not a threat to property or persons;" and (2) "is likely to comply with the order of removal."[159] Given the vagueness of the criteria provided in regulatory authority, field manuals,[160] and policy guidance memoranda, in 2009 DHS promised to develop an assessment tool to determine which noncitizens would be most suitable for ATD programs.[161] Three years later, however, such a standardized assessment tool has yet to be publicly released. Hence, there is no

standardized measure by which advocates, attorneys, and program participants can determine the legitimacy of ICE's placement of a person under a specific type of ATD order.

Moreover, we have received multiple anecdotal examples of individuals appearing for routine OSUP check-ins with the Newark ICE ERO office and, without warning, being given an ISAP electronic ankle monitor enhancement.[162] For individuals such as these who are not initially placed on a full-service electronic monitoring device, but who are later placed on such a device, it is often unclear what factors led to the increase in their intensity of supervision. Similarly, we have received reports of changes in the required frequency of check-ins for individuals, with no reasons given for the changes.[163]

Under the current ISAP contract, the private contractor is obligated to provide an orientation to each program participant no later than 24 hours after being notified by the ERO that a participant is available for intake.[164] At a minimum, the orientation must include an overview of the program, rules, regulations, procedures, consequences for violating those policies, and an explanation of the case management and service plan procedure.[165]

Interviewees reported that this required orientation takes the form of a twenty to thirty minute informational video that participants are asked to watch when they are first enrolled in the program.[166] After watching the video, program participants receive the "Participant Handbook," which is a two-page, double-sided handout detailing the ISAP program including: the private contractor's responsibility, the program requirements, the court process, the individual service plan (ISP), the five stages of ISAP supervision, the ISAP rules, and the use of electronic monitoring.[167] Afterwards, a program participant must sign an agreement acknowledging his or her "voluntary" consent to be placed under ISAP as well as an acknowledgement of the rules and requirements of ISAP.[168]

ii. Insufficient Compliance Documentation Provided to Program Participants

Another commonly reported flaw in the current ATD scheme is the absence of sufficient documentation for noncitizens who are subjected to frequent and ongoing reporting under an OSUP or ISAP. Pursuant to the November 12, 2004, memo, OSUP case officers are required to fully explain each program participant's reporting requirements as listed in Form I-220B.[169] The participant must sign the form, acknowledging that he or she fully understands the requirements imposed. Samples of these forms are included in the Appendix to this report.[170] Each of these forms contains space for the following information: the date; the officer's name; and comments/changes to the reporting requirements.[171] However, each of the completed forms that the authors reviewed merely included the date, the next date on which the participant must report, any required documentation (e.g., a "bag and baggage" letter,[172] passport, etc.) and the officer's initials.

Despite the November 12th memo, individuals on OSUP routinely leave their check-in appointments with no proof of their having successfully checked in. One program participant was informed that he was in violation of his OSUP due to his alleged noncompliance.[173] The program participant had not received any documentation during his check-ins to account for his compliance with the program.[174] In that individual's case, his attorney had been present at prior check-ins, and was able to convince the ICE officer that the individual had in fact complied with the OSUP.[175] But for the attorney's advocacy, that individual might have been charged with noncompliance and either faced heightened reporting requirements or detention in a facility. The problem of insufficient documentation is even more pronounced for individuals who do not have attorneys to advocate on their behalf at check-ins.

ISAP program participants have also reported that they received insufficient proof of compliance with check-ins.[176]

iii. Lack of Consistency at Check-Ins

Komi reported that he did not meet with the same ICE officer each time he attended a check-in.[177] For program participants, this system leads to uncertainty as to how each ICE officer will treat their case. For ICE officers, lack of familiarity with the individuals who are reporting may lead to a failure to identify issues or needs particular to that individual. ICE officers may further be more mistrustful of individuals with whom they are not familiar, leading to stricter reporting requirements.[178]

Moreover, we found a lack of consistency in the frequency of required check-ins, both among the participants, and within each participant's check-in schedule. Some individuals, who according to the reference table provided in the November 12, 2004, memo should have been required to check in every three months, were required to check in twice a month, while others with the same recommended schedule were required to check in every three months.[179]

In one individual's case, one check-in was scheduled ninety days after another check-in, while a subsequent check-in was scheduled sixty days later.[180] Not knowing a reporting schedule in advance may lead to problems with employment and transportation, as the program participants are unable to provide a concrete schedule to employers or those upon whom they rely for transportation.

In addition, ICE officers who are unfamiliar with the participants checking in may be unable to perceive differences in the participant's demeanor, or may have a more difficult time establishing a trusting relationship with the participant, leading to an inability to determine whether the individual has particular needs for medical or social services, or whether there have been changes in the individual's situation such that legal assistance would be beneficial.

A sign at the ICE ERO office in Newark, NJ

iv. Language Issues

In New Jersey, immigrants make up 19.9 percent of the population, making New Jersey the third highest ranking state in terms of foreign-born population.[181] "Twenty-seven percent of New Jersey's population speaks a language other than English at home"—a number that will likely increase.[182] These statistics demonstrate the vast need for interpreters and/or foreign language proficiency by ICE officers.

By not having interpreters for a range of languages, the ATD system appears opaque for some noncitizens. Through our meetings with attorneys, community advocates, and those currently under OSUP, we learned of the shortage of translators and interpreters for individuals who do not speak English or Spanish. In a jurisdiction as diverse as New Jersey, Spanish interpreters are the only interpreters easily accessible to program participants.

When we accompanied a program participant to a check-in at the Newark ERO office, the Supervisor for DHS's ICE Non-Detained Unit made a brief announcement in English regarding the different types of cases that this particular ICE office oversees, as well as the mutual expectations of respect that enforcement officers and individuals should have for one another. The supervisor went on to state that should any problems arise, he would be the person to speak with. This speech was not translated into Spanish or any other language. When we inquired about the availability of this or similar announcements—along with documentation regarding ATD programs—in languages other than English and Spanish, attorneys, advocates, and participants all informed us that this announcement is only available in English, and that documentation was only available in English or Spanish.

c. Overuse and Inconsistent Use of ISAP and Electronic Monitoring

Immigration detention today is a lucrative multi-billion dollar industry.[183] The detention industrial complex, paralleling its criminal justice sister, provides perverse financial incentives for private companies to ensure that its detention beds are always filled. The ATD context is seemingly no different. An unfortunate and disturbing feature of the detention system that has trickled to the ATD system is the government's use of private contractors to operate its ATD programs. These contracts have left the government with a need to fulfill its contractual obligations by maintaining a revolving door of program participants.

One of the core problems of the privatization of ATD programs is the incentive it creates to place program participants on electronic monitoring. Like the expansion of the private detention centers, the competition for profits may increase the number of individuals subject to electronic monitoring who would otherwise not be subject to such a restrictive order. As discussed above, in 2009, DHS awarded B.I. nearly $375 million to implement its ISAP program over the course of five years.[184] That same year, Newark's ERO office had contracted for 300 full-service slots for eligible program participants in ISAP each year.[185] Today, B.I. still manages ISAP, and the government is therefore motivated to ensure that the program's slots are constantly filled with participants.

The government's solicitation of contracts to run the programs is illuminating. During the fiscal year 2011, the government sought the following: 1,056,972 "participant days" of telephonic reporting (TR); 523,713 participant days of radio frequency (RF) monitoring; 83,723 participant days of passive global positioning (GPS) tracking; and 48,683 participant days of monitoring using active GPS tracking in the form of ankle monitors.[186] For the following fiscal year, the government incrementally increased those numbers as follows: 1,099,251 participant days of telephonic reporting; 544,667 participant days of radio frequency monitoring; 87,072 participant days of passive GPS tracking; and 50,630 participant days of monitoring using active GPS tracking.[187] The projected numbers for fiscal year 2013 also reveal another incremental increase in the number of electronic monitoring units contracted by ICE.[188] The numbers for fiscal year 2013 are as follows: 1,143,221 participant days of telephonic reporting; 566,454 participant days of radio frequency monitoring; 90,555 participant days of passive GPS tracking; and 52,656 participant days of monitoring using active GPS tracking.[189] As set forth above, B.I. was awarded the contract.

The motivation to ensure ISAP slots are filled not only encourages overuse of electronic monitoring, but it also encourages inconsistent use of the devices. For example, Komi recounted how during one of his routine OSUP check-ins, he was told that he would be placed on ISAP and given an electronic ankle monitor. Komi, who was already in a situation of extreme stress, pleaded with the officer not to place him on an ankle monitor.[190] The officer agreed not to place him on ISAP or an electronic monitoring device.[191] Santoso, on the other hand, was placed on an ISAP electronic ankle monitor after a routine OSUP check-in, even though he had complied with all of his OSUP requirements.[192] Neither program participant had a criminal history and neither had been detained in a facility. The different outcomes in their cases demonstrates the need for a more consistent system in which an individual's ability (or inability) to opt out of a particular supervisory enhancement, as well as the consequences of opting out, are made clear.

Finally, the stated goal of ISAP is to be a robust and intensive supervisory program with case management services including an individual service plan (ISP) and case specialists.[193] However, the current model falls short of its intended format, which would provide a level of service that might actually be beneficial to participants. Instead, as we observed, an ISAP check-in lasts mere minutes and consists only of notifying ICE of the participant's compliance and notifying the participant of his or her schedule of check-ins.

d. Economic Toll

i. Frequency & Duration of Check-Ins

As set forth above, program participants are often required to check in more frequently than suggested by the November 2004 memo. Moreover, even though the check-in itself lasts mere minutes, the wait times can last several hours depending on the type of ATD program.[194] For example, participants have reported wait times of three hours or more for OSUP check-ins at the local ICE ERO office. The frequency and duration of check-ins with ICE and the ISAP contractor raise three distinct problems for program participants.

First, the frequency and duration of check-ins negatively impacts an individual's ability to work. As mentioned earlier, individuals under OSUP are often granted work authorization.[195] However, even with authorization, a program participant may find it difficult to obtain gainful employment due to the frequent need to miss work in order to check in, as well as the irregular and unpredictable check-in schedule. The long wait times associated with check-ins also make it impossible for an individual to simply take an hour or two off from work for a check-in appointment. Participants must instead miss a half or even a full day of work in order to comply with check-in requirements.

Second, the expense associated with traveling to the reporting site is another problem facing many program participants. In New Jersey, for example, while the Newark office is located near public transportation, the Marlton office is located in a suburban area detached from public transit. To report to an OSUP appointment at the Marlton Office, many individuals are forced to either walk long distances or obtain private transportation. In addition, as set forth above, individuals may be placed on ISAP if they reside up to 85-miles from the ISAP office, meaning that some individuals will incur the expense of commuting over an hour to and from ISAP check-ins.[196]

Third, some individuals choose to bring private attorneys to check-ins, which can be very expensive. Because removal proceedings are considered civil in nature, individuals in immigration proceedings are not granted the right to government-paid counsel.[197] Those individuals who are not able to secure pro bono representation must pay private attorney's fees. Although accompanying an individual to a routine check-in does not require the attorney to extensively prepare, the wait

time of three-hours for OSUP check-ins could greatly increase attorney fees. This reality may make some program participants reluctant to bring their attorneys, and as shown above, the lack of an attorney at a check-in can lead to negative consequences for the individual.

ii. Other Economic Burdens

Some individuals placed on an ISAP electronic ankle monitor have curfews and are subjected to unannounced home or work visits. These curfews and work visits have the potential to burden an individual's relationship with his or her employer. An employer may view an individual with an ankle monitor or curfew with suspicion or may be unwilling to work around an individual's curfew or visit schedule. Moreover, as set forth above, those on ROR orders are not automatically eligible for work authorization,[198] yet they must still comply with their check-in requirements despite the financial burdens imposed by the requirements.

e. Psychological & Emotional Toll

i. Criminalization and Humiliation Associated with Ankle Monitors

Besides the economic hardships that accompany ATD programs, there are also tremendous psychological and emotional tolls. One such toll is the criminalization and humiliation felt by those on ATD programs, and in particular those who are on ankle monitors. Program participants have expressed a range of feelings in regards to being placed on an ankle monitor. Jaime reported feeling deeply embarrassed wearing the ankle monitor when doing every day activities. She stated that the ankle monitor makes her appear to others as if she is a "threat to society," or "trouble."[199] Ankle monitors are not only unsightly, but they also loudly play pre-recorded messages for various reasons without warning. For example, Jaime reported that she is scared to take the bus to her check-in appointments, because the ankle monitor has "gone off" while Jaime was on the bus, announcing to all within earshot that she was required to report to the ICE office for a check-in. Jaime reports that the recorded messages add to the humiliation she feels when wearing the ankle monitor. Santoso also reports feeling like he is being "treated like a murderer," because of the ankle monitor he has to wear.[200] Additionally, he feels that people look at him and think that he has committed a crime because of the ankle monitor, and that people think only reason is he is not in detention is because the detention facilities are full.[201]

ii. Psychological Impact of Check-Ins

Psychological effects of the check-in requirements include, but are not limited to, inability to sleep, loss of appetite, anxiety, stress, paranoia, and general lack of willpower to continue with one's immigration proceedings.[202] Such psychological symptoms may be magnified for those who have experienced trauma in the past, such as those granted withholding of removal because of persecution or those granted Convention Against Torture (CAT) relief. "Having a survivor of torture report to a uniformed official can very well be a trigger for traumatic symptoms where the [noncitizen] unfortunately may re-experience elements of the original traumatic event," said Dr. Nishant Patel, Psy. D., Licensed Psychologist, and Interim Director of the Cross Cultural Counseling Center at the International Institute of New Jersey.[203] If noncitizens are "yet again forced to face the potential trauma triggers, this will again recreate elements [of] the trauma event because their agency and control will be taken away from them."[204]

Komi stated that since he was placed on an OSUP he is "always scared; he can't eat, [and] he can't sleep."[205] He stated that he is afraid that ICE will take him away from his children. Komi further reported feeling like ICE is inside his head.[206] Jaime also feels the psychological impact of the reporting requirements. When she was first placed on an OSUP and required to wear the ankle monitor, Jaime became depressed and anxious, developed acne, and gained weight.[207] Every time Jaime reports to the ERO field office, she experiences feelings of anxiety brought on by the thought that she may not return home that night.[208] An attorney stated that the reporting requirements felt sometimes like "psychological warfare," in that they made some individuals' living conditions so miserable that it might be better for some to simply go back to their home country.[209] As Francois Crepeau, United Nations Special Rapporteur on the Human Rights of Migrants, stated in a recent report on the human rights of migrants, "the stigmatizing and negative psychological effects of the electronic monitoring are likely to be disproportionate to the benefits of such monitoring."[210]

The psychological burdens extend beyond the individual under the OSUP or ROR order. There is an extra psychological burden placed on families with mixed immigration status, as there is a threat of family separation due to removal each time that an individual reports.[211] For this reason, Jaime has chosen not to tell her family about her immigration problems or

reporting requirements, but the result is that she must bear the psychological burden alone.[212] Santoso and his wife have three children, and they do not know what they will do to survive if Santoso is removed.[213] Komi is the father of two U.S. citizen daughters. If Komi is removed from the United States, his children will stay here, but he is unsure what will happen to his daughters without him. [214] One advocate described to us witnessing a seven-year-old girl's heartbreak when an ankle monitor was placed on her mother, and her extreme joy when the ankle monitor was taken off.[215]

f. Physical Toll

i. Physical Limitations Associated with Ankle Monitors

The electronic monitoring device presently being used at the Newark ICE office is the Behavioral Interventions, Inc. (B.I.) ExacuTrack One ankle monitor device.[216] This device is able to track the individual's location and movement in near-real time.[217] And, as stated above, the device has the ability to transmit pre-recorded messages to the individual.[218]

The ankle devices are square—approximately five inches by five inches—and require hours of charging. Jaime reported that in order to keep the device charged, she must be plugged into a wall outlet, often times all night so that the device does not lose charge the next day. If the device were to lose charge, typically ISAP officers would try to locate the person, and if the officer could not locate the individual, the individual would be considered a fugitive. At that point, the ISAP officer would contact ICE to tell them the person was missing.[219]

Wearing an ankle monitor requires an adjustment period. Although the ankle monitor itself only weighs a few ounces, program participants have reported that getting used to its placement and weight takes time. Jaime reports that at first "the ankle monitor often caused her leg to cramp and hurt while walking," but as time went by she became used to the extra protrusion.[220] Additionally, the individual must also adjust his or her style of clothing to accommodate the bulky device.[221]

The ankle monitor also restricts the wearer's movement geographically. When the wearer needs to leave his or her designated area, she must ask the service provider for permission to do so.[222] One individual recounted that his monitor restricted him to the five boroughs of New York City and northern New Jersey. Two days after his wedding (during which, incidentally, he was forced to wear his monitor), he and his new wife, a U.S. citizen, traveled to Rockaway Beach for a brief honeymoon. They accidentally drove too far and crossed the border into Nassau County, outside of the five boroughs. Immediately, the ankle monitor started beeping, and a pre-recorded message repeatedly declared, "You are exiting your master zone." The couple realized what had happened and turned the car around; as they re-entered Queens, the monitor again began beeping, and the message declared, "You are now entering your master zone." The couple had no idea what the repercussions would be. Ultimately, the ISAP office did very little, but the stress on the newlywed couple on their honeymoon was "indescribable." [223]

ii. Physical Toll of Compliance with Check-Ins

Attending checks-ins imposes various physical burdens on individuals under supervision. As stated above, individuals who live within an 85-mile radius of the ISAP office are eligible to be placed on ISAP.[224] An individual who lived 85 miles away from an ISAP office would have to endure the physical burdens of traveling 85 miles each way for each ISAP appointment.

In addition, we received reports that those individuals who report to the Marlton, New Jersey, office must often times wait outside, due to the size of the office, regardless of weather conditions.[225] And, as mentioned earlier, wait times for check-ins can exceed three hours.[226] Attorneys accompanying their clients to the Marlton office are subject to the same wait times and must also wait outside.[227] There are obvious physical harms associated with standing outside for several hours at a time, withstanding the elements. Moreover, the long wait time might make it less likely for attorneys to accompany their clients to the Marlton office, further harming their clients.

g. Persons Unlikely to be Deported

i. Individuals Granted Immigration Relief

ICE retains the right to subject individuals who have been granted immigration relief to reporting requirements. Because individuals who have been granted Convention Against Torture (CAT), withholding of removal, or Temporary Protected Status (TPS) relief are technically subject to an order of removal, ICE may place such individuals under an OSUP.[228]

CAT relief is granted under 8 C.F.R. § 208.16 to those who more likely than not would be tortured upon removal to their home countries. Withholding of removal is available to individuals who face a threat to their life or freedom on account of a protected ground if removed to their home country.[229] Many of these individuals were persecuted in the past.[230] TPS is available to eligible noncitizens under 8 U.S.C. §1254a. "The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately."[231] These countries currently include Haiti and El Salvador, among others.[232]

One attorney reported having two clients—one who had been granted CAT and the other who had been granted withholding of removal—who nonetheless were subject to reporting requirements.[233] One interviewee, "Juan," has TPS relief, but is still subject to reporting requirements.[234] He has had a final removal order since 1995 and has been renewing his TPS status every year. Juan has been subject to an OSUP since 2000, following his release from detention. Juan came to the United States from El Salvador out of fear of being killed there. He has no close relatives remaining in El Salvador, though in the U.S. he has an LPR brother and U.S. citizen daughter. Juan reported that every time he attends a check-in, he goes into the appointment with fear, as he is never sure what might happen.[235]

Subjecting such individuals to stringent reporting requirements or ankle monitors is unnecessary and inhumane. As stated above, noncitizens who have been granted relief under the CAT, withholding of removal, or TPS often experience psychological effects such as Post-Traumatic Stress Disorder or depression because of the trauma they experienced in their home countries and during their journey to the United States.[236] Many of these individuals were targeted by government officials in their home countries, and forcing them to interact with uniformed officials regularly may exacerbate their psychological disorders.[237]

Furthermore, for these individuals, stringent reporting requirements or electronic monitoring do not serve the purpose of ensuring compliance with removal orders, since these individuals are unlikely to be removed. Theoretically, a noncitizen could live in the U.S. under color of law for the rest of her life having been granted one of these forms of relief. Accordingly, subjecting these individuals to required regular check-ins and restricting their travel within the U.S. (or forcing them to ask for permission to travel within the U.S.) is unnecessary and unduly burdensome.

ii. Stateless Individuals

Stateless persons are those "who [are] not considered as a national[s] by any State under the operation of its law."[238] It is unknown exactly how many stateless people there are in the United States, as many stateless persons are undocumented; however, there are over twelve million stateless individuals worldwide.[239] In 2005, Refugees International reported that "several thousand . . . individuals held in U.S. immigration detention facilities are believed to be stateless."[240] ICE subjects stateless individuals to reporting requirements due to its purported belief that they can be removed to a third country.[241] However, in reality, stateless individuals are unlikely to be removed.

One attorney told us of an individual who is a native of Yugoslavia, a country that is no longer in existence. This individual left Yugoslavia before the fall of Communism, yet has been under an OSUP for the past ten years despite the amount of time he has lived in the United States.[242] This individual has ties to the community, and his removal in the foreseeable future is highly unlikely. Nevertheless, he remains under supervision indefinitely, as do many other stateless individuals.

iii. Mariel Cubans

Mariel Cubans comprise another group of individuals who are subject to reporting requirements despite having lived in the United States since the 1980s, a period of over thirty years. During that time, "[t]housands of Cubans came to the United States by boat from the port of Mariel."[243] For a variety of reasons, whether it was suspicion of crimes committed in Cuba or conviction of crimes committed in United States, these individuals were placed in detention centers pending removal.[244] Cuba, however, has refused to accept the repatriation of the vast majority of its nationals.[245] Following the U.S. Supreme Court's decision in *Clark v. Martinez*, Mariel Cubans who were previously held in detention were released and placed under an OSUP.[246] The American Friends Service Committee currently has twenty to twenty-five Mariel Cuban clients under OSUP, all subject to reporting requirements. Because Cuba still refuses to repatriate these individuals, they remain under a final order of removal and subject to supervision requirements, despite the low likelihood of removal.

Part III: Recommendations

A. Recommendations for Immediate Agency Reforms

a. Expansion of Community-Based Alternative to Detention Programs

i. Elimination of Private, For-Profit Contractors

Much has been written on the privatization of immigration detention centers and the degree to which private companies influence the oversight and management of detention centers. There is a growing body of research that suggests that private contractors sacrifice quality and humane condition in favor of generating revenue.[247] Moreover, as U.N. Special Rapporteur Francois Crepeau stated, privately-run detention centers "pose particular concern if the contracts for managing detention centres are awarded to the company that offers the lowest cost, without giving sufficient attention to the obligation to treat those detained with humanity and with respect for their dignity."[248]

Immigration and Customs Enforcement (ICE) should discontinue its use of private contractors in the administration of alternative to detention (ATD) programs in favor of community-based models. More specifically, ICE should transition to the exclusive use of not-for-profit nongovernmental organizations in lieu of private contractors. This change would allow for ICE to employ ATDs in a less invasive manner, focusing on providing the supervisory measures and support services appropriate and necessary for each individual. By shifting to a community-based model, ICE could save a substantial amount of money, as those currently placed on ATD programs may not genuinely need the intensive supervision or electronic monitoring to which they are currently subjected.

The same humanitarian concerns raised by the detention system reform movement[249] also apply to the federal government's widespread use of private contractors in the ATD context. As previously mentioned, the majority of individuals in detention facilities are not a threat to the general public. In her previously mentioned report, Dr. Schriro suggested that, "it is likely that additional aliens who are statutorily eligible, but not otherwise qualified due to a lack of community ties, would qualify for ATD if not-for-profit and NGOs would sponsor them. ICE should seek community partners and pilot this effort."[250] The Lutheran Immigration and Refugee Service (LIRS) has suggested that providing immigrants with access to social services contributes to a person's likelihood to comply with program requirements.[251] By providing comprehensive and individualized case management services to program participants facing specific immigration issues, particularly to vulnerable individuals such as asylum seekers, resources may be allocated more efficiently and humanely.

ii. Benefits of Community-Based Models

The benefits of transitioning the currently operated system of ATD programs to a support-centered community-based model are as follows: ensuring programming that is both cost-effective and individualized to each program participant; increasing compliance with required immigration interviews and appearances; leveraging public-private partnerships to provide human service resources such as social support and counseling, mentoring, and health-related assistance; providing the inclusion of a legal referral or self-help component, in which individuals can receive referrals for assistance with their legal claims; and ensuring the reduction in and eventually the elimination of the improper use of electronic monitoring devices for individuals who genuinely should not be subjected to physical incarceration or intensive supervision and monitoring.

The use of programming specifically designed to support the needs of individual program participants would also address many of the flaws of the current system. There are several documented examples of proven community-based models that have worked both domestically and abroad. The most acclaimed domestic example of a model that could be replicated by ICE is the previously mentioned Appearance and Assistance Program (AAP) program created by the Vera Institute of Justice.[252]

The experiences of other nations are worth noting. Australia's individualized case management ATD program boasted a compliance rate of 94 percent between 2006 and 2009.[253] Under Australia's system, each program participant receives a "case plan" and is individually assessed to determine whether he or she can live independently or should live under supervision in a residential center.[254] Canada's state-funded Toronto Bail Program boasted a compliance rate of almost 92 percent for participants who were primarily asylum seekers and those who would ordinarily be considered to be flight risks.[255] The Toronto system contracted local shelters to support those recently released from custody with services, while also enforcing a curfew.[256]

In order to effectively transition toward a holistic community-based model, there must be recognition of each noncitizen's immigration experience and his or her individual plight. If properly instituted, a community-based model would include an array of human services including, but not limited to, non-institutional housing, employment counseling and training, transportation guidance, and English as a second language classes. Such a comprehensive model should also include health care, social, psychological, and emotional services or referrals to such services. The intensive case management alternative could allow the government to fulfill the promise underlying the Intensive Supervision Appearance Program (ISAP) and ATD programs generally—the ability to monitor individuals using the least restrictive and most humane methods possible. The inclusion of case management services might lower or remove many of the hurdles faced by noncitizens as they navigate the complex immigration process.

A crucial piece of any holistic ATD system is providing consistent access to legal advice and services. Because removal proceedings are considered to be civil in nature, noncitizens in immigration proceedings do not have the right to a government-paid attorney as they would in criminal proceedings.[257] Where possible, noncitizens may retain a pro bono attorney or a nonprofit legal services entity to assist with their legal claims. If not, individuals are likely to pay expensive legal fees with a private attorney or represent themselves. It is well documented that the lack of legal assistance in immigration cases is correlated with a decreased likelihood of success.[258] In a 2011 report, the LIRS concluded that non-profits represent the best candidates for implementing an individualized system. Because such organizations are connected to the community and are not profit driven, they are in the best position to exercise expertise with certain vulnerable populations and to provide competent and cost-effective legal advice or referrals without risk of a conflict of interest between best practices and profit margins.[259] By partnering with nonprofit organizations, the government may be able to leverage local resources and build upon existing programs with robust legal services or referral components.

b. Increased Accountability

i. Increased Guidance for ICE Officers and the Public

As described above, there is limited guidance for both the ICE officers who administer ATD programs and noncitizens who participate in them. The present reliance on the discretion of individual ICE officers leaves a tremendous amount of room for officers to subject program participants to a constellation of punitive measures that humiliate, intimidate, or harm participants. It is therefore imperative that ICE create and implement standard operating procedures, as well as individual assessment tools, for its field officers, and for those documents to be made available to the public.

In her recommendations for alternatives to detention, Dr. Schriro suggested the following:

> ICE needs to develop a validated risk assessment instrument specifically calibrated for the U.S. alien population. The tool should assess initial and ongoing suitability for participation. As is the case with population management, ICE should ascertain each participating alien's need for supervision on the basis of factors such as the alien's propensity for violence, and approve a supervision strategy that fits the alien's profile. The risk assessment instrument can also be used to ascertain the program's optimal pool of participants.[260]

Dr. Schriro recognized that the design of the assessment instrument should be based on a "comprehensive review of existing innovative ATD programs and best practices."[261] The benefits of creating and implementing an objective standard for individualized assessments of a noncitizen's eligibility for enrollment in an ATD are as follows: a reduction in the arbitrary use of intensive supervision mechanisms like electronic monitoring; clarification and continuity for individual field officers in their application of ATD orders; clarification as to which noncitizens should be considered low risk and not flight risks; clarification as to the factors that prompt an increase in the level and frequency of supervision; ensuring a demonstrable and legitimate need to place a person under an order; greater—and adequate—implementation of the Orders of Release on Recognizance (ROR) and Orders of Supervision (OSUP) programs for qualified low-risk detainees; and a reduction in the potential trauma that program participants might otherwise be subject to under intensive supervision.

To assist its officers, ICE should revise the Detention and Deportation Officer's Field Manual that outlines the eligibility requirements for ATD programs. These revisions should include a chart that clarifies the recommended reporting requirements for program participants, expanding on the four categories currently in place. The chart should list specific reasons that allow deviation from the recommended requirements and explicit criteria for imposing additional requirements,

such as an ankle monitor, on certain individuals. ICE should also clarify terminology such as "flight risk" and "danger to community," as its officers use such terms when determining who warrants an ankle monitor.

Those individuals with criminal histories who would otherwise be subject to mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c)(1), and for whom placement in an ATD program is truly an alternative to detention in a detention facility, might have the harshest reporting requirements (see the discussion below regarding viewing ankle monitors as a form of custody). At the other end of the spectrum might be those individuals who have been granted immigration relief or stateless persons unlikely to be deported.

ii. Increased Training for ICE Officers

Enforcement and Removal Operations (ERO) office staff should be provided increased training that incorporates guidance from any new memoranda or policy directives. Training ICE personnel on every memorandum received will ensure that each round of reforms is properly implemented and enforced. Specifically, ICE officers at each field office should be trained on the nationally-set reporting requirements, to ensure uniformity among the various offices. Further, as check-ins with ICE officers may be a noncitizen's only regular contact with a government official, ICE officers should be trained to recognize when an individual needs referrals to legal, medical, or other social services.

iii. A Clearer Grievance Procedure

It is unclear what grievance procedures are currently in place for ATD program participants; a clear grievance procedure should be put in place and made easily available. Likewise, program participants should be given instructions (in the form of exit documents and counseling) that outline grounds for grievances and how a grievance can be filed. As stated above, disagreements between ICE officers and program participants can lead to severe ramifications such as being placed on an ankle monitor or arbitrary increases in check-in requirements.[262] Program participants need accessible and safe channels to file their grievances so that they are not subject to the whims of an individual ICE officer.

c. Increased Transparency

i. Increased Information Regarding Placement, Reporting, and Restrictions Decisions

We recommend greater transparency in the contracting, administering, and accessing of information pertaining to ATD programs.

As set forth above, there is a need for increased guidance to ICE officers as to how to administer ATD programs. This guidance should also be made publicly available, so that ATD participants and their attorneys are adequately informed about the applicable reporting requirements and any potential enhancements. ICE should also provide informative literature to program participants. As noted above, while OSUP and ISAP both provide documentation regarding upcoming scheduled check-ins, meetings, and ICE appearances, the information provided does not adequately address participant questions and uncertainty related to decisions on the eligibility, frequency, and duration of check-ins.[263] The result of constant check-in uncertainty may unnecessarily contribute to anxiety, stress, and a violation of orders. Without reliable documentation that fully informs individuals of upcoming check-in dates, duration of check-ins, supervisory enhancement decisions, and grievance procedures, the ATD program and its participants are possibly positioned to fail.

ii. Increased Documentation Regarding Compliance

Another way to remedy the current lack of program participant guidance and quell uncertainty is to provide improved compliance documentation to program participants and to their attorneys. The high compliance rate of ATD programs—and, therefore, its position as a successful alternative to detaining noncitizens—is threatened by the current lack of compliance documentation. As the LIRS has noted, "any alternatives to detention programs that do not adequately support the participants are destined to fall short on compliance rates and will tarnish the reputation of ATDs as a concept."[264] We recommend that participants be given clear documentation indicating that they have complied with particular check-ins or other requirements.

In addition to increased paper documentation, ICE should consider incorporating an online system where all compliance documentation may be recorded and tracked by both governmental actors and program participants. Such an option could

minimize the potential for confusion for many program participants, while also providing individuals a record of program participation and activity.

d. A More User-Friendly System

i. Increased Consistency at Check-Ins

As stated above, one interviewee reported that he did not see the same officer every time he checked in.[265] This rotating role of authority leads to unfamiliarity with an individual's case, resulting in accusations of program noncompliance from officers and uncertainty about these requirements from participants.[266]

A more efficient alternative would be to dedicate a specific case load to each ICE officer assigned to check-in duty. Participants could then be directed to check in with their assigned officer based on a pre-determined meeting schedule suitable to both parties. Such a system would allow officers to become familiar with the program participants assigned to them, and would ensure more consistency in the administration of program requirements for participants. Officers would be in a better position to establish a relationship of trust with participants and therefore to learn of particular difficulties faced by the participant.

ii. Shortened Wait Times at Check-Ins

All participants interviewed for this project stated that the wait times during check-in vary from at least two hours to as much as six hours, despite the fact that the actual check-in process takes 5-6 minutes.[267] Through the alternatives described above, including the assignment of specific caseloads to ICE officers, ICE could reduce wait-time for check-ins, which would alleviate some of the hardship experienced by ATD program participants, while also maximizing government resources by improving ICE's operational efficiency.

The ICE ERO office in Newark, NJ

iii. Location of Check-In Offices

ICE ERO offices should be easily accessible and in areas that are centrally located and safe. Attorneys, advocates, and noncitizens have complained that the Newark ERO is located in a dangerous area.[268] Furthermore, since the Newark ERO office shares its facilities with various private businesses, available parking is limited, such that those who opt to visit the office using private transportation must nevertheless walk several blocks to reach the office.[269]

The Marlton, New Jersey, ERO office is located in a remote setting, accessible only by private vehicles. Placing the office in a centralized location accessible by public transportation will ease the travel burdens placed on ATD program participants and advocates. Additionally, having the office in an accessible area may increase program compliance.

iv. Increased Language Capabilities

According to the U.S. Government Accountability Office (GAO), the Department of Homeland Security (DHS) "has taken limited actions to assess its foreign language needs and existing capabilities and to identify potential shortfalls."[270] ICE relies on its agents to identify the "foreign languages they have encountered most frequently during their daily law enforcement and intelligence operations."[271] However, "ICE is not in a position to comprehensively assess its language needs" because ICE does not analyze and does not review the gathered data its agents provide.[272]

The main foreign language in which the Newark ICE Field Office provides services is Spanish. "According to ICE officials, in 2007, ICE reinstated the Spanish language requirements that were in place prior to the formation of DHS for its Office of

Detention and Removal Operations."[273] In addition to addressing Spanish language needs, the local ICE Field Office should provide adequate support for other foreign languages, as New Jersey is one of the most diverse jurisdictions in the country.[274] Given the variety of individuals that ICE officers work with on a daily basis, support for a wide spectrum of foreign languages is vital for the ongoing communication between ICE officers and ATD program participants, particularly since the consequences for failure to comply with supervision requirements are so severe. As such, documentation and announcements, including compliance documents and instructions, should be provided in the various languages spoken by ATD participants. Moreover, ICE should ensure that interpretation is available for in-person appointments.

v. Decreased Wait Times for Immigration Court Hearings for ATD Participants

In recent years, much attention has been paid to the amount of time it takes for immigration cases to make their way through the system. One study reported that in the fiscal year 2012, the average amount of time an individual had to wait to have his or her immigration case adjudicated in immigration court was 507 days.[275] In New Jersey, the average wait was 452 days.[276]

In recognition of the high costs to the government associated with detention, as well as the restriction on detainees' physical liberty, the Attorney General requires Immigration Judges to adjudicate 85% of their detained cases within 60 days.[277] This requirement has resulted in the prioritizing of detained cases in the immigration court system. In New Jersey, for example, the wait time for adjudication in the immigration court in the Elizabeth Detention Center in the fiscal year 2012 was 178 days, significantly lower than the 463-day average wait time in the Newark Immigration Court.[278]

The cases of those individuals who are released from detention on ROR orders pending their removal proceedings are no longer prioritized in the immigration court system.[279] As a result, like the rest of the nondetained population, ATD program participants can spend years awaiting adjudication of their cases, particularly in light of the increase in the Executive Office for Immigration Review's (EOIR) detained docket.[280] In the 2011 fiscal year, forty-two percent of the 303,287 cases before the EOIR involved detained individuals.[281] Out of the 14,930 cases the Board of Immigration Appeals (BIA) heard, twenty-nine percent were from detained individuals.[282]

The long wait time for ATD participants tends to erode some of the benefits associated with ATD programs. In 2011, the U.S. House of Representatives Committee on Appropriations wrote the following:

> In testimony before the Committee, the ICE Assistant Secretary noted that the cost of ATD per individual is higher than detention per detainee, asserting that this is largely because the individuals enrolled in ATD remain in the system significantly longer than those in detention. Further, the ICE Assistant Secretary agreed that the promise of ATD has not been fully realized since the non-detained docket has a low priority in many immigration courts. The Committee is aware that, as a contravening fact, many of the individuals enrolled in ATD are from special populations, such as those with pending asylum claims.[283]

Moreover, as this report makes clear, while supervision may be a better alternative than detention in a facility, there are several human costs associated with supervision. The long adjudication wait times for noncitizens who are not in detention results in the prolonged exposure of individuals subject to ROR orders to these flaws in the system. In addition, as set forth above, unlike OSUP, ROR orders do not come with work authorization, leaving individuals under ROR orders with the economic burdens associated with such orders and without the ability to work.

We recommend that ATD participants' cases receive higher priority in the immigration court system. While their cases may not need to be as high priority as detainees' cases, they should be higher priority than those of individuals who are neither detained nor subject to an ATD program. We recommend this change, at the very least, for individuals on ATD programs who request expedited proceedings. This change would reduce the costs associated with ATDs and would make it so that individuals are subjected to ATD programs, and their accompanying burdens, for a shorter amount of time.

e. Electronic Monitoring Should be Viewed as Custody

In 1988, the INA was amended to include a mandatory detention provision. This provision requires a noncitizen who falls under one of the categories delineated in INA 236(c), 8 U.S.C. § 1226(c)(1) to be taken into "custody" without the possibility of release on bond.[284] Nowhere in the statute, or in the immigration regulations, is a definition of "custody" provided.[285] ICE apparently has interpreted the statute as requiring that all qualifying individuals be detained in a detention facility. However, many individuals whom ICE has placed in detention under the statute pose no safety threat or threat to

national security.[286] This group includes legal permanent residents (LPRs) who have convictions for "petty crimes and misdemeanors" or "those who committed more serious crimes years ago but have long since completed their criminal sentences."[287]

Advocates have argued that mandatory detention is an ineffective deterrent in reducing the amount of individuals attempting to enter to United States illegally, interferes with detainees' human rights, and causes emotional and physical damage.[288] In addition, individuals subject to mandatory detention are much less likely to secure counsel, and as a result, are less likely to prevail in their immigration court hearings.[289] For all of these reasons, many advocates have called for the repeal of mandatory detention.[290]

Similarly, much attention has been paid in recent years to the privatization of immigration detention and its harmful effects on immigrant detainees.[291] Given these harmful effects, advocates have called for the elimination of privately-run detention facilities, and some advocates such as the American Friends Service Committee have called for an end to immigration detention all together.

Yet, despite the potential for ATD programs to function as true alternatives to detention, restrictions such as ankle monitors have been used to supervise individuals who have legitimately been released from detention or who were never detained in the first place. As a result, despite the increased focus on ATD programs, the number of individuals held in detention centers has steadily risen, rather than declined.[292]

For these reasons, the American Immigration Lawyers Association has taken the position that electronic monitoring should constitute "custody" for mandatory detention purposes, reasoning that "[i]f ICE were to use electronic monitoring and other alternative methods for those subject to § 236(c), it could alleviate the emotional and economic hardship of institutional detention on both the individuals and their families as well as save millions in taxpayer dollars."[293] The organization has further stated that "less restrictive and resource-intensive forms of custody can both ensure public safety and guarantee attendance during court proceedings. For many individuals electronic monitoring and alternative methods are sufficient to ensure both public safety and attendance at removal hearings."[294] Similarly, the Vera Institute of Justice has stated that "[e]xpansion of a home detention program to include persons who would otherwise be released increases a program's cost, diverts resources from persons appropriate for electronic monitoring, and curtails individuals' liberty unnecessarily." [295]

Given all of the problems associated with ankle monitors outlined above, the authors of this report do not condone the use of electronic monitoring, particularly as currently administered by private entities. Nonetheless, as long as electronic monitoring continues to be used, the authors agree that such monitoring should be considered "custody." Moreover, it is clear that at least some ATD programs could realistically be used in lieu of detention in facilities. Those ATD programs should be used as true alternatives to detention, rather than as additional conditions of supervision imposed on individuals who have already been released from detention or who would never have been subject to detention in the first place.

B. Recommendations for Long-Term Reform

In addition to the changes that should be implemented by ICE, there are changes that should be implemented by Congress. First and foremost, Congress should clearly signal to ICE that ATD programs should be used as true alternatives to detention by increasing funding for ATD programs while simultaneously decreasing a proportionate amount of funding for detention in detention facilities.

Furthermore, as set forth above, numerous individuals and organizations, including the American Friends Service Committee, have called for the repeal of mandatory detention. Absent such a repeal, Congress could explicitly set forth that electronic monitoring constitutes "custody" for mandatory detention purposes.

Moreover, in recognition of the hardships faced by noncitizens who do not have work authorization, particularly those who have valid claims for relief and must fight to survive without employment for long enough to have their claims adjudicated, there have been calls for reform of the current work authorization system.[296] As set forth above, individuals subject to ROR orders face the significant economic hardships associated with program compliance, yet they are not granted work authorization. We recommend further reforming the work authorization system to include a grant of work authorization to individuals subject to ROR orders.

Conclusion

The authors laud the government's efforts to identify efficient and effective alternatives to immigration detention. Given the harmful effects of detention, it is clear that more alternatives are needed. But as the government expands the capacity of alternative to detention (ATD) programs and transitions detained or non-detained individuals to these programs, the government must consider not only the effectiveness of the current system, but also its flaws. The authors of this report urge the federal government to reevaluate and redesign an ATD system taking into account the pitfalls with the current system delineated in this report. Because the current system is still in its infancy, there is potential for vast improvement. However, if such a reevaluation of the present ATD system is not performed, the federal government runs the risk of replicating the inhumane facets of the immigration detention system and dehumanizing people who are our neighbors, our families, and our friends.

Endnotes

[1] *Blueprint for Building a 21st Century Immigration Sys.*, THE WHITE HOUSE (May 2011) *available at* http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf (hereinafter referred to as "*Blueprint for Building a 21st Century Immigration Sys.*").
[2] *See Blueprint for Building a 21st Century Immigration Sys.*
[3] *See Blueprint for Building a 21st Century Immigration Sys.* at 8-9.
[4] *See Blueprint for Building a 21st Century Immigration Sys.* at 17.
[5] *See* Lisa A. Cahan, *Constitutional Protections of Aliens: A call for action to provide adequate health care for immigration detainees*, 3 J. HEALTH & BIOMEDICAL L. 343, 348 (2007), *available at* http://www.law.suffolk.edu/highlights/stuorgs/health/upload/Cahan-343-366.pdf.
[6] *See* Am. Civil Liberties Union of New Jersey, *Behind Bars: The Failure of the Department of Homeland Security to Ensure Adequate Treatment of Immigration Detainees in New Jersey* 2 (2007), *available at* http://www.rcusa.org/uploads/pdfs/051507DetentionReport.pdf.
[7] *See* Det. & Deportation Working Grp., *Briefing Materials Submitted to the United Nations Special Rapporteur on the Human Rights of Migrants* 5 *available at* http://www.aclu.org/pdfs/humanrights/detention_deportation_briefing.pdf. Materials submitted by the Lutheran Immigration & Refugee Serv. in partnership with the Det. Watch Network. (Hereinafter referred to as "*Briefing Materials Submitted to the United Nations Special Rapporteur on the Human Rights of Migrants*").
[8] *Briefing Materials Submitted to the United Nations Special Rapporteur on the Human Rights of Migrants* at 5.
[9] *See* Nat'l Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to the Sensible Policies*, 1, 2 (Aug. 2011) *available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf (hereinafter referred to as "*The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to the Sensible Policies*").
[10] *See* United States Dep't of Homeland Sec. Budget in Brief, *Fiscal Year 2012*, at 84, *available at* http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf (hereinafter referred to as "*Budget in Brief 2012*").
[11] *See The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to the Sensible Policies at* 2.
[12] *See Budget in Brief 2012* at 65.
[13] *See The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to the Sensible Policies at* 1.
[14] *See* Int'l Det. Coal., *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* 11 (2011) *available at* http://massivefishball.com/IDC_Handbook.pdf.
[15] Francois Crepeau, Special Rapporteur on the human rights of migrants, *Report of the Special Rapporteur on the human rights of migrants*, Human Rights Council 20th Sess., 13, U.N. Doc. A/HRC/20/24 (Apr. 2, 2012) *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/125/96/PDF/G1212596.pdf?OpenElement (hereinafter referred to as "*Report of the Special Rapporteur on the human rights of migrants*").
[16] *See* Ruben Loyo & Carolyn Corrado, *Locked Up But Not Forgotten: Opening Access to Family & Community in the Immigration Detention System*, N.Y. Univ. Sch. of Law Immigrant Rights Clinic (Apr. 2010) *available at* http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__news__media/documents/documents/ecm_pro_065626.pdf (hereinafter referred to as "NYU, Locked Up But Not Forgotten").
[17] Fact Sheet: Detention Compliance Oversight, U.S. Immigration & Customs Enforcement, (Aug. 12, 2010), *available at* http://www.ice.gov/doclib/news/library/factsheets/pdf/detention-compliance.pdf; *see also* Dora Schriro, Dep't of Homeland Sec., *Immigration Detention Overview and Recommendations* (2009), *available at* http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf (hereinafter referred to as "Schriro, *Immigration Detention Overview and Recommendations*").
[18] *Alternatives to Detention for ICE Detainees*, U.S. Immigration & Customs Enforcement (Oct. 23, 2009), *available at* http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C31038%7C30487 (hereinafter referred to as "*Alternatives to Detention for ICE Detainees*").
[19] *Alternatives to Detention for ICE Detainees* at 2.
[20] Lutheran Immigration & Refugee Serv., *Frequently Asked Questions About the U.S. Immigration Detention System* (Nov. 24, 2010) *available at* http://www.lirs.org/frequently-asked-questions-about-the-u-s-immigration-detention-system/. *See also Report of the Special Rapporteur on the human rights of migrants* at 15 (defining alternatives to detention and citing examples of how they can be used).
[21] U.S. Immigration & Customs Enforcement Field Office Presentation and Q & A at Rutgers Univ. Law School - Newark (Mar. 7, 2012); *see also* Victor X. Cerda, *Memorandum on U.S. Immigrations and Customs Enforcement regarding Orders of Supervision* (Nov. 12, 2004), *available at* http://www.ice.gov/doclib/foia/dro_policy_memos/ordersofsupervisionsep282006.pdf (hereinafter referred to as "*Memorandum on Orders of Supervision*").
[22] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[23] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[24] *See* 8 U.S.C. § 1231(a)(3) (2006).
[25] 8 C.F.R. § 241.5(c) (2011).
[26] *See Nguyen v. B.I., Inc.*, 435 F. Supp. 2d 1109, 1111-12 (D. Or. 2006) (holding that ISAP is not a new administrative law nor subject to Administrative Procedure Act requirements).
[27] *See* Office of Inspector Gen., U.S. Dep't of Homeland Sec., OIG-06-33, *Detention and Removal of Illegal Aliens* 3 (Apr. 2006) *available at* http://www.oig.dhs.gov/assets/Mgmt/OIG_06-33_Apr06.pdf.
[28] *See* U.S. Dep't of Homeland Sec., *U.S. Immigration and Customs Enforcement: Salaries and Expenses, Fiscal Year 2011 Overview*, Congressional Justification 7 (2011) *available at* http://www.ice.gov/doclib/foia/secure_communities/fy2011overviewcongressionaljustification.pdf.
[29] *See* Nat'l Immigration Forum, *The President's FY 2013 Budget Department of Homeland Security*, *available at* http://www.immigrationforum.org/images/uploads/2012/DHS_FY_2013_Budget_Summary.pdf .

[30] U.S. Dep't of Homeland Sec., *ICE Detention Reform: Principles and Next Steps* (Oct. 6, 2009) *available at* http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf (hereinafter referred to as "*ICE Detention Reform: Principles and Next Steps*").
[31] *ICE Detention Reform: Principles and Next Steps* at 1.
[32] *ICE Detention Reform: Principles and Next Steps* at 2.
[33] Schriro, *Immigration Detention Overview and Recommendations* at 20.
[34] *U.S. Immigration & Customs Enforcement Fiscal Year 2013 Budget Request Before the H. Comm. On Appropriations Subcommittee on Homeland Sec.* (Mar. 8, 2012) (statement by John Morton, Director, ICE) *available at http://www.ice.gov/doclib/news/library/speeches/120308morton.pdf (hereinafter referred to as "Morton, 2013 Budget Request").*
[35] *Morton, 2013 Budget Request* at 2.
[36] *Morton, 2013 Budget Request* at 12.
[37] *See* Jessica Zuckerman, *The 2012 Homeland Security Budget: Misplaced Priorities* (Mar. 24, 2012), *available at* http://www.thecuttingedgenews.com/index.php?article=72554&pageid=&pagename=.
[38] *See The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to the Sensible Policies* at 3.
[39] *Budget in Brief 2012* at 84.
[40] *Budget in Brief 2012* at 84.
[41] *See* Schriro, *Immigration Detention Overview and Recommendations* at 6.
[42] 8 U.S.C.§ 1231 (2006).
[43] *See Zadvydas v. Davis*, 533 U.S. 678 (2001).
[44] *See Clark v. Martinez*, 543 U.S. 371 (2005).
[45] 8 C.F.R. § 241.5 (2011).
[46] 8 U.S.C. §1231(a)(3) (2006); 8 C.F.R. § 241.4 (2011).
[47] 8 C.F.R. § 241.5 (2011); *See* Appendix B*, Sample Order of Supervision and Addendum*.
[48] *See, e.g.*, Memoranda issued by U.S. Immigration & Customs Enforcement officials and the *Detention and Deportation Officer's Field Manual* only details the application of an OSUP to individuals released from detention. Application of OSUP may be found in U.S. Immigration & Customs Enforcement Det. and Deportation Officer's Field Manual, Chapter 17 Removal Process: Post Order Custody Reviews (POCR) (Mar. 27, 2006) *available at* http://www.immigration.com/sites/default/files/icedetention.pdf (However, there are individuals on OSUP who have never been detained. Given the lack of clear guidance as to how ICE proceeds with those who have never been detained, we presume that those individuals are dealt with in the same manner as those who have been released from detention.).
[49] Appendix A, Form I-220B, Order of Supervision – Addendum; *see Acknowledgment of Conditions of Release under an Order of Supervision*, available in the Appendix E to this report.
[50] Cerda, *Memorandum on Orders of Supervision* at 1.
[51] Cerda, *Memorandum on Orders of Supervision* at 1.
[52] Cerda, *Memorandum on Orders of Supervision* at 2.
[53] EWI is the acronym for "Entry Without Inspection" and may be used to indicate that a person entered the U.S. without having his or her documents or passport checked by a government inspector. In other words, the person crossed the border without any valid papers. Entry without inspection is the most common ground of deportation. *See* Gunaydin v. U.S. I.N.S., 742 F.2d 776, 777 (3d Cir. 1984).
[54] LPR is the acronym for "Lawful Permanent Resident." *See* Jankowski-Burczyk v. I.N.S., 291 F.3d 172, 176 (2d Cir. 2002) (citing 8 U.S.C. § 1101(a)(20)).
[55] The term "overstay" is used when a nonimmigrant is admitted for "a temporary period, . . . the period has elapsed, and . . . the nonimmigrant has not departed." *See* Milande v. Immigration & Naturalization Serv., 484 F. 2d 774, 776 (7th Cir. 1973).
[56] CIMT is the acronym for "Crime Involving Moral Turpitude." *See* Uppal v. Holder, 605 F.3d 712, 714 (9th Cir. 2010).
[57] U.S. Immigration & Customs Enforcement Det. & Deportation Officer's Field Manual, *Chapter 17 Removal Process: Post Order Custody Reviews (POCR)* at 17.12, *available at* http://www.immigration.com/sites/default/files/icedetention.pdf.
[58] *See* Cerda, *Memorandum on Orders of Supervision* at 2.
[59] Gary Mead, *Memorandum on* Orders of Supervision to Field Office Directors (Sept. 28, 2006), *available at* http://www.ice.gov/doclib/foia/dro_policy_memos/ordersofsupervisionsep282006.pdf.
[60] *See* 8 C.F.R. § 287.3 (2012).
[61] *See* Johnny Williams, *Memorandum on Guidance Regarding the Release of an Alien on an Order of Release on Recognizance, Detention and Deportation Officer's Field Manual* (Jan. 26, 2003), *available at* http://www.ice.gov/doclib/foia/dro_policy_memos/guidanceregardingreleaseofalienonorderofreleaseonrecognizance01262003.pdf (hereinafter referred to as "Williams, *Memorandum on Guidance Regarding the Release of an Alien on an Order of Release on Recognizance, Detention and Deportation Officer's Field Manual*").
[62] *See* Williams, *Memorandum on Guidance Regarding the Release of an Alien on an Order of Release on Recognizance, Detention and Deportation Officer's Field Manual*.
[63] *See* Williams, *Memorandum on Guidance Regarding the Release of an Alien on an Order of Release on Recognizance, Detention and Deportation Officer's Field Manual*.
[64] 8 C.F.R. § 236.1(d); § 1236.1(d) (2012).
[65] 8 C.F.R. § 1003.19 (2006).
[66] INA § 236.
[67] U.S. Immigration & Customs Enforcement Memorandum to Field Office Directors, *Alternatives to Detention Recovery Procedures*, at 1 (Dec. 10, 2004), *available at* http://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf. *See also* Wesley J. Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance* (June 28, 2005), available at

http://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf (hereinafter referred to as "Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance*").

[68] Vera Institute for Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program I, Final Report to the Immigration Naturalization Service*, at I (August 1, 2000), *available at* http://www.vera.org/download?file=615/finalreport.pdf (herein after referred to as "Vera Institute, *Testing Community Supervision for the INS*").

[69] The INS ceased to exist on March 1, 2003, and its functions were transferred to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub.L. No. 107-296, § 402, 116 Stat. 2135, 2178 (Nov. 25, 2002). *See Dobrova v. Holder*, 607 F.3d 297, 299 n. 1 (2d Cir. 2010).

[70] *See* Megan Golden et al., *The Appearance Assistance Program Attaining Compliance with Immigration Laws Through Community Supervision* 4 (2008) *available at* http://www.vera.org/download?file=211/aap.pdf.

[71] Vera Institute, *Testing Community Supervision for the INS* at i.

[72] Golden et al. at 8.

[73] *See* Golden et al. at 7.

[74] *See* Golden et al. at 9.

[75] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* (Oct. 2011), *available at* http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-912f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF (hereinafter referred to as "Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*").

[76] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*.

[77] *See* Vera Institute, *Testing Community Supervision for the INS* at ii.

[78] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 28.

[79] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 28.

[80] Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance* at 2.

[81] Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance* at 1-2.

[82] *See* Alison Siskin, *Immigration-Related Detention: Current Legislative Issues* 15 (Jan. 12, 2010), *available at* http://www.fas.org/irp/crs/RL32369.pdf. (The cities where the ISAP program was piloted were San Francisco, California; Denver, Colorado; Miami, Florida; Baltimore, Maryland; St. Paul, Minnesota; Kansas City, Missouri; Portland, Oregon; and Philadelphia, Pennsylvania. The EMD program pilot was conducted in Anchorage, Alaska; Miami, Florida; and Detroit, Michigan).

[83] "The GEO Group Announces $415 Million Acquisition of B.I. Incorporated," BUSINESS WIRE, Dec. 21, 2010, http://www.businesswire.com/news/home/20101221005564/en/GEO-Group-Announces-415-Million-Acquisition-B.I.

[84] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 29.

[85] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 29; Susan Banki & Illan Katz, *Resolving Immigration Status, Part 2: Comparative Case Studies* 75 (Nov. 2009), *available at* http://www.immi.gov.au/media/publications/pdf/unsw-report-2.pdf.

[86] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 29.

[87] *See* U.N. High Comm'r for Refugees, *Alternatives to Detention of Asylum Seekers and Refugees* 238 (April 2006), *available at* www.unhcr.org/refworld/docid/4472e8b84.html (hereinafter referred to as "ATD of Asylum Seekers and Refugees").

[88] *See* Schriro *Immigration Detention Overview and Recommendations* at 20.

[89] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 30.

[90] *See* Schriro *Immigration Detention Overview and Recommendations* at 20.

[91] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 31.

[92] B.I. Incorporated, *BI-Incorporated, Leading the Way*, *available at* http://bi.com/about.

[93] Susan Carol, *Flaws found in options for immigration detention*, HOUSTON CHRONICLE, (Oct. 20th, 2009), *available at* http://www.chron.com/news/houston-texas/article/Flaws-found-in-options-for-immigrant-detention-1587363.php stating that:

> On its Web site, ICE boasts a 99 percent appearance rate in immigration court for participants in its restrictive Intensive Supervision Appearance Program (ISAP). Yet records maintained by private contractors that administer ISAP show they were 'unable to locate' 18 percent of 6,373 illegal immigrants who passed through the program between 2004 and the end of January. Five percent were re-arrested by ICE, records show.

[94] B.I. Incorporated, "The GEO Group Announces Acquisition of BI Incorporated," *available at* http://bi.com/geo_group_announces_acquisition_of_bi_incorporated; *See* Cody Mason, *Too Good to be True: Private Prisons in America,* The Sentencing Project 2 (Jan. 2012) *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/02-10-2012_TooGoodtoBeTrue.pdf; *See also* Correctional Corporations of America, *Investor Relations,*(May 2012) *available at* http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-irhome; Tom Barry, *The National Imperative to Imprison Immigrants for Profit*, Americas Program Report 3 (Mar. 10, 2009) *available at* http://dspace.cigilibrary.org/jspui/bitstream/123456789/26485/1/The%20National%20Imperative%20to%20Imprison%20Immigrants%20for%20Profit.pdf?1.

[95] Office of Det. and Removal Compliance and Enforcement Div., U.S. Immigration & Customs Enforcement, Alternatives-to-Detention Unit, Intensive Supervision Appearance Program (ISAP) II, Statement of Work, 41 *available at* https://www.fbo.gov/index?s=opportunity&mode=form&id=ca9481103ba015f459615fcaf61da90a&tab=core&_cview=1 (Solicitation for contractors to run the Intensive Supervision Appearance Program) (hereinafter referred to as "ISAP Statement of Work").

[96] *See* ISAP Statement of Work at 34-35. *See* Appendix C, *ISAP II Individual Service Plan*.

[97] Appendix C, *ISAP II Individual Service Plan*.

[98] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 33.

[99] U.S. Immigration & Customs Enforcement Field Office Presentation and Q and A at Rutgers Univ. Law School - Newark (Mar. 7, 2012).
[100] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 15.
[101] *See* ISAP Statement of Work at 37.
[102] Schriro, *Immigration Detention Overview and Recommendations* at 20.
[103] *See* 8 U.S.C. § 1231(a)(3), 1253; 8 CFR § 241.5 (2011); *see Zadvydas v. Davis*, 285 F.3d 398 (5th Cir. La. 2002) (noting that "the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions.").
[104] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 31.
[105] *See* ISAP Statement of Work at 35-36; *see also* Appendix F, *Intensive Supervision Appearance Program II Participant Handbook*.
[106] *See* ISAP Statement of Work at 35.
[107] *See* Appendix G, *Intensive Supervision Appearance Program II Participant Handbook*.
[108] Pursuant to 8 C.F.R. § 241.4(k)(1)(ii) (2011), some local U.S. ICE field offices may make custody determinations up to three months following the expiration of the ninety-day removal period. See Kathleen Glynn & Sarah Bronstein, *Systemic Problems Persist in U.S. ICE Custody Reviews for 'Indefinite" Detainees*, 2 (2005), for further discussion regarding Post-Order Custody Review *available at* http://cliniclegal.org/sites/default/files/CLINICIndefiniteReportFINAL.pdf.
[109] Pursuant to 8 C.F.R. § 241.4(k)(2)(ii) (2011), the Headquarters Post-Order Detention Unit (HQPDU) performs the second review of custody determinations and the review is conducted after the expiration of the three-month period, following the ninety-day review. See Kathleen Glynn & Sarah Bronstein, *Systemic Problems Persist in U.S. ICE Custody Reviews for 'Indefinite' Detainees*, 6 (2005), for further discussion regarding Post-Order Custody Review *available* at http://cliniclegal.org/sites/default/files/CLINICIndefiniteReportFINAL.pdf.
[110] Interview with Jaime, OSUP and ISAP II program participant (Mar. 9, 2012).
[111]The case specialist informed us that they typically send an email to ICE to inform them that an individual has complied with a check-in. In this situation, however, the individual's attorney requested that the case specialist call ICE, because she wanted to ensure that the individual was not required to also check in with ICE.
[112] *See* Appendix C, *ISAP II Individual Service Plan*.
[113] *See* ISAP Statement of Work at 86.
[114] *See* ISAP Statement of Work at 86.
[115] *See* ISAP Statement of Work at 86.
[116] Alice Edwards, *Measures of First Resort: Alternatives to Immigration Detention in Comparative Perspective,* EQUAL RIGHTS REVIEW 7, 117 (2011).
[117] Proposal for a Pilot Program in Middlesex County, NJ: *Community Supervision and Services: An Alternative to Detention for Asylum Seekers without Sponsors, October 6, 2010* (on file with authors) (hereinafter referred to as "*Community Supervision and Services: An Alternative to Detention for Asylum Seekers without Sponsors*").
[118] *Community Supervision and Services: An Alternative to Detention for Asylum Seekers without Sponsors.*
[119] *Community Supervision and Services: An Alternative to Detention for Asylum Seekers without Sponsors.*
[120] Seafarers & International House, Guest House, http://www.sihnyc.org/newyork-guesthouse.php (hereinafter referred to as "Seafarers & International House").
[121] Seafarers & International House.
[122] Casa Marianella, Services, http://www.casamarianella.org/.
[123] Freedom House, Services, http://freedomhousedetroit.org/services.php.
[124] *See The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* at 6.
[125] *See Budget in Brief 2012.*
[126] *See Budget in Brief 2012.*
[127] *See* New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings (Part I)*, 33 CARDOZO L. REV. 357 (Dec. 2011), available at http://www.nylj.com/nylawyer/adgifs/decisions/013012report.pdf (hereinafter referred to as "*Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*"); *see also* NYU, Locked Up But Not Forgotten at 17 (April 2010) stating that:

> The confinement or detention of persons — in prison, or detention centers — is a costly endeavor, both in economic and human terms. . . There is a rich body of literature that seeks to promote alternatives to confinement and detention, precisely because confinement and detention create so many intangible and unintended human costs, both for the person being deprived of liberty and for those in that person's wider family and community network.

[128] *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings.*
[129] *See* Inter-Am. Comm'n on Human Rights, *Report on Immigration in the United States: Detention and Due Process* 130-43 (Dec. 30, 2010) *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/03.17.2011_ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf.
[130] The direct interview with "Jaime" was held in two-parts, and the authors also accompanied her to a Master Calendar Hearing, ISAP Check In, and an ICE Newark ERO Check In. These interviews and fieldwork observation took place over the period of February and March 2012. For purposes of confidentiality, her name and the specifics of her case have not been disclosed; otherwise, Jaime's story and recollection of her experiences under OSUP and ISAP II remain unchanged.
[131] Santoso was interviewed on March 7, 2012; for purposes of confidentiality, his name and the specifics of his case have not been disclosed; otherwise, Santoso's story and recollection of his experiences under OSUP and ISAP II remain unchanged.
[132] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).

[133] These interviews and fieldwork observation took place on March 8, 2012. For purposes of confidentiality, Komi's name and the specifics of his case have not been disclosed; otherwise, Komi's story and recollection of his experiences under OSUP remain unchanged.
[134] *See* Sarah Gryll, Comment, *Immigration Detention Reform: No Band-Aid Desired*, 60 EMORY L.J. 1211, 1225 (2011) (hereinafter referred to as "Gryll, *Immigration Detention Reform: No Band-Aid Desired*").
[135] *See* 8 U.S.C. § 1226(a) (1996).
[136] *See* Gryll, *Immigration Detention Reform: No Band-Aid Desired* at 1231-34.
[137] *See* Am. Immigration Council, *Understanding Prosecutorial Discretion in Immigration Law*, THE IMMIGRATION POLICY CENTER, *available at* http://www.immigrationpolicy.org/just-facts/understanding-prosecutorial-discretion-immigration-law.
[138] *See* John Morton, *Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* 2 *(June 17, 2011) available at* http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf (herein after referred to as "Morton, *Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement*"); *See also* John Morton, *Memorandum on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf.
[139] Morton, *Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement* at 2.
[140] Morton, *Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement* at 2.
[141] Morton, *Memorandum on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs.*
[142] Morton, *Memorandum on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs; Morton, Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement* at 2.
[143] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 41.
[144] Am. Immigration Lawyers Ass'n, *Holding DHS Accountable on Prosecutorial Discretion* (Nov. 2011) *available at* http://www.aila.org/content/default.aspx?docid=37615.
[145] Am. Immigration Council, The Immigration Policy Center, *AILA- AIC Survey Reveals ICE Official's Sporadic Exercise of Prosecutorial Discretion* (Nov. 9, 2011) *available at* http://immigrationpolicy.org/newsroom/release/aila-aic-survey-reveals-ice-officials-sporadic-exercise-prosecutorial-discretion.
[146] Schriro, *Immigration Detention Overview and Recommendations* at 16.
[147] Cerda, *Memorandum on Orders of Supervision*; *see also* Victor X. Cerda, *Memorandum on Reporting Requirements and Management of Alternatives to Detention Program Participants* (Mar. 8, 2005); Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance.*
[148] Cerda, *Memorandum on Orders of* Supervision at 1.
[149] Victor X. Cerda, *Memorandum on Alternatives to Detention Recovery Procedures* (Dec. 10, 2004) (hereinafter referred to as "*Memorandum on Alternatives to Detention Recovery Procedures*").
[150] Cerda, *Memorandum on Alternatives to Detention Recovery Procedures* at 1.
[151] Cerda, *Memorandum on Alternatives to Detention Recovery Procedures* at 1.
[152] Cerda, *Memorandum on Reporting Requirements and Management of Alternatives to Detention Program Participants* at 1.
[153] Cerda, *Memorandum on Reporting Requirements and Management of Alternatives to Detention Program Participants* at 1.
[154] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012); Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[155] Wesley J. Lee, *Memorandum on Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program* (May 11, 2005), available at http://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf.
[156] Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance* at 1.
[157] Lee, *Memorandum on Alternatives to Detention Programs (ATDP) Enrollment Guidance.*
[158] *See Intensive Supervision Appearance Program II Participant Handbook,* available in the Appendix F of this report.
[159] 8 C.F.R. § 241.4; *see also* Immigration and Customs Enforcement, Memorandum for Field Office Directors, *Guidance relating to 8 C.F.R. § 241.4 Continued Detention of Aliens Beyond the Removal Period and New Procedures Relating to Case Transfers to the Custody Determination Unit* (Nov.14, 2007).
[160] *Chapter 17 Removal Process: Post Order Custody Reviews (POCR).*
[161] *See ICE Detention Reform: Principles and Next Steps* at 2.
[162] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012); Interview with Komi, OSUP program participant (Mar. 8, 2012).
[163] Interview with Komi, OSUP program participant (Mar. 8, 2012); Interview with Elissa Steiglich, AFSC Managing Attorney, and Alix Nguefack, Detention Project Coordinator (February 5, 2012); Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012). *See* Appendix B, *Sample Order of Supervision and Addendum.*
[164] *See* ISAP Statement of Work at 44.
[165] *See* ISAP Statement of Work at 44-45.
[166] *See* Appendix F, *Intensive Supervision Appearance Program II Participant Handbook.*
[167] *See* Appendix F, *Intensive Supervision Appearance Program II Participant Handbook.*
[168] *See Appendix D, Participant Agreement to Voluntarily Enroll in the Electronic Monitoring Program (GPS) of ISAP and translation.*
[169] Appendix A, *Sample Continuation Page for Form I-220B.*
[170] Appendix A, *Sample Continuation Page for Form I-220B.*
[171] Appendix A, *Sample Continuation Page for Form I-220B.*
[172] A "bag and baggage" letter is "issue[d] once the government determines that there is no further administrative relief available to an alien who is subject to an order of removal, and instructs the alien to appear at a specified location and time for removal," *Singh v. Gonzales*, 494 F.3d 1170, 1172 n.3 (9th Cir. 2007).
[173] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[174] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).

[175] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[176] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012) (wherein, the ISAP II program participant noted that she never receives any compliance documentation proving her appearance aside from her next upcoming report date).
[177] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[178] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[179] Interview with Pastor Seth Kaper-Dale, Pastor at the Reformed Church of Highland Park (Mar. 7, 2012).
[180] *See also* Appendix B*, Sample Order of Supervision and Addendum*.
[181] *See* U.S. Census Bureau: Percent of people who are foreign born from the 2005 American Community Survey.
[182] *See* U.S. Census Bureau: Percent of people who are foreign born from the 2005 American Community Survey.
[183] *See* Gryll, *Immigration Detention Reform: No Band-Aid Desired* at 1243.
[184] *See* Sarah Phelan, *Who profits from ICE's electronic monitoring anklets?*, SAN FRANCISCO BAY GUARDIAN ONLINE (Mar. 16, 2010), http://www.sfbg.com/politics/2010/03/16/who-profits-ices-electronic-monitoring-anklets-0.
[185] *See* Immigration & Customs Enforcement, Office of Det. & Removal Compliance Enforcement Division, Alternatives-to-Detention Unit, Intensive Supervision Appearance Program (ISAP) II, Supplies or Services and Prices/Costs, 77. *available at* https://www.fbo.gov/index?s=opportunity&mode=form&id=ca9481103ba015f459615fcaf61da90a&tab=core&_cview=1 (Solicitation for contractors to run the Intensive Supervision Appearance Program) hereinafter referred to as "ISAP Supplies or Services and Prices/Costs").
[186] *See* Supplies or Services and Prices/Costs at 20-21.
[187] *See* Supplies or Services and Prices/Costs at 20-21.
[188] *See* Supplies or Services and Prices/Costs at 34-36.
[189] *See* Supplies or Services and Prices/Costs at 20-21.
[190] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[191] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[192] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[193] *See* ISAP Statement of Work at 42-46.
[194] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012); Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012); Interview with Komi, OSUP program participant (Mar. 8, 2012). *See generally Report of the Special Rapporteur on the human rights of migrants* at 15-16.
[195] *See* 8 C.F.R § 241.5(c) (2011).
[196] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 15.
[197] *See Brewer v. Williams*, 430 U.S. 387 (1977) "The Sixth Amendment right to counsel exists for "criminal prosecutions." The right to counsel attaches only upon commencement of adversary judicial proceedings, such as preliminary hearing, indictment, information, or arraignment.
[198] *See* INA §2368, 8 U.S.C. § 1226 (1996).
[199] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[200] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[201] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[202] Interview with Rita Dentino, immigrant rights advocate (Mar. 1, 2012).
[203] The Cross Cultural Counseling Center at the International Institute of New Jersey has since closed.
[204] E-Mail from Nishant Patel, Psy. D., Interim Director, Cross Cultural Counseling Center, to author (Apr. 20, 2012, 8:47 EST) (on file with author).
[205] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[206] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[207] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[208] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[209] Interview with Elizabeth Trinidad, attorney (Mar. 9, 2012).
[210] *Report of the Special Rapporteur on the human rights of migrants* at 16.
[211] Interview with Rita Dentino, immigrant rights advocate (Mar. 1, 2012).
[212] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[213] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[214] Interview with Komi, OSUP program participant (Mar. 8, 2012).
[215] Interview with Rita Dentino, immigrant rights advocate (Mar. 1, 2012).
[216] *BI ExacuTrack One & Beacon Customer Guide* received by Jaime when she was placed on ISAP. Attached as Appendix G.
[217] BI Incorporated, *One-piece active GPS offender tracking*, BI ExacuTrack® One*, available at* http://bi.com/exacutrackone (hereinafter referred to as "*One-piece active GPS offender tracking*").
[218] *One-piece active GPS offender tracking.*
[219] *See* Cerda, *Memorandum on Alternatives to Detention Recovery Procedures*.
[220] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[221] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[222] *See* ISAP Statement of Work at 71.
[223] Interview with "Reginald," former ISAP and current OSUP participant (April 27, 2012).
[224] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 5.
[225] Interview with Daniel Weiss, attorney (Mar. 6, 2012).
[226] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012); Interview with Cesar Martin Estela, attorney (Mar. 8, 2012); Interview with Elissa Steglich, AFSC attorney (Feb. 5, 2012).
[227] Interview with Elizabeth Trinidad, attorney (Mar. 9, 2012); Interview with Daniel Weiss, attorney (Mar. 6, 2012).

[228] U.S. Immigration & Customs Enforcement Field Office Presentation and Q and A at Rutgers Univ. Law School - Newark (Mar. 7, 2012); Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[229] 8 C.F.R. 208.16 (2012); 8 U.S.C. § 1253(h) (1996).
[230] *See* 8 U.S.C. § 1253(h).
[231] *See* U.S. Citizenship & Immigration Servs., *Temporary Protected Status*, *available at* http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD (hereinafter referred to as "*Temporary Protected Status*").
[232] *Temporary Protected Status.*
[233] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[234] Interview with Juan, OSUP program participant (Mar. 9, 2012); Juan's name has been changed for the purposes of confidentiality, but the story is otherwise unchanged.
[235] Interview with Juan, OSUP program participant (Mar. 9, 2012).
[236] *See, e.g.*, Sally Hargreaves, A Body of Evidence: Torture Among Asylum Seekers to the West, THE LANCET, vol. 359, 793-94 (2002).
[237] *See* E-Mail from Nishant Patel, Psy. D., Interim Director, Cross Cultural Counseling Center, to author (Apr. 20, 2012, 8:47 EST) (on file with author).
[238] *See* UN High Comm'r for Refugees, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, 12 (Oct. 2003), *available at* http://www.unhcr.org/refworld/docid/415c3cfb4.html.
[239] *See* UNHCR Action to Address Statelessness - A Strategy Note, UNHCR Division of International Protection, 4 (Mar. 2010), http://www.unhcr.org/refworld/pdfid/4b9e0c3d2.pdf; *See generally* Jay Milbrandt, Stateless, 20 Cardozo J. Int'l & Comp. L. 75, 103 (2011).
[240] *See* Immigration & Refugee Board of Canada, *United States: The treatment of stateless persons living in the United States (US) with no legal status; whether they are subject to detention by immigration authorities, and if so, whether such detentions can be challenged through the courts; the rights of such individuals if they are not in detention, such as the right to work; whether there is a mechanism to provide legal rights to stateless persons when the US has no place to deport them; whether a stateless person's status changes if he or she has minor children who are US citizens by birth*, 16 October 2008, USA102948.E, *available at* http://www.unhcr.org/refworld/docid/49b92b1ec.html.
[241] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[242] Interview with Camille Mackler, attorney (Feb. 24, 2012).
[243] *See* William G. Belden, *Paradise Lost: The Continuing Plight of the Excludable Mariel Cubans*, KAN. J.L. & PUB. POL'Y, Winter 1996, at 181.
[244] *See* José Javier Rodríguez, *Clark v. Martinez: Limited Statutory Construction Required by Constitutional Avoidance Offers Fragile Protection for Inadmissible Immigrants from Indefinite Detention*, 40 HARV. C.R.-C.L. L. REV. 505, 508 (2005) (hereinafter referred to as "Rodriguez, *Clark v. Martinez*").
[245] Rodriguez, *Clark v. Martinez.*
[246] *Clark v. Martinez*, 125 S. Ct. 716 (2005) (holding that Mariel Cubans could not be lawfully detained indefinitely).
[247] *See generally*, Lee Hall, *Nomads Under the Tent of Blue: Migrants Fuel The U.S. Prison Industry*, 6 RUTGERS RACE & L. REV. 265 (2004) (describing the relationship between post September 11, 2001 detention policies and the commercialization of state and private detention facilities).
[248] *Report of the Special Rapporteur on the human rights of migrants* at 9.
[249] *See* NYU, *Locked Up But Not Forgotten* at 2.
[250] Schriro, *Immigration Detention Overview and Recommendations* at 21.
[251] Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 45.
[252] Vera Institute, *Testing Community Supervision for the INS* at ii.
[253] *See* Heartland Alliance's Nat'l Immigrant Justice Ctr., *Creating 'Truly Civil' Immigration Detention in the United States: Lessons from Australia* 6 (May 2010), *available at* www.immigrantjustice.org/policy-resources/policydocs/australia.html (hereinafter referred to as "Heartland Alliance").
[254] *See* Heartland Alliance.
[255] *See* ATD of Asylum Seekers & Refugees at 26.
[256] *See* ATD of Asylum Seekers & Refugees at 26.
[257] *See* Mark T. Fennell, Preserving Process in the Wake of Policy: The Need for Appointed Counsel in Immigration Removal Proceedings, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 261, 285 (2009); Nimrod Pitsker, *Due Process for All: Applying Eldridge to Require Appointed Counsel for Asylum Seekers*, 95 CAL. L. REV. 169, 175-76 (2007). *See generally* Renewing the Call: Immigrants' Right to Appointed Counsel in Deportation Proceedings, 20 B.C. THIRD WORLD L.J. 393 (2000).
[258] *See* Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541 (2009), http://ir.lawnet.fordham.edu/flr/vol78/iss2/5 (recognizing that the lack of government-paid counsel often leads to litigants hiring incompetent or unscrupulous attorneys, who often advance frivolous and non meritorious claims); *see also* Robert A. Katzmann, The Marden Lecture: *The Legal Profession and the Unmet Needs of the Immigrant*, 21 GEO. J. LEGAL ETHICS 3, 4-5, for Judge Katzmann's analysis of the importance of competent legal representation in immigration cases:

> In our legal system, driven by complex rules and procedures, a lack of access to competent legal services damages fundamental concepts of fairness and equality before the law. . . .The importance of quality representation, be it paid or pro bono, is especially acute for immigrants . . . because there is a wide disparity in the success rate of those who have lawyers and those who proceed pro se. For example, several studies have shown that asylum seekers are much more likely to be granted asylum when they are represented in immigration proceedings.

[259] Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 45.
[260] Schriro, *Immigration Detention Overview and Recommendations* at 20.
[261] Schriro, *Immigration Detention Overview and Recommendations* at 20.

[262] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012). (Santoso was placed on ISAP and consequently, an electronic ankle monitor due to a disagreement with an ICE officer regarding paperwork).
[263] *See* Schriro, *Immigration Detention Overview and Recommendations* at 20.
[264] Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 33.
[265] Interview with Komi, OSUP program participant.
[266] Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012).
[267] Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012); Interview with Santoso, OSUP and ISAP II program participant (Mar. 7, 2012); Interview with Komi, OSUP program participant (Mar. 8, 2012).
[268] Interview with Daniel Weiss, attorney (Mar. 6, 2012); Interview with Cesar Martin Estela, attorney (Mar. 8, 2012); Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012); Interview with Elissa Steglich, AFSC attorney (Feb. 5, 2012); Interview with Alix Nguefack, AFSC advocate (Feb. 5, 2012); Interview with Jaime, OSUP and ISAP II program participant (Feb. 19, 2012).
[269] Interview with Amelia Wilson, AFSC attorney (Feb. 23, 2012).
[270] U.S. Gov't Accountability Office, *Department Of Homeland Security: DHS Needs to Comprehensively Assess Its Foreign Language Needs and Capabilities and Identify Shortfalls* (July 29, 2010) *available at* http://www.gao.gov/assets/310/305856.html (hereinafter referred to as "*DHS Needs to Comprehensively Assess Its Foreign Language Needs*").
[271] *DHS Needs to Comprehensively Assess Its Foreign Language Needs.*
[272] *DHS Needs to Comprehensively Assess Its Foreign Language Needs.*
[273] *DHS Needs to Comprehensively Assess Its Foreign Language Needs.*
[274] *See* Leadership NJ Pub. Policy Research Inst., *Presenting Partners: American Conference on Diversity Initiative for Regional and Community Transformation* (Sept. 20, 2007) *available at* http://www.americanconferenceondiversity.org/documents/ConfSummaryBochFINAL-081808.pdf.
[275] *See* TRAC Immigration, *Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Cases, available at* http://trac.syr.edu/phptools/immigration/court_backlog/ (hereinafter referred to as "*Immigration Court Backlog Tool*").
[276] *See Immigration Court Backlog Tool.*
[277] *See* U.S. Dep't of Justice, Congressional Submission: FY 2013 Administrative Review and Appeals 14 (2012) *available at* http://www.justice.gov/jmd/2013justification/pdf/fy13-ara-justification.pdf.
[278] *See Immigration Court Backlog Tool.*
[279] *See* William R. Robie, *Memorandum on Operating Policies and Procedures 84-1: Case Priorities and Processing* (Feb. 6, 1984), *available at* http://www.hsdl.org/?view&did=9907 (noting that "[t]he calendaring of detained cases and detained bond redetermination hearings shall be of the highest priority relative to the calendaring of all other types of cases.").
[280] Human Rights First, Statement of Human Rights First, United States Senate Committee on the Judiciary *Improving Efficiency and Ensuring Justice in the Immigration Court System* (May 18, 2011), *available at* http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF_statement_hearing_on_immigration_courts.pdf.
[281] Executive Office for Immigration Review, FY 2011 Statistical Yearbook (Feb. 2012), *available at* http://www.justice.gov/eoir/statspub/fy11syb.pdf (hereinafter referred to as "Yearbook 2011").
[282] *See* Yearbook 2011.
[283] H.R. NO. 112-091 at 53, (2011), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt91/pdf/CRPT-112hrpt91.pdf.
[284] 8 U.S.C. § 1226 (1996).
[285] *See* Am. Immigration Lawyers Ass'n, *The Use of Electronic Monitoring and Other Alternatives to Institutional Detention on Individuals Classified under INA § 236(c)* (Aug. 6, 2010), *available at* www.nilc.org/document.html?id=94, at 11 for a detailed interpretation of the term "custody" (hereinafter referred to as "*The Use of Electronic Monitoring*").
[286] *See The Use of Electronic Monitoring* at 8.
[287] *The Use of Electronic Monitoring* at 8.
[288] *See* Int'l Det. Coal., *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* at 11 *available at* http://massivefishball.com/IDC_Handbook.pdf.
[289] *See Accessing Justice: The availability and adequacy of Counsel in Immigration Proceedings* at 12-14.
[290] *See* Lutheran Immigration & Refugee Serv., *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* at 4.
[291] *See* Physicians for Human Rights, *Dual Loyalties: The Challenges to Providing Professional Health Care to Immigrant Detainees*, Mar. 2011, *available at* https://s3.amazonaws.com/PHR_Reports/2011_DualLoyalties_Final_3_24_2011_opt.pdf for some of the harmful effects of detention including: physical and emotional abuse, poor access to health care, sexual assaults, and deaths; *see also* Katy Robjant et al., *Mental Health Implications of Detaining Asylum Seekers: Systematic Review,* THE BRITISH JOURNAL OF PSYCHIATRY, (2009); *see also* New York Univ. School of Law Immigrant Rights Clinic, *Immigration Incarceration: The Expansion and Failed Reform of Immigration Detention in Essex County, NJ*, Mar. 2012, *available at* http://www.afsc.org/sites/afsc.civicactions.net/files/documents/ImmigrationIncarceration2012.pdf (hereinafter referred to as "*Immigration Incarceration*"); Dana Priest and Amy Goldstein, *Careless Detention: System of Neglect*, WASHINGTON POST, May 11, 2008, at A1 *available at* http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html.
[292] *See Immigration Incarceration* at 7.
[293] Memorandum from the American Immigration Lawyers Association to David Martin 9 (Aug. 6, 2010) https://nilc.org/document.html?id=94.
[294] AILA Position Paper – Alternatives to Detention, *available at* http://www.aila.org/Content/default.aspx?docid=25874.
[295] Vera Institute of Justice, *Home Detention for Immigration Detainees, Would it be Useful, Legal, and Effective?* 9-10 (Sept. 1996) *available at* http://www.vera.org/download?file=640/353.4vi.pdf.
[296] *See* Memorandum from the American Immigration Lawyers Association to David Martin, Office of General Counsel, DHS on The Use of Electronic Monitoring and Other Alternatives to Institutional Detention on Individuals Classified under INA § 236 (c) 16 (Aug. 6, 2010) *available at* http://www.legalactioncenter.org/sites/default/files/docs/lac/Asylum_Clock_Paper.pdf.

Appendix

A. Form I-220B

B. Sample Order of Supervision and Addendum

C. ISAP II Individual Service Plan

D. Participant Agreement to Voluntarily Enroll in the Electronic Monitoring Program (GPS) of ISAP and translation

E. Acknowledgment Form of the Rules and Guidance of the ISAP Program and translation

F. Intensive Supervision Appearance Program II Participant Handbook

G. B.I. ExacuTrack One & Beacon Customer Guide and translation

Appendix A

Department of Homeland Security
Immigration and Customs Enforcement

D.O.B [redacted]

Continuation Page for Form: I-220B

Alien's Name	File Number	Date
[redacted]	[redacted]	[redacted]

[redacted]

Alien's Signature

Alien's Address

[redacted]

Alien's Telephone Number (if any)

Home:

Cell:

RIGHT INDEX PRINT

[redacted]

PERSONAL REPORT RECORD

DATE	OFFICER	COMMENT/CHANGES
01-05-10		Next report date 02-10-10 with Passport and Proof of Address [redacted]
2-11-2010		Next Report date Bring Passport [redacted]
4-14-10		Next report date 6-16-10 with Update information regarding [redacted]
6-16-10		Next report date 9-15-10. [redacted]
9-15-11		Next report Dec 15, 2010
12/5/10		Next report 4/20/11 [redacted]
4/20/11		Next Report 6/8/11 [redacted]
6-8-11		Next Report 9/08/11 [redacted]
9-7-11		Next report date 11-[redacted]-2011 with tickets to depart the U.S. NO later than 12/13/2011. [redacted]

Signature	Title

Appendix B

U.S. Department of Justice
Immigration and Customs Enforcement

DOB: [redacted]

Order of Supervision

File No: [redacted]

Date: [redacted]

Name: [redacted]

On [redacted] (Date of final order) you were ordered:

[ ] Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
[X] Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Immigration and Customs Enforcement (ICE) has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

[X] That you appear in person at the time and place specified, upon each and every request of ICE, for identification and for deportation or removal.

[X] That upon request of ICE, you appear for medical or psychiatric examination at the expense of the United States Government.

[X] That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as ICE considers appropriate.

[X] That you do not travel outside **the state of New York/New Jersey** (Specify geographic limits, if any) for more than 48 hours without first having notified this ICE office of the dates and places of such proposed travel.

[X] That you furnish written notice to this ICE office of any change of residence or employment within 48 hours of such change.

[X] That you report in person on [redacted] this ICE office at: **970 Broad Street, 9th Floor, Newark, NJ 07102**, unless you are granted written permission to report on another date.

[X] That you assist the Immigration and Customs Enforcement in obtaining any necessary travel documents.

[X] Other: **Do not use or possess any illegal drugs. Do not possess firearms**

[ ] See attached sheet containing other specified conditions (Continue on separate sheet if required)

[redacted]
(Signature of ICE official)

[redacted]
(Print name and title of ICE official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[redacted]
(Signature of ICE official serving order)

[redacted]
(Signature of alien)

[redacted]
Date

[redacted]

Form I-220B

Appendix B

U.S. Department of Justice
Immigration and Customs Enforcement

Order of Supervision-Addendum

File No: [redacted]
Date: [redacted]

Name: [redacted]

[X] That you do not associate with known gang members, criminal associates, or be associated with any such activity.

[ ] That you register in a substance abuse program within 14 days and provide the ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

[ ] That you register in a sexual deviancy counseling program within 14 days and provide the ICE with written proof of such within 30 days. You must provide the ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.

[ ] That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide the ICE with written proof of such within 10 days.

[X] That you do not commit any crimes while on this Order of Supervision.

[ ] That you report to any parole or probation officer as required within 5 business days and provide the ICE with written verification of the officers name, address, telephone number, and reporting requirements.

[ ] That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.

[ ] That you provide the ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.

[ ] That you provide the ICE with written responses from the Embassy or Consulate regarding your request.

[X] Any violation of the above conditions will may result in revocation of your employment authorization document.

[X] Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.

[X] That you comply with ICE's electronic monitoring devices at ICE's discretion

[ ] Other.

Appendix C

ISAP II INDIVIDUAL SERVICE PLAN

Date:	[redacted]	**Intake Date:**	[redacted]
Participant Name:	[redacted]	**BI ISAP Office:**	ISAP - Newark
Alien Registration #:	[redacted]	**ISCS Staff:**	[redacted]

SUPERVISION PLAN:

Legal Stage ERO: Post-Order **Type of EM:** ET1 – Passive

Supervision Billing Stage per ERO: Post-Order

Supervision Plan: See Appendix

EMPLOYMENT:

Employed: No

Employment Notes: See Appendix

Plan for Immigration Case:	Depart
Immigration paperwork filed:	Departure only
Next Court Appearance Date:	
Attorney currently on file:	No
Actions for Legal Plan:	
Legal plan:	See Appendix

TRANSLATION PLAN:

Languages spoken: English, Spanish

English: **Speaks:** Fluent **Writes:** Yes **Reads:** Yes

TRANSPORTATION PLAN:

Primary Transportation Method: public transportation

Transportation Backup Plan: Public Trans

Appendix C

SAP II INDIVIDUAL SERVICE PLAN

PERSONAL CONTACTS:

Name	Relationship	Phone Number	Address	Last Changed
[redacted]	Friend	(000) 000-0000	[redacted]	[redacted]
[redacted]	Friend	(000) 000-0000	[redacted]	[redacted]

Appendix D

[redacted]

Programa de Comparecencia con Supervisión Intensiva (ISAP) Última actualización Mar 11

Acuerdo del Participante para Tomar Parte Voluntariamente en el Programa de Monitoreo Electrónico (GPS) de ISAP

Los participantes que requieran ser monitoreados con seguimiento GPS serán monitoreados usando ExacuTrack® One, el sistema GPS activo de una pieza de BI.

1. Estando en el Programa de monitoreo electrónico, acepto usar una tobillera no removible que colocará el Especialista del Caso que me corresponda.
2. Acuso recibo de la unidad ExacuTrack One con número de identificación: [redacted] y Beacon con número de identificación: N/A
3. Entiendo que la entrada al Programa de monitoreo electrónico requiere servicios eléctricos en mi residencia.
4. Acepto que es mi responsabilidad mantener servicio eléctrico en mi residencia durante el tiempo que esté en el Programa de monitoreo electrónico.
5. Acepto no quitarme ni alterar la tobillera de seguimiento GPS excepto si se necesita en una emergencia o con la aprobación previa del Especialista del Caso.
6. Acepto permitir al personal autorizado inspeccionar y mantener la tobillera durante visitas a la oficina y en mi residencia.
7. Entiendo que debo respetar estrictamente mi programa aprobado.
8. Entiendo que todas las solicitudes de cambio de programa deben efectuarse al menos 24 horas antes llamando a [redacted] dejando un mensaje. Las llamadas se devolverán solamente durante horarios de oficina. El horario de oficina es de lunes a viernes, desde las 8:00 a.m. hasta las 5:00 p.m. Todas las solicitudes de cambio debe aprobarlas de antemano el Especialista del Caso que me corresponda.
9. En caso de emergencia (por ejemplo, médica), se me ha dado el número de una línea directa de emergencia. El número es [redacted]. Entiendo que este número no debe usarse nunca para situaciones que no sean de emergencia ni para pedir un cambio de programa.
10. Entiendo que es posible que se me haga responsable del equipo de monitoreo electrónico GPS y puede que se me exija reembolsar el costo de reemplazo o reparación a BI Incorporated por cualquier pérdida y/o daño del equipo.

Appendix D

Reglas locales:

Otras condiciones:

Reconozco que he recibido una copia de estas reglas y del programa autorizado y que se me han explicado. También reconozco que había servicios de traducción a pedido. Entiendo que debo cumplir con estas reglas hasta haber llevado a cabo el Programa de monitoreo electrónico, o hasta que reciba notificación de lo contrario a través de mi Especialista de Caso de Supervisión Intensiva. También entiendo que cualquier violación de estas reglas podría causar el término de mi participación en este programa y mi regreso a detención.

[redacted]

Firma del Participante

[redacted]

Fecha

[redacted]

Firma del Especialista del Caso

[redacted]

Fecha

Appendix D

Intensive Supervision Appearance Program with (ISAP) Last Updated Mar 11

Participant Agreement to Voluntarily Enroll in the Electronic Monitoring Program (GSP) of ISAP

Participants that are required to be regularly monitored with GPS tracking will be monitored using ExacuTrack One, a one-piece GPS system from B.I.

1. Being in the electronic monitoring program, I agree to use a non-removable brace that will be placed on me by my corresponding Case Specialist.

2. I acknowledge receipt of the ExacuTrack One unit with identification number [redacted] and Beacon with identification number [redacted].

3. I understand that participation in the electronic monitoring program requires electrical service at my residence.

4. I agree that it is my responsibility to maintain electric service at my residence throughout my participation in the electronic monitoring program.

5. I agree not to remove or alter the GPS tracking anklet unless in case of an emergency or with prior approval from the Case Specialist.

6. I agree to allow authorized personnel to inspect and maintain the ankle monitor during visits to the office and at my residence.

7. I understand that I have to strictly respect my approved program.

8. I understand that all program change requests must be made with at least 24 hours notice by calling [redacted] and leaving a message. Calls will be returned during office hours only. Office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. All requests for changes must be approved in advance by my assigned Case Specialist.

9. In case of an emergency (e.g., medical), I have been given the number of an emergency hotline. The number is [redacted]. I understand that this number should never be used for situations that are not emergencies such as to ask for a change of program.

10. I understand that it is possible for me to be held responsible for the GPS electronic monitoring equipment and I may be held liable for the cost of replacement to B.I. incorporated for any loss and/or equipment damage.

Local Rules:

Other conditions:

I acknowledge that I have received a copy of these rules and the rules of the authorized program and that these rules have been explained to me. I also recognize that there were translation services on demand. I understand I must comply with these rules until I have completed the electronic monitoring program or until it receive notification otherwise through my Case Specialist for Intensive Supervision. I also understand that any violation of these rules may cause the termination of my participation in this program and my return to detention.

[redacted]
Participant's Signature

[redacted]
Date

[redacted]
Case Specialist's Signature

[redacted]
Date

[redacted]

Appendix E

Formulario de Reconocimiento de las Reglas y Orientación del Programa

Hoy 10 de 6 de 2011, se ha acordado este contrato entre [redacted] y BI Incorporated. Este contrato define las responsabilidades mutuas de cada parte en el Programa ISAP II.

El Participante, al firmar más abajo, señala entender y aceptar todos los siguientes requisitos de supervisión y reglas de ISAP II. Si no se cumplen estas reglas puede exigirse que el Participante regrese a detención.

Derechos del participante

1. El derecho a esperar que se respete su estilo de vida, preferencia religiosa, valores, tradiciones y prácticas culturales sin importar raza, color, religión, origen nacional, edad, sexo, estatus económico, afiliación política, orientación sexual o discapacidad física.
2. El derecho a ser tratado con respeto en cuanto a asuntos personales demostrando preocupación cuando se comuniquen estos asuntos a otros miembros del personal y al Departamento de Seguridad Nacional (DHS);
3. El derecho a la confidencialidad con la excepción de información solicitada por DHS o que usted haya autorizado al ISAP para que divulgue.

[redacted] ***Iniciales del participante***

Responsabilidades del participante

1. Cumplir con todos los requisitos del DHS y de Tribunales y las órdenes de liberación.
2. Cumplir con todos los requisitos del ISAP estipulados en el Manual del Participante del ISAP.
3. Cumplir con el toque de queda de Monitoreo electrónico (EM)/Detención en Casa, reglas y reglamentos estipulados en los Formularios de monitoreo electrónico del Acuerdo del Participante.
4. Evitar usar drogas ilegales de cualquier tipo al participar en el ISAP.
5. No cometer actos criminales y reportar todo contacto con autoridades del orden público al Especialista del Caso dentro de 24 horas.
6. Cooperar con el personal del ISAP y contestar todas las preguntas correcta y completamente.
7. Proporcionar o autorizar la divulgación de cualquier información requerida por el personal de ISAP.
8. Si se le permite trabajar conforme a la Ley de Inmigración de los EE. UU., entregar toda la información de empleo a su Especialista del Caso. Si se requiere, esto puede incluir presentar el cheque de sueldo o talón de pago (o fotocopia) con el nombre y dirección de su empleador.
9. Cumplir con su programa semanal. Puede que se le pida en cualquier momento mientras esté en el ISAP confirmar su paradero las 24 horas del día, los 7 días de la semana.
10. Mantener al día a su Especialista del Caso en cuanto a cambios potenciales en su disposición de vivienda, incluyendo el cambio de dirección y número de teléfono. (El cambio de dirección y/o número de teléfono requiere aprobación del DHS.)
11. Reportar toda información financiera personal a su Especialista del Caso, si se requiere.
12. Respetar y reconocer los intereses de confidencialidad de todo otro Participante en programas de BI Incorporated al no comunicar a nadie ninguna información acerca de otros Participantes.
13. Cumplir con todas las citas requeridas y fijadas en las oficinas del ISAP.
14. Permitir que su Especialista del Caso entre a su residencia en toda visita requerida fuera de programa.
15. Llevar consigo su tarjeta de identificación del ISAP en todo momento (puede que se le cobre un cargo si se pierde la tarjeta).

[redacted] ***Iniciales del participante***

Appendix E

Políticas de ingreso a la instalación

1. Horarios de oficina: Los horarios de oficina para ingresar son de lunes a viernes, desde las 8 a.m. hasta las 5 p.m. Los horarios especiales de festivos se comunicarán anticipadamente.
2. No puede usarse ni lucirse parafernalia o ropa inadecuada al estar en una sede de ISAP.
3. Al estar en un recinto de ISAP, las pertenencias o el vehículo del Participante están sujetos a inspección.
4. No se permiten armas de ningún tipo en ninguna sede de ISAP. Las armas que se traigan a una sede se notificarán al DHS, se reportarán por escrito como incidente y, si se estima necesario, se le retirará del programa, y se contactará a la policía.
5. El participante no integrará peleas ni exhibirá comportamiento agresivo con ningún miembro del personal, familiar ni ninguna otra personal en la oficina de ISAP.
   - Número de emergencia de la oficina de ISAP de BI [redacted]
   - Oficina Regional del Departamento de Seguridad Nacional [redacted]

[redacted] *Iniciales del participante*

Procedimiento de queja

Los Participantes que estén desconformes con alguna parte del programa, plan de supervisión o sanciones del programa tienen la opción de presentar una queja. La queja se transmitirá al Gerente del Programa ISAP, quien la analizará y si es posible, la resolverá dentro de tres días laborables. Si no se resuelve la queja en dicho plazo, el participante tiene la opción de notificar al DHS.

[redacted] *Iniciales del participante*

Materiales del programa

Reconozco haber recibido los siguientes recursos en un esfuerzo por hacer productivo y satisfactorio mi tiempo en el Programa ISAP: listados de servicios de recursos comunitarios locales, lista de proveedores de servicios legales gratuitos locales y un Manual del Participante de ISAP.

[redacted] *Iniciales del participante*

Acepto lo anterior y doy mi consentimiento para participar en el programa. He asistido a una Orientación integral el 8/10/14. He leído detenidamente todas las condiciones anteriores y documentos de referencia, incluyendo el Manual del Participante de ISAP, y concuerdo en procurar y lograr los objetivos del contrato. Entiendo y concuerdo en que si cambian las circunstancias, puedo solicitar una revisión de este contrato. Haré todo esfuerzo razonable para lograr mis objetivos indicados y tengo presente que, de no hacerlo, puedo ser eliminado del ISAP.

[redacted]

Firma del Participante Fecha

[redacted]

Firma del Especialista del Caso Fecha

Appendix E

Intensive Supervision Appearance Program with (ISAP) Last Updated Mar 11

Acknowledgment Form of the Rules and Guidance of the ISAP Program

Today [redacted] of [redacted] year [redacted], this contract has been entered into by [redacted] and B.I. Incorporated. This contract defines the mutual responsibilities of each party to the ISAP II Program.

The Participant, by signing below, states that he understands and accepts all of the following requirements of supervision and the rules of ISAP II. If the Participant does not comply with these rules, the Participant may be required to return to detention.

Participant Rights

1. The right to expect respect for their lifestyle, religious preferences, values, traditions and cultural practices without regard to race, color, religion, national origin, age, gender, economic status, political affiliation, sexual orientation or physical disability.
2. The right to be treated with respect with regards to personal matters demonstrating concern [sic] when communicating these matters to other staff members and the Department of Homeland Security (DHS).
3. The right to confidentiality with the exception of information requested by DHS or information you have authorized the ISAP to disclose.

[redacted] ***Participant Initials***

Responsibilities of the participant

1. Meet all requirements of the DHS and Court orders and release orders.
2. Comply with all requirements stipulated in the ISAP Participants Manual.
3. Comply with the curfew from the electronic monitoring (EM)/Detention Home, rules, and regulations set forth in the electronic monitoring Participant Agreement.
4. Avoid using illegal drugs of any kind while participating in the ISAP.
5. Do not commit criminal acts and report any contact with law enforcement authorities to the Case Specialist within 24 hours.
6. Cooperate with the ISAP staff and answer all questions correctly and completely.
7. Provide or authorize disclosure of any information required by the ISAP staff.
8. If allowed to work in accordance with the Immigration Laws of the United States, submit all the information to your Case Specialist. If required, this may include submitting the paycheck or pay stub (or photocopy) with the name and address of your employer.
9. Stick to your weekly schedule. You may be asked at any time while on the ISAP to confirm your whereabouts 24 hours a day, 7 days a week.
10. Keep your Case Specialist up to date regarding potential changes in housing, including change of address and phone number. (Change of address and/or phone number requires approval from DHS).
11. Report all personal financial information to the Case Specialist, if required.
12. Respect and recognize the interests of confidentiality of all other Participants in the B.I. Incorporated programs by not disclosing to anyone any information about other participants.
13. Comply with all required and set appointments at the ISAP office.
14. Allowing your Case Specialist into your residence at all unscheduled visits.
15. Bring your ISAP identification card at all times. (You may be charged a fee if the card is lost).

[redacted]**Participant's initials**

Appendix E

Intensive Supervision Appearance Program with (ISAP) Last Updated Mar 11

Policies for Admission to the Facility

1. Office Hours: Office hours are Monday through Friday, from 8:00 am to 5:00 pm. Special holiday schedules will be communicated in advance.
2. Paraphernalia or inappropriate clothing cannot be worn while in the ISAP office.
3. While in an ISAP area, personal belongings or Participant's vehicle are subject to inspection.
4. Weapons of any kind are not allowed at an ISAP office. If weapons are brought to an ISAP office, ISAP will notify the DHS headquarters, it will be reported in writing as an incident and, if deemed necessary, the person will be taken off the program and the police will be contacted.
5. The Participant will not exhibit aggressive behavior or fight with any staff member, relative, or any other person in the office of ISAP.

    - Emergency number of the ISAP BI office [redacted]
    - Regional Office of Homeland Security [redacted]

[redacted] **Participant's Initials**

Grievance Procedure

Participants who are unhappy with any part of the program, plan of supervision or program sanctions have the option to file a complaint. The complaint will be transmitted to the ISAP Program General Manager, who will analyze and if possible, will resolve the issue within three business days. But if the issue is not resolved within that period, the Participant has the option to notify DHS.

[redacted] **Participant's Initials**

Program materials

I acknowledge receipt of the following resources in an effort to make my time productive and satisfying the ISAP Program requirements: lists of local community resources services, list of free local legal service providers and the ISAP Participant Manual.

[redacted] **Participant's Initials**

I accept the above and give my consent to participate in the program. I attended a comprehensive orientation on the [redacted]. I have read and understood all previous conditions and reference documents, including the ISAP Participant Manual, and agree to seek and achieve the objectives of the contract. I understand and agree that if circumstances change I can request a review of this contract. I will take every reasonable effort to achieve my goals and I have been informed that failure to do so can result in removal from the ISAP.

[redacted]
Participant's Signature

[redacted]
Date

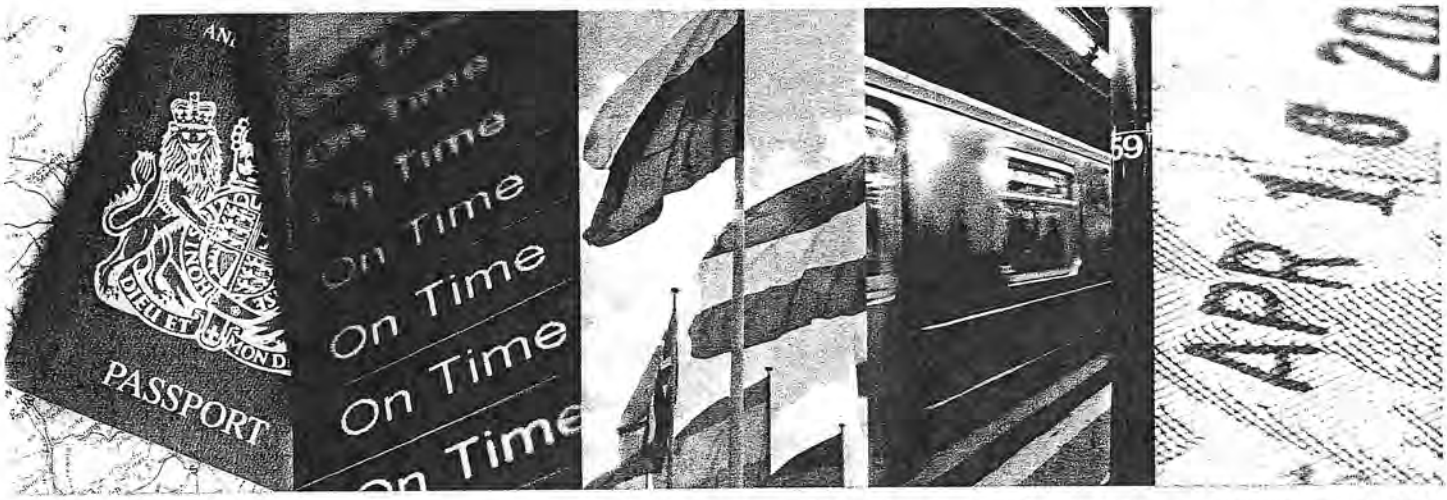
[redacted]
Case Specialist's Signature

[redacted]
Date

Appendix F

INTENSIVE SUPERVISION APPEARANCE PROGRAM II

Participant Handbook



ISAP services delivered by BI Incorporated under authority of a contract with the Department of Homeland Security, #HSCECR-09-R-00004

WELCOME

Welcome to the Intensive Supervision Appearance Program. We know that you will have many questions. Do not be hesitant to ask and get answers to all your questions. You have made certain promises; for example to go to court, and to follow court orders. We are here to help you keep those promises.

BI Incorporated operates the ISAP under a contract with the Department of Homeland Security (DHS). We cannot and will not give out any information about you or the fact that you are in this program to any person not directly involved in ISAP, unless we have obtained your permission to do so.

You will be treated with respect and dignity by ISAP staff. In turn, we expect you to follow program rules, and be in court and at the ISAP office when you are scheduled. You will remain in ISAP until DHS releases you or you leave the country. Until then, you must follow all program rules.

PROGRAM REQUIREMENTS

If eligible for participation in ISAP, you must agree with the following:

- Agree to participate in all aspects and comply with all rules and requirements of the ISAP program
- Be in possession of travel documents or be in the process of applying for a passport
- Not pose a threat to public safety or public health
- Be self-supporting or show support from a family or local organization
- Possibility of being placed on electronic monitoring or telephonic reporting
- Allow ISAP staff to visit, verify and inspect participant residence
- Be truthful in the application process and fully comply with ISAP staff and DHS
- Agree to remain within local jurisdiction, at a verifiable residence, that is a reasonable distance from the ISAP office

COURT PROCESS

You may have already had your first hearing at the Immigration Court. If not, in this first hearing, called a "master calendar hearing," the Immigration Judge hears many cases at the same time.

No BI employee, including your Case Specialist, is allowed to give you any legal advice about your case. Your Case Specialist will provide you with a list of DHS approved pro bono attorneys. You can contact one of these attorneys to inquire about your legal questions or you may seek your own.

If you're ready to proceed at the master calendar hearing, the Immigration Judge will ask you if the information in your Notice to Appear is correct. Prior to your hearing, you and your lawyer should have looked over all the information carefully. If you have any questions or documents that need to be corrected, you should tell the Immigration Judge.

If the Immigration Judge decides that you should be deported, you will be asked if you want to apply for relief from deportation. If you are eligible and apply for it, a court date will be set for a separate private hearing, called an "individual hearing," to consider your application.

At the end of the hearing, the Immigration Judge will make an oral decision, or a written decision at a later date. If you and your attorney do not agree with this decision, you may be eligible to file an appeal. You will need to discuss this with an attorney.

This process may take many weeks or months. Our job is to make certain you attend your Court hearings. If you fail to appear in Court, you could be ordered to return to detention. So be in Court on the date required and get there early.

Appendix F

INDIVIDUAL SERVICE PLAN

While you are in ISAP, you will have a Case Specialist assigned to you. This person will be your main contact during the time you are with us in the program. Please learn their name and keep their phone number with you at all times.

Your Case Specialist will develop an Individual Service Plan with you. You will meet regularly with him or her to track your progress and make changes to the plan if necessary. This plan includes:

Supervision Plan. This will clearly explain when you will report to the ISAP office and the process for unscheduled home visits.

Authorized Schedule. Your Case Specialist will work out a daily schedule with you. Your schedule will include Court hearings, employment, school, and meetings with legal services, ISAP staff, community resources, doctor appointments, etc. You are responsible for keeping your Case Specialist up to date on any schedule changes that will affect your supervision. DHS may also require electronic monitoring supervision, if appropriate. You must follow this schedule while you are in the program.

Legal Plan. Your Case Specialist will refer you to an approved list of pro bono legal representation and assist you in getting to Court at your scheduled time. You may also find your own attorney if you choose to do so.

Transportation Plan. Your Case Specialist will help you find public or other transportation so that you can be on time for your court hearings, ISAP meetings, and other required meetings.

Translation Plan. Your Case Specialist will make sure that you can understand, and be understood, in ISAP. He or she may speak your native language, or may ask a family member, or someone else to help translate. If no translator is available, a translation phone service will be utilized.

Travel Document or Passport. You will be expected to obtain or renew your country passport. Your Case Specialist will assist you with the necessary paperwork and/or address of your nearest Country consulate.

Departure Plan. If you have already received a final decision on your immigration case, you will work on your departure plan. Your Case Specialist will assist you with coordinating your travel arrangements.

FIVE STAGES

The ISAP program includes five stages of Supervision: Pre-Order, Post-Order, Appeal, Post-Order Custody Review - Local Release and Post-Order Custody Review - Headquarters Release. The Stage of Supervision for each participant is determined by what stage of Immigration proceedings in which you are currently involved.

- The Pre-Order Stage is for participants who have or will have an EOIR hearing scheduled. EOIR stands for Executive Office of Immigration Review. This is where you will meet with an Immigration Judge to determine your future status in the United States.
- The Post-Order Stage is for participants who have already attended EOIR court and have received a final order. The participants in this stage are preparing to return to their country of origin and will work with their assigned Case Specialist to complete this process.
- The Appeal Stage is for participants who received a final order but are asking the court to review their case.
- The Post-Order Custody Review - Local Release Stage is for participants who have completed the court process, have been reviewed by Local Immigration and a determination was made to release.
- The Post-Order Custody Review - Headquarters Release Stage is for participants who have completed the court process, have been reviewed by Headquarters Immigration and a determination was made to release.

A full table of the program design and five stages of Supervision can be found on the back page of this booklet.

DHS will determine the proper Stage of each participant prior to releasing them to the ISAP program.

Each phase will include the same program events and will follow the same ISAP program rules. The events may occur in differing frequency based on the stage of supervision.

During all Stages of ISAP, the program rules that you must follow are:

- Comply with Participant created schedules
- Come to the office and attend all case management meetings
- Comply with your Individual Service Plan
- Meet employment and residence requirements
- Meet and keep appointments with all community resources to which you have been referred

During the Pre-Order Stage, you will meet with your Case Specialist at the ISAP office once every two weeks, and your Specialist will also make unscheduled visits to your home.

During the Post-Order Stage, you will meet with your Case Specialist at the ISAP office twice every two weeks, and your Specialist will also make unscheduled visits to your home.

During the Appeal Stage, you will meet with your Case Specialist at the ISAP office once every four weeks, and your Specialist will also make unscheduled visits to your home.

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During the Post-Order Custody Review - Local Release Stage, you will meet with your Case Specialist at the ISAP office twice every two weeks, and your Specialist will also make unscheduled visits to your home.

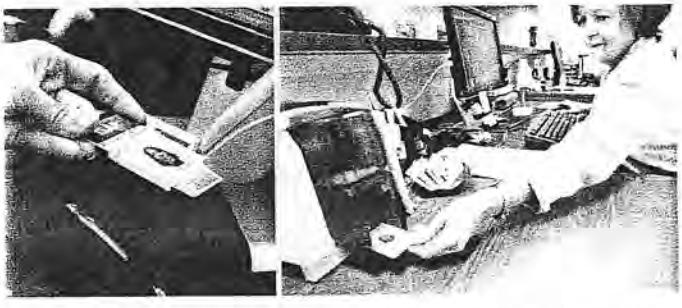
During the Post-Order Custody Review - Headquarters Release Stage, you will meet with your Case Specialist at the ISAP office once every eight weeks, and your Specialist will also make unscheduled visits to your home.

In all stages, you may also be monitored with an electronic monitoring ankle bracelet and/or random phone calls.

ISAP RULES

There are certain rules that are very important. You will get a copy of these rules to take with you. Failing to follow them may cost you your freedom:

Number 1: We will give you an ISAP photo ID card. You must have this card with you at all times. If you lose your card, notify your Case Specialist immediately.



Number 2: Arrive at Immigration Court on time and prepared. Plan your time to get there early in case you have a problem that could make you late. If you have legal counsel, meet with that person ahead of time to make sure you are prepared.

Number 3: Be on time for your scheduled meetings at the ISAP office.

Number 4: Your Case Specialist will make unscheduled visits to your home to make sure you are living in a safe and stable residence. You must be home at the times indicated on your schedule. You must allow him or her to enter your home during these visits. These meetings will usually only last 15 minutes.

Number 5: You must notify your Case Specialist immediately if you become pregnant, give birth, become the parent of a new child, are hospitalized, become seriously ill, are seriously injured, receive a ticket, or are arrested. Also notify your Case Specialist if you are threatened, intimidated, or harmed by anyone.

Number 6: You must live within a reasonable distance of the referring agency. You are not allowed to move your place of residence without permission from your Case Specialist and DHS.

Number 7: If you need to talk to your Case Specialist at a time other than your scheduled meetings, call the phone number that he or she gave you and leave a message. Your Case Specialist will call you back as soon as he or she is able.

Number 8: Keep all ISAP contact information in your Orientation Handbook and keep emergency numbers with you at all times.

Number 9: In the case of an emergency that forces you to miss an appointment or break your authorized schedule, contact your Case Specialist as soon as you possibly can. You will need proof that you had an emergency, for example, a copy of a hospital emergency room admittance form.

If you break any of the program rules, we are required to report program violations you commit immediately to DHS. They could take immediate action if you do not comply with the ISAP program rules. If you break the rules, the result may include:

- Electronic monitoring
- Increased electronic monitoring
- Finally, you could be ordered to detention

ELECTRONIC MONITORING

If your supervision includes electronic monitoring, your Case Specialist will attach a tracker around your ankle and instruct you on how to charge the tracker every day.

- Never remove your transmitter or tamper with it. You are required to wear it all the time, even in the shower and at night in bed. If you are having problems with the transmitter, report them to your Case Specialist. Your Case Specialist will remove it from your ankle when you are no longer required to wear it.
- You may place a sock under the ankle bracelet for comfort purposes. The transmitter is completely safe. Millions of people have worn monitoring bracelets and have not been harmed by them.
- If your supervision includes telephonic reporting, your Case Specialist will assist you with enrolling in the program and building an appropriate schedule.

If you have a problem with ISAP or an ISAP staff member, write or type, clearly and in detail, a letter stating the problem you are having. Include your ideas for resolution of the problem. Give your written letter to your Case Specialist or to the Participant Administrator.

The grievance will be forwarded to the Program Manager, who will discuss and if possible, resolve the grievance within three working days. You will be given a written response to your grievance. If the grievance is not resolved at that point, talk to DHS.

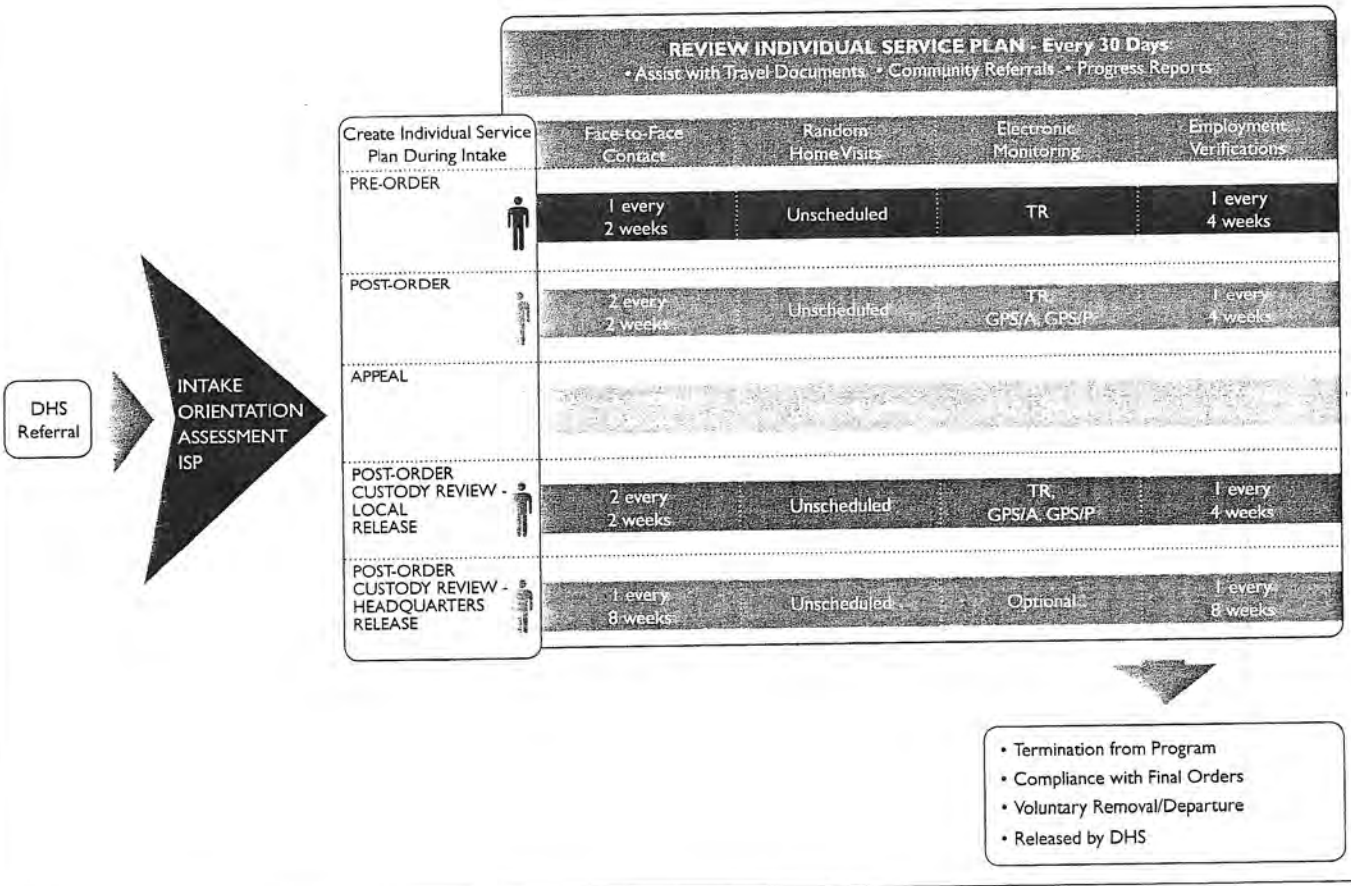
We are very pleased that you have been selected to be in the ISAP program. We want you to be successful and stay out of detention. We are here to assist you in keeping those very important promises you made. So, appear in Court for all hearings and obey all Court Orders.

Thank you and good luck.

Appendix F

NOTES

BI ISAP II Program Design

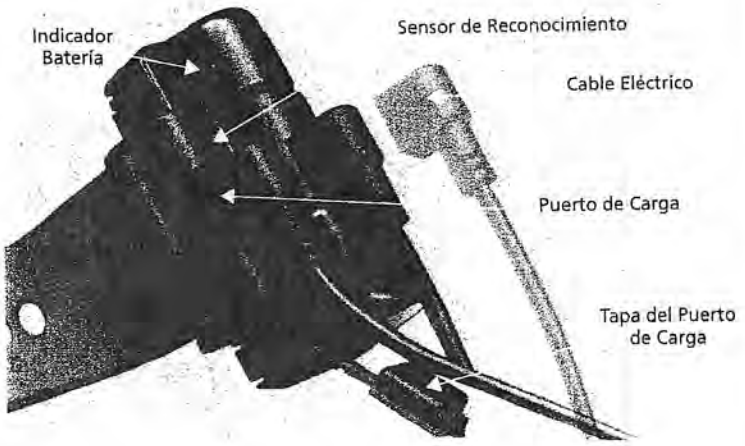


Appendix G

BI a GEO Group Company

BI ExacuTrack® One y Beacon
Guía para el Cliente

Para Cargar la Batería



Paso 1. Conecte el cable electrico al enchufe de la parade. Suelte y separa la tapa del puerto de carga.

Paso 2. Conecte el cable eléctrico al puerto de carga. El indicador luminoso de la batería cambiará de una luz parpadeante a una luz constante, y escuchará un tono.

Paso 3. Continúe cargando la unidad de restreo hasta que escuche el pitido, y luego ponga suavemente el dedo sobre el sensor de reconocimiento por **1** segundo entero.

Paso 4. La bocina interna de la unidad de restreo tocará el mensaje "Batería cargada."

Paso 5. Si se requiere, reconozca el mensaje poniendo suavemente el dedo sobre el sensor de reconocimiento por **1** segundo entero.

Paso 6. Después de cargar la batería, desconecte el cable eléctrico y usted escuchará un tono. Reinserte la tapa del puerto de carga.

Para Escuchar un Mensaje

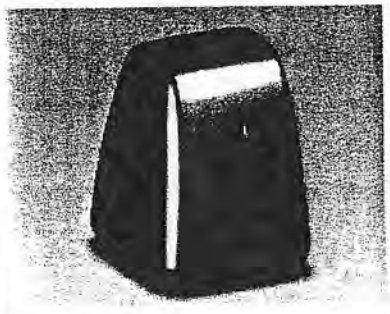
Paso 1. La unidad de restreo empezará a emitir pitidos. Entre pitidos, ponga suavemente el dedo sobre el sensor de reconocimiento por **1** segundo entero. No toque el sensor hasta que termine el pitido. Escuchará un tono, reconociendo que usted está listo para recibir el mensaje.

Paso 2. La bocina interna de la unidad de restreo tocará el mensaje. Espere a que el mensaje termine y luego toque suavemente el sensor de reconocimiento por **1** segundo entero. No toque el sensor mientrasque el mensaje está tocando. Escuchará un tono, reconociendo que usted ha recibido el mensaje.

Mensajes iniciados por el oficial

Su oficial puede enviarle los siguientes mensajes:

- Llame su oficial ahora.
- La batería baja, recarga la unidad.
- Pague sus cargos inmediatamente.
- Recuerde su cita.
- Repórtese inmediatamente a la oficina.



Pautas de Colocación Del Beacon

- Coloque el Beacon en una superficie de madera y a tres pies de altura por encima del piso. No lo coloque directamente en el piso.
- Mantega alejado de la luz solar directa, los espejos, el metal, y electrodomésticos.
- No ponga nada encima del Beacon.

Appendix G

BI ExacuTrack One and Beacon
Client Guide

To Charge the Battery:

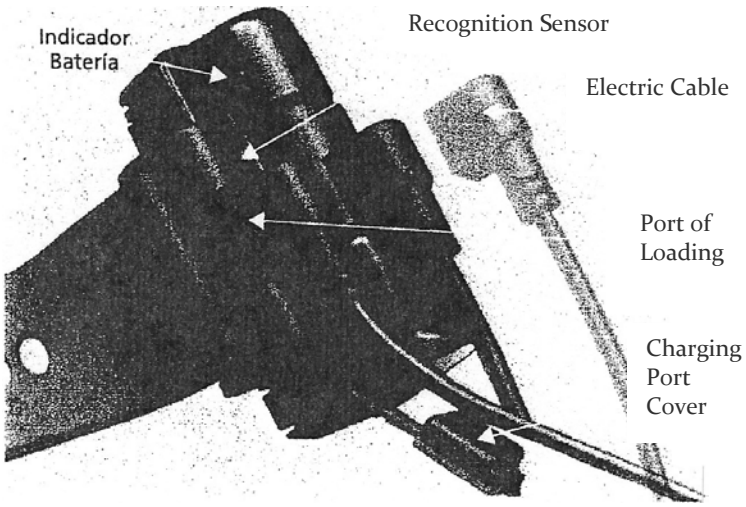
Step 1. Connect the power cord to an outlet. Release and separate the charging port cover.

Step 2. Connect the power cord to the charging port. The battery indicator light will change from a flashing light at a constant light and a tone will be audible.

Step 3. Continue charging the tracking unit until you hear the beep, and then gently put you finger over the recognition sensor for 1 full second.

Step 4. The internal speaker of the tracking unit will play the message "Battery charged."

Step 5. If required, gently acknowledge the message by putting placing your finger on the recognition sensor for 1 full second.



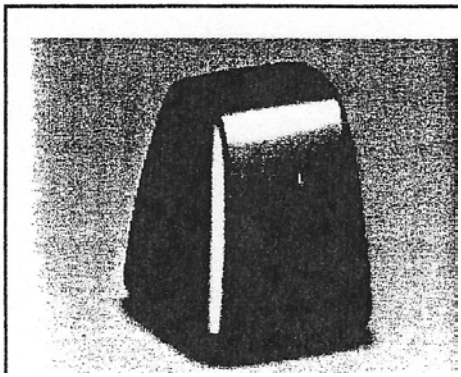
Step 6. After charging the battery, disconnect the power cord and you will hear a tone. Reinsert the charging port cover.

To Play a Message:
Step 1. The tracking unit will start beeping. Between beeps, gently place your finger over the recognition sensor for 1 full second. Do not touch the sensor until the beeps stop. You will hear a tone, acknowledging that you are ready to receive the message.

Step 2. The internal speaker of the tracking device unit will play the message. Wait for the complete message and then gently touch the sensor recognition for 1 second. Do not touch the sensor while the message is playing. You will hear a tone, acknowledging that you have received the message.

Messages initiated by the officer:
Your officer may send the following messages:

- Call your officer now
- Low battery, recharge the unit
- Pay your fees immediately
- Remember your appointment
- Please report to the office immediately.



The Beacon Placement Guidelines

- Place the Beacon on a wooden surface three feet above the floor. Do not place directly on the floor.
- Keep away from direct sunlight, mirrors, metal, and appliances.
- Do not place anything on top of Beacon.