



HUMAN
RIGHTS
WATCH

Dismantling Detention

International Alternatives to Detaining Immigrants



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Summary

As the harmful effects of immigration detention become more widely known and the appropriateness of detaining migrants is increasingly questioned, governments are looking at alternatives to detention as more humane and rights-respecting approaches to addressing the management of migrants and asylum seekers with unsettled legal status. This report examines alternatives to immigration detention in six countries: Bulgaria, Canada, Republic of Cyprus, Spain, the United Kingdom, and the United States to highlight viable, successful alternatives that countries should implement before resorting to detention. While the report provides an analysis of specific alternatives to detention (often referred to as ATDs) in each country, it is not intended to provide a comprehensive overview of all alternative programs available.

Each country featured in this report has taken a different approach to alternatives to detention. Some focus more heavily on surveillance and others on a more person-centered, holistic approach. Ultimately, this report finds alternatives that place the basic needs and dignity of migrants at the forefront of policy, such as community-based case management programs, offer a rights-respecting alternative to detention while simultaneously furthering governments' legitimate immigration enforcement aims.

Alternatives to Detention

Many individuals interviewed for this report have experienced hardship not only in their home countries, but also upon arrival in their destination countries. Some described overcrowded, unsanitary, and even dangerous conditions in detention centers. Further complicating the situation in 2020-2021 has been the Covid-19 pandemic, which exponentially increased the risk of living in a detention setting. In the United States, formerly detained people interviewed by Human Rights Watch described the lack of precautions taken in certain detention centers. In some centers, detained people were denied even the most basic protective equipment, such as masks, gloves, soap, and hand sanitizer. The circumstances surrounding the pandemic led US judges to issue orders and US Immigration and Customs Enforcement (ICE) officials to make decisions releasing migrants from detention – typically on the condition that they be placed on an electronic monitoring device (EMD), usually in the form of an ankle bracelet.

The pandemic led a number of governments to release migrants from detention, but their approaches differed greatly. While US authorities released individuals from detention on ankle monitors, Spanish authorities released them into a reception program that provided them with housing, food, case workers and legal assistance, as well as cultural integration activities and Spanish language classes.

Fundación Cepaim, one of several organizations that operate reception centers in Spain, provides such services to migrants. Although the Spanish government does not officially recognize it as an alternative to detention, during the pandemic it served as a de facto alternative for those who may have remained in detention. The Spanish Ministry of Inclusion, Social Security and Migration funds the programs – which enrollees can leave at any time – catering specifically to asylum seekers, refugees, stateless persons, and undocumented migrants. The program supports asylum seekers, refugees, and stateless persons for 18 months and undocumented migrants for six months.

Individuals under the reception model used in Spain told Human Rights Watch their experience had a positive impact on their lives, despite the pressures of living undocumented in a foreign country. “They put us into nice flats,” said Malick, a 36-year-old man from Senegal. “They brought us clothes, they took care of everything... They even came to our flats very regularly and answered questions and guided us.” Individuals also have access to lawyers, although undocumented migrants are not always guaranteed legal assistance.

A series of pilot case management programs operated in Bulgaria, Cyprus, and Poland also show that surveillance is not necessary to ensure individuals enrolled in alternative to detention programs stay engaged in the immigration process. After the first two years of the pilot programs, 86 percent of participants remained engaged with immigration procedures, and some said their case workers helped them navigate the complex immigration process.

Case managers also provide support by acting as mediators between immigration officials and program participants, helping individuals obtain employment, and assisting with finding and maintaining housing. This holistic support system allows people to assimilate to their new surroundings and helps them make important decisions about their future. However, laws in Bulgaria and Cyprus can make provision of these services difficult at

times, given restrictions migrants sometimes face when it comes to obtaining employment or housing. Furthermore, housing is not formally provided by either case management program, leaving some individuals in a precarious position.

In the United Kingdom, several case management programs have been implemented, two of which are operated by civil society organizations in collaboration with the Home Office, and others which run independently. This report examines a case management program that runs independently of the Home Office, and which is not officially recognized by the government as an alternative to detention. The program is operated by Detention Action, a civil society organization, and specifically works with young migrant men who have been convicted of crimes and served their prison sentences. Although the program does not specifically help individuals with their immigration status, it serves as an alternative to prolonged immigration detention and helps people acclimate to life in the community after spending time in both prison and immigration detention.

Participants in this program described a relationship of trust with their “community support officers,” whom they arrange to meet typically on a weekly basis. Hamed, a participant, said, “I phoned him with the smallest details of things... He was like an advisor and a counselor to me.”

Situation in the United States and Canada

Unlike the programs offered in European countries, in the United States, tens of thousands of individuals are fitted with ankle monitors. Ankle monitors are part of US Immigration and Customs Enforcement’s (ICE) Alternatives to Detention Program (ATDP), which was introduced in 2004. The ATDP has consisted of two programs: 1) the Intensive Supervision Appearance Program (ISAP) and 2) the Family Case Management Program (FCMP). The FCMP was terminated under the administration of former President Donald Trump in 2016, despite its success in keeping migrants engaged in immigration proceedings. Of the 952 families enrolled in the FCMP, 99 percent complied with ICE check-ins and 99 percent complied with court hearings. Furthermore, the FCMP cost about US\$38 per family per day in 2017.

In contrast, ISAP continues to operate. Currently, enrolled individuals are required to wear ankle monitors, download an application called SmartLINK on their cell phones, or use a

voice reporting system. It is unclear how ICE determines which option to assign to an individual, and ICE did not respond to Human Rights Watch's requests for interviews. As of September 16, 2021, 124,999 participants were enrolled in ISAP, a 370 percent increase over the number of participants in FY2015 (26,625). These programs cost around \$9 per participant per day.

While ISAP may offer a pathway out of detention, it is significantly more burdensome on rights than the FCMP. Ankle monitors in particular pose physical and emotional burdens on those required to wear them. Interview subjects said they were constantly aware of the bulky piece of plastic attached to their ankles. Some attributed this awareness to physical pain; others said the ankle monitors made them feel shame at the stigma rooted in their original use for keeping tabs on criminal offenders released from prison. "People look at you as if you are a delinquent because they are the ones who use these ankle monitors," David, a 38-year-old man from Honduras, said. Despite this association, EMDs, including ankle monitors, are increasingly being used within the immigration system for those who have not been charged or convicted of criminal charges.

In addition to the physical and psychological effects of wearing an ankle monitor, migrants are sometimes penalized when, through no fault of their own, the technology malfunctions, such as when a battery dies or the GPS tracking fails, potentially causing what are colloquially referred to as "strikes." Individuals who receive too many strikes risk being re-detained, which can delay the process of having an ankle monitor removed. Further complicating this process, ICE officers are not transparent about what factors are considered when determining whether an ankle monitor should or should not be removed.

Furthermore, ankle monitors closely track an individual's whereabouts, which allows ICE to establish patterns of behavior and surveil not just the individual wearing the ankle monitor, but also people in their network and community. Historically, surveillance methods have been targeted at people of color, resulting in a host of human rights abuses and harm. Although there has been a slight overall decrease in ICE's usage of ankle monitors over the past year, tens of thousands of migrants continue to be monitored through EMDs, infringing upon their rights to privacy.

In September 2019, ankle monitors were the most commonly used form of reporting under ICE's alternatives to detention program. In the past two years, ICE has increased the use of

a new phone application called SmartLINK, which requires enrollees to check in through the application by taking pictures of themselves. This option is used by the majority of individuals enrolled in ICE's ISAP programs.

SmartLINK raises some of the same data privacy issues as ankle monitors. While ICE claimed in 2018 and 2019 that, unlike ankle monitors, SmartLINK does not constantly capture real-time location data, they did recognize that it tracks location data during the time of the check-in. In addition to data privacy concerns, SmartLINK uses facial verification technology, which studies show does not identify certain racial and ethnic groups as effectively as others.

Canada also uses surveillance technology to track migrants who are not detained, but authorities require migrants to use EMDs less frequently than in the United States. More common in Canada is the voice reporting system, which may appear less intrusive and burdensome. However, voice reporting is only compatible with certain cell phone providers and landline telephone systems. Individuals are required to call a number on a designated day and repeat a pre-recorded phrase three times. Nora, 55, from Albania, who has been reporting by telephone for around seven years, said she has never had an issue with the reporting system. She said migration authorities are flexible and, if she forgets to record, there are ways to rectify the situation, such as reporting by telephone a day or two later. When flexibility such as this is given, it can relieve the enormous stress migrants are under and help ensure that the consequences of failing to report are appropriate and proportionate. However, like with other forms of surveillance, voice technology also raises privacy, discrimination, and reliability concerns.

Prohibition on Arbitrary Detention and Unlawful Interference with Privacy

All the countries featured in this report have ratified the International Covenant on Civil and Political Rights (ICCPR), which prohibits arbitrary detention under article 9(1). The United Nations Human Rights Committee, the international expert body that interprets the ICCPR, has not found migrant detention to be arbitrary per se, but requires that detention only take place if it is necessary and proportionate. The decision to detain should also consider whether alternatives to detention are appropriate after an individualized review of the circumstances. Detention and alternatives to detention should be subject to periodic review.

Detention is a severe intrusion on the right to liberty, and in the vast majority of cases, detention for immigration-related reasons is neither necessary nor proportionate to the goal of enforcing immigration laws, particularly in light of the effectiveness of alternatives to detention that are much less burdensome on rights, such as case management. For this reason, the UN Working Group on Arbitrary Detention has called for immigration detention to be gradually abolished.

The Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration) has also called on countries to prevent arbitrary arrest and detention and to “prioritize non-custodial alternatives to detention,” with an eye towards expanding alternative, non-custodial measures.

At the same time, electronic monitoring and surveillance of migrants intrude on migrants’ privacy rights, which are protected under article 17 of the ICCPR. A 2014 report of the Office of the UN High Commissioner for Human Rights on the right to privacy in the digital age highlighted the issue of surveillance and collection of personal data. Mass surveillance of migrants through ankle monitors, and possibly other Electronic Monitoring Devices (EMDs), allows governments to collect excessive amounts of personal data, including real-time location data.

Even in cases where there is a risk of absconding, other alternatives to detention have proven to be highly effective, rendering the use of tools that permit collection of real-time location data unnecessary. Given the magnitude of the intrusion on privacy and other rights that certain EMDs represent, their use would also be disproportionate, with the sole narrow exception of situations in which detention itself might be permissible.

The UN Standard Minimum Rules for Non-Custodial Measures (“The Tokyo Rules”) provide that “non-custodial measures should be in accordance with the principle of minimum intervention... The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.” Given the severe restrictions on rights that highly intrusive EMDs such as ankle monitors impose, and the existence of other alternatives that are significantly less burdensome on rights, the use of EMDs that involve location tracking or other significant intrusions on privacy will rarely, if ever, meet the principle of minimum intervention.

Path Forward

In the context of immigration, countries should be implementing the least restrictive means necessary to accomplish legitimate government objectives. This means that, beyond a brief initial period to document migrants' entry, identities, and claims, authorities should in general release migrants. Any conditions imposed on release should be solidly grounded in an individualized assessment of the migrant's circumstances, such as the likelihood that they would abscond.

Because it is rarely necessary or proportionate to the goal of immigration enforcement, governments should avoid immigration detention, and move toward abolishing its use. The need for alternatives has been exacerbated by the Covid-19 pandemic, where detention settings can pose a high risk to health and safety. In exploring alternatives to detention, governments should seek to minimize intrusions on rights, including the right to privacy.

The United States' use of mandatory immigration detention and its extensive use of EMDs are unnecessary, disproportionate, and inconsistent with international human rights standards. The United States should take inspiration from the successful international experiences of case management profiled in this report as well as the success of the Family Case Management Program. Given the achievements of these programs, the United States should expand the use of case management, which offer migrants an opportunity to be a part of their new community, even if only temporarily. Instead of penalizing individuals who may have fled violence and other injustices, governments should be protecting their rights and providing them with critical services, such as legal assistance, mental health support, and housing. Without such support, migrants are left in a precarious position – forced to fight complex legal cases while struggling to meet their basic needs.

Additionally, alternatives to detention are less costly than detention. US Immigration and Customs Enforcement (ICE) spent an average of \$144 per day to keep an individual in detention in fiscal year 2020. ICE aims to spend around \$142 per person in detention per day in fiscal year 2022. Family detention, in contrast, costs around \$319 per family per day, which is over eight times as much as the cost of the FCMP.

The success of case management programs proves that neither detention nor digital surveillance are necessary to ensure that migrants appear at their immigration proceedings. A 10-year study conducted between 2008 and 2018 demonstrated that 83 percent of non-detained migrants with “completed or pending removal cases...attended all of their court hearings.” This number increased to 96 percent for those migrants represented by counsel. With the support of a case management program that also provides robust legal assistance, these numbers are only likely to increase.

In the United States, ankle monitors and surveillance measures continue to be used on thousands of people who should not have been detained in the first place. They are all at risk of having their data privacy compromised, to be stigmatized, and to suffer physical and emotional harms.

The EMDs that the United States uses are particularly burdensome on the right to privacy, and because of the existence of less burdensome alternatives that are highly effective at addressing the risk that migrants will abscond, the use of EMDs to that end is neither necessary nor proportionate.

Governments should move away from the use of EMDs that capture significant amounts of personal information in immigration enforcement. Instead, given the effectiveness of case management and person-centered alternatives to detention, governments should shift funding and resources from detention centers to community-based case management programs. Case management programs should provide holistic support, including legal advice, referrals to health services, and guidance on obtaining basic necessities such as housing and employment.

To the extent that governments use any form of electronic surveillance technology, such as SmartLink or voice reporting, in connection with immigration enforcement, they should ensure that effective limitations and procedural safeguards are placed on how data is collected and used to protect privacy and freedom from discrimination.

Recommendations

Recommendations to All Governments

- Immediately end immigration detention that is unnecessary or prolonged with the aim to gradually abolish immigration detention. Individuals should not be treated in a punitive manner for immigration-related reasons. Require release from immigration detention in at minimum the following circumstances:
 - Detention in conditions that are inhuman and degrading;
 - Detention of persons with disabilities;
 - Detention of children;
 - Detention of families with children; and
 - Detention based solely on unlawful entry or reentry.
- Establish a limit on the length of time individuals may be held in immigration detention in countries that have not already established a time limit.
- In the context of immigration, countries should be implementing the least restrictive means necessary to accomplish legitimate government objectives. This means that, beyond a brief initial period to document migrants' entry, identities, and claims, authorities should in general release migrants, and impose conditions only when necessary and proportionate to a legitimate aim. Any conditions imposed on release should be solidly grounded in an individualized assessment of the migrant's circumstances, such as the likelihood that they would abscond.
- Shift funding and resources from detention centers to community-based case management programs and allow for greater numbers of individuals in immigration proceedings to enroll in case management programs as an alternative to detention.
- Make available to all people in immigration proceedings community-based case management programs that provide individuals with holistic services, including the following:
 - Access to legal services or direct provision of such legal services (to advise and help with various processes such as obtaining work authorization, understanding the status of their immigration claim, and filing paperwork);
 - Access to housing, guidance on housing rights, or assistance with applying for government-funded housing, where available;

- Guidance on securing employment authorization, employment, and labor rights;
- Guidance and referral to other services that support the fulfillment of basic human rights to the highest attainable standard of health, education, and an adequate standard of living, such as:
 - Schooling;
 - Health services, including mental health services; and
 - Language classes and other services that may help to improve migrants' standard of living.
- Provide case management for as long as it takes to resolve the asylum claim or other claims, or until the individual no longer requires such services or is removed from the country.
- Encourage local community organizations to provide case management services, independently from the government, because they are often best situated to know the availability of programs and services. Support local community organizations that require or request it to continue provision of case management services.
- To the extent reporting systems are necessary and proportionate, prioritize less-invasive programs such as voice reporting. To ensure that voice reporting does not create an undue burden, it should incorporate the following standards:
 - Voice reporting should be flexible and of brief duration so as not to interfere with work and family schedules;
 - Individuals should be allowed to report at any time of the day on the day of reporting and should not be required to speak with an immigration official during every reporting session;
 - Voice reporting should be compatible with all phone models and phone plans to allow the maximum number of individuals to enroll; and
 - Voice reporting should be compliant with privacy regulations, data impact assessments, data sharing, ownership regulation, among other privacy and human rights safeguards.

To the US Government

- The US Congress should amend current laws that authorize mandatory immigration detention to require instead that any decision to detain a person in immigration

- proceedings be made pursuant to an individualized procedure that is subject to judicial review and that prioritizes alternatives to detention over detention.
- Alternatives to detention should not be used to expand the number of individuals under ICE’s control, and conditions on release should be imposed only when necessary and proportionate to a legitimate aim. Only under such circumstances, US authorities should consider alternatives to detention other than release, prioritizing those which are least intrusive or burdensome on human rights. In particular, they should consider case management-based release of individuals into the custody of family members, community-based organizations, or other sponsors in the community. They may also consider alternatives such as voice reporting or smartphone applications that do not constantly monitor GPS coordinates, so long as effective safeguards are in place to protect privacy and other rights.
 - Given that other alternatives to immigration detention are less intrusive of the rights to privacy and other rights, ankle monitors and other devices that provide real-time location tracking should be barred as an alternative to immigration detention.
 - To the extent that electronic monitoring devices (EMDs) remain in use, immediately increase transparency and accountability, through the following:
 - Require DHS/ICE to publish:
 - Information and guidelines about the specific data being collected through GPS tracking;
 - Statistics on the number of individuals using EMDs;
 - Statistics on the types of EMDs ICE is using and their technical capabilities;
 - Information about procurement practices and the relationships between the private sector and government agencies.
 - Establish a procedural mechanism for individuals to petition to have their EMD removed if they believe they were wrongfully required to wear one.
 - End the practice of contracting with private companies to monitor individuals wearing ankle monitors and using smartphone applications. Until this can be achieved, ensure transparency by requiring the publication of any contracts, agreements, and standards regarding ankle monitors, smartphone applications, and surveillance practices between ICE and private companies.

- Smartphone applications, such as SmartLINK should not be used to constantly track a person’s movements or personal data. To the extent that smartphone applications are being used, the government should ensure, at a minimum, that the following privacy safeguards are met:
 - Do not collect or store personal information of smartphone application users (including IP address, operating system, browser type, mobile network information, usage details and communication data).
 - Do not share personal information with third parties, subsidiaries and affiliates, contractors or buyers, and others who might gain access to personal data.
 - Prevent the collection of behavioral data or continuous location tracking. Prevent ICE officers and Intensive Supervision Appearance Program (ISAP) contractors from having access to real-time location data when users are not actively using the smartphone application.
 - Provide meaningful alternatives to facial verification, such as offline alternatives, if the user is unable to verify their identity using SmartLINK.
 - Prohibit data sharing for any purpose other than locating an individual who has failed to appear for an immigration hearing or removal and destroy all data after the individual is no longer a participant in the ISAP program.
 - Prohibit the use of facial images collected through the application for any purpose other than facial verification check ins.
 - Hold legally accountable any individual or agency violating data protection protocols.
 - Cease the use of SmartLINK for any person currently enrolled in the program if any of these conditions are not met.
- The US Congress should require transparency around the use of SmartLINK, specifically regarding the extent of tracking and surveillance conducted by ICE or private companies through the application.

To the Government of Canada

- Amend the Immigration and Refugee Protection Act to include a limit on the amount of time an individual may be held in immigration detention.
- Ensure that detention review hearings consider all alternatives to detention and implement such alternatives where possible.

- Ensure that voice reporting is an option for people who would otherwise be detained by creating a system that is compatible with all cell phone service providers, while safeguarding sensitive personal data.
- Consider reallocating funding from the Canada Border Services Agency budget to support community-based health services and alternatives to detention.
- Make public risk matrices used to evaluate whether someone is eligible for an alternative to detention such as voice reporting.

To the Government of Cyprus

- Ensure civil society organizations' access to funding for case management pilot programs so they can continue to serve migrant populations.
- Simplify and expedite the process by which employers hire asylum seekers.
- Expedite the process to receive financial assistance for rent payments through the Guaranteed Minimum Income (GMI) scheme so that eligible migrants can afford to pay their rent in a timely manner.
- Ensure that asylum seekers have access to employment by expanding the types of jobs that are available to them. Provide asylum seekers with equal access to the job market by removing restrictions on the types of employment in which they are legally able to engage.

To the Government of Bulgaria

- Ensure civil society organizations' access to funding for case management pilot programs so they can continue to serve migrant populations.
- Eliminate the requirement for individuals who do not have a permanent home address to provide one upon release from detention.
- Simplify the process by which Bulgarian landlords may rent homes to migrants by removing the requirements to present personal documents and proof of ownership to migration authorities.
- Provide housing assistance to refugees and asylum seekers who otherwise cannot afford rent.

To the Government of Spain

- Officially recognize the case management program, Atención Humanitaria, and the services offered by Fundación Cepaim as an alternative to detention.

To the European Commission and European Union Member States

- Establish an independent monitoring mechanism for immigration detention.
- Ensure that the implementation of the propositions of the European Pact on Migration and Asylum does not increase recourse to detention, but instead ensures that immigration detention is a measure of last resort, increases safeguards against detention and includes explicit references to prioritizing the creation and utilization of alternatives to detention in keeping with Objective 13 of the Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration).
- When implementing alternatives to detention, focus on the creation of person centered, holistic alternatives, such as community-based case management programs; ensure that civil society organizations receive the support they require from the government and/or migration officials, including funding, assistance with referrals, and willingness to engage with service providers.
- The European Commission should dedicate funding to support Member States and non-governmental organizations in setting up alternatives to immigration detention and urge EU member states that have existing alternatives to detention in place to continue to support and fund these programs and allow and encourage eligible individuals to enroll in them.

To the Government of the United Kingdom

- Establish a limit on the length of time individuals may be held in immigration detention.
- Make public the findings and evaluations of Home Office commissioned alternatives to detention pilot projects at the earliest opportunity, and implement lessons learned towards establishing further long-term alternative to detention programs.

Methodology

This report is based on interviews conducted with 27 people in alternative to detention (ATD) programs between October 2020 and July 2021. All individuals interviewed for this report are currently enrolled in ATD programs or previously participated in such programs. For purposes of this report, the term alternative to detention or “ATD” refers to any system or program that prioritizes release of immigrants over detention, including, but not limited to, electronic ankle monitoring, voice reporting, the SmartLINK phone application, case management programs, open reception centers, the requirement to show up for immigration proceedings, and monetary bail.

The phrase Electronic Monitoring Device or “EMD” in this report refers to surveillance instruments that have the capability to locate an individual enrolled in a supervision program.

In addition to interviews with individuals enrolled in alternative to detention programs, Human Rights Watch interviewed service providers, social workers, lawyers, and members of civil society organizations.

Human Rights Watch interviewed individuals located in six countries: Bulgaria, Canada, Cyprus, Spain, the United Kingdom and the United States. Due to travel restrictions as a result of Covid-19, all interviews were conducted by telephone, WhatsApp messenger, or email. Interviews were conducted in English or with the aid of interpreters in Arabic, Dari, French, Spanish, Turkish, or Wolof.

All participants were informed prior to the interview about how the material collected would be used and that such information would be published in the form of a report. Human Rights Watch ensured all interviewees understood that the interviews were voluntary and that they could opt out of answering all or specific questions. Oral informed consent was obtained prior to each interview. Human Rights Watch did not provide monetary or other incentives to those who participated in interviews.

Due to the sensitive nature of the interviews, many individuals stated that they did not want their identities revealed. Therefore, this report uses pseudonyms for all ATD program participants to protect the identity and safety of those interviewed.

Due to the nature of the research, Human Rights Watch organized interviews with participants in ATD programs through the help of case managers and service providers in Bulgaria, Cyprus, Spain and the United Kingdom. In most cases, case managers and service providers knew the interviewees personally. Many had served as their case manager or legal provider. Interviews were conducted in private without case managers or service providers present. In the US and Canada, individuals were contacted through the help of lawyers, law school legal clinics, and volunteers.

This report refers to the internationally recognized Republic of Cyprus as “Cyprus.” This research did not cover the situation of migrants in the self-declared Turkish Republic of Northern Cyprus, under the effective control of Turkey and recognized only by Turkey.

Human Rights Watch submitted a Freedom of Information Act (FOIA) request to US Immigration and Customs Enforcement (ICE) on March 26, 2021, requesting records relating to ICE’s response to the Covid-19 pandemic, including information regarding releases from immigration detention. As of October 22, 2021, Human Rights Watch had not received a response.

Human Rights Watch sent letters to two corporations, BI Incorporated and Libre by Nexus, requesting their response to issues surrounding the use of ankle monitors and SmartLINK in the immigration context. As of October 22, 2021, Human Rights Watch had not received a response.

In addition, Human Rights Watch sent letters summarizing the findings of this report and requesting responses to the following government agencies: the Ministry of Interior in Bulgaria; the Ministry of Interior in Cyprus; the Ministry of Inclusion, Social Security and Migration in Spain; the Home Office in the United Kingdom; the Ministry of Public Safety and Emergency Preparedness and the Ministry of Immigration, Refugees, and Citizenship in Canada; and the Department of Homeland Security in the United States.

As of October 25, 2021, Human Rights Watch had not received substantive responses from any of the governments, except Bulgaria and the United Kingdom, which are attached as annexes at the end of the report.

Background

International migrants comprise approximately 3.6 percent of the world’s population.¹ That translates to 281 million people who have left their home countries in search of protection or for economic or personal reasons.² Hundreds of thousands of these individuals will be detained on immigration-related grounds at some point during their journey. While in immigration detention, people often endure poor conditions and inhumane treatment, which can lead to lasting psychological effects.³ In most countries surveyed in this report, individuals told Human Rights Watch they had experienced mistreatment while detained. Human Rights Watch spoke with individuals who had survived a range of hardships in detention centers in Europe and North America, including inadequate nutrition, harassment, and physical abuse.

Detention of individuals solely due to their immigration status is harmful, expensive, and ineffective as a deterrent to migration. Alternatives to detention present a pathway forward. In 2018, the UN General Assembly adopted the Global Compact on Safe, Regular and Orderly Migration, which calls upon all governments to “use migration detention only as a measure of last resort and work towards alternatives.”⁴ Under international law, detention that is not necessary or proportionate to achieving a legitimate purpose is considered arbitrary. Thus, countries should be operating under the premise that people who cross their borders should not be detained. Furthermore, the vast majority of migrants have not been charged with a criminal offense and are being held in custody solely to ensure they appear for their immigration proceedings, that they comply with removal orders and, sometimes, for loosely defined “public safety” reasons.⁵

¹ United Nations, Department of Economic and Social Affairs, *International Migration 2020 Highlights*, January 15, 2021, <https://www.un.org/en/desa/international-migration-2020-highlights> (accessed July 7, 2021).

² *Ibid.*

³ M. von Werthern, et al., “The Impact of Immigration Detention on Mental Health: A Systematic Review,” *BMC Psychiatry* 18 (2018), accessed July 7, 2021, doi: 10.1186/s12888-018-1945-y.

⁴ *Global Compact on Safe, Orderly and Regular Migration*, (A/RES/73/195), UN General Assembly, January 11, 2019. <https://undocs.org/A/RES/73/195> (accessed July 20, 2021). The GCM was adopted by a vote of 152 for, 5 against, and 12 abstentions. See “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants,” United Nations press release, December 19, 2018. <https://www.un.org/press/en/2018/ga12113.doc.htm> (accessed July 20, 2021).

⁵ Human Rights Watch, *United States – Locked Away: Immigration Detainees in Jail in the United States*, vol. 10, no. 1(G), September 1998, <https://www.hrw.org/legacy/reports98/us-immig/Ins989-04.htm>.

In general, European Union (EU) member states commit to considering alternatives to detention during the migration process. In addition to the existing laws in each European country, EU member states fall under the Common European Asylum System (CEAS), which sets its own rules and regulations. Included in these regulations is the Reception Conditions Directive, which requires member states to duly examine all “non-custodial alternative measures to detention” prior to imposing detention and requires that “any alternative measure to detention must respect the fundamental human rights of applicants.”⁶ The Returns Directive specifies that EU member states may detain people for the purposes of deportation “unless other sufficient but less coercive measures can be applied effectively” and limits such detention to a maximum of 18 months.⁷ The United Kingdom, no longer a member of the EU, has opted out of CEAS directives and does not have a statutory limit on immigration detention.

In North America, there is no such binding regional instrument on migration. However, Canada approaches alternatives to detention similarly to the EU by leading with a presumption of freedom and requiring officials to consider alternative measures before imposing detention.⁸ Furthermore, Canadian officials are required to continuously consider and reassess alternatives at each detention review.⁹ The United States, on the other hand, has not typically considered alternatives to detention prior to imposing detention and has not enacted laws that obligate officials to do so.

Although some countries’ national laws or regional agreements include provisions for considering alternative measures, in practice alternatives are often overlooked or applied under a narrow set of circumstances. Because of this, individuals are subjected to days, months or even years in detention. Studies have shown that symptoms of depression, anxiety and post-traumatic stress disorder (PTSD) can last for many years after an

⁶ “Directive 2013/33/EU of the European Parliament and of the Council,” *Official Journal of the European Union* L 180, June 26, 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN> (accessed July 7, 2021), art. 20.

⁷ “Directive 2008/115/EC of the European Parliament and of the Council,” *Official Journal of the European Union*, December 12, 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN> (accessed August 11, 2021), art. 15.

⁸ Immigration and Refugee Board of Canada, “Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*,” amended April, 2021, <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx#s31> (accessed July 7, 2021), para. 3.1.

⁹ *Ibid.*

individual is released from detention, indicating that the harms of confinement endure long past the actual period of detainment.¹⁰

Individuals Human Rights Watch spoke with expressed feelings of hopelessness, distress, and discomfort while in detention. “It was an experience I would not want anyone to experience,” said Jean, a man held in US immigration detention. “You are locked up. You have no access to outdoors. You don’t even know [what] the color of the day looks like.”¹¹

One unacceptable consequence of US immigration detention is the separation of families. The Trump administration’s policy of separating families has had lasting consequences, with some children remaining separated from their parents to this day.¹² Luisa, who was separated from her child upon arriving in the United States, said that detention officials would ruthlessly taunt her. Upon being moved from one detention center to another, she said, “I was asking for my kid and [the guards] told me that I should forget my kid because he didn’t belong to me anymore.”¹³

Although the United States has one of the world’s most extensive immigration detention networks, it certainly is not the only country that mistreats detained people. In Bulgaria, Ali, who was held in the Lyubimets detention center, experienced such ill treatment that he and his young children are still afraid of people in uniform. “I was not able to speak the language, so most of the time I was crying by myself because I was not able to talk about my problems,” he said. “The police were reacting so bad with the migrants—most of the time they were beating the migrants with sticks. Because I was asking them to provide me with a translator, they would beat me with their hands on my chest.”¹⁴

In addition to the emotional distress of being detained, conditions of detention are often poor. Individuals across the countries surveyed described bad food, unhygienic practices, and lack of ability to exercise or go outdoors. “The jail was very dirty,” said Omar, a former

¹⁰ M. von Werthern, et al., “The Impact of Immigration Detention on Mental Health: A Systematic Review,” *BMC Psychiatry* 18, 382 (2018), <https://doi.org/10.1186/s12888-018-1945-y> (accessed July 7, 2021).

¹¹ Human Rights Watch telephone interview with Jean, New Jersey, February 10, 2021.

¹² Center for American Progress, “The Trump Administration’s Family Separation Policy is Over,” April 12, 2021, <https://www.americanprogress.org/issues/immigration/reports/2021/04/12/497999/trump-administrations-family-separation-policy/> (accessed July 7, 2021).

¹³ Human Rights Watch telephone interview with Luisa, California, April 12, 2021.

¹⁴ Human Rights Watch telephone interview with Ali, Sofia, April 19, 2021.

detainee in Cyprus, “It was moldy... terribly ventilated... from the beginning it was very unpromising.”¹⁵

Some individuals described a particularly painful experience while in detention – degradation and humiliation at the hands of guards. In Cyprus, for example, one man described his distress at being repeatedly strip searched upon reentering the detention center after attending court sessions:

They shook me and kind of threatened me to take my underwear off. So, I had to get completely naked and they searched me. Then they asked me to bend over and they got a detector type thing close to my rear and did a search like that. It was really hard for me to go through that.... They didn’t give me any information or explanation as to why [they needed to do that].¹⁶

The harm and abuse that people experience while in immigration detention underscores the importance of avoiding such punitive measures as part of migration processing. Alternatives not only allow people to avoid the traumatic experience of being locked up, but also offer them an opportunity to integrate with the community, even if only temporarily.¹⁷ Alternative to detention programs can also have a positive impact on government systems and structures. For example, some alternatives have been shown to enhance individuals’ understanding and engagement with immigration processes, leading to high compliance rates. Alternatives are often less costly than detention.¹⁸ For example, the Family Case Management Program in the United States cost about US\$38 per family per day in 2017.¹⁹ In contrast, US Immigration and Customs Enforcement (ICE) spent an

¹⁵ Human Rights Watch telephone interview with Omar, Nicosia, April 23, 2021.

¹⁶ Human Rights Watch telephone interview with Adem, March 26, 2021.

¹⁷ International Detention Coalition, “There are Alternatives,” 2015, <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf> (accessed July 7, 2021).

¹⁸ The Department of Homeland Security’s (DHS) Budget-in-Brief for fiscal year 2022 provides US\$440 million for Alternative to Detention (ATD) programming, which DHS states will enable them to serve an average of 140,000 participants. \$440 million allocated across 140,000 participants for 365 days per year is equal to \$8.60 per participant per day. See Department of Homeland Security, “Budget-in-Brief Fiscal Year 2022,” undated, https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf (accessed July 20, 2021), p. 3.

¹⁹ Women’s Refugee Commission, “The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration,” June 2019, <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf> (accessed July 23, 2021), p. 6.

average of \$143.92 per day to keep an individual in detention in fiscal year 2020.²⁰ ICE aims to spend around \$142.44 per person in detention per day in fiscal year 2022.²¹

For community-based case management programs, funding remains a critical matter. Many of the programs, including those in Bulgaria, Cyprus, and the United Kingdom, serve a relatively small number of individuals – ranging from a capacity of around 30 people in the United Kingdom²² to around 70-75 people in Bulgaria and Cyprus at any given time.²³ In most countries, government funding and support is necessary to expansion. A critical part of implementing alternatives to detention is to decrease funding for detention, while increasing funding for alternatives. As individuals are transferred from detention into alternative programs, fewer funds should be needed for detention. In the United States, for example, there is a significant deficiency of funds for alternative programs. For fiscal year 2022, the United States House Appropriations Committee has allocated \$2.46 billion for custody operations. Comparatively, only \$475 million was allocated for expanding alternatives to detention.²⁴

Alternatives to detention come in many forms, including through the payment of a monetary guarantee (bail), case management programs, and regular check-ins with immigration officials either in-person, or increasingly, through electronic means such as voice recording or facial recognition software. Of these alternatives, community-based case management often presents the least restrictive, most humane way to ensure people comply with immigration procedures.

²⁰ US Immigration and Customs Enforcement, Department of Homeland Security, “Strategic Context – Fiscal Year 2022, Congressional Justification,” https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf (accessed July 20, 2021), p. 24.

²¹ *Ibid.*, p. 43.

²² Human Rights Watch telephone interview with a Community Support Officer, Community Support Project, March 22, 2021.

²³ Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, March 16, 2021.

²⁴ “Appropriations Committee Releases Fiscal Year 2022 Homeland Security Funding Bill,” House Committee on Appropriations press release, June 29, 2021, <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-homeland-security-funding> (accessed August 3, 2021).

The United States

Background

The United States detains migrants at one of the highest rates in the world.²⁵ Even after the United States drastically reduced the detained population due to Covid-19, an average of 33,724 migrants were in immigration detention on any one day in fiscal year 2020, which ended in September 2020.²⁶ Court-ordered releases and custody reassessments based on Covid-19 risk factors²⁷ were some important steps taken by judges and ICE Enforcement and Removal Operations (ERO) to reduce overcrowding and the risk of illness in migrant detention centers. While the detained population steadily decreased between February 2020 and March 2021, this number has increased under the administration of President Joe Biden, with 22,129 people in detention as of October 1, 2021.²⁸ In the vast majority of cases, these detentions are unnecessary and disproportionate to any legitimate government objective.

Many of the people released from detention in response to Covid-19 were required to wear ankle monitors.²⁹ The US government has touted the use of ankle monitors as an alternative to detention, but people required to wear them have described them as embarrassing, disruptive to their daily lives, and even painful.³⁰

A recent non-representative survey of about 150 migrants wearing ankle monitors found that 90 percent of survey participants wearing them experienced physical harm and 88 percent experienced a negative impact on their mental health, including symptoms related

²⁵ Global Detention Project, “United States,” undated, <https://www.globaldetentionproject.org/countries/americas/united> (accessed July 22, 2021). Freedom for Immigrants, “Detention By the Numbers,” undated, <https://www.freedomforimmigrants.org/detention-statistics> (accessed July 22, 2021).

²⁶ US Immigration and Customs Enforcement, “ICE Detention Data,” undated, <https://www.ice.gov/doclib/detention/FY20-detentionstats.xlsx> (accessed June 6, 2021).

²⁷ Guidance from Peter B. Berg, Assistant Director, Field Operations, to Field Office Directors and Deputy Field Office Directors on Covid-19 Detained Docket Review, April 4, 2020, <https://www.ice.gov/doclib/coronavirus/attk.pdf> (accessed October 20, 2021).

²⁸ Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Immigration Detention Quick Facts,” data through October 1, 2021, <https://trac.syr.edu/immigration/quickfacts/> (accessed October 15, 2021).

²⁹ Matt Katz, “ICE Releases Hundreds of Immigrants as Coronavirus Spreads in Detention Centers,” NPR, April 16, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/16/835886346/ice-releases-hundreds-as-coronavirus-spreads-in-detention-centers> (accessed June 7, 2021).

³⁰ Human Rights Watch telephone interview with Jean, New Jersey, February 10, 2020.

to anxiety and sleep disruption. Twelve percent of participants reported experiencing suicidal thoughts.³¹

The stigma of ankle monitors and the association they have with the criminal justice system causes members of the community, including employers, to shun those who wear them. A convenience sample of nearly 1,000 people who received immigration legal services in New York and New Jersey found that, amongst these clients, monitors were used disproportionately on Black migrants,³² perpetuating the historical trend of over-surveillance within communities of color.

People required to wear ankle monitors are subject to constant surveillance, allowing for data collection that can be stored and used to track the movements of individuals and groups of individuals who are in proximity to one another. ICE and ISAP officials do not inform wearers about how the data is stored, shared, and used by government officials.

Like ankle monitors, SmartLINK, a phone application used as part of ICE's alternative to detention programming, raises concerns about privacy, reliability, and over-surveillance, particularly for communities of color. The application relies on facial verification technology, which may result in what are referred to as "false negatives." A false negative occurs when the algorithm mistakenly concludes that the person is not who they say they are.³³ The error rate is low when pictures are taken in ideal photo and lighting conditions but are higher when "image quality degrades."³⁴ False negative rates are highest in "African born subjects" and more commonly occur for women than men.³⁵ It is unclear where and how long these images are stored. Additionally, the technology itself has the capability of tracking real-time movement. ICE has said little about whether it is using this capability, though in a 2019 communication to the Congressional Research Service it

³¹ Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic, Freedom for Immigrants & Immigrant Defense Project, "Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles," July 2021, <https://static1.square-space.com/static/5a33042e8078691c386e7bce/t/60ec661ec578326ec3032d52/1626105377079/Immigration+Cyber+Prison+report.pdf> (accessed July 13, 2021), p. 3.

³² *Ibid.*

³³ Patrick Grother, et al., "Face Recognition Vendor Test (FRVT), Part 3: Demographic Effects," National Institute of Standard and Technology, US Department of Commerce, December 2019, <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf> (accessed July 16, 2021), pp. 53-60.

³⁴ *Ibid.*, p. 56.

³⁵ *Ibid.*, p. 54.

indicated that the application only collects location data during the check-in while using facial recognition.

The UN Standard Minimum Rules for Non-Custodial Measures (“The Tokyo Rules”) provide that “non-custodial measures should be in accordance with the principle of minimum intervention... The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.”³⁶ Given the severe restrictions on rights that EMDs such as ankle monitors impose, and the existence of other alternatives that are significantly less burdensome on rights, the use of EMDs will rarely, if ever, meet the principle of minimum intervention.

The Immigration and Nationality Act

The US Immigration and Nationality Act (INA) dictates the circumstances under which people are placed in immigration detention. The INA does not explicitly provide for alternatives to detention, which coupled with an overly broad approach to detention has led to the frequent unnecessary and disproportionate confinement of individuals, in violation of their rights against arbitrary detention.

In 1996, the US Congress passed two laws – the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act – that significantly amended the INA to expand mandatory detention, preventing many people from being afforded an individualized assessment based on their circumstances.

Some provisions of the INA give immigration officials discretion not to detain a person in removal proceedings, but other provisions, such as Section 236(c), regarding people convicted of specific crimes, make detention mandatory.³⁷ People accused of the same offense in criminal court are typically eligible to be released on bond before trial, whereas non-citizens who have served their sentences are not afforded the same opportunity when their detention is administrative.

³⁶ United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”), adopted December 14, 1990 G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990), <https://www.ohchr.org/documents/professionalinterest/tokyorules.pdf> (accessed October 20, 2021), paras 2.6 and 2.7.

³⁷ Congressional Research Service, “Immigration Detention: A Legal Overview,” September 16, 2019, <https://fas.org/sgp/crs/homesecc/R45915.pdf> (accessed June 7, 2021), p. 9.

Individuals may also be detained if they are subject to expedited removal or awaiting a determination of credible fear of persecution if returned to their country. INA section 235(b) mandates detention for individuals arriving in or present in the United States but not yet admitted, “pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”³⁸ However, even after an officer determines that an individual has a credible fear of persecution, INA Section 235(b)(1) requires the individual to “be detained for further consideration of the application for asylum.”³⁹ This means that individuals can be held in ICE custody for the duration of their proceedings. However, DHS retains the discretion to release individuals from detention on parole.⁴⁰

Finally, Section 241(a)(2) of the INA allows detention of individuals ordered removed from the United States for the duration of the removal period, which is limited to 90 days.⁴¹ This period may be extended and the individual can be kept in detention if they fail or refuse “to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.”⁴² However, the US Supreme Court has found that this provision of the INA contains an implicit “reasonable time” limit of six months.⁴³

Immigration officers retain a significant degree of discretion when determining whether to detain an individual. In any circumstance other than those that mandate detention under the INA, there are other options available. These include release on own recognizance (a written promise that the individual will appear at their immigration hearing), parole, bond,

³⁸ The US Immigration and Nationality Act § 235(b)(1)(B)(iv).

³⁹ The US Immigration and Nationality Act § 235(b)(1)(B)(ii).

⁴⁰ In *Matter of M-S*, then Attorney General William Barr ruled that individuals subject to expedited removal who are transferred to formal removal proceedings must be detained while their asylum claims are pending. Barr found that those “who are placed in formal removal proceedings after a positive credible fear determination, ‘remain ineligible for bond,’ whether they are arriving at the border or are apprehended in the United States.” After the Attorney General issued the opinion in *Matter of M-S*, the US Court of Appeals for the Ninth Circuit affirmed a lower court’s ruling in *Padilla v. ICE* that mandatory detention in these cases violated the US Constitution’s due process clause by denying the opportunity for bond. However, the US Supreme Court recently found in *DHS v. Thuraissigiam* that “an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause” than those provided for in statute. *Matter of M-S*, 27 l. & N. Dec. 509 (A.G. 2019), p. 515; *Padilla v. US Immigration and Customs Enforcement*, No. 19-35565 (9th Cir. March 27, 2020); *DHS v. Thuraissigiam*, 591 U.S. ___, p. 2; see also Congressional Research Service, “Is Mandatory Detention of Unlawful Entrants Seeking Asylum Constitutional?,” January 27, 2021, <https://fas.org/sgp/crs/homesec/LSB10343.pdf> (accessed July 13, 2021); Congressional Research Service, “Immigration Detention: A Legal Overview,” September 16, 2019, <https://fas.org/sgp/crs/homesec/R45915.pdf> (accessed June 7, 2021), p. 25.

⁴¹ The US Immigration and Nationality Act § 241(a)(1)(A).

⁴² The US Immigration and Nationality Act § 241(a)(1)(C).

⁴³ *Zadvydas v. Davis*, 533 U.S. 678 (2001).

supervised release, and alternative to detention programs such as the Intensive Supervision Assistance Program (ISAP).

The Intensive Supervision Assistance Program and the Family Case Management Program

ICE introduced the Alternative to Detention Program (ATDP) in 2004, from which developed the Intensive Supervision Appearance Program (ISAP) in May 2005⁴⁴ and the Family Case Management Program (FCMP) in January 2016. Under the FCMP, ICE contracted with the private company GEO Care to provide case management through subcontracted community-based organizations that provided enrolled families with necessities, such as food, clothing, and medical services;⁴⁵ and referrals to other services, including legal help, education enrollment, and language classes.⁴⁶

The FCMP was successful at ensuring immigrants' continued compliance with the requirements of immigration proceedings. According to FCMP data from the 2018 closeout report, of the 952 families enrolled in the FCMP, 99.4 percent complied with ICE check-ins and 99.3 percent complied with court hearings.⁴⁷ FCMP cost about US\$38 per family per day in 2017.⁴⁸ In contrast, family detention costs around \$319 per family per day.⁴⁹ Despite its success, the Trump administration prematurely ended the FCMP in 2017.⁵⁰ ISAP, however, continued through the Trump administration and is still used at time of writing.

ISAP is currently in its fourth iteration, known as ISAP IV. BI Incorporated, a subsidiary of GEO Group, supervises ISAP. Enrollees in the program are assigned both an ISAP and an

⁴⁴ US Immigration and Customs Enforcement, Memorandum from Wesley J. Lee, Acting Director, to Field Office Directors: Eligibility Criteria for Enrollment into the Intensive Supervisions Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program, May 11, 2005, https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf (accessed July 22, 2021).

⁴⁵ Women's Refugee Commission, "The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration," June 2019, <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf> (accessed July 23, 2021), pp. 4-5.

⁴⁶ *Ibid.*, p. 7.

⁴⁷ *Ibid.*, p. 6.

⁴⁸ *Ibid.*

⁴⁹ Jaden Urbi, "This Is How Much It Costs to Detain an Immigrant in the US," CNBC, June 20, 2019, <https://www.cnbc.com/2018/06/20/cost-us-immigrant-detention-trump-zero-tolerance-tents-cages.html> (accessed August 25, 2021).

⁵⁰ Women's Refugee Commission, "The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration," June 2019, <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/The-Family-Case-Management-Program.pdf> (accessed July 23, 2021), p. 1.

ICE officer.⁵¹ In addition to in-person or telephonic check-ins with both officers,⁵² individuals are sometimes subjected to unannounced home visits.⁵³ As of September 16, 2021, 124,999 participants were enrolled in ISAP,⁵⁴ a 370 percent increase over the number of participants in FY2015 (26,625).⁵⁵ Individuals enrolled in ISAP may be tracked through GPS (ankle) monitoring, via SmartLINK, which was introduced under ISAP III, or through voice reporting. Those in GPS ankle monitoring and SmartLINK may also be required to attend additional check-ins over the phone or in person. In 2019 SmartLINK was the least used form of reporting, with only 12 percent of enrollees reporting via SmartLINK.⁵⁶ As of September 2021, however, use of the SmartLINK software has increased, with a majority of enrollees using the smartphone application.⁵⁷

In March 2020, GEO Group announced that BI Incorporated signed a five-year contract with ICE for the “continued provision of case management and supervision services” under ISAP.⁵⁸ The contract was expected to cover 90,000 to 100,000 participants daily – a predicted number based on the average daily participants in the previous year. However, as of September 2021, the number of enrollees exceeds those estimates.⁵⁹ Furthermore, the House Appropriations Committee earmarked \$475 million to “continue expanding Alternatives to Detention” for fiscal year 2022.⁶⁰ This funding will enable ICE to monitor

⁵¹ Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021.

⁵² *Ibid.*

⁵³ Just Futures Law and Mijente, “ICE Digital Prisons – The Expansion of Mass Surveillance as ICE’s Alternative to Detention,” May 2021, <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j/full-view.html> (accessed July 20, 2021).

⁵⁴ Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Immigration Detention Quick Facts,” data through September 16, 2021, <https://trac.syr.edu/immigration/quickfacts/> (accessed October 15, 2021).

⁵⁵ Congressional Research Service, “Immigration: Alternatives to Detention (ATD) Programs,” July 8, 2019, <https://fas.org/sgp/crs/homesecc/R45804.pdf>, (accessed September 22, 2021), p. 7.

⁵⁶ *Ibid.*, p. 8.

⁵⁷ Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Immigration Detention Quick Facts,” data through September 16, 2021, <https://trac.syr.edu/immigration/quickfacts/> (accessed October 15, 2021).

⁵⁸ “The GEO Group Announced Five-Year Contract With U.S. Immigration and Customs Enforcement for Intensive Supervision and Appearance Program (ISAP),” *BusinessWire*, March 24, 2020, <https://www.businesswire.com/news/home/20200324005145/en/The-GEO-Group-Announces-Five-Year-Contract-With-U.S.-Immigration-and-Customs-Enforcement-for-Intensive-Supervision-and-Appearance-Program-ISAP> (accessed June 8, 2021).

⁵⁹ Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Immigration Detention Quick Facts,” data through September 16, 2021, <https://trac.syr.edu/immigration/quickfacts/> (accessed October 15, 2021).

⁶⁰ The committee earmarked \$34.5 million above the requested amount. See “Appropriations Committee Releases Fiscal Year 2022 Homeland Security Funding Bill,” House Committee on Appropriations press release, June 29, 2021, <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-homeland-security-funding> (accessed July 9, 2021).

around 140,000 individuals through its ATD program,⁶¹ but the bill earmarks only \$100 million, for a “non-custodial, community-based shelter grant program for immigration processing, ATD enrollment, and provision of case management services for migrants,” to be administered by the Federal Emergency Management Agency (FEMA).⁶²

ISAP, like the FCMP, has been effective in ensuring individuals attend court hearings. In evaluating the “full service” option of ISAP, which involves a combination of case management and other supervision tools, such as unannounced home visits,⁶³ the Government Accountability Office (GAO) found in 2014 that 99 percent of participants appeared for court hearings, while 95 percent appeared for final removal hearings.⁶⁴ However, ISAP uses devices, such as ankle monitors, that are overly intrusive and neither necessary nor proportionate to serve the legitimate purpose of ensuring that individuals show up for their immigration proceedings.

A 10-year study conducted between 2008 and 2018 demonstrated that 83 percent of non-detained people with “completed or pending removal cases... attended all of their court hearings.”⁶⁵ This number increased to 96 percent for people represented by counsel.⁶⁶ These statistics demonstrate that people are vastly more likely to comply with the government’s requirements than to evade them, even when faced with the likely possibility of deportation.

Alternatives to detention, such as the FCMP and voice reporting, can help to end arbitrary detention but should only be used when truly necessary and proportionate to a legitimate aim. Furthermore, they should not become an additional means to control and surveil people who should be released.

⁶¹ Department of Homeland Security, “Budget-in-Brief Fiscal Year 2022,” https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf (accessed July 20, 2021), p. 3.

⁶² “Appropriations Committee Releases Fiscal Year 2022 Homeland Security Funding Bill,” House Committee on Appropriations press release, June 29, 2021, <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2022-homeland-security-funding> (accessed July 9, 2021).

⁶³ Congressional Research Service, “Immigration: Alternatives to Detention (ATD) Programs,” July 8, 2019, <https://sgp.fas.org/crs/homsec/R45804.pdf> (accessed October 15, 2021), p. 8.

⁶⁴ *Ibid.*

⁶⁵ American Immigration Council, “Measuring *In Absentia* Removal in Immigration Court,” January 2021, https://www.americanimmigrationcouncil.org/sites/default/files/research/measuring_in_absentia_in_immigration_court.pdf (accessed July 23, 2021), p. 4.

⁶⁶ *Ibid.*

Ankle Monitors

Developed in the 1960s and introduced more broadly in the 1980s, ankle monitors were originally used solely within the criminal legal system in the United States. In line with global trends that appear to criminalize migration⁶⁷ and apply tools from the criminal legal system to migrants, ICE introduced the use of ankle monitors to track people in immigration proceedings in 2002.⁶⁸ Since then, ICE’s use of ankle monitors has expanded.

Background on Ankle Monitors

The decision to issue an ankle monitor is discretionary, but no information is publicly available regarding the factors immigration officials consider when making this decision.⁶⁹ In many cases, there is no basis for detaining individuals in immigration proceedings; however, authorities often require them to wear an ankle monitor upon release.⁷⁰ There is recourse to have ankle monitors removed under certain circumstances, but the decision to remove them is as opaque as the decision to put them on.⁷¹ Some ICE officers have told lawyers they are more amenable to removing ankle monitors after the individual has worn one for at least a year – a prolonged timeframe for someone who is experiencing pain, discrimination, and constant surveillance.⁷² Others, however, have said that the amount of time someone has been wearing an ankle monitor has no bearing on whether it will be

⁶⁷ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 5, Migrants’ Rights to Liberty, Freedom from Arbitrary Detention and Their Connection with Other Human Rights, U.N. Doc. CMW/C/GC/5 (2021), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=7&DocTypeID=11 (accessed October 21, 2021), paras. 1 and 4.

⁶⁸ Colleen Long, Frank Bajak, Will Weissert, “ICE Issuing More Immigrant Ankle Monitors. But Do They Work?,” *AP News*, August 25, 2018, <https://www.spokesman.com/stories/2018/aug/25/ice-issuing-more-immigrant-ankle-monitors-but-do-t/> (accessed October 21, 2021).

⁶⁹ Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021, and telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, Oakland, May 7, 2021.

⁷⁰ Rutgers School of Law – Newark Immigrant Rights Clinic, “Freed but not Free: A Report Examining the Current Use of Alternatives to Immigration Detention,” July 2012, <https://www.afsc.org/sites/default/files/documents/Freed-but-not-Free.pdf> (accessed July 22, 2021), pp. 15-16; Julie Pittman, “Released into Shackles: The Rise of Immigrant E-Carceration,” *California Law Review*, vol. 108 (2020), https://29qish1lqx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/6-Pittman_Released-Into-Shackles.pdf (accessed June 8, 2021), p. 605.

⁷¹ Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021, and telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, Oakland, May 7, 2021.

⁷² Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021.

removed.⁷³ ICE officers can also delay removal for any type of violation, including failing to show up in person or over the phone for an ICE check in.⁷⁴ Leniency might vary on a case-by-case basis.⁷⁵

ICE is not the only entity that issues ankle monitors to migrants. Libre by Nexus (Libre), a company that extends credit to migrants who cannot afford to pay bonds, required migrants to wear ankle monitors in exchange for their services.⁷⁶ While Libre operates independently from the US immigration system, according to their website, the company uses GPS technology.⁷⁷ It is unclear how many migrants have been placed on ankle monitors by Libre.

Releases from Detention During Covid-19

In response to the Covid-19 pandemic, individuals were released from detention to prevent overcrowding and reduce the risk of spreading the virus. On April 4, 2020, ICE issued an updated Docket Review Guidance, which enabled custody reassessment – at the discretion of immigration officials and detention centers – for certain categories of detained migrants, including people over 60 years old, those with chronic illnesses, and

⁷³ Human Rights Watch telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, Oakland, May 7, 2021.

⁷⁴ Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles April 30, 2021.

⁷⁵ One attorney described how she had been unsuccessful in removing ankle monitors from several of her clients who had been wearing them for over two years during the Trump administration. In early 2021 she experienced success in working with ICE officers to have ankle monitors removed from three of her clients. Human Rights Watch telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, Oakland, May 7, 2021.

⁷⁶ Libre by Nexus, “Contract for Services,” 2017, <https://librebynexus.com/wp-content/uploads/2019/05/Updated-NEW-CLIENT-CONTRACT-ENGLISH.pdf> (accessed October 18, 2021). In February 2021, the Consumer Financial Protection Bureau, along with the attorneys general of Virginia, Massachusetts, and New York, filed a complaint in the US District Court for the Western District of Virginia alleging that the company used “deceptive and abusive acts or practices in connection with Libre’s offer of credit to consumers for their immigration bonds.” See *Consumer Financial Protection Bureau v. Nexus Services, Inc.*, Complaint, Case No.: 5:21-cv-00016, Filed February 22, 2021, https://files.consumerfinance.gov/f/documents/cfpb_nexus-services-inc-et-al_complaint_2021-02.pdf (accessed October 21, 2021), p. 11. In response to the complaint, Libre filed a motion to dismiss, asserting that in three separate instances in which Libre program participants brought allegations of consumer fraud, arbitrators concluded that no fraud took place. Thus, Libre argues, the CFPB and Attorneys General lack “the specificity required to allege claims that sound in fraud.” See *Consumer Financial Protection Bureau v. Nexus Services, Inc.*, Defendants’ Motion to Dismiss Complaint for Lack of Subject-Matter Jurisdiction, Case No. 5:21-cv-00016, Filed March 1, 2021, <https://fingfx.thomsonreuters.com/gfx/legaldocs/oakveblbep/WEEKAHEADS%206-21%20nexus.pdf>, pp. 2-6.

⁷⁷ Libre by Nexus, “Common Questions,” undated, <https://librebynexus.com/common-questions/> (accessed October 18, 2021).

those who were pregnant.⁷⁸ Courts also ordered some releases. Of those released, many were required to wear an ankle monitor.

Social distancing is almost impossible in detention and some facilities lacked basic hygiene products, heightening the risk of contagion. Some formerly detained people told Human Rights Watch they had to go without masks, gloves, soap, or hand sanitizer at the beginning of the pandemic.⁷⁹ Jean, a 37-year-old man from Cameroon, said he sometimes had to beg for cleaning materials. He recounted, “Sometimes when you ask [for cleaning products], the guards don’t look at you. They wouldn’t respond. The guard on duty said, ‘That’s not my job.’”⁸⁰ Jean also said he was given two face masks to last him an entire month.

Three people told Human Rights Watch they understood they were released from detention because of Covid-19; however, they were not released until the Fall of 2020, seven or eight months after the beginning of the global pandemic. Despite the instability presented by the pandemic, interviewees told Human Rights Watch they were given little guidance or assistance upon release from detention. Jean said that upon his release from detention in November 2020 immigration officials “put the ankle monitor [on] and just opened the door... There was no assistance or anything.” Jean had someone he could call to pick him up, but that is not always the case.

José, a 39-year-old man from Mexico, who was released from detention on an ankle monitor in October 2020 after spending about eight months in immigration detention, said that when he tried to ask questions about the conditions of his release an officer dismissed him. “I started asking questions and the officer said everything is in the paperwork... But it’s wrong – everything on the paperwork is wrong,” said José. “The officer told me to shut up and said, ‘Do you want to go back into the cell?’”⁸¹ José said he has difficulty contacting his ICE officer and his parole officer.

⁷⁸ Guidance from Peter B. Berg, Assistant Director, Field Operations, to Field Office Directors and Deputy Field Office Directors on Covid-19 Detained Docket Review, April 4, 2020, <https://www.ice.gov/doclib/coronavirus/attk.pdf> (accessed October 20, 2021).

⁷⁹ Human Rights Watch telephone interviews with Abdul, Texas, March 8, 2021, and Jean, New Jersey, February 10, 2021.

⁸⁰ Human Rights Watch telephone interview with Jean, New Jersey, February 10, 2021.

⁸¹ Human Rights Watch telephone interview with José, Texas, March 9, 2021.

Abdul, a 43-year-old man from Sierra Leone who was released in October 2020 after spending almost three years in detention, said he was fitted with an ankle monitor prior to his release. However, his ICE officer did not explain anything to him about the ankle monitor after he was released. He was given a set of written instructions at the detention center, but no additional information.⁸²

When people are released from detention, they are often required to comply with certain conditions, such as regularly reporting to ICE officers in person or telephonically and staying within a certain geographical boundary. When there is confusion over these conditions of release, as was the case for some of the individuals Human Rights Watch interviewed, it can lead to people unintentionally violating them, which in turn can result in re-detention.

Physical Pain and Discomfort

Many people interviewed by Human Rights Watch said the ankle monitors they wore were physically uncomfortable and sometimes even painful. The devices are bulky, heavy and strapped to the wearer's ankle in a way that sometimes causes the device to rest directly against the ankle bone. People told Human Rights Watch they experienced a variety of symptoms from wearing the ankle monitors, including itchiness, swelling, and headaches.⁸³

David, a 38-year-old man from Honduras, who had been wearing an ankle monitor for about eight months at the time Human Rights Watch spoke with him, said the ankle monitor made his foot swell. "I have to be careful when I turn it a little bit around. It's very uncomfortable to do that... It's really, really bothersome."⁸⁴

"I cannot move my foot properly" when wearing the ankle monitor, said Luisa, a 27-year-old woman from Honduras who had been wearing the ankle monitor for almost three years at the time Human Rights Watch spoke with her. She said that it causes a burning sensation and that she had strong headaches since wearing it.⁸⁵

⁸² Human Rights Watch telephone interview with Abdul, Texas, March 8, 2021.

⁸³ Human Rights Watch telephone interviews with Abdul, Texas, March 8, 2021, Ana, California, March 23, 2021, David, New Jersey, March 24, 2021, and Hina, Texas, March 13, 2021.

⁸⁴ Human Rights Watch telephone interview with David, New Jersey, March 24, 2021.

⁸⁵ Human Rights Watch telephone interview with Luisa, California, April 12, 2021.



An individual who was released from detention and reunited with his family wears an ankle monitor as he waits at a Catholic Charities facility in San Antonio, Texas. © 2018 AP Photo/Eric Gay

Hina, a 40-year-old woman from Pakistan, who was required to wear an ankle monitor for about eight months before it was removed in 2018, recounted the experience. “It was very hard and every time I was checking in [at the office] I was telling the officer that my skin is very sensitive... It was hitting on the side bone of the foot – my ankle bone – so it was hurting me...whenever I’m walking.” Hina said the ankle monitor also caused an uncomfortable rash.⁸⁶

Some told Human Rights Watch that the discomfort of the ankle monitor made it difficult to sleep. “Every day, every night it squeezes my feet. It is difficult for me to lie down sideways. I lie down on my back, but I cannot lie down sideways. It hurts me every day,” said Abdul, the man from Sierra Leone. “Right now as I’m talking to you, I have my mark. This ankle bracelet gives me a mark down on my feet. When I’m sleeping at night, it squeezes my feet.”⁸⁷

⁸⁶ Human Rights Watch telephone interview with Hina, Texas, March 13, 2021.

⁸⁷ Human Rights Watch telephone interview with Abdul, Texas, March 8, 2021.

As Abdul explained, ankle monitors can cause marks or even discoloration of the skin.⁸⁸ Jean, who had been wearing the ankle monitor for about three months at the time Human Rights Watch spoke to him, said, “The area where [the ankle monitor] is...a completely [different] color of my skin because I’m not able to wash it properly or put lotion around it properly. The line is completely a dark color...darker than my skin. The area is not in pain, but it’s sometimes itchy.”⁸⁹

Individuals are forced to wear the ankle monitors at all times of day and night, including when they shower and sleep. There is no opportunity for relief during the months or years that an individual wears the ankle monitor. In addition to the ailments described above, ankle monitors have been said to cause cramps, bleeding, numbness around the leg and foot, hair loss, and chest pain.⁹⁰

Stigma and Psychological Effects

In addition to physical discomfort, ankle monitors can cause psychological pain. Almost all the individuals Human Rights Watch interviewed said they experienced psychological distress caused by wearing an ankle monitor, including many who said they felt stigmatized by wearing them. Some said the ankle monitors are difficult to conceal, even when they wear long pants. They also said they avoided going out in public for fear of being stigmatized.

The public sometimes associates ankle monitors with criminal charges. While ankle monitors have historically been used to track people who have committed crimes, the immigration system has often used them to track people who have neither been accused nor convicted of any criminal offense.

Abdul, who left Sierra Leone because of death threats, sought asylum at the US border after making the strenuous journey across South and Central America. He spent three years in detention before being released with an ankle monitor. Abdul does not leave his

⁸⁸ Human Rights Watch telephone interviews with Jean, New Jersey, February 10, 2021, and Abdul, Texas, March 8, 2021.

⁸⁹ Human Rights Watch telephone interview with Jean, New Jersey, February 10, 2021.

⁹⁰ National Immigration Forum, “Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention,” February 22, 2019, <https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/> (accessed June 7, 2021).

home very often, in part because he is embarrassed about the device strapped to his ankle:

If I'm going to the store, I feel ashamed because some people...[think] that you are a criminal.... It's embarrassing. One time I went to the supermarket to buy some food. When I entered [the store] people say look at that guy, he has a GPS [ankle monitor]... I don't go to the supermarket [anymore]. If I see somebody going to the supermarket...I give them the money and tell them to buy [things] for me.⁹¹

Other people Human Rights Watch interviewed described similar sentiments. José told Human Rights Watch that people choose to distance themselves from him after they discover that he wears an ankle monitor. "It's the same bracelet they put on people who are criminals," he said. "Some [people] don't know that I'm in this country illegally – so they assume I'm a bad person."⁹² José said he would prefer if the ankle monitor was made to look like a watch so that it would be less attention-grabbing. In its current form, he said, it is difficult to hide because it is "humongous."⁹³

Although he said he likes to be outside and go fishing, José no longer goes out much. He is isolated. "Whoever finds out that I'm wearing [the ankle monitor], they don't get close to me anymore." José's quality of life has been severely affected. "I dream of the day somebody will cut it."⁹⁴

Ana, a transgender woman from Honduras, said she feels that people in her local community associate the ankle bracelet with criminal charges. "The community doesn't look at me with good eyes," she said. "They look at me as if I'm a criminal, as me being under the police's surveillance."⁹⁵

Even those who come to terms with wearing an ankle monitor are constantly aware of how it might affect those around them. Gabriel, who has been wearing an ankle monitor for

⁹¹ Human Rights Watch telephone interview with Abdul, Texas, March 8, 2021.

⁹² Human Rights Watch telephone interview with José, Texas, March 9, 2021.

⁹³ Human Rights Watch telephone interview with José, Texas, March 9, 2021.

⁹⁴ Ibid.

⁹⁵ Human Rights Watch telephone interview with Ana, Maryland, March 23, 2021.

three years, said, “It makes other people uncomfortable, which makes me uncomfortable.”⁹⁶

Interference with Work

Many of the individuals with whom Human Rights Watch spoke said that wearing an ankle monitor affected their ability to work. Certain categories of migrants, including asylum seekers awaiting a decision on their asylum applications, can obtain work authorization upon release from detention.⁹⁷ However, asylum seekers are required to wait 365 days from the date they apply for asylum until submitting an application for an Employment Authorization Document (EAD).

Penalizing migrants who work illegally raises a host of issues. Chapter III of the Convention Relating to the Status of Refugees (Refugee Convention) recognizes the right of refugees to gainful employment.⁹⁸ Article 17 calls on States to recognize the “right to engage in wage-earning employment,” for “refugees lawfully staying in their territory.”⁹⁹ According to the United Nations High Commissioner for Refugees (UNHCR), the term “stay” means “both permanent and temporary residence.” On the other hand, “lawful” “should be determined by the circumstances, ‘including the fact that the stay in question is known and not prohibited.’”¹⁰⁰ By this logic, an individual should be considered as “lawfully staying” within the United States upon submission of the initial asylum application.¹⁰¹ Forcing asylum seekers to wait 365 days to apply for work authorization therefore not only places migrants in extremely difficult circumstances but is also inconsistent with the Refugee Convention.

The right to work is also recognized in the Universal Declaration of Human Rights, which applies to all individuals regardless of migration status. Article 23 recognizes the right of

⁹⁶ Human Rights Watch telephone interview with Gabriel, California, March 19, 2021.

⁹⁷ Department of Homeland Security, US Citizenship and Immigration Services, “Instructions for Application for Employment Authorization,” August 25, 2020, <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf> (accessed June 7, 2021).

⁹⁸ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, <https://www.unhcr.org/en-us/3b66c2aa10> (accessed October 21, 2021).

⁹⁹ *Ibid.*, art. 17.

¹⁰⁰ Human Rights Watch, *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, November 2013, https://www.hrw.org/sites/default/files/reports/us1113_asylum_forUPLoad.pdf, p. 6.

¹⁰¹ *Ibid.*

every person “to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”¹⁰² It is also protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the United States has signed but not ratified. The Committee that oversees compliance with the ICESCR has said that article 6, which recognizes the right to work, applies “to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”¹⁰³

Some people said they were denied job opportunities despite possessing a work permit, because their employers did not want someone working for them who was wearing an ankle monitor. Luisa, who has a work permit, told Human Rights Watch she lost a job because of her ankle monitor:

One time I found a job and I went the first day to work and that day a woman from human resources saw the ankle monitor and afterward she called me to her office and she told me I couldn’t work there anymore and she said it was because of the ankle monitor – that it was a sign of something bad.¹⁰⁴

Ankle monitors also need to be charged at least twice per day and must remain on the wearer while recharging.¹⁰⁵ Individuals are forced to carry around a bulky back-up battery to avoid triggering the alarm on the ankle monitor. Luisa told Human Rights Watch that a security guard at the company she works for noticed the battery in her backpack one day:

¹⁰² Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed October 21, 2021), art. 23.

¹⁰³ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed October 21, 2021); UN Committee on Economic, Social, and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), <https://www.refworld.org/docid/4a60961f2.html> (accessed October 21, 2021), para. 30.

¹⁰⁴ Human Rights Watch telephone interview with Luisa, California, April 12, 2021.

¹⁰⁵ National Immigration Forum, “Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention,” February 22, 2019, <https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/> (accessed June 7, 2021).

That day the security guard saw that I had the battery in my backpack and she stopped me and told me that I couldn't work at [the company] because I was wearing an ankle monitor. Then she called her supervisor and the supervisor said that I could work there but I just needed to cover the ankle monitor for others not to see it.¹⁰⁶

Luisa was able to stay at her job only if she kept her ankle monitor hidden, reinforcing the stigma and shame associated with her circumstances. Fortunately, Luisa had a work permit, but some people are not so lucky. When migrants are unable to work legally, they can experience food insecurity, emotional distress, and vulnerability to exploitation.¹⁰⁷ Without work authorization, employers can and often do capitalize on the unequal employer-employee relationship by withholding wages and neglecting occupational health.¹⁰⁸

After she was released from detention, Hina waited six months to receive a work permit.¹⁰⁹ During that time, she was responsible for feeding herself and her three children without being able to work legally. She was also rejected by an employer who said they were willing to hire her without first obtaining a work permit, but ultimately did not do so because of the ankle monitor:

Because of the ankle monitor, they don't want to give me a job. They said, "We cannot do this. This is our business reputation." They think I'm a criminal, but I tell them "No, I'm not a criminal, I have this on because I'm an immigrant." It was very embarrassing how they were asking questions. I struggled a lot during that time because I was not having money and I have to feed my kids.¹¹⁰

¹⁰⁶ Human Rights Watch telephone interview with Luisa, California, April 12, 2021.

¹⁰⁷ Human Rights Watch, *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, November 2013, https://www.hrw.org/sites/default/files/reports/us1113_asylum_forUPLoad.pdf.

¹⁰⁸ *Ibid.*, pp. 33-34.

¹⁰⁹ Human Rights Watch telephone interview with Hina, Texas, March 13, 2021.

¹¹⁰ *Ibid.*

Limitations on Movement

Many migrants also face restrictions on their freedom of movement as part of their conditions of release. Any restrictions on migrants' movement should be both necessary and proportionate to a legitimate purpose under article 31(2) of the 1951 Convention Relating to the Status of Refugees (Refugee Convention).¹¹¹ If people who are forced to wear ankle monitors go beyond a pre-determined radius (often barring them from leaving the state in which they live), an alarm is triggered and their ISAP officer is notified. However, some people may be able to ask their ISAP officer for permission to travel.¹¹² These restrictions can cause problems for individuals who need to cross state lines for work, to visit family or even to comply with their reporting requirements. Confining people to a narrow geographical boundary is an added hardship that appears largely arbitrary, as it is neither necessary nor proportionate to serve the legitimate purpose of ensuring they attend their immigration proceedings. According to a recent study, 96 percent of individuals represented by counsel appeared for their court proceedings, indicating that legal assistance may be sufficient to avoid the risk of absconding.¹¹³

José must report to his ICE officer in a different state from where he resides. But he said that upon release from detention immigration officials made him sign an agreement in which he was warned that if he left the state where he lives, he risked being picked up by immigration. The alarm on his ankle monitor is triggered when he crosses state lines:

My [ICE officer] lives in Oklahoma – the office where I'm supposed to report is in Oklahoma. I live in Texas. They put you against the wall. If you go, you're bad, because you're getting out of the state. If you don't go, you're not agreeing with what you signed – the contract. Either way, you are bad. If you go to your appointment, you are violating your agreement.¹¹⁴

¹¹¹ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, <https://www.unhcr.org/en-us/3b66c2aa10> (accessed October 21, 2021), art. 31(2); Marjoleine Zieck, "Refugees and the Right to Freedom of Movement: From Flight to Return," *Michigan Journal of International Law*, vol. 39 (2018), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1926&context=mjil> (accessed August 6, 2021), p. 75.

¹¹² Human Rights Watch telephone interview with Gabriel, California, March 19, 2021.

¹¹³ American Immigration Council, "Measuring *In Absentia* Removal in Immigration Court," January 2021, https://www.americanimmigrationcouncil.org/sites/default/files/research/measuring_in_absentia_in_immigration_court.pdf (accessed July 23, 2021), p. 4.

¹¹⁴ Human Rights Watch telephone interviews with Jose, Texas, March 9, 2021 and July 22, 2021.

Others told Human Rights Watch that the movement restrictions interfered with their ability to work. Gabriel said, “There is a radius of how far you can travel. When I was working, if I had to go to a conference or a meeting, I had to ask permission to travel.”¹¹⁵ Sometimes, even asking permission to travel is not enough. One lawyer described a situation in which her client had received permission to travel out of state, but later received a call from her client’s ICE officer reporting a violation.¹¹⁶ Individuals enrolled in ISAP are assigned both an ISAP officer and an ICE officer, so notifying the wrong officer can lead to unintended violations.¹¹⁷

In addition to interference with work, limitations on movement have other consequences. “I have family in New York and in Chicago. I would like to visit them, but I can’t because of the ankle monitor,” said Ana. “If I leave the state, I’m being surveilled... I can be caught at the airport and I could lose my documentation.”¹¹⁸

In addition to GPS tracking, individuals wearing ankle monitors typically must check in either at ICE offices in person or over the phone. In response to Covid-19, reporting can sometimes be done over the phone, but before Covid-19 protocols were implemented some people told Human Rights Watch that they had to travel hours away from where they lived to report to their ICE officers.¹¹⁹ Sometimes, these check-ins are planned ahead of time. However, some individuals described being called without notice. David said he will occasionally get unplanned calls from his officer asking him to show up for a check-in:

The difficult part of it is...sometimes when they call you and they tell you that you have an appointment the same day. Sometimes they don’t tell you in advance... It’s hard because if I don’t have money to pay for my ticket or transportation, I just have to run and do everything I can to get there, because they will take it the wrong way if I don’t show up.¹²⁰

¹¹⁵ Human Rights Watch telephone interview with Gabriel, California, March 19, 2021.

¹¹⁶ Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021.

¹¹⁷ Ibid.

¹¹⁸ Human Rights Watch telephone interview with Ana, Maryland, March 23, 2021.

¹¹⁹ Human Rights Watch telephone interview with Abdul, Texas, March 8, 2021;

¹²⁰ Human Rights Watch telephone interview with David, New Jersey, March 24, 2021.

Individuals are under constant pressure to comply with all conditions of release. This includes not only ICE check-ins, phone calls at all hours of the day,¹²¹ and staying within state lines, but also the requirement that they ensure their ankle monitor is always charged. If they fail to comply with any of these requirements, they can get what is colloquially referred to as a “strike.”¹²² If an individual receives too many strikes, they are at risk of being re-detained and it becomes more difficult to have the ankle monitor eventually removed. Even if a person attempts to call back after a missed phone call from an ICE or ISAP officer, it is possible that they will not answer, resulting in a strike.¹²³

Surveillance

Some people interviewed by Human Rights Watch raised privacy concerns. When Luisa speaks to the ISAP officer on the telephone, she is required to answer a series of questions, which she said are often intrusive. “They ask me if I’m home, who is in the home with me.”¹²⁴

Others told Human Rights Watch they faced challenges at work and were even denied employment because of coworkers’ and employers’ fear the ankle monitor would lead ICE officials to the workplace. Ana said, “There’s people that had told me that because of me, migration [officers] could come to our workplace.”¹²⁵

Hina described a similar experience:

Most of the businesses disagreed to give me a job because of the ankle monitor, not because I was without documents. They said, “They are watching you wherever you are. They can find us too because you’re working here without documents.” They were scared.¹²⁶

¹²¹ Ibid.

¹²² Human Rights Watch Zoom interview with Hannah Rogers, Staff Attorney, Esperanza Immigrant Rights Project, Los Angeles, April 30, 2021.

¹²³ Ibid.

¹²⁴ Human Rights Watch telephone interview with Luisa, California, April 12, 2021.

¹²⁵ Human Rights Watch telephone interview with Ana, Maryland, March 23, 2021.

¹²⁶ Human Rights Watch telephone interview with Hina, Texas, March 13, 2021.

This fear is not unfounded. In August 2019, ICE coordinated a massive raid across seven food-processing plants in Mississippi after using ankle monitors to track the GPS coordinates of individuals going to and from their places of work.¹²⁷ Around 680 people were arrested after over 600 ICE and Homeland Security Investigations' (HSI) officers conducted the raids.¹²⁸ The search warrant applications reveal extensive and precise surveillance of migrants' whereabouts. Court affidavits show that ICE agents were able to track the exact time, down to the minute, that migrants arrived and left the food processing plants:

Queries of the historical GPS coordinates associated with [the individual's] electronic monitoring ankle bracelet revealed numerous daily captured coordinates located within the Koch Foods Processing Plant... Historical GPS coordinates also revealed [the individual] travels from her current address... to the Koch Foods Processing Plant multiple times a week... [the individual] remains on the Koch Foods Processing Plant property for approximately 8 to 10 hours. For example, on July 25, 2019, at approximately 10:04 pm [the individual] arrived at the Koch Foods Processing Plant. [The individual] remained at the Koch Foods Processing Plant until approximately 8:04 am on July 26, 2019, when she departed and returned to her residence.¹²⁹

¹²⁷ Other tactics were used in establishing probable cause in the search warrant application, for example interviews with individuals after arrest, during which it was indicated that they worked at the food processing plants. See *In the Matter of the Search of Koch Foods of Mississippi*, LLC, Affidavit in Support of an Application for a Search Warrant, Case No. 3:19mj205LRA, Filed August 5, 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/kochfoods-319mj.pdf>; US Immigration and Customs Enforcement, "ICE executes federal search warrants at multiple Mississippi locations," August 7, 2019, <https://www.ice.gov/news/releases/ice-executes-federal-search-warrants-multiple-mississippi-locations> (accessed June 7, 2021).

¹²⁸ US Immigration and Customs Enforcement, "ICE executes federal search warrants at multiple Mississippi locations," August 7, 2019, <https://www.ice.gov/news/releases/ice-executes-federal-search-warrants-multiple-mississippi-locations> (accessed June 7, 2021); Richard Gonzales, "Mississippi Immigration Raids Lead to Arrests of Hundreds of Workers," *NPR*, August 7, 2019, <https://www.npr.org/2019/08/07/749243985/mississippi-immigration-raids-net-hundreds-of-workers> (accessed June 7, 2021).

¹²⁹ *In the Matter of the Search of Koch Foods of Mississippi*, LLC, Affidavit in Support of an Application for a Search Warrant, Case No. 3:19mj205LRA, Filed August 5, 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/kochfoods-319mj.pdf> (accessed October 21, 2021).



Workers at the Koch Foods plant in Morton, Miss. are handcuffed and escorted onto a bus after over 600 ICE and Homeland Security Investigations officers conducted a raid in search of undocumented workers. © 2019 AP Photo/Rogelio V. Solis, File

With this type of extensive tracking capability, ICE can map not only an individual's whereabouts, but also networks of people who interact with one another. Mapping networks of individuals has been used in the criminal legal system for over a decade,¹³⁰ contributing to high levels of surveillance in communities of color. Extensive surveillance raises issues regarding migrants' fundamental right to privacy – a right protected by article 17 of the International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified. The right to privacy should encompass the protection of data collected

¹³⁰ In 2006, the California Department of Corrections and Rehabilitation (CDCR) began a pilot program that used GPS technology to track the location of alleged gang members. GPS monitoring was used as part of a "gang suppression program," which uses "policing, prosecution and incarceration to influence the behavior of gang members and deter criminal activities." See the National Criminal Justice Technology Research, Test, and Evaluation Center and The Johns Hopkins University Applied Physics Laboratory, "GPS Monitoring Practices in Community Supervision and the Potential Impact of Advanced Analytics," January 2016, <https://www.ojp.gov/pdffiles1/nij/grants/249888.pdf> (accessed August 26, 2021), pp. 10-11 and 19.

during the immigration process, including data collected on those being tracked through advanced technology, such as ankle monitors and smart phone applications.¹³¹

In addition to privacy concerns, the growth of digital surveillance technologies has had discriminatory and harmful consequences. Historically, people of color have been disproportionately surveilled, resulting in numerous human rights abuses.¹³² Today, that trend continues with more advanced technologies, such as those used to predict behavior before it happens. According to a 2020 report by the United Nations Secretary-General, “predictive models use artificial intelligence to forecast whether people with no ties to criminal activities will nonetheless commit crimes in the future,” resulting in “racially discriminatory feedback loops.”¹³³ GPS ankle monitoring systems are highly capable of this type of predictive modeling. Under some circumstances, ankle monitors are able to identify “patterns of activity for individual offenders, including...association/congregation monitoring.”¹³⁴

Advances in technology have led to the creation of the phone application called SmartLINK, which is used by ICE to supervise people released from immigration detention. ICE has drastically increased the use of SmartLINK in the past few years. In 2019, only 12 percent of those enrolled in ISAP used the application. As of September 2021, more than half of ISAP participants are enrolled in SmartLINK.¹³⁵ The application requires users to take photos of themselves and, sometimes, video conference with their ICE or ISAP officers.¹³⁶ The application also keeps track of upcoming appointments such as home

¹³¹ In the criminal legal system, advances in artificial intelligence have been suggested as a means to monitor an individual’s behavior and assess their risk of offending based on a set of algorithms. See “Tapping Into Artificial Intelligence – Advanced Technology to Prevent Crime and Support Reentry,” National Institute of Justice, August 6, 2020, <https://nij.ojp.gov/topics/articles/tapping-artificial-intelligence> (accessed June 8, 2021).

¹³² Alvaro M. Bedoya, “The Color of Surveillance: What an Infamous Abuse of Power Teaches Us About the Modern Spy Era,” January 18, 2016, <https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html> (accessed August 26, 2021).

¹³³ United Nations General Assembly, Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, November 10, 2020, U.N. Doc. A/75/590, <https://undocs.org/A/75/590> (accessed August 26, 2021), para. 53.

¹³⁴ The National Criminal Justice Technology Research, Test, and Evaluation Center and The Johns Hopkins University Applied Physics Laboratory, “GPS Monitoring Practices in Community Supervision and the Potential Impact of Advanced Analytics,” January 2016, <https://www.ojp.gov/pdffiles1/nij/grants/249888.pdf> (accessed August 26, 2021), p. 19.

¹³⁵ Transactional Records Access Clearinghouse (TRAC) Immigration, Syracuse University, “Immigration Detention Quick Facts,” data through September 16, 2021, <https://trac.syr.edu/immigration/quickfacts/> (accessed October 15, 2021).

¹³⁶ Just Futures Law and Mijente, “ICE Digital Prisons – The Expansion of Mass Surveillance as ICE’s Alternative to Detention,” May 2021, <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j/full-view.html> (accessed July 20, 2021).

visits, face to face meetings, and court dates.¹³⁷ SmartLINK uses facial verification technology, which studies show is less accurate for certain racial groups, including racial groups from Africa.¹³⁸

Like ankle monitors, the smartphone application leads to a host of privacy and other human rights concerns. ICE has said very little publicly about how SmartLINK works and how the agency uses it. According to a report released by the Congressional Research Service in 2019, ICE said in communications in 2018 and 2019 that SmartLINK did not “actively monitor the participant’s location through their cell phone as a GPS ankle monitor would.”¹³⁹ According to ICE’s statement at the time, the SmartLINK application only collected location data during the check-in. However, a recent report by Just Futures Law and Mijente states that the application has the capability of collecting real-time location data and that ICE officers and ISAP contractors have access to this feature through an application called TotalAccess.¹⁴⁰ According to BI’s website, TotalAccess also allows for “predictive analysis,” raising concerns about the potential for over-surveillance and abuse, particularly for marginalized groups.¹⁴¹ Human Rights Watch asked ICE and BI for more information about SmartLINK, but as of October 22, 2021 has not received a response.

Of particular concern is SmartLINK’s privacy policy, which states that it “may collect information about your mobile device and internet connection, device’s unique device identifier, IP address, operating system, browser type, mobile network information, and the device’s telephone number.”¹⁴² The privacy policy allows users to opt out of automatic

¹³⁷ Human Rights Watch telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, May 14, 2021; Just Futures Law and Mijente, “ICE Digital Prisons – The Expansion of Mass Surveillance as ICE’s Alternative to Detention,” May 2021, <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j/full-view.html> (accessed July 20, 2021).

¹³⁸ Patrick Grother, et al., “Face Recognition Vendor Test (FRVT), Part 3: Demographic Effects,” National Institute of Standard and Technology, US Department of Commerce, December, 2019, <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf> (accessed July 16, 2021), pp. 53-60.

¹³⁹ Congressional Research Service, “Immigration: Alternatives to Detention (ATD) Programs,” July 8, 2019, <https://sgp.fas.org/crs/homesec/R45804.pdf> (accessed September 22, 2021), p. 8.

¹⁴⁰ Just Futures Law and Mijente, “ICE Digital Prisons – The Expansion of Mass Surveillance as ICE’s Alternative to Detention,” May 2021, <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j/full-view.html> (accessed July 20, 2021).

¹⁴¹ BI TotalAccess, “Software,” undated, <https://bi.com/software/> (accessed August 26, 2021).

¹⁴² BI SmartLINK, “Privacy Policy,” March 13, 2017, <https://bi.com/products-and-services/bi-smartlink-privacy-policy> (accessed June 8, 2021); Just Futures Law and Mijente, “ICE Digital Prisons – The Expansion of Mass Surveillance as ICE’s

data collection of this kind, but requires that individuals contact their Community Supervision officer before they download and use the application. This means that users would need to be aware of and have read the privacy policy prior to enrollment in the program.¹⁴³ The policy also indicates that this information may be shared with third parties. Furthermore, it has been reported that some individuals are required to enter the contact details of five close friends or family members in the United States upon downloading the application.¹⁴⁴

In addition to data privacy concerns, enrollees have also said that the smart phone application is not user friendly. One lawyer said her client was unable to effectively use the application because it would not accept any of the photos she submitted for verification. Because of this, her client had to contact both her ICE officer and the application administrator before she was transferred to the voice reporting system. Her client now receives a phone call from her officer, in addition to an automated phone call, once per week.¹⁴⁵

Alternative to Detention,” May 2021, <https://www.flipsnack.com/JustFutures/ice-digital-prisons-1u8w3fnd1j/full-view.html> (accessed July 20, 2021).

¹⁴³ BI SmartLINK, “Privacy Policy,” March 13, 2017, <https://bi.com/products-and-services/bi-smartlink-privacy-policy> (accessed June 8, 2021).

¹⁴⁴ Tommy Walters, “Critics Decry Surveillance App that Tracks Undocumented Migrants,” The Gotham Grind, October 22, 2019, <https://medium.com/the-gotham-grind/critics-decry-surveillance-app-that-tracks-undocumented-immigrants-95ec30a2ed2c> (accessed July 13, 2021).

¹⁴⁵ Human Rights Watch telephone interview with Bonita S. Gutierrez, Immigration Attorney, Open Immigration Legal Services, Oakland, May 14, 2021.

Bulgaria and Cyprus

Background

Three pilot programs on alternatives to immigration detention funded by the European Program for Integration and Migration (EPIM) were launched in early 2017 in Bulgaria, Cyprus, and Poland. In the initial two years, the programs served a total of 126 individuals.¹⁴⁶ All three programs continue to operate at the time of publication and serve varying numbers of people. The programs' case-management services range from legal help to intensive, holistic support. Case managers serve as the initial point of contact for healthcare referrals or as mediators between program participants and government officials.¹⁴⁷

A 2018 interim report on the status of the pilot projects defines case management as a social work approach “designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs.”¹⁴⁸ Case management is also intended to enhance clients' understanding about the immigration process.¹⁴⁹ Program participants interviewed by Human Rights Watch said their case managers developed strong relationships with them and were often the initial point of contact when they encountered problems, whether or not those problems were directly related to their legal situation.¹⁵⁰

Although case management programs in Bulgaria and Cyprus have at times been constrained by state laws on migration, they have met with some important successes. After the first two years of the program, an EPIM evaluation found that 86 percent of participants across the three programs (Bulgaria, Cyprus, and Poland) remained engaged

¹⁴⁶ European Programme for Integration and Migration, “Alternatives to Detention: Building a Culture of Cooperation,” July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021).

¹⁴⁷ Human Rights Watch Zoom interview with Corina Drousiotou, Project Coordinator and Senior Legal Advisor, Cyprus Refugee Council, Nicosia, December 15, 2020.

¹⁴⁸ European Programme for Integration and Migration, “Alternatives to Detention: Building a Culture of Cooperation,” July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021), p. 7.

¹⁴⁹ *Ibid.*

¹⁵⁰ Human Rights Watch telephone interview with Farah, Sofia, April 1, 2021.

with immigration procedures.¹⁵¹ Twenty-five percent of individuals reached some form of case resolution, while 60 percent continued to engage with the programs. Only 11.9 percent absconded or disengaged from the program, while 2.4 percent were forcibly removed from the countries.¹⁵² Importantly, 79 percent of program participants had previously been detained, showing that detention was not necessary in most cases to ensure compliance with immigration procedures.¹⁵³ The evaluation also showed that the programs were cost efficient. The case management cost per person per day in the Bulgarian pilot program was €3.34. In Cyprus, the cost per day was €6.90.¹⁵⁴

While these statistics demonstrate the efficacy of the programs, the governments' responses represent another important marker of success, given the instrumental role they play in scaling up these types of programs. In Bulgaria, the pilot program includes workshops to educate migration authorities on alternatives to detention. In Cyprus, the pilot program has also established relationships with government officials. Recently, according to one case manager, the government has started to show growing interest in the program.¹⁵⁵ This is a positive development; the pilot program was made to operate at its inception without state support, even though it was intended to eventually be adopted by the government.¹⁵⁶ As of publication, the Cyprus Refugee Council (CyRC) is in talks with the government regarding formalization of the relationship. Ideally, said one case manager, this would result in a procedure through which CyRC itself would continue screening individuals in detention and formally accept referrals from the state onto the pilot program.¹⁵⁷

Legal Framework in Bulgaria

The Law on Foreigners in the Republic of Bulgaria (LFRB) provides for three alternatives to detention: weekly reporting at the Ministry of the Interior (Moi); a monetary guarantee

¹⁵¹ European Programme for Integration and Migration, "Alternatives to Detention: Building a Culture of Cooperation," July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021) p. 17.

¹⁵² Ibid.

¹⁵³ Ibid., p. 3.

¹⁵⁴ Ibid.

¹⁵⁵ Human Rights Watch Zoom interview with Corina Drousiotou, Project Coordinator and Senior Legal Advisor, Cyprus Refugee Council, Nicosia, December 15, 2020.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

(bond); or surrendering of travel or identity documents.¹⁵⁸ These alternatives can be implemented “when obstacles exist for a foreigner to leave the country immediately or to enter another country,”¹⁵⁹ and are applied after an assessment of the individual’s circumstances and their risk of “hiding or thwarting return.”¹⁶⁰ Although Bulgarian law provides for alternatives, many migrants are either unable to open bank accounts to pay a bond or do not have identity documents to surrender, placing these options out of reach.¹⁶¹

Detention, on the other hand, may only be imposed under two circumstances. The LFRB allows for “compulsory accommodation” if an individual “hinders the execution of the order” or if there is a risk of absconding.¹⁶² These “compulsory accommodations” take the form of “special hostel[s]” or “special home[s]” used “for temporary accommodation of foreigners with the purpose of organizing their compulsory escort to the border of the Republic of Bulgaria or their expulsion.”¹⁶³ “Special” or “compulsory” accommodations, operated by the Migration Directorate of the Ministry of the Interior, are closed detention centers.¹⁶⁴ There are two such facilities in Bulgaria, one referred to as Busmantsi, located in Sofia, and the other called Lyubimets, located in the town of the same name.¹⁶⁵ Busmantsi holds up to 400 people at a time, while Lyubimets holds up to 300 people at a time.¹⁶⁶

¹⁵⁸ Republic of Bulgaria, “Foreigners in the Republic of Bulgaria Act,” April 2016, <http://www.bulgarian-citizenship.com/wp-content/uploads/2017/12/FOREIGNERS-IN-THE-REPUBLIC-OF-BULGARIA-ACT.pdf> (accessed October 21, 2021), art. 44, para. 5; European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 2.

¹⁵⁹ Foreigners in the Republic of Bulgaria Act, art. 44, para. 5.

¹⁶⁰ For the full email response to Human Rights Watch’s letter regarding alternatives to detention in Bulgaria from the Schengen, Borders, Migration and Asylum Unit of the Bulgarian Ministry of Interior, see Annex I at the end of this report.

¹⁶¹ Human Rights Watch Zoom interview with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, December 7, 2020.

¹⁶² Foreigners in the Republic of Bulgaria Act, art. 44, para. 6. See also European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 3.

¹⁶³ Foreigners in the Republic of Bulgaria Act, Art. 44, para. 6.

¹⁶⁴ European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 2.

¹⁶⁵ For further descriptions and photographs of Busmantsi and Lyubimets see Human Rights Watch, *Containment Plan: Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, April 2014, <https://www.hrw.org/node/256540/printable/print>, pp. 39-43, 55-57.

¹⁶⁶ European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 2.

The law allows individuals to be held up to six months in these facilities but requires monthly reviews to “ascertain the existence of grounds for forcible placement in special facilities.”¹⁶⁷ The LFRB provides for the stay to be extended up to 18 months if the “person refuses to cooperate with the competent authorities,” or fails to provide officials with the necessary documents to complete forcible removal or expulsion.¹⁶⁸ Importantly, Bulgarian law provides for immediate release from “special accommodations” when it has been established “that a reasonable possibility for the deportation of a foreign national no longer exists for legal or technical reasons.”¹⁶⁹

Legal Framework in Cyprus

Under Cypriot law, detention of asylum seekers is only permissible if alternatives to detention have been exhausted, and only then may be used as a measure of last resort. The Cyprus Refugee Law provides for four alternatives to detention:

1. Regular reporting to authorities;
2. Release on bail/monetary guarantee;
3. Obligation to stay at an assigned place, including a reception center; or
4. Probation.¹⁷⁰

In addition, there are limited circumstances under which an asylum seeker may be detained,¹⁷¹ and it is not permissible to detain asylum seekers under 18 years of age. There are few procedures in place ensuring officials conduct an individualized assessment of the

¹⁶⁷ Foreigners in the Republic of Bulgaria Act, art. 44, para. 8.

¹⁶⁸ Ibid. See also European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 4.

¹⁶⁹ Foreigners in the Republic of Bulgaria Act, art. 44, para. 8.

¹⁷⁰ Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), p. 109.

¹⁷¹ The circumstances under which an asylum seeker may be detained include the following: “(a) in order to determine or verify his or her identity or nationality; (b) in order to gather information about the application which could not be obtained if the applicant were not detained, in particular when there is a risk of the applicant absconding; (c) in order to decide on the asylum-seeker’s right to enter the territory; (d) in order to assess the validity of the claim being made in the application in case the asylum-seeker has already received a deportation order before applying for asylum, and that the application has not been made for international protection merely in order to delay or frustrate the enforcement of the return decision; (e) when protection of national security or public order so requires; (f) in case there is a decision under the Dublin Procedure to be transferred to another EU Member State, and there is a significant risk that the asylum-seeker will not comply with the procedure.” See UNHCR Cyprus, “Detention,” undated, <https://help.unhcr.org/cyprus/applying-for-asylum/detention/> (accessed October 21, 2021).

circumstances before deciding to detain someone.¹⁷² The Civil Registry and Migration Department (CRMD), which has the discretion to apply alternatives to detention but does not seriously consider them in practice, has been criticized in this regard.¹⁷³

In addition to failing to consider alternatives to detention, Cypriot authorities have in the past also implemented “alternatives to detention” that, in effect, are detention. In July 2020, a Cypriot court heard a case regarding an individual who was detained in Menoyia Immigration Detention Center and was later transferred to a closed center under open skies called Pournara.¹⁷⁴ Cypriot authorities transferred the individual to Pournara under the pretense that the move to a place that had a more camp-like appearance constituted an alternative to detention. The person argued that confining him in this fenced-in site was simply another form of detention and was not based on an individualized assessment of his situation. He was successful in his claim, and the court ultimately ordered all the residents of Pournara Center who had been ordered to stay there as an alternative to detention to be released into the community with reporting conditions.¹⁷⁵

Case Management Programs

The pilot programs in Bulgaria and Cyprus are operated by local civil society organizations. In Bulgaria, two organizations – the Center for Legal Aid Voice in Bulgaria and the Bulgarian Lawyers for Human Rights – work together to provide case management and legal services to program participants. In Cyprus, the Cyprus Refugee Council (CyRC) offers these services.¹⁷⁶

¹⁷² Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), pp. 108-109.

¹⁷³ See *G.N. v. The Republic*, ΔΔΠ 155/2019 (5/11/2019); Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), p. 109.

¹⁷⁴ This case is unpublished. See also Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), pp. 110-111.

¹⁷⁵ *Ibid.*

¹⁷⁶ The pilot programs in these countries are referred to by different names. In Bulgaria, the program is called “Protecting migrants with precarious status: decreasing the use of detention and applying community-based alternatives.” In Cyprus, the pilot program is referred to as the “Pilot project on the implementation of alternative measures: the Revised Community Assessment and Placement model in Cyprus.” In Poland, the pilot program is operated by the Stowarzyszenie Interwencji Prawnej (SIP) and is called “No Detention Necessary.” See European Programme for Integration and Migration, “Alternatives to Detention: Building a Culture of Cooperation,” July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021).

Both programs follow the International Detention Coalition’s Community Assessment and Placement framework, which emphasizes placement in the community without conditions (unless necessary), coupled with a case management approach.¹⁷⁷ In addition, each pilot program works towards case resolution, with the understanding that “resolution” might present itself differently in each individual’s case. Sometimes, resolution means regularization of status, in other cases, voluntary repatriation. Although the programs are outcome-oriented, there is no maximum time limit placed on the provision of case management services.¹⁷⁸

Individuals are referred to the pilot programs through people with direct access to detention centers, such as police or advocates. In Cyprus, individuals are screened and assessed by CyRC while in detention.¹⁷⁹ In addition to referrals from police and advocates, individuals are referred by civil society organizations.¹⁸⁰ People residing in the community can also enroll in the pilot program by contacting the organization directly for assistance or through referrals from NGOs.¹⁸¹ The program implementers use specific criteria when choosing individuals to participate in the program. In Cyprus, the program generally will not enroll individuals with serious criminal convictions; however, it has served some individuals who have been convicted of drug-related charges.¹⁸² In addition, because the program is not always able to provide housing, case managers in Cyprus will not actively advocate for release from detention for people who would otherwise be homeless or destitute. Furthermore, the Cypriot case managers typically enroll individuals with the mental capacity to understand and make decisions, but will sometimes make exceptions

¹⁷⁷ The Community Assessment and Placement Model recognizes that “laws or policies that establish a presumption of liberty may do so by allowing the use of immigration detention as an exceptional measure,” when alternatives cannot be applied based on an individualized assessment of the case. International Detention Coalition, “There are alternatives,” 2015, <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf> (accessed July 7, 2021), pp. 20-21.

¹⁷⁸ European Programme for Integration and Migration, “Alternatives to Detention: Building a Culture of Cooperation,” July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021), p. 8.

¹⁷⁹ Human Rights Watch Zoom interview with Corina Drousiotou, Project Coordinator and Senior Legal Advisor, Cyprus Refugee Council, Nicosia, December 15, 2020.

¹⁸⁰ Human Rights Watch email correspondence with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, July 30, 2021.

¹⁸¹ *Ibid.*, August 19, 2021.

¹⁸² Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, March 16, 2021.

to these criteria if detention has become too burdensome.¹⁸³ Unfortunately, this can mean that some of the most vulnerable individuals are not eligible for the pilot program.

In Bulgaria, social workers from a civil society organization called Caritas Bulgaria, who are permanently positioned within the detention centers, work with migration authorities and the Bulgarian pilot program to secure release from detention for individuals who are a good fit for the program.¹⁸⁴ The criteria used in Bulgaria to accept someone into the program are slightly less restrictive. The Bulgarian pilot program requires that a person be either detained or at risk of being detained at the time they enter the program, that they be willing to cooperate with the program, and that they do not intend to go to a third country.¹⁸⁵ In addition to referrals from other organizations, individuals in Bulgaria are connected to the program through other clients in the program and, occasionally, migration authorities.¹⁸⁶

Provision of services can start well before individuals are released from detention. Not only do case managers help secure release from detention as part of the program,¹⁸⁷ but, at times, they also ensure that participants' basic needs are met while they are still in detention. For example, Omar, who has diabetes, faced delays in receiving insulin, sometimes lasting hours, while being held in several different police holding cells in Cyprus. His case manager was instrumental in guaranteeing that he received his insulin in a timely manner while still in detention.¹⁸⁸

The Relationship Between Case Managers and Program Participants

Most of the individuals Human Rights Watch spoke with had positive interactions with their case managers. They said their case managers were willing and able to advocate on their behalf in order to secure their release from detention, arrange for their housing, and,

¹⁸³ Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, March 16, 2021.

¹⁸⁴ Human Rights Watch Zoom interview with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, December 7, 2020.

¹⁸⁵ Human Rights Watch email correspondence with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, May 8, 2021.

¹⁸⁶ *Ibid.*, August 30, 2021.

¹⁸⁷ Some program participants are not detained at the time they enter the program. See European Programme for Integration and Migration, “Alternatives to Detention: Building a Culture of Cooperation,” July 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf (accessed July 23, 2021), p. 12.

¹⁸⁸ Human Rights Watch telephone interview with Omar, Nicosia April 23, 2021.

in some cases, obtain residency permits. Many said that it was difficult to navigate the immigration system without their guidance, and that it was helpful to have someone explain the various processes to them. They also said their case managers mediated with immigration authorities.¹⁸⁹

Participants said that the relationships of trust were built, at least in part, on the emotional support they received from their case managers. Some, like Samir, a 32-year-old man from Afghanistan, said the interaction with his case manager was the sole form of support he received upon arrival in Bulgaria. Samir migrated to Bulgaria alone – the rest of his family remains in his home country – and spent many months navigating detention centers on his own. He met his case manager while he was held in Busmantsi, where he struggled to adapt to the harsh environment. He said, “I didn’t get any assistance from the Bulgarian government. It was [the case manager] who helped me find a house and work. She is like a sister—she is always asking me if I want any type of help.”¹⁹⁰ Samir said that his case manager was “very active” while working on his case, and he is now able to stay in Bulgaria after obtaining a passport and a Bulgarian national ID card. Throughout the process, his case manager kept him involved. “I was not able to speak the language and I did not know the legal system and the court system. She was following all the processes and led me by the hand.”¹⁹¹

Khalil, 63, also from Afghanistan, referred to his case manager as being like “a sister” to him. Khalil met his case manager while he was in Busmantsi, where he stayed for 18 months before he was released. While in Busmantsi, Khalil said the officers treated him like an animal. After losing his entire family while crossing the Mediterranean, Khalil explained that his case manager has been the one supporting him emotionally, “She has been so kind to me I can’t even explain.”¹⁹² With his case manager’s help, Khalil recently received a passport and a national ID card, in addition to a permit that will let him stay in the country legally for three years.

¹⁸⁹ Human Rights Watch Zoom interview with Corina Drousiotou, Project Coordinator and Senior Legal Advisor, Cyprus Refugee Council, Nicosia, December 15, 2020.

¹⁹⁰ Human Rights Watch telephone interview with Samir, Sofia, March 15, 2021.

¹⁹¹ Ibid.

¹⁹² Human Rights Watch telephone interview with Khalil, March 29, 2021.

In addition to emotional support and help with obtaining residency permits, case managers also connect individuals to medical help when they need it. When Farah’s husband had a medical emergency, her case manager helped:¹⁹³

[She sent] the address of the doctor...and she told me I can go there and she would translate through the phone. In the last seven months, it was only [the case manager] who has responded to me and helped me.¹⁹⁴

Farah was initially introduced to her case manager while in a shelter, after being shuffled between detention centers she described as unsuitable for her needs and those of her children. The case manager not only helped Farah, but also helped reunite her with her husband, Ali, who, at the time, had been held separately from his wife and children in Lyubimets center for one and a half years.¹⁹⁵ Upon initially reuniting with his family, Ali said his young daughter did not recognize him – a harsh reality of the damage migrant detention can inflict upon families. After experiencing a series of setbacks with their case, Farah and Ali received humanitarian status in Bulgaria in August 2021.¹⁹⁶

In Cyprus, Marie, a 30-year-old woman from the Democratic Republic of the Congo, met case managers from the Cypriot pilot program who helped her secure release from detention, where she was held for eight months. They also helped her after she was released, providing guidance and assistance in adjusting to life in Cyprus:

I gave [people from the Cyprus Refugee Council] my story, and they said, “Okay, we are going to help you with the court. We will make things go faster.” I let them help me. They helped me get a lawyer. In ten days, I was free... They helped me to get a house – a place to stay... They talk to me – every week they call me to tell me that everything will be okay. If my welfare is late, I should call them, and they will bring me food and things that I need.¹⁹⁷

¹⁹³ Human Rights Watch telephone interview with Farah, Sofia, April 1, 2021.

¹⁹⁴ Ibid.

¹⁹⁵ Human Rights Watch telephone interview with Ali, Sofia, April 19, 2021.

¹⁹⁶ Human Rights Watch email correspondence with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, August 30, 2021.

¹⁹⁷ Human Rights Watch telephone interview with Marie, March 24, 2021.

Omar, a 25-year-old man from Libya, another participant in the Cypriot pilot program, spoke similarly about the comprehensive support he received from his case manager, but also noted the constraints CyRC faces. “It’s a non-government organization, so they have limitations. In every way they could help, they help,” but, he said, there are some hurdles that simply cannot be overcome, such as the ability of asylum seekers to work legally in certain employment sectors.¹⁹⁸

Although case managers serve as counselors and mediators, they are not able to solve every problem that migrants encounter. Homelessness, isolation, and mental health difficulties persist among migrant populations. A case manager told Human Rights Watch that they work in collaboration with the participant to “make necessary interventions,” which may involve communicating with the relevant state authorities, doctors, housing owners, and others.¹⁹⁹

Employment and Financial Assistance

Although both Bulgaria and Cyprus allow asylum seekers to work legally under certain circumstances, asylum seekers and irregular migrants still face employment obstacles, including the lack of employment opportunities.

In Bulgaria, the Law on Labor Migration and Labor Mobility (LLMLM) regulates the conditions under which migrants can work while the Law on Asylum and Refugees (LAR) regulates work for asylum seekers and refugees. The LAR permits asylum seekers to access the labor market if their asylum case has not been resolved within three months “for reasons beyond the foreigner’s control.”²⁰⁰ Migrants who are not recognized as asylum seekers and don’t have legal status are not allowed to work. Case managers in the Bulgarian pilot program are only able to assist those who have work authorization to find jobs.²⁰¹ Others, who are unable to work legally, are typically left to their own devices to navigate the informal sector.

¹⁹⁸Human Rights Watch telephone interview with Omar, Nicosia, April 23, 2021.

¹⁹⁹ Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, March 16, 2021.

²⁰⁰ European Programme for Integration and Migration and Center for Legal Aid Voice in Bulgaria, “Final Report: Applying Engagement-Based Alternatives to Detention of Migrants in Bulgaria: Opportunities and Challenges,” May 2019, <http://detainedinbg.com/wp-content/uploads/2019/09/Doklad-June19-En.pdf> (accessed July 23, 2021), p. 27.

²⁰¹ Human Rights Watch telephone interview with Samir, Sofia, March 15, 2021.

In Cyprus, asylum seekers are allowed to work one month after they submit their asylum application, but are limited to certain jobs, typically ones that involve manual labor.²⁰² Other hurdles include low wages, distant places of work and limited means of transportation, and language barriers.²⁰³ Prolonged bureaucratic procedures for employers to hire asylum seekers can also make finding work difficult.

For migrants forced to work illegally to survive, case managers are not able to assist them in finding such employment.²⁰⁴ Omar described the consequences of working without authorization:

It's not [the case manager's] position to break the law. But basically, trying to work legally was a fruitless endeavor. I worked under the table until I was recognized as a refugee over two years later... Not having legal employment has other consequences. You have no social insurance number, no contracts in your name for electricity or phone services, no car insurance – stuff like that.²⁰⁵

In addition to barriers to employment, some people are subject to exploitative practices upon arriving in a foreign country. Amir worked for four months without wages before he was arrested and sent to the Menoyia Immigration Detention Center. He said he was healthy prior to being sent to the detention center, but “because of the jail and the bad conditions, I am now a sick person. I have some mental shock. I cannot concentrate on work.”²⁰⁶

Although his case manager helped secure his release from detention, Amir is currently unable to work. His case manager helped him inform the authorities about the abuse he suffered at the hands of his former employer. Currently, authorities consider him to be a victim of trafficking and work exploitation and are working to investigate his case. His

²⁰² Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, March 16, 2021; Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), pp. 87-88.

²⁰³ Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), pp. 89-91.

²⁰⁴ Human Rights Watch telephone interview with Omar, Nicosia, April 23, 2021.

²⁰⁵ Ibid.

²⁰⁶ Human Rights Watch telephone interview with Amir, March 26, 2021.

basic needs are being covered through welfare support while the case is ongoing, and any threat of deportation is suspended until the case has been resolved.²⁰⁷

The CyRC has a job placement system to help people with work authorization to find jobs, although sparse employment opportunities and language barriers make it difficult.²⁰⁸ Furthermore, the job seeking platform is only open to recognized refugees and beneficiaries of subsidiary protection, because asylum seekers are limited to working in certain sectors.²⁰⁹

Housing

Several migrants told Human Rights Watch of the difficulties they had in securing housing after being released from detention.²¹⁰ As one case manager noted, case management operates under the assumption that an individual's legal needs cannot be met unless their other needs are also addressed. Direct provision of housing is not formally a part of either pilot program's mandates; however, case managers help program participants navigate the sometimes-complicated housing market and, at times, go beyond their official duties in helping to arrange for accommodation.

To secure release from detention in Bulgaria, detained people must provide a home address. For people who have spent most, if not all, of their time in the country in detention centers, this is a difficult task. In Bulgaria, the situation has led to a market in which people sell addresses to migrants in detention centers desperate to be released.²¹¹ Individuals do not necessarily live at the address they provide to the authorities – it is

²⁰⁷ Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, May 28, 2021.

²⁰⁸ Aida Asylum Information Database, "Country Report: Cyprus," December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), p. 91.

²⁰⁹ Human Rights Watch Zoom interview with Memnon Arestis, Project Coordinator and Case Manager, Cyprus Refugee Council, Nicosia, May 28, 2021; Aida Asylum Information Database, "Country Report: Cyprus," December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), p. 88.

²¹⁰ Both Bulgaria and Cyprus have ratified the Covenant on Economic, Social and Cultural Rights, which recognizes the right to "an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions." See International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed October 21, 2021).

²¹¹ Human Rights Watch Zoom interview with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, December 7, 2020, and telephone interview with Bakary, Sofia, March 4, 2021.

simply a way for them to secure release, at which point they are forced to find shelter elsewhere.²¹²

Critically, case managers in Bulgaria serve as mediators between Bulgarian landlords and migrants looking for housing arrangements. Bulgarian landlords may be hesitant to sign a rental agreement with migrants because they are required to present various personal documents to the migration department, including documents proving ownership of the property in question.²¹³ In addition, language barriers can pose problems for migrants looking for housing. In such cases, case managers play a critical role by stepping in. “It was very difficult for me to find a house because I was not able to speak the language,” Samir explained. “Also, the [landlords] were not trusting refugees to give their houses, so, [the case manager] would keep calling [them] to give me a house.”²¹⁴

Farah and Ali, a married couple, received additional help from their case manager who arranged a Facebook fundraiser to help the couple pay for their rent. The campaign was a success, and they have now secured housing.²¹⁵

High rent, language barriers, and unemployment are just a few factors that make securing housing difficult in Cyprus.²¹⁶ Although the Guaranteed Minimum Income (GMI) scheme will assist international protection beneficiaries with rent payments, they will not receive financial assistance until a property has been identified and a contract has been signed.²¹⁷ As a result, in practice, beneficiaries are often unable to take advantage of the scheme. “It’s only on paper that the government can pay for your rent,” said Omar.²¹⁸

Instead of using government assistance, Omar’s case manager introduced him to someone who was looking for a roommate in a home that housed many people. This was not part of his case manager’s duties, but Omar said it was nonetheless a critical form of assistance.

²¹² Human Rights Watch telephone interview with Bakary, Sofia, March 4, 2021.

²¹³ Human Rights Watch Zoom interview with Diana Radoslavova, Head Attorney and Founder, Center for Legal Aid – Voice in Bulgaria, Sofia, May 26, 2021.

²¹⁴ Human Rights Watch telephone interview with Samir, Sofia, March 15, 2021.

²¹⁵ Human Rights Watch telephone interview with Farah, Sofia, April 1, 2021.

²¹⁶ Aida Asylum Information Database, “Country Report: Cyprus,” December 2020, https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-CY_2020update.pdf (accessed July 23, 2021), p. 139.

²¹⁷ Ibid.

²¹⁸ Human Rights Watch telephone interview with Omar, Nicosia, April 23, 2021.

Although it was an overcrowded living situation, it was immediate housing he may not have received otherwise.

Limitations of Case Management Programs

Government policies and practices in Bulgaria and Cyprus can make provision of case management services challenging. Some people Human Rights Watch interviewed expressed frustration regarding the limitations of their case managers in this regard.

Adem, a 37-year-old man from Turkey, said that despite his case managers' efforts to help, they faced too many bureaucratic hurdles in Cyprus to provide the kind of support he requires. "They are trying to help. Especially on a personal level...but on an organizational level, they can't do much as an organization," he said. "They are trying not to confront, not to anger, the Cyprus government too much, so they are not very effective."²¹⁹

"[The case manager] is a very good guy, he helped me a lot. He helped me to stop my deportation papers," said Amir, a participant in the Cyprus program. "The problem is that the government is not cooperating with [the case manager]. They are not helping him to help me."²²⁰

In addition to administrative barriers, circumstantial issues can make it difficult for program participants to take full advantage of the services provided by the pilot programs. For example, Omar, a participant in the Cypriot program, said he knew the program offered in-house psychological services, but he never discussed this option with his case manager. "More pressing issues were very immediate economic struggles. In hindsight, I probably could have used it. But it wasn't a priority."²²¹

Finally, funding has proved to be an issue for the continuation of the programs. Funding for the Bulgarian pilot ended in April 2021, although case workers continue to address the needs of participants whose cases have not yet been resolved. The organization is currently in the process of applying for additional funding to continue the program. In Cyprus, funding for the program was initially set to end in June 2021, but at time of writing,

²¹⁹ Human Rights Watch telephone interview with Adem, March 26, 2021.

²²⁰ Human Rights Watch telephone interview with Amir, March 26, 2021.

²²¹ Human Rights Watch telephone interview with Omar, Nicosia, April 23, 2021.

the program has received bridging funding through December 2021. As of writing, the Cypriot pilot implementors are working to secure funding for the next stage of the program.

Spain

Background

At the beginning of the Covid-19 pandemic in March 2020, the government began releasing people from immigration detention and closing Spanish immigration detention centers.²²² Initially, those with families in Spain were released back into the community. During the pandemic, Fundación Cepaim, a non-profit that operates reception programs funded by the Spanish Ministry of Inclusion, Social Security and Migration,²²³ among others, opened its centers to released migrants who did not have family in the country, in effect, serving as a “de facto alternative to detention.”²²⁴

Fundación Cepaim operates two separate programs: one for asylum seekers, refugees,²²⁵ and stateless persons and another, called Atención Humanitaria, for undocumented migrants who cannot be deported. Each program serves about 1,000 individuals. In addition to migrant populations, the Foundation serves other marginalized populations, such as people who are homeless.²²⁶ Other organizations, such as the Spanish Red Cross and a non-governmental organization called Accem, also provide reception services to migrants.²²⁷

²²² “Europe: Curb Immigration Detention Amid Pandemic,” Human Rights Watch news release, March 27, 2020, <https://www.hrw.org/news/2020/03/27/europe-curb-immigration-detention-amid-pandemic>; Karina Piser, “The End of Immigration Detention Doesn’t Mean the End of Fortress Europe,” Foreign Policy, July 31, 2020, <https://foreignpolicy.com/2020/07/31/coronavirus-asylum-end-immigration-detention-spain-france-end-of-fortress-europe/> (accessed July 6, 2021).

²²³ Various projects operated by Fundación Cepaim are funded by different sources. Funding for such projects include the European Commission, European Union (EU) funding instruments, and other international organizations. Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

²²⁴ Karina Piser, “The End of Immigration Detention Doesn’t Mean the End of Fortress Europe,” Foreign Policy, July 31, 2020, <https://foreignpolicy.com/2020/07/31/coronavirus-asylum-end-immigration-detention-spain-france-end-of-fortress-europe/> (accessed July 6, 2021).

²²⁵ In Spain, an asylum seeker is a person located within the country who has applied for refugee status. A refugee is a person who is located within the country and has been recognized as such. Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

²²⁶ Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, February 10, 2021.

²²⁷ Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

Fundación Cepaim workers meet people while they are still in custody within their first days of arrival and provide transportation to their accommodation, which is arranged for by the Foundation. The Foundation then arranges for legal assistance, stipends, cultural activities, language lessons, and other services, which are provided for at least a six-month period.²²⁸ Each apartment is assigned a specific case manager, who acts as a resource for the individuals assigned to live there.²²⁹ Case managers notify their clients when there are activities planned, assist when there are any issues with the apartment, and act as an intermediary between authorities, such as police and doctors.

Fundación Cepaim's programs are optional, and people are free to leave the centers at any time. This gives participants a significant degree of autonomy over decision-making, allowing them to gauge their needs and participate accordingly.

While migrants may need to report on occasion to Spanish authorities, there are fewer reporting requirements in Spain than some of the other countries featured in this report. Because of this, Fundación Cepaim does not place an emphasis on ensuring that individuals in the Atención Humanitaria program comply with reporting requirements. Lawyers may assist migrants when it is time to adjust their residency status, but there are times when individuals enrolled in the program are not actively engaged with the legal process.

Legal Framework in Spain

Spain places a 60-day limit on migrant detention. Furthermore, individuals can only be held in detention centers in order to carry out a deportation order.²³⁰ If it takes longer than 60 days to execute the order, migrants must be released from detention. While they may still be deported, they cannot be detained or re-detained past the 60-day mark.²³¹ Because

²²⁸ Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, February 10, 2021.

²²⁹ In Spanish, the case managers are called “técnicos de acogida,” or “reception assistants.” Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

²³⁰ Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, February 10, 2021; Nacho Hernández Moreno, “A Step Forward Towards Ending Immigration Detention in Spain,” PICUM, April 21, 2020, <https://picum.org/a-step-forward-towards-ending-immigration-detention-in-spain/> (accessed July 6, 2021).

²³¹ Nacho Hernández Moreno, “A Step Forward Towards Ending Immigration Detention in Spain,” PICUM, April 21, 2020, <https://picum.org/a-step-forward-towards-ending-immigration-detention-in-spain/> (accessed July 6, 2021).

migrants could not be deported during the pandemic, there was no justifiable reason to continue to detain them. Those released from detention during the pandemic cannot be re-detained under Spanish law.²³²

Spanish law does not explicitly provide for alternatives to detention for asylum seekers, but, because asylum seekers cannot be removed from the country, they cannot be detained. Alternatives are only considered, in law, for foreigners who are subject to a disciplinary proceeding and who are at risk of being subjected to removal.²³³ In practice, however, these alternatives are not used.²³⁴

The “Aliens Law” recognizes various rights for all non-citizens in Spain. Among the rights recognized are the right to work, freedom of movement and the right to choose a place of residence, and the right to free legal counsel and access to an interpreter in matters related to “entry denial, expulsion, mandatory exit from the territory and in all proceedings related to asylum.”²³⁵ However, not all migrants in practice receive assistance with their legal cases, given lack of transparency about their rights and the difficulty some lawyers and NGOs face when attempting to enter detention centers to provide assistance.²³⁶

Fundación Cepaim

The Ministry of Inclusion, Social Security and Migration has established eligibility criteria for the program operated by Fundación Cepaim.²³⁷ While some people, such as pregnant

²³² Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, February 10, 2021.

²³³ Under this circumstance, the following alternatives to detention are provided for in law: “Periodic presentation to the competent authorities; Compulsory residence in a particular place; Withdrawal of passport or proof of nationality; Precautionary detention, requested by the administrative authority or its agents, for a maximum period of 72 hours prior to the request for detention; Preventive detention, before a judicial authorisation in detention centres; Any other injunction that the judge considers appropriate and sufficient.” “Alternatives to Detention: Spain,” Asylum in Europe, March 25, 2021, <https://asylumineurope.org/reports/country/spain/detention-asylum-seekers/legal-framework-detention/alternatives-detention/> (accessed July 6, 2021).

²³⁴ “Alternatives to Detention: Spain,” Asylum in Europe, March 25, 2021, <https://asylumineurope.org/reports/country/spain/detention-asylum-seekers/legal-framework-detention/alternatives-detention/> (accessed July 6, 2021).

²³⁵ Some limitations may “be imposed according to international treaties or following judicial decisions, in cases of state of emergency, martial law and for security reasons.” See UNHCR, “Organic Law on Rights and Freedoms of Aliens in Spain and Their Social Integration (Aliens Law),” March 14, 2000, <https://www.refworld.org/pdfid/3b20e810e.pdf> (accessed July 6, 2021), arts. 5, 10, and 20.

²³⁶ Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, May 26, 2021.

²³⁷ Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

women or those with mental health conditions, are prioritized, generally anyone who arrives in Spain without resources is eligible for the program.²³⁸ The limiting factor is the number of spots available in the program at any given time.

The Foundation provides forms of assistance to undocumented migrants and asylum seekers, refugees, and stateless persons. Asylum seekers are offered accommodations for six months and other services, including financial assistance, for 18 months.²³⁹

Undocumented migrants are offered accommodation and financial assistance for food and other necessary items, and are sometimes connected to lawyers to explore opportunities for adjustment of status, for a six-month period.²⁴⁰ In March 2020, due to the Covid-19 pandemic, the Foundation received between 50 and 60 undocumented migrants who were released from detention.²⁴¹

Acclimating to Life in Spain: Accommodation, Integration, and Legal Status

Human Rights Watch spoke with several individuals enrolled in Fundación Cepaim's program for undocumented migrants. Farid, a 28-year-old man who arrived in Spain at the height of the pandemic in April 2020, was detained for about a day before he and several other migrants were released to Fundación Cepaim. "They took me to a home, they gave me cash, they gave me food, and they gave me clothing," he said.²⁴² In addition to providing the essentials, Farid said the Foundation offered Spanish classes and other cultural activities.

Malick, a 36-year-old man from Senegal, said he was released into Fundación Cepaim's program after being held at a police station for three days:²⁴³

Staff reassured us and told us that we shouldn't be frightened of the police – that we are in Spain and we are free... that we can even have a session with lawyers. We were really well received. They put us into flats. They

²³⁸ Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, February 10, 2021.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Human Rights Watch telephone interview with Farid, Valencia, April 8, 2021.

²⁴³ Human Rights Watch telephone interview with Malick, Valencia, March 30, 2021.

brought us clothes, they took care of everything, and the apartments were really very nice... They told us that any time we had questions to go to them. They even came to our flats very regularly and answered questions and guided us.²⁴⁴

Each apartment accommodates about six people, and they are located in cities to enhance opportunities for community integration. Some, like Assane, a 28-year-old man from Senegal, said that without the accommodation provided for by the Foundation, they would have been faced with homelessness.²⁴⁵ Apartments are equipped with cooking supplies, refrigerators, stoves, and televisions. Everyone Human Rights Watch interviewed said the accommodations met their needs.

Even so, some have trouble adapting to their new living situations. Daniel, a 22-year-old man, said, “We were all from different countries and so it was hard to get along.”²⁴⁶

Each apartment is assigned a case manager, who serves as a point of contact and provides guidance. Lawyers on staff advise both asylum seekers and undocumented migrants, including about their options for legal residency status, although undocumented migrants are not always guaranteed legal assistance.²⁴⁷ “Thanks to the help of [the lawyer] I was able to get papers, health insurance and a work permit,” said Daniel. “She understood the strategy for getting working papers.”²⁴⁸ With the work papers, Daniel was able to afford a shared apartment where he felt comfortable.²⁴⁹

Employment and Financial Assistance

The Foundation assists undocumented migrants for a total of six months. As of May 2021, the Foundation provided undocumented migrants with €50 per month.²⁵⁰ Undocumented

²⁴⁴ Human Rights Watch telephone interview with Malick, Valencia, March 30, 2021.

²⁴⁵ Human Rights Watch telephone interview with Assane, Valencia, March 11, 2021.

²⁴⁶ Human Rights Watch telephone interview with Daniel, Valencia, April 22, 2021.

²⁴⁷ Human Rights Watch email correspondence with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, July 27, 2021.

²⁴⁸ Human Rights Watch telephone interview with Daniel, Valencia, April 22, 2021.

²⁴⁹ Ibid.

²⁵⁰ Fundación Cepaim provides asylum seekers 18 months of assistance. In the first phase, they are housed for six months in shared apartments and given up to €350 per month to cover their basic needs. In the second, 12-month phase, the Foundation provides asylum seekers who do not have an alternative form of income with €350 for rent payments and an additional €350 to cover basic needs. The Foundation will cover up to €700 but deducts money based on the individual's

migrants are not allowed to work legally for three years after they arrive in Spain. Originally, the Foundation was only able to assist undocumented migrants for three months, but the government extended the period of assistance to six months in 2020.

Undocumented migrants are placed in a precarious position and may face poverty and homelessness when the assistance lapses. For example, Malick, who received assistance prior to 2020, lived in the Foundations' housing for three months after which he was unable to find shelter and became homeless.²⁵¹



People enrolled in the Atención Humanitaria program attend a workshop in Teruel, Spain.
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income. Human Rights Watch Zoom interview with Nacho Hernández Moreno, Head of the International Department, Fundación Cepaim, Alicante, May 26, 2021.

²⁵¹ Human Rights Watch telephone interview with Malick, Valencia, March 30, 2021.

Fundación Cepaim also connects individuals to training courses and classes, such as job training. Daniel said he took both language classes and basic training courses while in the program:

During those six months when I was staying at the house, I took classes and training and a class to learn how to speak Spanish. I continued my studies... I did a lot of trainings in order to be able to work. Some of them were specialized trainings, like for a trade. For example, I took a training for raising cattle.²⁵²

Similarly, Malick explained that the Foundation connected him to a basic training on laser cutting, a device used for industrial manufacturing.²⁵³ Although the trainings do not connect migrants directly to employment, they provide them with useful skills that might lead to a job in the future. For example, Farid took a computer course while in the program and now would like to continue his studies to pursue a career as a mechanic.²⁵⁴

Sometimes, former program participants volunteer to guide new migrants entering the program. Daniel explained:

I stayed six months [in the accommodation] and after they made a request to see if I wanted to be a volunteer... I would explain what to do [to other migrants] and accompany them and show them how things worked. I would often have to explain because people would arrive and be really afraid that Cepaim was just another form of police... And I would explain to them that Cepaim is not the police. [They] are free to do what [they] wish... [They are] safe.²⁵⁵

²⁵² Human Rights Watch telephone interview with Daniel, Valencia, April 22, 2021.

²⁵³ Human Rights Watch telephone interview with Malick, Valencia, March 30, 2021.

²⁵⁴ Human Rights Watch telephone interview with Farid, Valencia, April 8, 2021.

²⁵⁵ Human Rights Watch telephone interview with Daniel, Valencia, April 22, 2021.

Canada

Background

In response to the Covid-19 pandemic, authorities in Canada released a significant number of people from immigration detention. While 2,578 people were detained between July and September 2019, this number dropped to 476 people in the same period in 2020.²⁵⁶ This stands in contrast to recent trends revealing that the number of individuals in detention increased every fiscal year between 2016-2017 and 2019-2020, with the number of individuals in detention peaking in fiscal year 2019-2020, when 8,825 people were detained.²⁵⁷

Alternatives to detention in Canada range from reporting conditions, bonds, and community case management programs, to curfews, house arrest, and electronic monitoring.²⁵⁸ At each detention review, officials are required to “actively consider and reassess alternatives to detention” to determine whether an individual is a good candidate for an ATD program.²⁵⁹ In practice, however, authorities may consider and reassess alternatives, but fail to order release from detention.²⁶⁰

Lawyers often develop an alternative to detention plan for their clients, and may work with Canada Border Service Agency (CBSA) officers in the development of that plan.²⁶¹ If an individual does not have counsel, they can work directly with a CBSA officer to create a plan for release or propose a plan to the Immigration Division adjudicator.²⁶² ATD plans can be one single condition or a mix of conditions, depending on the migrant’s individual situation.²⁶³ The Immigration Division of the Immigration and Refugee Board (IRB),

²⁵⁶ Human Rights Watch, “I Didn’t Feel Like a Human in There”: Immigration Detention in Canada and its Impact on Mental Health, June 2021, https://www.hrw.org/sites/default/files/media_2021/06/canadao621_web.pdf, p. 60.

²⁵⁷ *Ibid.*, pp. 15-16.

²⁵⁸ Human Rights Watch Zoom interview with Aviva Basman, Immigration and Refugee Lawyer, Toronto, May 7, 2021.

²⁵⁹ Immigration and Refugee Board of Canada, “Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*,” amended April, 2021, Section 3.1.3, <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx#s31> (accessed July 7, 2021).

²⁶⁰ Human Rights Watch, “I Didn’t Feel Like a Human in There”: Immigration Detention in Canada and its Impact on Mental Health, June 2021, https://www.hrw.org/sites/default/files/media_2021/06/canadao621_web.pdf, p. 85.

²⁶¹ Human Rights Watch Zoom interview with Aviva Basman, Immigration and Refugee Lawyer, Toronto, May 7, 2021.

²⁶² *Ibid.*

²⁶³ *Ibid.*

however, makes the final decision on whether a release plan is adequate and has sole power to order release from detention.

In 2018, the CBSA introduced voice reporting under its alternatives to detention programming. Although Canada uses a number of alternatives to detention, this report focuses on the Voice Reporting Program which uses voice biometrics to confirm identity and also records the location of the individual if they are using a cell phone.

Legal Framework in Canada

Under Canadian law, the CBSA has the power to arrest and detain non-citizens only when they have “reasonable grounds to believe that they are inadmissible to Canada and constitute a ‘danger to the public,’ or are unlikely to appear for an examination or other proceeding.”²⁶⁴ Individuals can be detained for months or years, since there is no maximum time limit on detention, causing uncertainty and distress for individuals who remain in detention without an end in sight.²⁶⁵

However, the law requires alternatives to detention be considered prior to detention in all cases.²⁶⁶ An individual may only be detained if an officer believes the potential risk the individual poses cannot be mitigated by an alternative to detention.²⁶⁷ CBSA officers and Immigration Division adjudicators “have broad discretion to impose any conditions they consider necessary to release an individual from detention.”²⁶⁸ However, Canadian law requires that the least onerous conditions available be imposed. When more restrictions or conditions are added, they need to be justified. According to Guidelines issued by the IRB of Canada, “any condition that is imposed should have a rational connection to the circumstances of the case and the specific ground of detention.”²⁶⁹

²⁶⁴ Human Rights Watch, “I Didn’t Feel Like a Human in There”: Immigration Detention in Canada and its Impact on Mental Health, June 2021, https://www.hrw.org/sites/default/files/media_2021/06/canadao621_web.pdf, p. 10.

²⁶⁵ *Ibid.*, pp. 85-86.

²⁶⁶ Immigration and Refugee Protection Regulations, section 248 (e).

²⁶⁷ Canada Border Services Agency, “ENF 20: Detention,” March 23, 2020, <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf> (accessed July 6, 2021), pp. 16, 18.

²⁶⁸ Human Rights Watch, “I Didn’t Feel Like a Human in There”: Immigration Detention in Canada and its Impact on Mental Health, June 2021, https://www.hrw.org/sites/default/files/media_2021/06/canadao621_web.pdf, pp. 87.

²⁶⁹ Immigration and Refugee Board of Canada, “Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*,” amended April 2021, Section 3.1.2, <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDiro2.aspx#s31> (accessed July 7, 2021).

Voice Reporting

The CBSA specifies categories of people who are eligible for voice reporting, including: “individuals that are not detained and are subject to a removal order, examination or admissibility hearing; individuals that present a lower risk of not appearing, as required; individuals that present a medium risk of not appearing as required and are also subject to other conditions such as a Deposit or Guarantee or supervision by the Community Case Management and Supervision service provider.”²⁷⁰ The CBSA and the IRB have the authority to impose this reporting condition.²⁷¹

Participants in the program create a reporting schedule with either the CBSA or the IRB. Individuals record a phrase at a CBSA office upon enrollment in the program, which is used as a baseline for comparison at the time of reporting. When participants call in, they are guided by voice prompts to repeat a phrase that is matched against a previously recorded template.²⁷²

People enrolled in the Voice Reporting Program told Human Rights Watch that voice reporting is a relatively low burden. It takes a matter of minutes and can generally take place at any time of day on the pre-arranged day of reporting. Compared to other alternatives, voice reporting is less stressful and time consuming for participants and – assuming it is necessary and proportionate – may be preferable for individuals who do not need additional support that is provided in case management programs.

Nora, who left Albania about 28 years ago, has been part of the Voice Reporting Program for around seven years. She reports monthly through her landline telephone. She said the process is simple and quick – it takes about five minutes from start to finish. She dials a number, puts in a code, and then records her voice message three times in her native language. She said, “It always goes through. I don’t have a problem.”²⁷³ If she does have issues, there is a phone number she can call. She also can report at any time of day on the day she reports, allowing her to report at times that do not conflict with her work schedule.

²⁷⁰ For an exhaustive list of eligible individuals, see Canada Border Services Agency, “Voice Reporting,” July 24, 2018, <https://www.cbsa-asfc.gc.ca/security-secureite/detent/vr-rv-eng.html> (accessed July 6, 2021).

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Human Rights Watch telephone interview with Nora, Toronto, June 2, 2021.

Nora reports using her home telephone, which she only keeps in use for voice reporting purposes. Currently, voice reporting is compatible with three cell phone providers (and sub-brands of those providers).²⁷⁴ The fact that Nora cannot call from a mobile device causes issues occasionally, like when she travelled for the holidays one year to visit family. However, Nora was able to arrange with immigration services to report ahead of time so she would not need to call while she was away.

Hassan, a 39-year-old man from Afghanistan, also reports to the CBSA through the voice reporting system. However, he was also required to participate in in-person meetings every week for about six months from the time he was released from detention in 2018 to immediately prior to the pandemic. Due to new measures taken in response to Covid-19, he can now report by phone call on those days he previously was required to report in person. Recently, Hassan's reporting was reduced further – he now speaks to a CBSA officer monthly and reports every other week through the voice reporting system.²⁷⁵

The ability to avoid in-person reporting has made a huge impact on Hassan's wellbeing. Recounting the experience of in-person reporting, Hassan said, "The first time I was going, my hands were shaking, my legs were shaking. I was so nervous because every time I went, I kept thinking they were going to detain me. I kept thinking what is going to happen to my family, to my kids."²⁷⁶ Hassan said that reporting through telephone calls and the voice reporting system has helped with his anxiety and depression. It is not uncommon for individuals to feel intense fear and distress at being required to report in person to the CBSA.²⁷⁷

Hassan also said that reporting in person was a huge time commitment. He said he would sometimes lie to his boss and say that his daughter was sick in order to take off the three or four hours it took him to report in person. Comparatively, reporting by telephone or the voice reporting system takes him about two minutes from start to finish. He also has the flexibility to take the calls from any location, since he reports through his cell phone. However, he said that in order to participate in the Voice Reporting Program he was forced

²⁷⁴ Canada Border Services Agency, "Voice Reporting," Date Modified July 24, 2018, <https://www.cbsa-asfc.gc.ca/security-securite/detent/vr-rv-eng.html> (accessed July 6, 2021).

²⁷⁵ Human Rights Watch telephone interview with Hassan, Vancouver, June 23, 2021.

²⁷⁶ Ibid.

²⁷⁷ Human Rights Watch telephone interview with Ron Poulton, Immigration and Refugee Lawyer, May 28, 2021.

to purchase a more expensive phone service, since the system is not compatible with all service providers.²⁷⁸

While the voice reporting system has certain drawbacks, including restrictive eligibility criteria, it presents a way for individuals to retain a larger degree of freedom and autonomy than other ATDs. Immigration officials do not constantly monitor participants' GPS location, nor is there the requirement to appear in person, which can be both time consuming and nerve-wracking.

However, voice recognition technology, like other forms of surveillance technology, raises privacy and reliability concerns. It is unclear what privacy safeguards are in place for people enrolled in the voice reporting program in Canada. Like with any other form of technology that collects data about an individual, there should be adequate safeguards ensuring that data is not shared or used for any purpose other than the explicitly intended one. Additionally, there are concerns that voice recognition technology may not always recognize the speaker's voice. In these scenarios, there should be leniency and the option to report in a different manner.

²⁷⁸ Human Rights Watch telephone interview with Hassan, Vancouver, June 23, 2021.

The United Kingdom

Background

Staff in the UK Home Office are supposed to follow the “General Instructions” on the use of immigration detention, which include a presumption in favor of bail, and require that alternatives to detention be used when possible.²⁷⁹ The guidance further states that an individualized assessment of the person’s circumstances must be considered, including special consideration for children and families with children.²⁸⁰ Despite this stated policy commitment and guidance to officials, research by specialist organizations and parliamentary inquiries have found authorities over-rely on detention, and pointed to a need for improvement on individual decision-making by immigration officials on a decision to detain.²⁸¹ While the guidance asserts that detention should be limited to “a period that is reasonable in all the circumstances for the specific purpose,” for which the individual is detained, UK law does not place a time limit on immigration detention.²⁸² The practice of forcing people to remain in detention without knowing when they might be released has been described as “inhumane” by Members of Parliament.²⁸³ A recent report by the Jesuit Refugee Service in the UK found that the nature of indefinite detention made it difficult for people to plan for life outside, leaving them in a constant state of uncertainty.²⁸⁴

Several small alternative to detention (ATD) pilot programs have been established in the United Kingdom. Some of these programs are funded by and designed in collaboration

²⁷⁹ UK Home Office, “Detention: General Instructions,” June 9, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992285/detention-general-instructions-v1.o.pdf (accessed July 7, 2021), p. 6.

²⁸⁰ *Ibid.*, p. 13.

²⁸¹ Immigration officers, immigration caseworkers, or the Secretary of State are vested with the statutory powers to detain an individual. The Home Office typically requires “an officer of at least chief immigration officer rank, or a higher executive officer” to make the initial authorization to detain. House of Commons, House of Lords, Joint Committee on Human Rights, “Immigration Detention,” January 30, 2019, <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf> (accessed August 27, 2021) pp. 11-12.

²⁸² UK Home Office, “Detention: General Instructions,” June 9, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992285/detention-general-instructions-v1.o.pdf (accessed July 7, 2021), p. 9.

²⁸³ Toby Helm and Mark Townsend, “Tory rebels call for 28-day limit on detention of migrants,” *The Guardian*, June 27, 2020, <https://www.theguardian.com/uk-news/2020/jun/27/tory-rebels-call-for-28-day-limit-on-detention-of-migrants> (accessed September 17, 2021).

²⁸⁴ United Kingdom Jesuit Refugee Service, “Detained and Dehumanised: The impact of immigration detention,” June 27, 2020, https://www.jrsuk.net/wp-content/uploads/2020/06/Detained-and-Dehumanised_JRS-UK-Report_28.06.2020_FINAL-1.pdf (accessed October 21, 2021), pp. 15-16.

with the UK Home Office and the United Nations High Commissioner for Refugees (UNHCR), including the pilot programs operated by the charities Action Foundation and the King's Arms Project.²⁸⁵ These programs are part of the Home Office's Community Engagement Pilot (CEP) series, which was founded in 2018.²⁸⁶ Both programs provide enrollees with access to a case worker, legal support, and referrals to other services, such as health care.²⁸⁷ Each pilot was designed to last for two years, after which there will be a final evaluation for effectiveness, cost efficiency, and lessons learned.²⁸⁸

The pilot program operated by Action Foundation, called Action Access, was available only to women asylum seekers who would otherwise be detained at the Yarl's Wood Immigration Removal Centre.²⁸⁹ The pilot aimed to assist those enrolled in the program by helping them find stability (for example, through "housing, subsistence and safety"), providing relevant information regarding UK immigration and asylum law, and connecting them with community support.²⁹⁰ The pilot program provided housing, access to legal aid, caseworker support, and outside referrals to healthcare services.²⁹¹ Ultimately, the objective was to "provide more efficient, humane and cost-effective case resolution for migrants and asylum seekers, by supporting migrants to make appropriate personal immigration decisions."²⁹² The Action Access pilot concluded on March 31, 2021 after operating for the planned two-year period.²⁹³

²⁸⁵ Lydia Marshall and Padmini Iyer, "Evaluation of The Refugee and Migrant Advice Service," May 2021, <https://natcen.ac.uk/media/2054360/Evaluation-of-the-Refugee-and-Migrant-Advice-Service.pdf> (accessed July 27, 2021), p. 5; Lydia Marshall, et al., "Evaluation of *Action Access*," August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed July 27, 2021), p. 2.

²⁸⁶ Lydia Marshall, et al., "Evaluation of *Action Access*," August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed July 27, 2021), p. 4.

²⁸⁷ Lydia Marshall and Padmini Iyer, "Evaluation of The Refugee and Migrant Advice Service," May 2021, <https://natcen.ac.uk/media/2054360/Evaluation-of-the-Refugee-and-Migrant-Advice-Service.pdf> (accessed August 3, 2021), p. 5; Lydia Marshall, et al., "Evaluation of *Action Access*," August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed August 3, 2021), p. 2.

²⁸⁸ Lydia Marshall and Padmini Iyer, "Evaluation of The Refugee and Migrant Advice Service," May 2021, <https://natcen.ac.uk/media/2054360/Evaluation-of-the-Refugee-and-Migrant-Advice-Service.pdf> (accessed August 3, 2021), p. 8; Lydia Marshall, et al., "Evaluation of *Action Access*," August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed August 3, 2021), p. 6.

²⁸⁹ Lydia Marshall, et al., "Evaluation of *Action Access*," August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed July 27, 2021), p. 2.

²⁹⁰ *Ibid.*, p. 3.

²⁹¹ *Ibid.*, p. 2.

²⁹² *Ibid.*, p. 3.

²⁹³ Response from UK Visas & Immigration, United Kingdom Home Office to Human Rights Watch, October 14, 2021. For the full letter, see Annex II at the end of this report.

The Refugee and Migrant Advice Service (RMAS), operated by the King’s Arms Project, operates a similar model. The pilot connects participants to legal services and a support worker, who helps them access basic services and “opportunities to develop skills.”²⁹⁴ The support worker also assists participants in decision-making regarding their legal situation, which may include helping them “apply for necessary permissions to remain in the UK or supporting them to consider voluntary return.”²⁹⁵ RMAS differs from Action Access in that it is open to individuals of all genders and does not provide accommodation.²⁹⁶ RMAS will remain in operation through June 2022.²⁹⁷

This report focuses on the Community Support Project, a pilot program operated by Detention Action, which unlike the other ATD programs operates independently from the Home Office.

The Community Support Project serves non-citizen men who are former criminal offenders at risk of long-term detention. The project, operated since 2014 by Detention Action, a non-profit organization, has been successful at preventing recidivism: it has a completion rate of 83 percent and 93 percent of participants have not reoffended since joining the program.²⁹⁸

Legal Framework in the United Kingdom

Immigration detention is considered appropriate in the United Kingdom under the following circumstances: (1) “to effect removal;” (2) “initially to establish a person’s identity or basis of claim;” or (3) “where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail.”²⁹⁹ The United Kingdom places no limit on the amount of time a person can be held in immigration detention, which sets it apart from all other European countries and means that people are

²⁹⁴ Lydia Marshall and Padmini Iyer, “Evaluation of The Refugee and Migrant Advice Service,” May 2021, <https://natcen.ac.uk/media/2054360/Evaluation-of-the-Refugee-and-Migrant-Advice-Service.pdf> (accessed July 27, 2021), p. 5.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ Response from UK Visas & Immigration, United Kingdom Home Office to Human Rights Watch, October 14, 2021.

²⁹⁸ Detention Action, “Community Support Project,” June 9, 2021, <https://detentionaction.org.uk/community-support-project/> (accessed July 8, 2021).

²⁹⁹ UK Home Office, “Detention: General Instructions,” June 9, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992285/detention-general-instructions-v1.o.pdf (accessed July 7, 2021), p. 6.

sometimes subject to indefinite detention.³⁰⁰ A person who has served a prison sentence for a criminal conviction may continue to be held in prison under immigration powers or be immediately transferred to an immigration detention center, where they might be held for extended periods of time.³⁰¹

Currently, the only alternative to detention that is recognized in law in the United Kingdom is immigration bail. As part of bail, individuals agree to live at a particular address and meet reporting requirements. When an individual fails to report, they are at risk of being re-detained.³⁰²

The Community Support Project

A unique part of Detention Action’s Community Support Project is the community it serves: migrants who have been convicted of criminal offenses and face deportation. People who fit these criteria have particular needs and a primary goal of the project is to prevent enrollees from re-offending.

Two case workers serve about 30 participants at a given time. Unlike migrants served by case management programs elsewhere, many of the people served by the Community Support Project grew up in the United Kingdom, having migrated to the country with their parents when they were children.

Case workers seek to enroll individuals in the program who are looking for additional support to avoid reoffending in the future.³⁰³ The program has few other requirements, offering individuals who might otherwise be overlooked an opportunity to live in the community. Case workers meet interested individuals while they are still in detention and over the course of a few visits explain to them what enrollment in the program requires. Once someone has agreed to participate in the program, a case worker will write a

³⁰⁰ United Kingdom Jesuit Refugee Service, “Detained and Dehumanised: The impact of immigration detention,” June 27, 2020, https://www.jrsuk.net/wp-content/uploads/2020/06/Detained-and-Dehumanised_JRS-UK-Report_28.06.2020_FINAL-1.pdf (accessed October 21, 2021), p. 8.

³⁰¹ House of Commons, “Immigration detention in the UK: an overview,” September 12, 2018, <https://researchbriefings.files.parliament.uk/documents/CBP-7294/CBP-7294.pdf> (accessed August 27, 2021), p. 23.

³⁰² Lydia Marshall, et al., “Evaluation of *Action Access*,” August 28, 2020, <https://natcen.ac.uk/media/1938417/NatCen-Evaluation-of-Action-Access-%E2%80%93-Inception-report.pdf> (accessed August 3, 2021), p. 13.

³⁰³ Human Rights Watch telephone interview with a Community Support Officer, Community Support Project, March 22, 2021.

statement on their behalf that will be presented in court to assist them in securing release from detention.³⁰⁴

Case workers describe the project as person-centered, with a focus on trying to facilitate clients' choices. In addition to periodic meetings, case workers help their clients with more specific needs when they arise, such as connecting them to healthcare providers.³⁰⁵

Participation in the project only lasts a year, although some individuals remain in contact with case workers for longer. The goal is to help people released from detention settle into their community, not necessarily to regularize their immigration status. Many individuals enrolled in the project already have access to legal advice, who help them with immigration and other legal matters.³⁰⁶

James, a 29-year-old man originally from the Netherlands, has lived in the United Kingdom since 2014. He was released into the Community Support Project in November 2019. In 2017, James was arrested and sentenced to a 28-month prison term for a drug offense. After serving 14 months of his prison sentence, James was immediately transferred to an immigration detention center. According to James, the criminal sentence also triggered a deportation order, which he is challenging based on difficult circumstances in the Netherlands that he says compromise his safety.

A community support officer met with James while he was still in prison and told him how the project could help him. James said his community support officer explained that they would meet weekly and he would be able to connect him to services such as mental health providers and medical professionals. James said his community support officer did not make any false claims. "He doesn't sell us a dream, but whatever is in his powers to do, he helps with."³⁰⁷

James said that he has a good relationship with his community support officer. "Since November, we stay in contact every week. Since then, it's been uplifting. I've been trying to stay focused, trying to stay away from people who have had a bad influence on me, trying

³⁰⁴ Human Rights Watch telephone interview with a Community Support Officer, Community Support Project, March 22, 2021.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Human Rights Watch telephone interview with James, Swindon, June 25, 2021.

to turn my life around.”³⁰⁸ James usually spends about an hour with his community support officer, who visits him in the town he lives in. James said the help he receives is “mostly emotional.”³⁰⁹ He said his community support officer is “someone who understands my situation, who has a bit of experience working with other people, who can help with how to remain calm, how to act in the situation that I’m in.”³¹⁰ James also said his community support officer offered to connect him to a mental health provider.

Hamed, a 31-year-old man from Iran, has lived in the United Kingdom since he was about eight years old. He said that his entire family was granted Indefinite Leave to Remain (ILR), the term used to describe permanent residency in UK immigration law, around six or seven years after they arrived in the UK. When he was 16 years old, Hamed was sentenced to prison for a criminal offense for an indefinite term under the since-discontinued Imprisonment for Public Protection (IPP) scheme.³¹¹ After spending almost 10 years in prison, Hamed appealed his indefinite sentence. The court ordered the sentence revoked and his immediate release, at which time Hamed was sent directly to an immigration detention center.

Hamed was forced to remain an additional 13 or 14 months in immigration detention. “It is very, very frustrating,” Hamed said. “I had served my sentence and the courts in the country had decided that that time was sufficient,” but, he said, given his immigration status, he was “still at an utter loss of liberty,” after being transferred to the immigration detention center.³¹²

While in the immigration detention center, Hamed came across a leaflet advertising the Community Support Project. He said that he was skeptical at first, but eventually decided to make contact and arranged a meeting with a community support officer:

After speaking to him quite at length he decided to take me on to the project... The understanding I had was that I would work with him for one year and that includes weekly visits... He gave me a [phone] number after

³⁰⁸ Human Rights Watch telephone interview with James, Swindon, June 25, 2021.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Human Rights Watch telephone interview with Hamed, Manchester, June 29, 2021.

³¹² Ibid.

and said I could contact him at that number any time I want. For me, [the community support officer] was a massive help once released. Obviously, he got me released, but it was the support I received after release that was the main help he gave me.³¹³

For Hamed, getting released from detention was imperative to his wellbeing. Just prior to his release, he said he was starting to have suicidal thoughts. “I think if I didn’t get released with [the community support officer’s] help... there’s a good chance I would have committed suicide.”³¹⁴ Hamed said he also witnessed other people in the detention center experience suicidal thoughts and self-harm.

In addition to helping secure Hamed’s release from detention, the community support officer helped him acquire a release address and a place to live, although the Project does not directly pay for or provide housing. While Hamed is no longer imprisoned, he still struggles with the reality of both his criminal sentence and the revocation of his indefinite leave to remain as a result of his conviction:

You might not be in a cell anymore, but you still don’t have the freedom to work, you don’t have the freedom to travel, you don’t have the freedom to drive... you have to [report weekly]. All these things are external pressures that one could easily fall under. [The community support officer’s] support was one of the keys that I didn’t reoffend—that I managed to stay on the track that I needed to stay on.³¹⁵

When Hamed started using drugs, his community support officer put him in touch with substance abuse counselors. Another important form of assistance for Hamed was gaining access to a gym, which the Community Support Project financed.³¹⁶ Hamed’s community support officer also showed him the process of enrolling in university.

³¹³ Human Rights Watch telephone interview with Hamed, Manchester, June 29, 2021.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

One of the critical aspects of the Community Support Project is the trust that is built between community support officers and participants in the program. Hamed explained the bond of trust with his community support officer:

I phoned him when I wasn't feeling too good, I phoned him when I was successful. He was very involved through the early stages of my release... It's easy to get caught up in one mindset and making the wrong decisions. He was my go-to point to bring me back to reality."³¹⁷

Originally, Hamed intended to participate in the Community Support Project for one year, however he ultimately remained in the program for two and a half years. He still keeps in touch with his community support officer, although rarely these days. Hamed received his five-year visa about a year ago through the help of his lawyer.

³¹⁷ Human Rights Watch telephone interview with Hamed, Manchester, June 29, 2021.

International Legal Standards

Although domestic and international law does not afford migrants all the same legal rights as citizens, they are entitled to most of the human rights protections contained in the International Covenant on Civil and Political Rights (ICCPR). These include the right against arbitrary detention and the right to privacy, which extend to all people, regardless of their migration status. All the countries featured in this report have ratified the ICCPR and are therefore bound by its provisions.

Furthermore, all the countries included in this report, except the United States, have signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR recognizes the right of everyone to basic economic rights, including the rights to “an adequate standard of living for himself and his family, including adequate food, clothing and housing.”³¹⁸ The ICESCR also recognizes the right to the “highest attainable standard of physical and mental health,” and the right to participate in cultural life.³¹⁹ The United States has signed, though not ratified, the ICESCR, meaning that the US government is obligated to refrain from actions that undermine its object and purpose.³²⁰

Community-based case management programs protect and help fulfill these rights for migrants by assisting them in accessing basic necessities such as health care and housing. They also present an opportunity to help people access the cultural life of the community, even if only temporarily.

Prohibition on Arbitrary Detention

The right to be free from arbitrary detention appears in multiple international human rights instruments. The ICCPR, which all countries featured in this report have signed and

³¹⁸ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed October 21, 2021), art. 11.

³¹⁹ *Ibid.*, arts. 12 and 15.

³²⁰ The Vienna Convention is widely viewed as being reflective of customary international law. Vienna Convention on the Law of Treaties adopted May 22, 1969, G.A. Res. 2166 (XXI), 2287 (XXII), 1155 U.N.T.S. 331, U.N. Doc. A/CONF.39/11/Add.2, entered into force January 27, 1980, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed October 21, 2021), art. 18.

ratified, recognizes the prohibition on arbitrary detention in article 9(1).³²¹ Arbitrary arrest or detention does not only apply when it is “against the law.”³²² The UN Human Rights Committee, the body charged with providing authoritative interpretations of the ICCPR, has stated in its General Comment No. 35 on article 9 of the ICCPR that “the notion of ‘arbitrariness... must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”³²³

The Human Rights Committee has not found migrant detention to be arbitrary per se, but has stated that “detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.” It has also noted that in determining whether detention is permissible, authorities should “take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding.”³²⁴ Although General Comment No. 35 does not specify a time limit for detention, the Human Rights Committee has indicated that an individualized assessment, subject to periodic review, is necessary to prevent arbitrarily detaining migrants. With respect to asylum seekers, it has said:

Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.³²⁵

Governments have a legitimate interest in regulating and enforcing their laws on immigration. However, the situations in which detention of migrants on immigration

³²¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed October 21, 2021).

³²² UN Human Rights Committee, General Comment No. 35, Liberty and security of person, U.N. Doc. CCPR/C/GC/35 (2014), <https://www.refworld.org/docid/553e0f984.html> (accessed July 26, 2021), para. 12.

³²³ Ibid.

³²⁴ Ibid., para. 18.

³²⁵ Ibid.

grounds could be considered a necessary or proportionate measure to further that interest are extremely narrow, particularly in light of the effectiveness of alternatives to detention.

Indeed, the UN Working Group on Arbitrary Detention has stated that “immigration detention should gradually be abolished” and that “[i]f there has to be administrative detention, the principle of proportionality requires it to be the last resort.”³²⁶ The Working Group on Arbitrary Detention has also found mandatory detention of migrants in the United States to be against international legal standards and applied in practice to deter immigration.³²⁷

Because detention is rarely necessary and proportionate, governments that use it regularly – including several countries included in this report – should adopt initiatives to drastically reduce its use. These measures should include developing rights-respecting alternatives to detention to deal with situations where there may be a risk of flight or other legitimate government concern. So long as governments continue to unnecessarily or disproportionately detain individuals on immigration grounds, they will be violating ICCPR article 9.

The necessity and proportionality analysis also applies to the use of alternatives to detention, in particular electronic monitoring devices (EMDs) that involve the use of real-time location tracking. Due to their intrusiveness on privacy rights and the availability of less intrusive alternatives, the use of such devices for immigration purposes should only be considered necessary and proportionate under a narrow set of circumstances, namely, where detention itself would be permissible. The UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has recognized that some alternatives, including electronic surveillance, “emulate those measures existing in the field of criminal justice,” and are “often excessively restrictive and are not appropriate in the context of migration.”³²⁸ By contrast, the Committee has emphasized that, when

³²⁶ Human Rights Council, Report of the Working Group on Arbitrary Detention, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development,” U.N. Doc. A/HRC/13/30, January 15, 2010, https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_AEV.pdf (accessed October 15, 2021), paras. 58-59.

³²⁷ “Arbitrary Detention: UN Expert Group Urges the USA to Abolish Mandatory Detention of Migrants,” United Nations Office of the High Commissioner news release, October 24, 2016, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20749&LangID=E> (accessed June 9, 2021).

³²⁸ The Committee on the protection of the rights of all migrant workers and members of their families is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All

properly implemented, alternatives that are designed to “protect people’s health, well-being and human rights,” can be “more effective than detention in assisting people to cope better with immigration procedures,” while also being less costly.³²⁹ The need for such alternatives has been exacerbated by the Covid-19 pandemic,³³⁰ where detention settings can pose a high risk to health and safety.

Objective 13 of the Global Compact for Safe, Orderly and Regular Migration (Global Compact for Migration), which is the first UN global agreement on a common approach to international migration, not only calls on states to prevent arbitrary arrest and detention in the context of international migration, but also calls on them to “prioritize non-custodial alternatives to detention,” with an eye towards expanding alternative, non-custodial measures.³³¹ The Global Compact for Migration promotes “community-based care arrangements” and urges that states make a “viable range of alternatives” available and accessible to migrant children and families.³³² According to the Global Compact, these alternatives should “ensure access to education and healthcare, and respect [the] right to family life and family unity.”³³³

In addition to the international instruments mentioned, regional instruments also recognize the right to be free from arbitrary detention. Article 5 of the European Convention on Human Rights (ECHR) recognizes the right to liberty and security of person,³³⁴ which applies to Bulgaria, Cyprus, Spain, and the United Kingdom.

Migrant Workers and Members of Their Families by its state parties. None of the countries featured in this report have signed or ratified this treaty. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 5, Migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights, U.N. Doc. CMW/C/GC/5 (2021), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=7&DocTypeID=11 (accessed October 21, 2021), para. 49.

³²⁹ Ibid., para. 50.

³³⁰ Ibid.

³³¹ Global Compact for Safe, Orderly and Regular Migration, adopted December 19, 2018, U.N. Doc. A/RES/73/195, https://refugeemigrants.un.org/sites/default/files/180711_final_draft_o.pdf (accessed July 7, 2021), para. 29.

³³² Ibid., para. 29, subsection h.

³³³ Ibid.

³³⁴ Council of Europe, “European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14,” November 4, 1950, ETS 5, entered into force September 3, 1953, <https://www.refworld.org/docid/3ae6b3bo4.html> (accessed July 7, 2021).

Prohibition on Arbitrary or Unlawful Interference with Privacy

The right to privacy is protected by various international and regional instruments, including article 17 of the ICCPR.³³⁵ The Office of the UN High Commissioner for Human Rights released a report in 2014 on the right to privacy in the digital age, highlighting the issue of surveillance and collection of personal data. As the report acknowledges, in recent years government mass surveillance has emerged “as a dangerous habit rather than an exceptional measure.”³³⁶ Mass surveillance of migrants is no exception. Some EMDs in the United States, such as ankle monitors, are capable of collecting enormous amounts of personal data, including real-time location data, impacting both the people assigned the devices and applications and those around them. In addition, voice reporting may involve the collection of personal data. Without adequate safeguards that recognize the necessity of protecting sensitive and personal data these programs may result in arbitrary or unlawful interference with privacy, particularly in high-risk contexts such as immigration detention and enforcement.

In December 2013, the UN General Assembly adopted resolution 68/167, affirming that “the rights held by people offline must also be protected online.”³³⁷ The General Assembly called upon states to “respect and protect the right to privacy in digital communication.”³³⁸ The right to privacy also applies to other rights as well, such as the right to freedom of opinion and expression and the right to family life. The report finds that “The aggregation of information commonly referred to as ‘metadata’ may give an insight into an individual’s behavior, social relationships, private preferences and identity that go beyond even that conveyed by accessing the content of a private communication.”³³⁹ In the immigration context, ankle monitors and smartphone applications are capable of collecting such

³³⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed October 21, 2021), art. 17.

³³⁶ Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), para. 3.

³³⁷ *Ibid.*, para. 5.

³³⁸ *Ibid.*

³³⁹ *Ibid.*, para. 19.

“metadata,” allowing government officials to draw conclusions about an individual’s behavior, such as where and when they work.³⁴⁰

International law provides that “no one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence.”³⁴¹ This means that even interference with privacy that is legal under domestic law is forbidden under the ICCPR if it is “arbitrary.”³⁴² As with other rights protected by the ICCPR, the Human Rights Committee has made clear that “Where...restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.”³⁴³ The Office of the UN High Commissioner for Human Rights (UNHCHR) has explained that any limitation on privacy rights “must be necessary for reaching a legitimate aim, as well as in proportion to the aim and the least intrusive option available... The onus is on the authorities seeking to limit the right to show that the limitation is connected to a legitimate aim.”³⁴⁴

Furthermore, in determining proportionality, states should consider “what is done with bulk data and who may have access to them once collected.”³⁴⁵ The 2014 report also draws

³⁴⁰ See *In the Matter of the Search of Koch Foods of Mississippi*, LLC, Affidavit in Support of an Application for a Search Warrant, Case No. 3:19mj205LRA, Filed August 5, 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/kochfoods-319mj.pdf>.

³⁴¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed October 21, 2021), art. 17; UN Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, April 8, 1988, <https://www.refworld.org/docid/453883f922.html> (accessed October 15, 2021), paras. 1-4; Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), para. 21.

³⁴² *Ibid.*

³⁴³ UN Human Rights Committee, General Comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, May 26, 2004, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13, <https://www.refworld.org/docid/478b26ae2.html> (accessed October 15, 2021), para. 6. See also Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), paras. 22-23.

³⁴⁴ Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), para. 23.

³⁴⁵ Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), para. 27.

attention to the lack of “use limitations,” among states, without which data can be collected for a legitimate purpose, and subsequently be used for non-legitimate aims.³⁴⁶

In a 2018 report to the Human Rights Council, following up on the 2014 report, UNHCHR also expressed concern about “systems relying on the collection and use of biometric data, such as DNA, facial geometry, voice, retina or iris patterns and fingerprints.”³⁴⁷ The report noted, “Such data is particularly sensitive, as it is by definition inseparably linked to a particular person and that person’s life, and has the potential to be gravely abused.”

While enforcing immigration laws is a legitimate aim for government, the burden is on governments to show that any immigration-related restrictions they impose on the right to privacy – such as electronic surveillance programs – are both necessary and proportionate to that aim.

Ankle monitors are, as described in this report, particularly burdensome on the right to privacy; there’s insufficient publicly available information to determine whether the US SmartLINK application is being used in a similarly intrusive fashion. But even in cases where there is a risk of absconding, other alternatives to detention have proven to be highly effective, rendering the use of these tools and others that permit collection of real-time location data unnecessary. Given the magnitude of the intrusion on privacy and other rights that certain EMDs represent, their use would also be disproportionate, with the sole narrow exception of situations in which detention itself might be permissible.

In addition, the UN Standard Minimum Rules for Non-Custodial Measures (“The Tokyo Rules”) provide that “non-custodial measures should be in accordance with the principle of minimum intervention... The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.”³⁴⁸ Given the severe restrictions on rights that EMDs such as ankle monitors impose, and the existence of other alternatives that are significantly

³⁴⁶ Human Rights Council, “The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights,” U.N. Doc. A/HRC/27/37, June 30, 2014, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf (accessed July 26, 2021), para. 27.

³⁴⁷ *Ibid.*, para. 14.

³⁴⁸ United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”), adopted December 14, 1990 G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990), <https://www.ohchr.org/documents/professionalinterest/tokyorules.pdf> (accessed October 15, 2021), paras. 2.6 and 2.7.

less burdensome on rights, the use of these types of EMDs will rarely, if ever, meet the principle of minimum intervention.

To the extent that governments use any electronic surveillance technology, such as SmartLink or voice reporting, in connection with immigration enforcement, they should ensure that effective limitations are placed on how data is collected and used to protect privacy.

Freedom of Movement

Article 31(2) of the 1951 Convention Relating to the Status of Refugees (Refugee Convention) prohibits restrictions on the freedom of movement of asylum seekers unless such restrictions are deemed necessary.³⁴⁹ The Refugee Convention also recognizes the right of freedom of movement for refugees staying lawfully within a country under article 26. This provision has been interpreted to require that restrictions on movement be not only necessary, but also proportionate to the “purpose that needs to be served.”³⁵⁰

Restrictions on freedom of movement such as those imposed in the United States, where asylum seekers and other migrants are often barred from crossing state lines as a condition of release, are only permissible if the government can establish that they are necessary and proportionate to its enforcement of immigration law.

Economic and Social Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) has been ratified by every country featured in this report except for the United States, which has only signed the treaty. Article 11 of the ICESCR recognizes the right of everyone to “an adequate standard of living” for themselves and their families, as well as the rights to “adequate food, clothing and housing.”³⁵¹ Alternatives to detention rooted in surveillance do nothing

³⁴⁹ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, <https://www.unhcr.org/en-us/3b66c2aa10> (accessed October 21, 2021), art. 31(2).

³⁵⁰ Marjoleine Zieck, “Refugees and the Right to Freedom of Movement: From Flight to Return,” *Michigan Journal of International Law*, vol. 39 (2018), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1926&context=mjil> (accessed August 6, 2021), p. 75.

³⁵¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed October 21, 2021), art. 11.

to promote these rights, and often hinder them. Ankle monitors, for example, can make it difficult for individuals to obtain work, thereby lowering their standard of living and making it difficult to secure food, housing, and other basic necessities. In contrast, community-based case management programs help connect individuals to employment opportunities, provide necessities, and even arrange for accommodation under certain circumstances.

The ICESCR also recognizes the right to the “highest attainable standard of physical and mental health,” in article 12.³⁵² While ankle monitors can cause both physical pain and distress, as has been highlighted by this report, case management programs connect individuals to mental and physical health care providers.

Additionally, article 15 of the ICESCR establishes the right to participate in cultural life.³⁵³ Case management programs offer individuals an opportunity to improve their access to their communities’ cultural life through services such as language classes and educational courses.

Surveillance-based alternatives to detention hinder the ability of people to attain economic and social rights, while case management programs often further them. In order to abide by their obligations under the ICESCR, governments should prioritize using community-based case management programs as opposed to surveillance-based methods.

Racial Discrimination

International law, including the ICCPR, ICESCR, and the International Convention on the Elimination of Racial Discrimination (ICERD), prohibit racial and ethnic discrimination. The ICERD specifically prohibits any policy that has the purpose or effect of restricting rights on the basis of race or ethnicity.³⁵⁴ It proscribes apparently race-neutral practices that affect

³⁵² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed October 21, 2021), art. 12.

³⁵³ *Ibid.*, art. 15.

³⁵⁴ Under ICERD, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” International Convention on the Elimination of All Forms of Racial Discrimination

fundamental rights – for example, the rights to liberty and privacy – regardless of racist intent, if those practices create unwarranted racial disparities. The Committee on the Elimination of Racial Discrimination, which interprets the ICERD, has specifically stated that “indirect – or *de facto* – discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”³⁵⁵

Under the ICERD, governments may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather need to act affirmatively to prevent or end policies with unjustified discriminatory impacts.³⁵⁶

ICERD’s provisions apply to immigration policies, which often have disproportionate impacts on members of specific racial or ethnic groups and nationalities.

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has recently highlighted the threats posed to rights by the deployment of digital technologies in the immigration context, noting that:

Governments and non-State actors are developing and deploying emerging digital technologies in ways that are uniquely experimental, dangerous and discriminatory in the border and immigration enforcement context. By so doing, they are subjecting refugees, migrants, stateless persons and others to human rights violations, and extracting large quantities of data from

(ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (accessed October 21, 2021), part I, art. 1(1).

³⁵⁵ Committee on the Elimination of Racial Discrimination, “Consideration of Reports Submitted by State Parties under article 9 of the Convention: Concluding Observations, United States of America,” February 2008, U.N. Doc. CERD/C/USA/CO/6, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf> (accessed October 15, 2021), para. 10; Human Rights Watch, United States – Submission to the Committee on the Elimination of Racial Discrimination, vol. 20, no. 2(G), February 2008, <http://hrw.org/reports/2008/us0208/>.

³⁵⁶ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (accessed October 21, 2021), part I, arts. 1(1) and 2(1)(a).

them on exploitative terms that strip these groups of fundamental human agency and dignity.³⁵⁷

Such disparities further underscore the importance of ensuring that government policies that impact immigrants or intrude on their rights are fully and objectively justified, necessary, and proportionate.

³⁵⁷ United Nations General Assembly, Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, November 10, 2020, U.N. Doc. A/75/590, <https://undocs.org/A/75/590> (accessed August 26, 2021), para. 3.

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Most importantly, Human Rights Watch would like to thank the brave individuals who shared their experiences with us. Without them, this report would not have been possible.

Annex I: Email Response from the Bulgarian Ministry of Interior

September 30, 2021

Re: Answer from the Ministry of Interior of the Republic of Bulgaria Regarding the Alternatives of Detention

Dear Colleagues,

In response to your letter to the Ministry of Interior regarding a research on alternatives to immigration detention in North America and Europe, please find below the information you pledged to be shared with you on behalf of the Ministry of Interior:

- Foreigners in the Republic of Bulgaria who have been imposed compulsory administrative measures (CAM) under the provisions of the Foreigners in the Republic of Bulgaria Act (FRBA) are forcibly accommodated in special homes for temporary accommodation of foreigners within the Migration Directorate of the Ministry of Interior.
- In cases when there are administrative or technical obstacles for the implementation of those measures and after assessing the individual circumstances and the risk of hiding or thwarting the return (each person is examined), the authority issued the order for CAM or the Director of the Migration Directorate apply the alternative written in Art.44, Para 5 of the FRBA as follows:
 - The foreigner with imposed CAM is released from the special home for temporary accommodation of foreigners and is obliged to appear on a weekly basis at the territorial structure of the Ministry of Interior at his place of residence;
 - The foreigner shall pay, personally or through a third person, a pecuniary guarantee within the term and in an amount determined by the regulation for implementation of the act;
 - The foreigner shall transmit in a temporary pledge a valid passport or other travel document for abroad, which he receives back in the course of the return or expulsion.

- The administrative control of foreigners with imposed CAMs, who are not accommodated in Migration Directorate's special homes is fulfilled by the officers of the Migration Directorate, the Migration Department within the Sofia Regional Directorate of the Ministry of Interior and by the Regional Migration Units.

Kind regards,

Nelly Guenova

Chief Expert

Schengen, Borders, Migration and Asylum Unit

European Policies and Initiatives Department

EU and International Cooperation Directorate

Ministry of Interior, Republic of Bulgaria

Annex II: Response Letter from the United Kingdom Home Office



October 14, 2021

Our Reference: TO 131-326074

Dear Human Rights Watch,

Thank you for your letter of 20 September to the Home Secretary about alternatives to detention in North America and Europe. Your enquiry has been passed to me to reply.

As part of the Department's immigration detention reform programme, we are delivering two pilots exploring alternatives to detention. In line with international best practice, each pilot will run for two years, before a final evaluation. Foreign National Offenders (FNOs) are excluded from this work.

The first of these pilots, Action Access, provided women who would otherwise be detained with a programme of support in the community. This pilot concluded on 31 March 2021 after operating for two years, as planned. The second pilot, the Refugee and Migrant Advisory Service, is currently supporting both men and women in the community and will remain in operation until June 2022.

We are working with the United Nations High Commissioner for Refugees (UNHCR) on these pilots and they have appointed the National Centre for Social Research (NatCen) to independently evaluate this work. These evaluations will be published, with the evaluation report of the Action Access pilot scheduled for publication later this year. We will use the evaluations of both of these pilots to inform our future approach to case-management focused alternatives to detention.

Yours sincerely,

T Dobson

Central Operations

UK Visas and Immigration

Dismantling Detention

International Alternatives to Detaining Immigrants

Immigration detention is a harmful, costly, and often abusive response to migration. In contrast, rights-respecting alternatives to detention present a more humane pathway forward. *Dismantling Detention* focuses on alternatives to detention in six countries: Bulgaria, Canada, Cyprus, Spain, the United Kingdom, and the United States. These range from surveillance-based alternatives to case management programs.

Some countries have heavily relied on surveillance-based programs, including ankle monitors, voice reporting, and smartphone applications. As this report demonstrates, ankle monitors impose physical and emotional burdens on those required to wear them. Individuals face discomfort, feelings of isolation, and difficulty in securing employment. Ankle monitors and other monitoring devices that capture significant amounts of personal information, including location data, also infringe on privacy rights.

In contrast to surveillance-based alternatives to detention, community-based case management programs seek to meet the needs of people released from detention by providing critical services. These include advice, referrals to health services, and guidance on obtaining basic necessities, such as housing and employment. “Dismantling Detention” calls on governments to shift resources from detention to rights-respecting alternatives, and in particular, community-based case-management programs. Individuals should be assisted throughout the legal process to ensure their human rights are respected and promoted.



(above) A man's daughter runs to embrace him as he is released from immigration detention at the Northwest Detention Center in Tacoma, Washington.

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(front cover) Illustration

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