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The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration

June 2019



The Women's Refugee Commission (WRC) improves the lives and protects the rights of women, children, and youth displaced by conflict and crisis. We research their needs, identify solutions, and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice.

Acknowledgements

This study was made possible by generous funding support from Oak Foundation and Ford Foundation.

This report was researched and written by Katharina Obser and reviewed by Michelle Brané and Dale Buscher of the Women's Refugee Commission. It was edited and designed by Diana Quick.

The Women's Refugee Commission extends deep thanks to all those who shared their time and experiences about the Family Case Management Program with the author.

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INTRODUCTION

From January 2016 through June 2017, the US government implemented a new program to respond to families seeking asylum at the US border. Rather than being funneled into immigration jails that detain families or being released with ankle monitors or into other electronic forms of monitoring with little or no information as to their next steps, some families were enrolled into the Family Case Management program (FCMP). The program was funded by US Immigration and Customs Enforcement (ICE), marking the first time in over 15 years¹ that the government's immigration enforcement arm invested politically and financially in an "alternative to detention" model that aimed to follow internationally proven principles for humane and effective treatment of immigrants in immigration proceedings.² FCMP operated on the principle that individuals who receive case management support with their immigration case, as well as support in accessing other services that they may need, will understand and comply with their case requirements, whether the outcome of their case is positive or negative.

Based on program data, FCMP was extraordinarily effective in achieving the government's goals of compliance with immigration requirements and outcomes, with more than 99% appearance rates at ICE check-in appointments and immigration court hearings. The program achieved these goals at a fraction of the cost of institutional detention—a practice that, in addition to its fiscal costs, is well documented to have a negative impact on access to legal protection and causes immense psychological and physical harm. However, WRC believes FCMP's implementation also included critical missteps, notably through its partnership with GEO Care.

FCMP was planned as a five-year program in five cities across the United States. Instead, ICE terminated the program in June 2017, only 1.5 years into its implementation and after months of uncertainty as to whether it would continue. No good reasons were offered for this termination; it occurred as part of the Trump administration's relentless attempts at deterrence in lieu of smart and humane immigration policies, attempts that have become more evident each day. Parallel to ending FCMP, the administration increased the practice of separating families at the border—first as part of a regional pilot and then nationwide—and has relentlessly called for an expansion in the use and duration of family detention.

The Women's Refugee Commission (WRC) was closely involved in the development of the FCMP, in similar programs leading up to its implementation, and in the efforts of the International Detention Coalition to increase the use of smart and humane non-detention practices around the world. FCMP offered a vision of another approach to managing the men, women, children, and families who seek asylum in the United States. The program is receiving renewed and growing interest from Congress, where many recognize its value both fiscally and as a humanitarian approach to families seeking protection at the border. Based on FCMP statistics and reporting from both FCMP's primary contractor and ICE, as well as conversations with the organizations sub-contracted to implement FCMP, WRC in this report seeks to explain the lessons—both best practices and areas for improvement—that the government can learn from the limited time FCMP was in existence.

BACKGROUND

US immigration policy and practices toward immigrants—those living in US communities, those seeking to migrate to the United States, and those seeking protection at US borders—are at a

crisis point. A conversation around the need for case management alternatives to detention must acknowledge the broader current political context: that many immigrants and asylum seekers, whether with long-established lives in the United States or trying to seek protection at US borders, face rhetorical, legal, and policy attacks on their ability to access safety or live without fear of rapid deportation. Exacerbating the situation is that the US immigration system suffers from increasingly insurmountable burdens on its immigration infrastructure and staffing, including severely backlogged immigration court and asylum caseloads. At the same time, the administration has deliberately ignored the regional protection crisis playing out in Central and South America.

Central to current immigration practice is the widespread and rapidly growing use of immigration detention. Detention continues to be used as a tool for criminalization and rapid deportation of immigrants, and as a misguided deterrent to future migrants, including asylum seekers, rather than as a necessary management or public safety tool. Although immigration detention must by law be “civil,” the more than 200 facilities used by ICE are essentially all penal and punitive. The harms of the government’s detention practices, including the practice of detaining families, have been widely documented, including extensively by WRC.³ The American Academy of Pediatrics and two whistleblower physicians contracted to the government have documented the harm of detaining or separating families and strongly objected to the practices.⁴ Immigrants in adult and family ICE detention are commonly deprived of acceptable medical care and lack access to lawyers or even basic information about the immigration process. Detention is experienced as punishment and strips families and individuals of their dignity.

This crisis demands thoughtful and just solutions. At the heart of those solutions should be the fair and humane outcome in immigration cases, but the current policy approach and legal framework to immigration takes as its goal deportation and deterrence. In particular, the asylum system—which should be grounded in US obligations under international legal conventions and should ensure that those fleeing harm can access a real chance at legal protection—is currently a system that seeks to narrow and restrict access to asylum. Policy conversations, while necessary, are focused on reducing backlogs by stopping access to the immigration and asylum system altogether for some individuals and dangerously expediting cases for others.

The narratives and practices around immigration in the United States today require a fundamental overhaul away from fearmongering to a vision coupled with political will that takes into account how integrally tied immigrants are to the fabric of US society and that upholds the one-time proud US commitment to protecting those fleeing persecution. Such a vision must be matched by a legal and practical infrastructure—laws, systems of processing, US immigration officials—that supports this vision. It is a vision that should be resoundingly embraced and promoted, and it is entirely feasible.

If done right, an approach to immigration proceedings grounded in case management and working toward fair immigration outcomes is a crucial piece of what a just immigration process can and should look like. The US approach to immigration requires a greater overhaul than what a revamped FCMP-like program alone can offer, but a program like it is an essential component of getting US immigration policy right.

METHODOLOGY

This analysis of FCMP is based on the final written evaluations of FCMP by both ICE and GEO Care (FCMP’s primary implementing contractor) that were conducted following the termination of the program, as well as an interview with a former ICE official who was involved in the program’s



implementation.⁵ WRC also interviewed representatives of some of the organizations that subcontracted with GEO Care to implement FCMP, representing three of the five cities in which FCMP was operational. In addition, we spoke to a small number of individuals who worked with families enrolled in the program. We are omitting identifying information to ensure that organizations and individuals who spoke with us could speak freely about their experiences with the program.

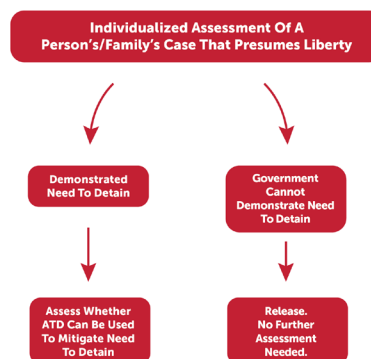
The Flawed Use of ICE's "Alternatives to Detention"

Much has been written and documented about both the government- and nongovernment-funded "alternatives" programs, including important testimonies of the many successful programs that used case management to support immigrants and their families during their legal proceedings.⁶

Despite the successes of many alternative to detention (ATD) programs, today's use of government-funded ATDs is flawed. First, ICE's alternatives—which have grown exponentially in recent years⁷—generally consist of the use of some form of electronic monitoring, including a substantial reliance on ankle monitors. While an ankle monitor allows someone to be in their community, it comes with heavy and unnecessary geographic constraints, the discomfort of their wear and charging requirements, and the burden on the ability to work or move freely. Ankle monitors are so restrictive that the International Detention Coalition considers them an alternative FORM of custody, not an alternative TO custody.⁸ In its detention guidelines for asylum seekers, the UN Refugee Agency strongly discourages the use of "harsh" forms of electronic monitoring such as ankle monitors.⁹

Second, ICE does not use its "alternatives to detention" as a true alternative, but rather uses them in addition to detention. This manifests in two ways. First, ICE has radically grown its use of institutional immigration detention in recent years while simultaneously expanding the enrollment of individuals in its "ATD" programs. As the use of "alternatives" grow, there should be a directly correlated decline in the use of detention; instead, both have expanded.¹⁰ This is directly tied to a second issue: that ICE only enrolls someone into one of its "alternative to detention" programs once that person or family has been deemed eligible for release. This is directly counter to the principle of an alternative to detention. As shown below, a meaningful alternative to detention should only be used to mitigate risks of release that the government finds would otherwise require detention. An ATD should not be used if the person is already found to have no risks of release and can be released without any conditions.

Custody Determination Decision Tree



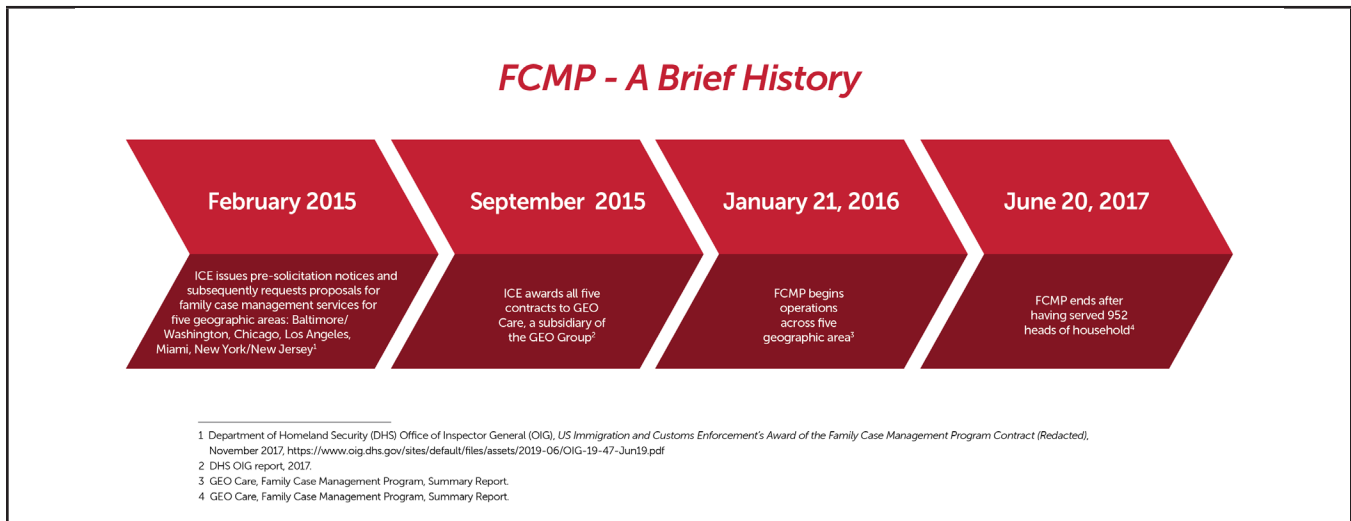
WHEN ARE ALTERNATIVES APPROPRIATE?

The government should always operate on a presumption of liberty when someone enters civil immigration proceedings. This approach is consistent with what the UN Refugee Agency recommends for government practice towards asylum seekers.¹¹ Its sole objective should be to ensure that individuals comply with those civil immigration proceedings and any resulting consequences that result. US government practice has increasingly turned away from these principles in the last several years.

Many individuals and families apprehended by ICE, both in the interior of the United States and at the border, have strong community ties and/or are working with an attorney who can help to support them through their proceedings and mitigate concerns over flight risk. In these cases, the presumption of liberty should result in release for the duration of proceedings and should not require any additional conditions, such as a bond or supervision.

ICE should turn to an alternative program only in cases where the government can prove a demonstrable risk of absconding. Given how effective and appropriate case management has proven internationally to providing support and achieving compliance, and given international guidelines on alternatives, alternative programs should always favor case management and not rely on unnecessarily intensive supervision or electronic monitoring. Although ICE considers these latter programs to be forms of release, numerous experts and researchers agree that ankle monitors in particular could or should actually be seen as a form of—not an alternative to—custody.¹²

FCMP—A BRIEF HISTORY



ICE’s decision to implement the FCMP came at a time when the Obama administration was heavily criticized for its massive expansion of family detention and prolonged detention of families seeking asylum at the US border. It sought to be grounded in an international context of best practices and responsive to the UN Refugee Agency calling on countries to implement alternatives to detention. ICE studied the model of community detention in Australia and learned from international roundtables convened to disseminate best practices in ATD.¹³ Per ICE, “The FCMP first tended to the basic necessities when these families arrived, ensuring they had appropriate access to food,



shelter, and medical care, so that they may be more ready and able to comply with immigration requirements.”¹⁴

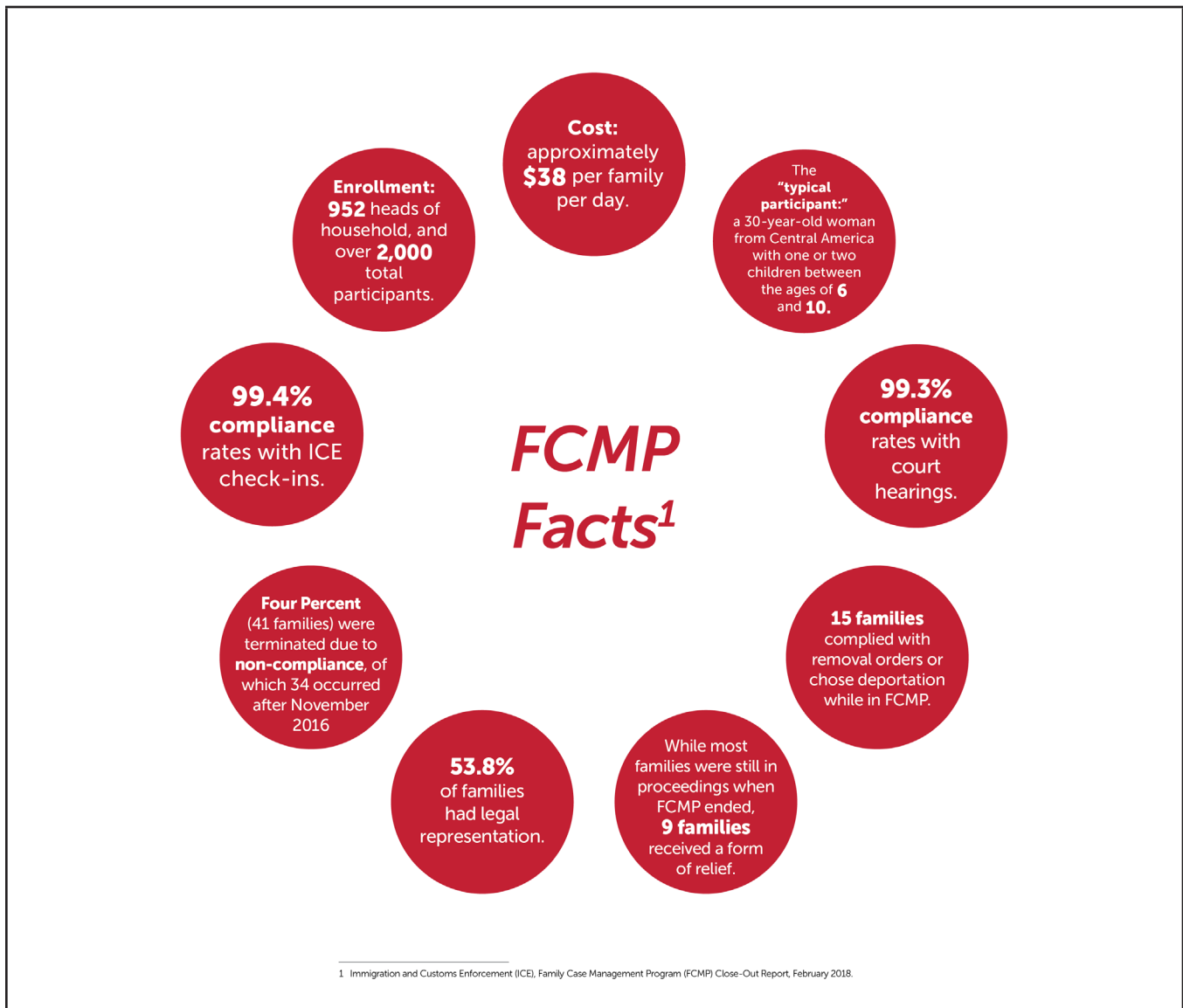
FCMP also followed on relatively successful unpaid partnerships with faith-based and not-for-profit service providers to provide case management services to vulnerable populations released from detention, and “was envisioned to share some similarities” with pro bono pilot programs that ICE had implemented through the US Conference of Catholic Bishops (USCCB) and Lutheran Immigration and Refugee Service (LIRS).¹⁵ However, despite receiving proposals that included experienced not-for-profit immigrant and refugee service providers, ICE contracted with the for-profit GEO Care for FCMP, a move that deeply concerned many members of Congress and immigrant rights groups, including WRC. GEO Care did not have the same level of expertise as local community-based organizations to facilitate a program rooted in a strong understanding of local resources, community dynamics, and a deep experience with serving immigrant communities in their proceedings.

By Congressional request, the Department of Homeland Security’s (DHS’s) Office of Inspector General (OIG) investigated how the contract was awarded, and ultimately found that GEO Care’s proposal was significantly less costly than other proposals that ICE received, despite the fact that the proposal from LIRS had received a higher technical rating.¹⁶ Ultimately, however, once ICE required GEO Care to subcontract with community-based organizations in order to carry out the program’s vision, GEO Care was forced to reduce the number of families it could serve, increasing the program’s cost per family.¹⁷ It is unclear, then, whether and how much contracting to GEO Care ultimately saved ICE in successfully implementing case management-based alternatives; in fact, as outlined below, WRC’s findings suggest that the decision to contract to GEO Care may have detracted from some of the program’s successes.

Despite these concerns, FCMP was—from ICE’s internal perspective and GEO Care’s final evaluation of the program—a resounding success. Regardless, FCMP was terminated only 1.5 years into the five years of its planned implementation. ICE’s public justification for its decision was cost savings, given that FCMP cost more than its electronic forms of “alternatives to detention.”¹⁸ But a program designed to have comprehensive services provided through individualized, tailored case management, if done well, will inherently cost more than a simple occasional telephonic check-in and will—as evidenced by FCMP’s compliance rates—have strong results and benefits, while still considerably less expensive than detention. The real reason for the termination of the program (as has been the case for many detention-related reforms implemented or envisioned under the Obama administration) was political.¹⁹

FCMP was implemented as a five-year contract in Baltimore/Washington, Chicago, Los Angeles, Miami, and the New York/Newark area. It was always intended to demonstrate to government officials, Congress, and the public how a program focused on case management support to immigrants in proceedings could best function. It is a program that had both successful outcomes and weaknesses that can inform areas for improvement as the development of case management continues. The evaluation offers both best practices and instructs what can and should be done differently in the future. These lessons learned are highlighted in more depth below. The fact that the program was ended by DHS officials prematurely—and in bad faith—does a disservice to the hundreds of families it successfully served and to the commitment of everyone involved in its creation and operation—ICE, GEO Care, the community-based organizations, and others—that were invested in its success. It is also a disservice to ICE efficiency and taxpayer dollars.

FCMP STRUCTURE AND ENROLLMENT



ICE determined that FCMP had three components that accounted for its success: compliance monitoring, stabilization services, and orientation programming.²⁰ Elements underpinning the cornerstones of the program—and what distinguished FCMP from ICE’s commonly used electronic ATD—included: 1) elements of “comprehensive case management” (instead of a compliance-only approach); 2) a “high level of professional case management experience”; 3) “an individualized family service plan”; 4) “case management services for each member of the family”; 5) “[proactive] assist[ance] with locating low-cost or pro bono legal assistance”; and 6) “proactive outreach to make connections with community resources.”²¹ ICE officers assigned to FCMP participants had substantially lower case ratios than officers managing individuals or families on electronic monitoring or others on ICE’s non-detained docket.²² GEO Care also established a “Community Reference Committee,” composed of subject matter experts from nongovernmental organizations (NGOs) and former ICE officials, to consult on implementation of FCMP.²³

Many families were enrolled directly after having been processed at the US southern border, while others were released into the program from ICE’s two Texas family detention facilities in Karnes



County and Dilley. Others were enrolled locally in the five metro areas, either from ICE's Intensive Supervision Appearance Program (ISAP—ICE's other alternative to detention contract) or its non-detained docket, in cases where ICE officials determined that the family could benefit from additional support.

Once enrolled, participants were required to meet with case managers for a number of initial check-ins over a very short period, both at FCMP offices and during home visits. After these initial few weeks, FCMP required regular check-ins at home, at FCMP offices, and with ICE officers. Participants also had to participate in a mandatory orientation intended to educate them about immigration requirements and basic US laws. The orientation ultimately included a specific and separate legal orientation presentation, which in many locations was provided by different subcontractors than the organization contracted to provide case management.

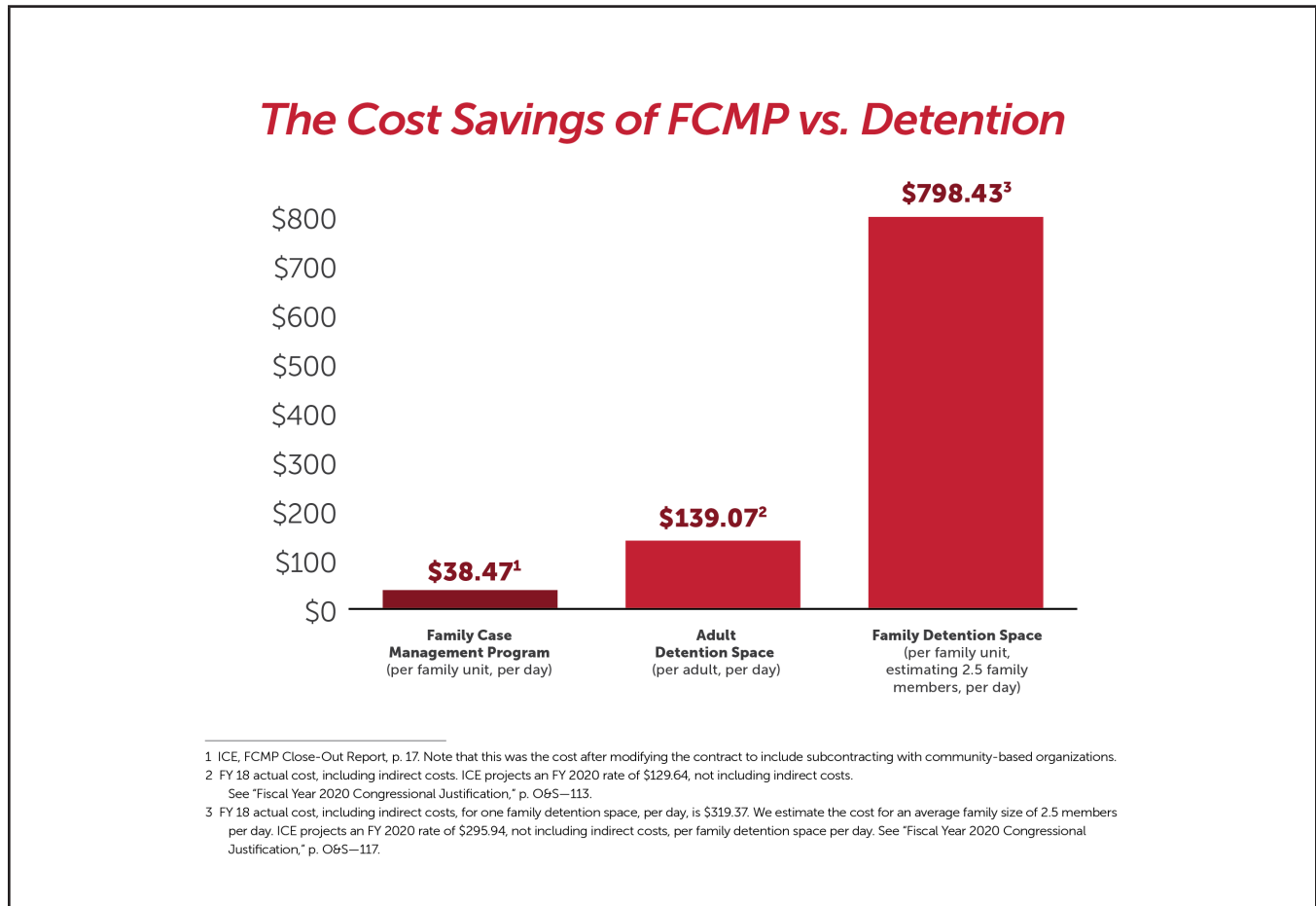
The program was rooted in individualized referrals to needed local services, including but not limited to medical and legal services, education enrollment, English classes, and assistance with identification documents. "This core component was based on the premise that stable individuals are more likely to comply with their immigration obligations," according to ICE's final evaluation of the program.²⁴ With the exception of funding the legal orientation presentation (though not actual representation) for participants to learn more about their immigration rights and obligations, none of the services that participants were referred to were paid for by the government. The program recognized that legal information presentations, already funded by the Justice Department for certain detained immigrants, are critical to understanding the complex US immigration and asylum process, and "[f]rom ERO's [Enforcement and Removal Operations (ICE)] perspective, legal presentations assisted with participation in immigration obligations."²⁵

By January 2017, ICE decided to implement a "two-stage monitoring plan," by which participants who were determined no longer to need the specific and more extensive services provided by FCMP and its subcontractors came solely under the supervision of an ICE official for periodic check-ins. ICE implemented this change to maximize FCMP resources, but the shift also envisioned that families which for any reason might again need more intensive case management services could be shifted back to that level of support if needed.²⁶

In June 2017, with more than three years remaining in the contract, the program was abruptly terminated without explanation. Subcontractors reported a chaotic experience and complete lack of clarity on what was transpiring, resulting in uncertainty to both case management staff and their FCMP clients. Ultimately, participants were transferred off the program with virtually no notice and, moreover, according to some reports, were no longer allowed to be in contact with the organizations they'd come to know as their support system unless an independent client relationship existed. GEO Care, as the implementing contractor, was invested in trying to maintain the program and was proud of its successes. For a program whose foundation is the stability offered by case management, ICE's termination of the program appears to have been intentionally punitive and the means of ending it harmful to clients still enrolled in June 2017.

Given the backlogs facing non-detained immigrants in removal proceedings, the vast majority of families still enrolled in FCMP when the program was terminated were still in proceedings. However, nine families had received legal relief, whereas 15 families had either voluntarily accepted deportation or successfully complied with a court-issued removal order. A small number—4 percent—were considered to be non-compliant. According to a former ICE official integrally involved in the program's development and implementation, "If FCMP hadn't been shuttered, it would have been even more successful."

THE SUCCESSES OF FCMP AND CASE MANAGEMENT PROGRAMS



From the government’s perspective, FCMP is far cheaper than either detention in an adult facility or in one of ICE’s family detention facilities, while having nearly perfect compliance rates with immigration requirements. Beyond the numbers, however, is the success of a program that ICE’s own evaluation shows succeeded due to an investment in individualized case management and legal orientation. As part of ICE’s evaluation, the agency interviewed over 100 heads of household enrolled in the program. ICE found that:

“99% of participants reported positive relationships with their case managers and many of their responses centered on this relationship and trust. Most of the participants interviewed indicated that beyond providing information, case managers helped them understand the information and helped them cope with the psychological aspect of navigating immigration proceedings. Furthermore, participants stated that comprehending their legal obligations made it easier for them to comply with immigration proceedings.”²⁷

GEO Care, in its final report, describes as a key lesson of FCMP that its

“philosophy to engage the families from enrollment and orientation through every interaction in the belief that [the heads of household] should view the immigration process as fair, and understand they must comply with court decisions, including



removal,” was an effort that “built rapport with participants and fostered open communication.”²⁸

Service providers largely echoed the importance of the support provided to many of the families in the program. While decisions over enrollment into FCMP were not always clear to those who administered the program or interacted with participants, and while it seems that enrollment in some cases could seem arbitrary or unnecessary, service providers observed that many of the families in the program really did need support with school enrollment for their children, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and other US and local requirements and processes they would not otherwise have understood how to navigate. This is where having a case manager who can understand the individualized need for services is critical, since not all families had the same needs.

The importance of this support extended to support with deportation: as one service provider observed, FCMP was helpful in assisting families even in cases of voluntary departure or deportation due to an order of removal. Fifteen families were repatriated while enrolled in FCMP,²⁹ and prior to FCMP's termination ICE had considered incorporating a new partnership to assist with safe repatriation in the form of “departure orientations” and needs assessments and referrals to services in a family's home country.³⁰ While deportation and repatriation should never be the goal or measure of success of case management programs or any alternative to detention, it is crucial that these programs seriously plan for the possibility of safe and informed removal as a case outcome. ICE's final evaluation of FCMP documents several stories of repatriation of FCMP recipients, including where FCMP first served to stabilize the family through orientations and referrals to services and subsequently worked with a family to coordinate travel home through finding airfare and assistance coordinating with consulates. In some cases, FCMP also assisted heads of households with transferring guardianship to US relatives where the parent wished for the child to remain in the United States.³¹

Legal orientation is also crucial, and one service provider interviewed emphasized the measurable difference it made to enrolled families once legal orientations were formally included as part of FCMP. ICE determined that it was particularly useful to have the attorney who provided the legal orientation also meet with interested families individually in order to better explain their options for relief, including when few or no options were available.³²

While not universal, in one area a service provider noted that they felt engaged in crafting the services they provided and in facilitating trainings as part of the program's implementation—opportunities that should be kept in mind for any future case management alternative.

FCMP's successes replicate those of similar post-release programs that have served families and other populations released from the border or from immigration detention. These programs tend to be on a smaller scale and differ most fundamentally from FCMP in that virtually none have been government supported, forcing organizations to raise and rely on their own funding.³³ However, the lessons they offer—including, most fundamentally, the importance of the experience of local, community-based organizations to providing appropriate and individualized case management—are instructive all the same. In the summer of 2018, LIRS and USCCB were asked by the US government to help provide services to families reunited after they had been separated as part of the administration's family separation and zero-tolerance policies.³⁴ In evaluating the services provided to families in a 90-day program, LIRS found that “[d]espite a limited timeframe for standing up and operating the Family Reunification Support program, LIRS and its partners were able to observe positive qualitative and quantitative impacts on the reunited families enrolled in this community-

based program.”³⁵ LIRS estimated the cost of the community-based support that it provided—services that were similar to those offered by FCMP—to cost \$14.05 per person per day.³⁶

Similarly, the Interfaith Community for Detained Immigrants’ (ICDI) Marie Joseph House, recently profiled by the National Immigrant Justice Center (NIJC), is another of many examples of local case management services that successfully support non-detained immigrants, albeit at their own cost.³⁷ Providing “food, shelter, housing, and robust case management support for asylum seekers immediately after their release from immigration detention,” as well as accompaniment to legal appointments and support with transitioning to the community once an individual has found initial support and stability, ICDI reports “extremely high compliance rates among their participants and attribute[s] these rates to programming that provides participants with the support and information they need to fully understand and engage with the system.” In fact, one of the key observations made by program staff is the belief that the program’s success would increase further, and that participants would benefit from its initial services much faster if participants could be enrolled directly, rather than access its services only after having been in detention.

FCMP’S LESSONS LEARNED AND AREAS FOR IMPROVEMENT

Despite the program’s successes, WRC’s evaluation of FCMP also indicates clear areas for improvement. Some of these areas may have improved on their own had FCMP been allowed to continue beyond its initial 1.5-year implementation period that brought with it the growing pains of any brand-new government program. Other areas, however, clearly point to obstacles that should be addressed in any future iteration of a government-funded case management alternative. In many cases, these areas have as an underlying issue the inexperience that a company like GEO Care faces regarding individualized and appropriate case management support and the depth of the company’s community ties—areas that must be addressed and mitigated in any future program.

GEO Care and ICE Requirements and Relationships

Many of the issues WRC heard about related to characteristics and implementation of the contracting and subcontracting relationship between ICE, GEO Care, and community-based organizations. Staffing requirements and procedures came up repeatedly. In particular, new staff hired to implement FCMP at community-based organizations experienced an onerous hiring process that was difficult for both employers and new employees. WRC heard about strict and inflexible qualification requirements and extreme levels of background checks and vetting surpassing requirements of other government contractors, which often delayed hiring by several months. This meant that a prospective case manager hire might ultimately take another position prior to being approved for FCMP, forcing subcontractors to renew their search process and delaying the services that FCMP was intended to provide.

WRC also heard about concerns in some cases over GEO Care’s lack of willingness to collaborate locally, despite the extensive experience that community organizations offered in terms of expertise in the immigration process and ties to local immigrant and refugee communities, and despite their critical role in FCMP. Although ICE envisioned that GEO Care and its subcontractors would share the caseload of families served, GEO Care in many cases seemed to alone determine which cases



would be handled by whom (e.g., either the local GEO Care office or the subcontracted community organization), and did not necessarily divide cases equitably or take into account factors like a family's geographic location or needs when deciding which local office would handle the case.

Enrollment

As stated above, ICE found, and service providers often agreed, that most of those enrolled in FCMP benefited from the program. However, WRC also learned of confusion over why some individuals were enrolled in FCMP. In some cases, families were already released into the community while going through their removal proceedings, had strong local support through their relatives, were complying with ICE check-in requirements, and had legal representation to support them. Given that FCMP was a new program with limited space, and given that the number of families that sought protection at the US border in 2016 and 2017 far exceeded FCMP's capacity, it seems ICE could have done more to ensure individualized and meaningful assessments of families at the border to enroll those that could most benefit from FCMP's services instead of using it in cases that did not require any supervision at all.³⁸

Once enrolled, FCMP required several initial check-ins both at FCMP sites and in-home visits. WRC heard that these could be burdensome for both participants and staff given their frequency, the distances that some participating families had to travel within each metropolitan area, and in the absence of financial or other support with public transportation.

FCMP Program Elements

GEO Care offices and staff did not have sufficient knowledge of the immigration process to provide wraparound services in the same way as an organization with longstanding immigration expertise and community ties. For example, in some cases WRC heard that GEO Care staff would focus primarily on ICE requirements (e.g., checking in with an ICE office), but not sufficiently focus on critical immigration court requirements, such as filing deadlines, or potential positive case outcomes. While FCMP did boast high compliance rates with court appearances, it is still crucial that families enrolled in a case management support program understand the distinction between ICE check-ins and court appearances, and understand that a single day can make the difference between having filed a timely asylum application under US law or having missed the "one-year filing deadline." GEO Care contractors were also reported to help someone apply for an identification document from their embassy in order for ICE to have an identification document on file, without the case manager realizing that such an interaction with their country's embassy can be problematic for an asylum case when someone is trying to prove they cannot avail themselves of their government's assistance.

It is essential that case managers understand and can assist participants with other aspects of the immigration process, such as applying for work permits, which individuals are eligible for after their asylum application has been pending for six months. This is particularly crucial given the difficulty many families and individuals face financially supporting themselves throughout lengthy legal cases.

One area of particular concern, which WRC has also heard regarding ICE's electronic monitoring programs, is that participants are required to surrender their travel documents upon enrollment in the program. This is problematic not only because it risks the loss of the only form of identification (especially photo documentation) that a person might have, but also because this identification is often critical to accessing local and state services like school enrollment.

A cornerstone of FCMP was providing referrals to essential community services, including food pantries or organizations like the Salvation Army for clothes and other supplies. The program measured success based on how many participants used the services to which they were referred. Although the services referrals appeared to be individualized, WRC found that it was unclear, when these services weren't needed or desired, whether and why participants would still be required to access them. One service provider noted that a stronger way of measuring the referrals component of FCMP would be to look not at the total number of referrals made, but whether the referrals made and used matched the individualized need of the program participant.

Program Gaps

FCMP helped to provide access to services and much-needed case management to over 900 families over its short lifespan. WRC heard of a few recommendations of services that were not included, however, that any future program should consider incorporating. Perhaps most critical among these is support to obtain housing. Many cities continue to lack stable housing options for individuals and families coming from the border. Even where a family already has housing support through relatives or acquaintances, this support is sometimes only available for a limited time. Additional support for housing is crucial given that asylum seekers do not receive work authorization for at least six months after they submit their application, and the duration of asylum and other immigration cases can be years, meaning that some families that thought they had stable housing may not have access to it throughout the lifespan of their immigration proceeding.

Another area identified as an opportunity for improvement is to allow for legal orientation to be offered directly by the community-based organizations providing case management. This was the case in some, but not all, FCMP locations. This allows for better wraparound services to be offered by one single organization, and also results in more trust from clients who will have already become familiar with the organization through the other services offered by FCMP. Moreover, WRC heard that the legal orientation presentation could have lengthy wait times despite the urgency for program participants—particularly asylum seekers required to file an application within one year of arrival—to receive these presentations. Similarly, FCMP could better incorporate community organization-developed workshops or events for program participants to meet and learn from each other, sharing experiences, engendering support, and helping to build community as families navigate the complexities of American life while going through their immigration proceedings.

Even with legal orientation programs, access to obtaining counsel remained difficult. In ICE's interviews with program participants, 39% reported difficulty in finding a lawyer due particularly to long waitlists, expensive fees, or unresponsiveness.³⁹ This parallels ongoing challenges with access to obtaining representation; for example, in LIRS's work with reunited families, the agency reported that 43.9% of the 148 families it worked with found lawyers, but also that "despite a high referral rate and counseling to participants to try to secure legal representation, there exists a significant shortage of free or low cost immigration legal services in many local communities."⁴⁰

Finally, where ICE does contract with an entity like GEO Care whose local staff may not be as experienced as the community-based organizations it subcontracts to, WRC found that there seemed to be little opportunity for programs in different cities to meet and learn from one another's experiences implementing FCMP.



Data Tracking

GEO Care and ICE's own reporting shows that families were closely tracked throughout their participation in the program, especially the numbers of services that families successfully accessed and their compliance with ICE check-in appointments, court appearances, and FCMP program appointments. Tracking has also been central in LIRS's and USCCB's initiatives to provide case support to released or reunited families and individuals.

However, WRC finds that tracking efforts could be further strengthened. First, as WRC heard, successfully accessing services should be measured against whether a participating family was first identified to need those services (e.g., a specific medical appointment, or assistance with a particular element of school enrollment), not against whether a service was referred and accessed regardless of whether the family needed it (e.g., a blanket referral to the Salvation Army for clothing).

Second, WRC believes that data on program components, compliance, and outcomes should be owned by and accessible to all participating entities—including ICE and any contractors or subcontractors. In order to be fully transparent, it is crucial for this data to be available for analysis and to be shared by all entities involved in a government case management program. Currently, much of the government's data on any of its alternative to detention programs, while stemming from the contractor, is at the discretion of the government to analyze and to share, which often does not happen expeditiously or transparently.⁴¹

WRC believes that ICE has long taken a misguided approach to its tracking of individuals and families released, especially those released on some kind of monitoring or case support. As WRC was told, the agency needs a case management system that documents the whole life cycle of a case, not disparate tracking mechanisms for when an individual or family is in detention, or released with certain conditions of release (e.g., intensive electronic monitoring), or released or transferred into a status of having fewer or different conditions of release (e.g., occasional ICE check-in appointments). WRC believes this is crucial because ICE often provides incorrect data on the effectiveness on its electronic forms of monitoring.

- For example, the agency measures the number of individuals who absconded against the number of those who were "terminated" from electronic monitoring programs, rather than against all participants of the program, which artificially inflates the rate of absconding.⁴²
- ICE also does not publish or seemingly even track the compliance of individuals who were "scaled down" or "de-escalated" from its more intensive forms of supervision. These are participants who may well continue to be as compliant with their immigration requirements as they were when enrolled in a form of supervision, but because they will have been "terminated" are no longer tracked in the context of the success of supervision for the duration of their case.

A NOTE ON SCALABILITY

One question that often arises around FCMP is whether the program could be scaled beyond its initial pilot size of serving 800 families in five metropolitan areas at any given time. The answer to that question, according to a former ICE official,⁴³ service providers, and experts, is a resounding yes.

With appropriate investment, there are numerous legal and social service providers in countless major and smaller metropolitan areas around the country who, if willing, could expand to help provide the kind of stabilization and compliance support that FCMP demonstrated successfully serves the government's and participants' needs. In the last two fiscal years alone, and against the wishes of Congress, ICE has grown its immigration detention capacity by 50%, from approximately 34,000 immigration detention beds to over 50,000.⁴⁴ At the same time, ICE has also dramatically grown its electronic monitoring program.⁴⁵

Service providers have reported repeatedly that they would be willing and able to provide additional case management-like services, if done well and if they are publicly funded to do so. And certainly, case management continues to be only one element of addressing gaps in an immigration system that also desperately needs legal reforms and non-political, robustly funded immigration courts. Based on our findings, WRC believes that the only serious current constraint on scalability of case management alternatives is political will.

CONCLUSION

The FCMP represented the first time in decades that US immigration officials chose to invest in the proven principles of case management to support families legally exercising their right to seek protection in the United States. Although in some ways flawed in its implementation, the program successfully supported hundreds of families in finding stability in their communities, supporting them with their immigration requirements, and beginning to prepare them for the outcomes of their case. With key additional improvements and expansion, the program could serve many thousands more, save millions of dollars, and increase efficiency. The program demonstrates that case management works in achieving immigration compliance at a tiny fraction of the fiscal cost of detention and without the human cost and cruelty of separating families or detention in the inappropriate and inadequate conditions long documented by WRC. Moreover, it began to shift the larger paradigm of how a country could and should receive those seeking protection at its borders. Just as FCMP was successful for families, case management programming can be effective for single adults as an alternative to detention. A case management support program—like all immigration programs—should recognize its participants not as needing punishment but as human beings with dignity and rights.

Nonetheless, ICE chose to terminate the FCMP, and has since expanded its immigration detention capacity at unprecedented rates, at enormous costs to US taxpayers, and with little regard to complying with its own inadequate standards for care. The agency did this at the same time the administration pursued an unconscionable policy of family separation that it ended only by posing expanded and prolonged family detention as a solution.⁴⁶ This trend must be reversed. However, based on our findings, it is crucial that any future iteration of case management support incorporates the lessons learned from FCMP's short-lived existence.



RECOMMENDATIONS

US Congress

- Led by Congressional appropriators, **Congress must prioritize and substantially increase investment in case management alternatives to detention that are well designed and contracted to not-for-profit community-based organizations with demonstrable experience in serving refugee and immigrant populations.** This funding must accompany a reduction in ICE's detention funding to truly make case management an alternative to detention.
- **Congress must exercise strict oversight over ICE's implementation of any case management alternatives** to ensure consistency with best practices such as the ones outlined here.
- At the same time, **Congress must hold ICE to account and insist that ICE reduce detention.** Where needed, ICE should turn to case management alternatives to provide additional community support with stabilization and immigration compliance.

For Future Case Management Alternatives to Detention

Overall

- ICE should only partner with and contract to experienced, not-for-profit service providers with demonstrable and proven experience in working with immigrant and refugee populations.
- ICE should expand appropriate case management alternatives beyond families and those presenting certain key vulnerabilities.⁴⁷ Case management should be seen not only as an alternative to institutional detention, but also as the preferred condition of release—as opposed to an ankle monitor or onerous reporting requirements—when an individual or family is determined to require that support.
- Any future case management alternative should **emphasize community support and stabilization** as a critical and equal objective, not only as a tool toward immigration compliance.
- Case management alternatives should include **robust and collaborative support for safe repatriation** in cases where an individual or family chooses or is ordered to be deported.

Contracting Logistics

- ICE should address the hiring issues that led to serious delays and obstacles to hiring qualified staff in an efficient manner.
- Where ICE partners with multiple service providers, **ICE should improve opportunities for communication and consultation among service providers**, and facilitate opportunities for input into case management alternatives structure, processes, and policies by all community-based partners.
- ICE should consult frequently and transparently with service providers and other experts on case management alternatives to inform and improve its case management programming.

Enrollment Processes

- ICE should have and train staff on clear criteria for what necessitates enrollment in case

management alternatives. Dedicated and trained staff should be in place in all border locations and field offices to appropriately and correctly identify participants who should be enrolled in its case management alternatives.

- **ICE should have clear criteria**, created with input from experienced community stakeholders and service providers, **to determine if an individual can be scaled down from more intensive case management services**, as well as when an individual should be scaled back up should the need arise. These decisions should be transparent, made with input from the case management service provider, and allow for appeal from a participant or attorney.
- **Case management alternatives participants should not be required to surrender their identification documents** to ICE or other officials as a condition of enrollment.

Access to Services

- **ICE should strengthen access to strong legal orientation programs** and allow these to be done in-house where organizations have the expertise and ability to do so.
- Around the country, individuals and families continue to face numerous barriers to obtaining legal counsel. **Congress must fund and the Department of Justice (DOJ) must implement access to counsel initiatives for indigent immigrants** that could then partner through referrals with case management alternatives.
- **Case management alternatives should incorporate access to, at minimum, temporary housing options** in each location for participants who may not otherwise have stable housing or who may be in need of short-term housing if original housing plans are no longer available.
- **Case management alternatives should incorporate additional support for local transportation.** Similarly, case management alternatives should contemplate reducing the initial frequency of reporting requirements, which would reduce the transportation burdens on participants and the program.

Measurements of Success & Data Tracking

- **ICE should improve its tracking of case management services by:**
 - considering individual access to individually tailored services as a measure of success;
 - consistently tracking measures of success of participants in case management alternatives throughout an immigration case, including if a participant is scaled down or unenrolled from the program entirely; and
 - ensuring contracted organizations and qualified independent partners' ability to track case management data and evaluate case management alternatives.



ACRONYMS AND ABBREVIATIONS

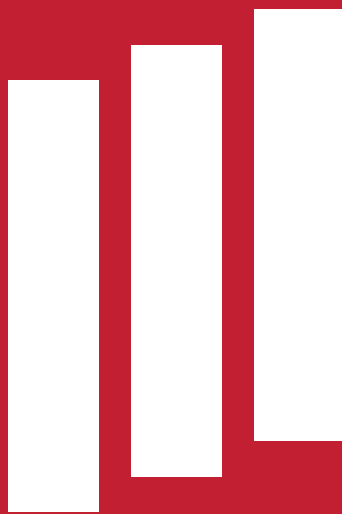
ATD	Alternative to detention
DHS	Department of Homeland Security
DOJ	Department of Justice
ERO	Enforcement and Removal Operations (ICE)
FCMP	Family Case Management program
ICDI	Interfaith Community for Detained Immigrants
ICE	Immigration and Customs Enforcement
ISAP	Intensive Supervision Appearance Program
LIRS	Lutheran Immigration and Refugee Service
NGO	Nongovernmental organization
NIJC	National Immigrant Justice Center
OIG	Office of Inspector General
USCCB	US Conference of Catholic Bishops
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children
WRC	Women's Refugee Commission

ENDNOTES

- 1 Eileen Sullivan et al, "Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program," Vera Institute of Justice, August 2000, https://storage.googleapis.com/vera-web-assets/downloads/Publications/testing-community-supervision-for-the-ins-an-evaluation-of-the-appearance-assistance-program/legacy_downloads/INS_finalreport.pdf.
- 2 International Detention Coalition, *There are alternatives* (2015), <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>.
- 3 See, most recently: Women's Refugee Commission, *Prison for Survivors: The Detention of Women Seeking Asylum in the United States* (2017), <https://www.womensrefugeecommission.org/rights/resources/document/download/1528>. Women's Refugee Commission and Lutheran Immigration and Refugee Service (LIRS), *Locking Up Family Values, Again* (2014), <https://www.womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again>. Women's Refugee Commission and LIRS, *Locking Up Family Values* (2007), <https://www.womensrefugeecommission.org/images/zdocs/famdeten.pdf>. See also *Prison for Survivors* FN 54 for a non-exhaustive list of other reports on the harms of detention.
- 4 Julie M. Linton et al, "Detention of Immigrant Children," *Pediatrics*, Vol 39 Issue 5, (May 2017), <https://pediatrics.aappublications.org/content/139/5/e20170483>. Miriam Jordan, "Whistle-Blowers Say Detaining Migrant Families 'Poses High Risk of Harm,'" *New York Times*, July 18, 2018, <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>.
- 5 Andrew Lorenzen-Strait, Former Deputy Assistant Director for Custody Management, ICE Enforcement and Removal Operations. Currently Director for Children and Family Services, LIRS, telephone conversation with author, May 15, 2019.
- 6 Women's Refugee Commission et al, "The Real Alternatives to Detention," June 2017, <https://www.womensrefugeecommission.org/images/zdocs/The-Real-Alternatives-to-Detention-FINAL-06-27-17.pdf>.
- 7 "Department of Homeland Security Immigration and Customs Enforcement Budget Overview Fiscal Year 2020 Congressional Justification," 2019, p. O&S 154. The Average ATD Program Participation has grown from 26,625 in FY 2015 to a 79,595 in FY 2018, a projected 99,500 in FY 2019, and a desired 120,000 in FY 2020. https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf.
- 8 *There are alternatives*, p. 73.
- 9 UNHCR, Detention Guidelines, 2012, p. 24, <https://www.refworld.org/pdfid/503489533b8.pdf>. See also: Alice Edwards, "Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum Seekers, Stateless Persons and Other Migrants," UNHCR, April 2011, p. 78, finding that devices like certain ankle monitors can "amount to a restriction on liberty" and "can have the effect of criminalizing the wearers; and in many cases, where they have been applied, they have been used unnecessarily," <https://www.unhcr.org/en-us/protection/globalconsult/4dc949c49/17-basics-right-liberty-security-person-alternatives-detention-refugees.html>.
- 10 See "Fiscal Year 2020 Congressional Justification," p. ICE 6, showing that ICE detention has expanded from 28,449 individuals in detention in FY 2015 to 42,188 in FY 2018. Recent reports indicate detention levels of over 52,000 individuals. See Hamed Aleaziz, "More than 52,000 People are Now Being Detained by ICE, An Apparent All-Time High," *Buzzfeed*, May 20, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/ice-detention-record-immigrants-border>. See also "Fiscal Year 2020 Congressional Justification," p. O&S 154 reflecting an increase in ICE use of alternatives to detention.
- 11 UNHCR *Detention Guidelines*, p. 6. "In view of the hardship which it entails, and consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided and be a measure of last resort. As seeking asylum is not an unlawful act, any restrictions on liberty imposed on persons exercising this right need to be provided for in law, carefully circumscribed and subject to prompt review. Detention can only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each individual case. Respecting the right to seek asylum entails instituting open and humane reception arrangements for asylum-seekers, including safe, dignified and human rights-compatible treatment."
- 12 See *There are alternatives*.
- 13 ICE, *FCMP Close-Out Report*, p. 10-11.
- 14 ICE, *FCMP Close-Out Report*, p. 5.
- 15 For more information on these programs, see "The Real Alternatives to Detention." See also: ICE, *FCMP Close-Out Report*, p. 11. See also: LIRS, "Family Placement Alternatives: Promoting Compliance with Compassion and



- Stability Through Case Management Services," April 2016, http://lirs.org/wp-content/uploads/2016/04/LIRS_FamilyPlacementAlternativesFinalReport.pdf.
- 16 DHS OIG Report, 2017, pp. 3, 4.
- 17 ICE, *FCMP Close-Out Report*, p. 17.
- 18 Aria Bendix, "ICE Shuts Down Program for Asylum-Seekers," *The Atlantic*, June 9, 2017, <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>.
- 19 Lorenzen-Strait, interview.
- 20 ICE, *FCMP Close-Out Report*, p. 13; pp. 19-20.
- 21 ICE, *FCMP Close-Out Report*, pp. 17-18.
- 22 ICE, *FCMP Close-Out Report*, p. 18.
- 23 Michelle Brané, Director of WRC's Migrant Rights & Justice Program, was one of the Committee's members.
- 24 ICE, *FCMP Close-Out Report*, p. 19.
- 25 ICE, *FCMP Close-Out Report*, p. 20.
- 26 ICE, *FCMP Close-Out Report*, p. 26.
- 27 ICE, *FCMP Close-Out Report*, p. 8.
- 28 GEO Care Summary Report, p. 8.
- 29 ICE, *FCMP Close-Out Report*, p. 21.
- 30 See "Safe Repatriation Proposal," ICE, *FCMP Close-Out Report*, p. 24.
- 31 See ICE, *FCMP Close-Out Report*, Appendix E, pp. 34-37. Note that WRC did not independently evaluate the stories included in ICE's report.
- 32 ICE, *FCMP Close-Out Report*, p. 23.
- 33 For a short summary of some of the smaller, community-based, and privately funded case management alternatives in the United States, see "The Real Alternatives to Detention." See also: LIRS, "Family Placement Alternatives."
- 34 For a summary of the populations and locations in which LIRS and USCCB served reunited families, as well as initial recommendations, see: LIRS and USCCB/Migration and Refugee Services, *Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity*, October 2018, https://www.lirs.org/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated.pdf.
- 35 LIRS, *Maintaining Family Values. Emergency Family Case Management Services for Reunited Families: Lessons Learned and the Way Forward*, March 2019, p. 14, <https://www.lirs.org/wp-content/uploads/2019/03/Maintaining-Family-Values.pdf>.
- 36 *Maintaining Family Values*, p. 12.
- 37 NIJC, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration*, April 2019, pp. 6-7, <https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>.
- 38 According to ICE's *FCMP Close-Out Report*, p.28, approximately 58.3% of the Heads of Household enrolled in FCMP were referred from the border or one of ICE's two Texas family detention facilities. Approximately 39.7% were referred from ISAP (ICE's other alternative to detention contract) or were considered "non-detained."
- 39 ICE report p. 31.
- 40 *Maintaining Family Values*, p. 9.
- 41 For example, ICE and DHS often make claims regarding the efficacy of its other ATD programs, such as electronic monitoring, without publicizing the raw data or the analysis behind this data.
- 42 See Congressional Budget Justification, p. O&S 154. ICE claims its overall "absconder" rate for its current ATD program is 22.9% for FY 2018, but this figure is determined by measuring 11,481 individuals absconding against 50,225 individuals terminated from its ATD program, rather than against all participants in the program.
- 43 Lorenzen-Strait, interview.
- 44 Hamed Aleaziz, "More than 52,000 People are Now Being Detained by ICE."
- 45 See "Fiscal Year 2020 Congressional Justification," p. O&S 154. The Average ATD Program Participation has grown from 26,625 in FY 2015 to a 79,595 in FY 2018, a projected 99,500 in FY 2019, and a desired 120,000 in FY 2020.
- 46 "Affording Congress an Opportunity to Address Family Separation," White House Executive Order, June 20, 2018, <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.
- 47 Notably, ICE's own evaluation of FCMP also calls for an expansion of eligible populations, albeit specifically focuses on those considered to have certain vulnerabilities.



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