

# **EXHIBIT 2**



# **The Math of Immigration Detention:**

*Runaway Costs for Immigration Detention Do  
Not Add Up to Sensible Policies*

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August 2013

## **Executive Summary**

One symptom of our broken immigration system is the exorbitant spending on detaining hundreds of thousands of immigrants annually. Physical detention, which is costly and severe, could be reduced by only holding immigrants whose release would pose a danger to the community. The government could employ less expensive alternatives for the majority of immigrants in detention. Billions of dollars could be saved if the government reduced its overreliance on detention and properly allocated resources towards more humane and cost-effective alternative methods of monitoring.

Immigration and Customs Enforcement (ICE), located in the Department of Homeland Security (DHS), has begun prioritizing enforcement against repeat immigration violators and those with criminal records, rather than using limited resources to target immigrants with no criminal records, who pose no danger to the community, and are contributing to our economy. However, ICE's use of discretion has been limited so far, and resources are still used to detain and deport aspiring citizens who pose no risk. Using prosecutorial discretion is an opportunity to reshape our vast immigration detention system, yet that opportunity continues to be squandered.

Despite a more focused approach by DHS to immigration enforcement, the White House continues to request billions of dollars for the detention operations of ICE. For the Fiscal Year that begins October 1, 2013 (Fiscal year 2014), DHS and the White House requested \$1.84 billion for DHS Custody Operations. This funding level would amount to over \$5 million per day spent on immigration detention. This funding level would put the current cost to detain an immigrant at approximately \$159 per day at a capacity of 31,800. The House of Representatives would spend even more. Furthermore, many of these detention dollars flow to enormous private prison corporations that stand to reap significant profits when the number of detained immigrants increases.

Detention should not be used as the default approach to enforcing immigration laws. Less wasteful and equally effective alternatives to detention exist. Estimates from the Department of Homeland Security show that the costs of these alternatives can range from 70 cents to \$17 per person per day. If only individuals convicted of serious crimes were detained and less expensive alternative methods were used to monitor the rest of the currently detained population, taxpayers could save more than \$1.44 billion per year—almost an 80 percent reduction in annual costs. An examination of the numbers makes it clear—the dollars spent to detain immigrants do not add up to something that makes sense.

## An Overview of Immigration Detention Costs

The Department of Homeland Security (DHS) requested approximately \$2 billion in funding for immigration detention for 2014, which runs October 1, 2013 to September 30, 2014.<sup>1</sup> This funding level would support Immigration and Customs Enforcement (ICE) with funding to maintain a detention capacity of 31,800 people in nearly 257 facilities<sup>2</sup> on any given night, including operational expenses, at an average of \$5.05 million per day (See Figure 1). The House of Representatives has made clear that it intends to fund immigration detention at levels that exceed the request from the Administration, specifically \$5.6 million per day spent on immigration detention and 34,000 daily detention beds for FY 2014.<sup>3</sup>

Two figures are used in calculating the average daily cost of immigration detention per person: \$119 per daily bed is the number ICE has provided in their annual performance report<sup>4</sup> but \$159 per daily bed includes ICE's operational expenses.<sup>5</sup> ICE officials have confirmed that the cost of detention is higher than the figure they generally report.<sup>6</sup>

### Figure 1

$$\frac{\$1,844,802,000 \text{ (FY 2014 Presidential Budget Request for Custody and Operations)}}{365 \text{ Days in a year}} = \$5.05 \text{ million per day}$$

$$\frac{\$5.05 \text{ million per day}}{31,800 \text{ detention beds (detainees)}} = \$159 \text{ daily cost to tax payers per immigrant detainee}$$

These costs are a slight decline from the \$164 per daily bed the National Immigration Forum calculated based on FY2012 numbers.<sup>7</sup> The decline is attributed to the administration's efforts to reduce the number of detention beds by 2,200, and to increase the use of detention alternatives, which cost significantly less than the cost of detention.<sup>8</sup>

The House of Representatives endeavors to spend even more taxpayer money, their authorized amount annually exceeding what DHS requests, on the detention operations of ICE. For Fiscal Year 2014, the House of Representatives approved a budget of \$5.4 billion for ICE operations,

<sup>1</sup> Department of Homeland Security, U.S. Immigration and Customs Enforcement, Salaries and Expenses, FY2014 Congressional Budget Justification p. 43-51, available at <https://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf> [hereinafter, "DHS FY 2014 Budget Justification"]. DHS requested \$1,844,802,000 for Custody Operations in FY 2014, however, in H.R. 2217, the House of Representatives increased the proposed amount for detention programs to \$2,038,239,000 in order to increase the number of detention beds to 34,000. See Department of Homeland Security Appropriations Bill Committee Report, p. 40, available at <http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2014-hsecurity.pdf> H.R. 2217 has been referred to the Senate for approval. See House Approves Fiscal Year 2014 Homeland Security Appropriations Bill, Available at <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=336993>

<sup>2</sup>DHS FY 2014 Budget Justification, pg. 43. See note 1 above.

<sup>3</sup> Department of Homeland Security Appropriations Act of 2014, H.R. 2217, 113<sup>th</sup> Cong. (2013). Sec. 544. Available at <http://thomas.loc.gov/cgi-bin/query/F?c113:3:./temp/~c113KIDRKP:e13952>.

<sup>4</sup> DHS FY 2014 Budget Justification, pg. 1336. See note 1 above.

<sup>5</sup> In calculating bed rates, collateral costs need to be accounted for as well. ICE officially projects bed cost at \$119; however this figure excludes payroll costs for employees who operate the detention system. If payroll is included, the cost of detention beds increases to \$159 per bed—a more accurate assessment. See DHS FY 2014 Budget Justification, pg. 1336.

<sup>6</sup> Laura Wides-Munoz and Garance Burke. "Immigrants Prove Big Business for Prison Companies" Associated Press-Miami, August 2012. Available at <http://news.yahoo.com/immigrants-prove-big-business-prison-companies-084353195.html>.

<sup>7</sup> National Immigration Forum, *The Math of Immigration Detention* (August 2012) available at, <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention2012.pdf>.

<sup>8</sup> Stephen Dinan, "Obama's Budget a Blow to Immigrant Enforcers; Funding Cut for Detentions, States" The Washington Times, April 11, 2013. Available at <http://www.washingtontimes.com/news/2013/apr/11/obamas-budget-a-blow-to-immigrant-enforcers/?page=all>.

\$2.04 billion for Custody Operations.<sup>9</sup> This is \$193 million more than the President requested and would accommodate the detention of 34,000 immigrants on any given day.<sup>10</sup> This is an increase of \$15.25 million dollars above FY2013 appropriations. This funding level would amount to \$5.6 million per day spent on immigration detention or \$164 per day per person.<sup>11</sup>

### **Immigration Detention in the US**

Immigration detention has been used by the United States in various forms throughout the country's history. It was temporarily suspended, with the closing of Ellis Island in 1954, and seemed to be extinct. With the influx of Haitian and Cuban refugees in the 1980's its use was reinstated, and since that time the system has steadily expanded through legislation and policy initiatives. Through the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress increased the number of aliens subject to mandatory detention, resulting in Immigration and Nationality Services (INS) expanding the number of detention beds available to meet the mandate. During the 108<sup>th</sup> Congress P.L. 108-458 the Intelligence Reform and Terrorism Prevention Act of 2004 directed the Secretary of Homeland Security to increase the number of detention beds by 8,000 annually starting in FY2006 through FY2010. Eventually, the House Appropriations Committee began incorporating a mandate into the annual appropriations bill. The FY2014 bill requires DHS to maintain 34,000 beds.

Despite the call for fiscal restraint from Congress in all areas of the federal budget, immigration enforcement has continued to see dramatic growth over the last several years (Illustrated in Figure 1). The average number of daily detention beds has nearly doubled, from 18,000 in 2004 to the current capacity of 34,000.<sup>12</sup> From 2001 to 2011 the total number of immigrants who pass through ICE detention per year rose from 204,459 individuals in 2001, to a record breaking 429,247 individuals in FY2011.<sup>13</sup> Also, according to the Congressional Budget Office (CBO), the immigration reform legislation passed in June by the U.S. Senate has the potential to increase the prison population by 14,000 inmates annually.<sup>14</sup>

While over the last several decades Congress has taken every opportunity to expand the immigration detention system through the bed mandate, there is a growing bipartisan chorus that is questioning its use. During the consideration of the DHS Appropriations Bill for FY2014 an amendment was offered by Representatives Theodore Deutch (D-FL) and Bill Foster (D-IL) that would have eliminated the requirement that DHS to maintain and fill 34,000 beds every day. Questions of the efficiency of the bed mandate were also raised during a House Judiciary Committee hearing when Representative Spencer Bachus (R-AL) cited the effectiveness of

<sup>9</sup> H.R. 2217, See note 3 above.

<sup>10</sup> H.R. 2217. See note 3 above.

<sup>11</sup> The cost per detainee appropriated by H.R. 2217 equals the total budget for Custody Operations, \$2.04 billion, divided by 365 days in a year, divided by the full capacity ICE is mandated to maintain by Congress, 34,000. This totals \$164 per immigrant per day. The Senate Judiciary Committee appropriated similar funding levels, \$1.9 billion for a minimum of 31,800 detention beds. Under the Senate bill the cost of detention would be \$162 dollars per detainee per day. See Department of Homeland Security Appropriations Bill, 2014, Full Committee Report pg. 54. Available at <http://www.gpo.gov/fdsys/pkg/CRPT-113srpt77/pdf/CRPT-113srpt77.pdf> The Senate version of the DHS appropriations bill has passed out of the full committee and is waiting to be called for a floor vote.

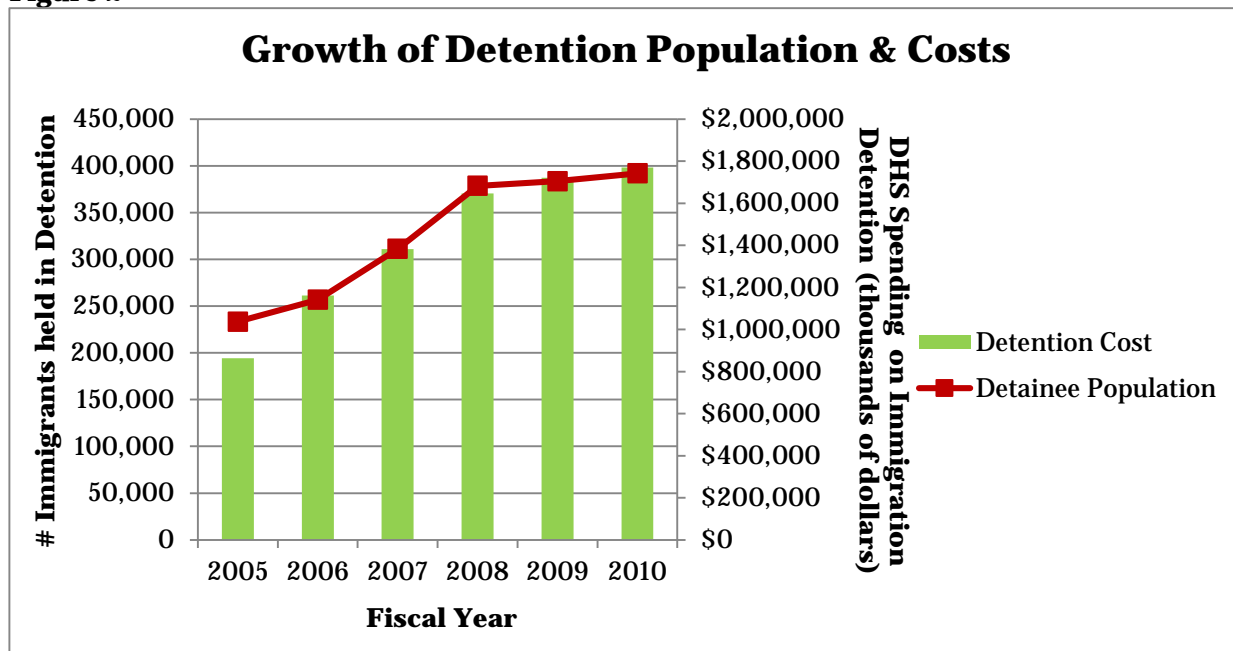
<sup>12</sup> Dep't of Homeland Security, Office of Inspector General, Detention and Removal of Illegal Aliens April 2006, p.5. Available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_06-33\\_Apr06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_06-33_Apr06.pdf).

<sup>13</sup> ICE, ERO Facts and Statistics, December 12, 2011. Available at <http://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf>.

<sup>14</sup> Congressional Budget Office Cost Estimate, S. 744 Border Security Economic Opportunity and Immigration Modernization Act, June 18, 2013, pg. 52. Available at <http://cbo.gov/sites/default/files/cbofiles/attachments/s744.pdf>.

alternatives to detention.<sup>15</sup> While the amendment to the appropriations bill ultimately failed, by a vote of 190-232,<sup>16</sup> there was bipartisan support for the elimination of the mandate and the actions taken by members reflects the growing support amongst both Democrats and Republicans that ICE should be allowed to use more cost efficient methods.

Figure 2<sup>17</sup>



Congress' expansion of the immigration detention system, through increased bed mandates, has created a profitable market for both private prison corporations and local governments.<sup>18</sup> In FY2013 nearly 244 state and county jails were contracted to house immigrant detainees on behalf of ICE (nearly 70 percent of the detained immigrant population).<sup>19</sup> Additionally, private correctional corporations are contracted to house detainees in their private facilities, and some of these corporations have built facilities strictly to house immigration detainees. Currently, ICE utilizes seven Contract Detention Facilities (CDF) and has said that they are exploring the cost effectiveness of these facilities. Additionally, ICE owns and operates six detention facilities, called Service Processing Centers (SPC's).<sup>20</sup>

<sup>15</sup> "Growing Bipartisan Support in Congress on Eliminating Immigration Detention Bed Mandate" Human Rights First, June 5, 2013. Available at <http://www.humanrightsfirst.org/2013/06/05/growing-bipartisan-support-in-congress-on-eliminating-immigration-detention-bed-mandate-2/>.

<sup>16</sup> Office of the Clerk of the U.S. House of Representatives, Roll Call Vote #198, June 5, 2013, H.R. 2217, available at <http://clerk.house.gov/evs/2013/roll198.xml>.

<sup>17</sup> Transactional Records Access Clearinghouse, "Growth in Number Detained," Syracuse University, Feb. 11, 2010, Available at <http://trac.syr.edu/immigration/reports/224/include/4g.html>; Transactional Records Access Clearinghouse, "Immigration and Customs Enforcement (ICE) Budget Expenditures," Syracuse University, Feb. 11, 2010, Available at <http://trac.syr.edu/immigration/reports/224/include/3.html>.

<sup>18</sup> Keith Harris "Minnesota Counties Feel Revenue Pinch with Release of Undocumented Immigrants, MINNPOST, June 14, 2012, Available at <http://www.minnpost.com/politics-policy/2013/06/minnesota-counties-feel-revenue-pinch-release-undocumented-immigrants>. Also see Cody Mason "Dollars and Detainees: The Growth of For-Profit Detention" The Sentencing Project, July 2012. Available at [http://sentencingproject.org/doc/publications/inc\\_Dollars\\_and\\_Detainees.pdf](http://sentencingproject.org/doc/publications/inc_Dollars_and_Detainees.pdf).

<sup>19</sup> DHS FY 2014 Budget Justification, pg. 44. See note 1.

<sup>20</sup> DHS FY 2014 Budget Justification pg. 45. See note 1.

Political pressure from private prison lobbies and local governments have played a large role in keeping detention centers open. Local government officials have treated the increase in bed mandates as a source of revenue for counties and a job creator for their region.<sup>21</sup> This has made it difficult to terminate contracts and leases on detention facilities.<sup>22</sup> The demand for jobs has taken priority over the poor conditions of confinement or whether detainees should be incarcerated in the first place.<sup>23</sup>

## **Prosecutorial Discretion**

After years of using sweeping and haphazard enforcement methods, ICE has made attempts to use more targeted efforts, focusing on individuals whose removals are a high priority for the agency. This is a needed shift after years of using resources to detain many immigrants who are not a danger or threat to their communities. From 1996 to 2006, 65 percent of immigrants who were detained and deported were detained after being arrested for non-violent crimes.<sup>24</sup> Between 2009 and 2011, over half of all immigrant detainees had no criminal records.<sup>25</sup> Of those with any criminal history, nearly 20 percent were merely for traffic offenses.<sup>26</sup>

ICE's new policy is to prioritize apprehension and detention of individuals convicted of serious criminal offenses. In June 2010, ICE Director John Morton released a memorandum which signaled the agency's first steps towards a more focused enforcement. The memorandum outlines the civil immigration enforcement priorities of ICE, focusing on removing individuals who are a threat to national security, public safety, and border security. With regard to detention, this directive stated "as a general rule, ICE detention resources should be used to support the enforcement priorities...or for aliens subject to mandatory detention by law."<sup>27</sup> It also directed ICE personnel to avoid detention where possible of individuals with serious physical or mental illnesses or who are disabled, pregnant, nursing, or are primary caretakers, or whose detention is "not in the public interest."<sup>28</sup>

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<sup>21</sup> "The Money Trail" Detention Watch Network, August 2013. <http://detentionwatchnetwork.org/node/2393>.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> ACLU, "Securely Insecure: The Real Costs, Consequences & Human Face of Immigration Detention". Available at [http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11\\_Fact%20Sheet%20FINAL\\_0.pdf](http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/1.14.11_Fact%20Sheet%20FINAL_0.pdf).

<sup>25</sup> Doris Missner, Donald M. Kerwin, Muzaffar Chishti and Clair Bergeron. "Immigration Enforcement in the United States, The Rise of a Formidable Machinery" Migration Policy Institute, January 2013, pg. 10. Available at <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>.

<sup>26</sup> John Simanski and Lesley M. Sapp "Immigration Enforcement Actions: 2011" Department of Homeland Security, Annual Report, September 2012, pg 6. Available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

<sup>27</sup> John Morton, Assistant Secretary Immigration and Customs Enforcement (ICE) to All ICE Employees, memorandum "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (June 2010), Available at <http://www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf>.

<sup>28</sup> Id.

### **Mandatory Detention**

IIRIRA which was passed in 1996 greatly expanded mandatory detention in the United States. Immigrants under the following categories must be detained pending removal proceedings:

- commission of a crime involving moral turpitude with sentences over a year
- conviction of multiple criminal offenses with a total sentence of 5 or more years of imprisonment
- commission of any drug offense, including if the immigration authorities have reason to believe that you are a drug trafficker
- commission of any prostitution-related offense
- involvement in terrorist activity
- involvement in significant human trafficking
- involvement in money laundering

The categories generally are related to the grounds of inadmissibility and deportability in the INA. Detention is mandatory regardless of eligibility for relief from removal. While prosecutorial discretion has fallen short of the expectations of many until Congress amends its mandatory detention laws there will continue to be high levels of immigration detention.

A subsequent memorandum was released in June 2011, consistent with the 2010 memorandum; it further outlined the use of “prosecutorial discretion” to advance enforcement priorities. In terms of detention, under this memorandum, “prosecutorial discretion” applies to a broad range of enforcement decisions, including “deciding whom to detain or to release on bond, supervision, personal recognizance, or other condition.”<sup>29</sup> Among other things, officers are encouraged to consider a person’s criminal history, the agency’s civil immigration enforcement priorities, the circumstances of the person’s arrival in the United States, and the person’s pursuit of education in the United States.<sup>30</sup>

In August 2011, DHS Secretary Napolitano announced that the agency would review its backlog of immigration removal cases in order to apply prosecutorial discretion, and that prosecutorial discretion should be applied consistently in new immigration cases.<sup>31</sup> Nearly two years later, despite the promise of the August 2011 memorandum, ICE had identified only nine percent of the non-detained cases as amenable for prosecutorial discretion<sup>32</sup>, and only 23,063 cases had been administratively closed as of July 31, 2013, which makes up on 7.1 percent of the back log.<sup>33</sup>

Most recently, subsequent to a memorandum by Secretary Napolitano in June of 2012, the administration has suspended the deportation of certain so called “DREAMers.” The memo outlines the use of prosecutorial discretion with respect to those brought to the United States as

<sup>29</sup> John Morton, Assistant Secretary, Immigration and Customs Enforcement (ICE) to All Field Office Directors, Special Agents in Charge and Chief Counsel, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens” (June 2011), Available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

<sup>30</sup> See note 29.

<sup>31</sup> ICE Case-by-Case Review Statistics (June 2012), Available at <http://www.documentcloud.org/documents/367098-ice-review-stats.html>.

<sup>32</sup> Id.

<sup>33</sup> Transactional Records Access Clearinghouse, “Immigration Court Cases Closed Based on Prosecutorial Discretion,” Syracuse University, June 30, 2013, Available at [http://trac.syr.edu/immigration/prosdiscretion/compbacklog\\_latest.html](http://trac.syr.edu/immigration/prosdiscretion/compbacklog_latest.html).



children. Since that time ICE has reviewed over 1,900 pending and new deportation cases, indicating the ones that may qualify for deferred action under the administration's new policy.<sup>34</sup>

The slow pace to effectively implement prosecutorial discretion comes at a high cost to the government, and is dire for detained individuals, who might otherwise settle their immigration case outside a prison cell. The guidance issued thus far offers a practical and deliberate way to inject these methods into the existing system. With detention costs high and deprivation of the liberty a severe governmental action, this would be the time for ICE to apply these guidelines liberally. Despite the steps already taken, much remains to be done in order to maximize the use of prosecutorial discretion in immigration enforcement, especially where the use of detention is concerned.

### **Privatization of ICE-owned Detention Facilities**

As previously indicated, the expansion of the immigration detention system has created a profitable market for those involved in operating county and state jails. The private prison industry has also benefited directly from this expansion. Corrections Corporation of America (CCA) is the largest ICE detention contractor, operating a total of fifteen ICE-contracted facilities with a total of 5,800 beds.<sup>35</sup> GEO Group, Inc. (GEO), the second largest ICE contractor, operates seven facilities with a total of 7,183 beds.<sup>36</sup> In FY2012 CCA and GEO reported annual revenues of \$1.8 billion<sup>37</sup> and \$1.5 billion<sup>38</sup> respectively. In December 2010, GEO purchased B.I. Incorporated, a company that has lucrative government contracts with ICE as the sole administrator of its alternatives to detention program.<sup>39</sup> Private prison companies in 2011 housed nearly half of all immigration detainees.<sup>40</sup>

Private prison corporations have also exerted their influence on legislators by lobbying for laws that detain immigrants more frequently and for longer periods of time.<sup>41</sup> According to the Associated Press, the three corporations holding the largest percentage of ICE detention contracts, including CCA and GEO, collectively spent at least \$45 million in the past decade on campaign donations and lobbyists at the state and federal levels.<sup>42</sup> The relationships between legislators and private prison corporations are perhaps best illustrated by Arizona's controversial S.B. 1070 bill, which was drafted in the presence of officials from CCA.<sup>43</sup> Of the 36 co-sponsors of S.B. 1070, 30 received campaign contributions from private prison lobbyists or companies, including CCA.<sup>44</sup>

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<sup>34</sup> Janet Napolitano, Secretary of Homeland Security to David V. Aguilar (CBP) Alejandro Mayorkas (USCIS) and John Morton (ICE), memorandum "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (June 15, 2012). Available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

<sup>35</sup> CCA Partners, Corrections Corporation of America [www.cca.com/partnering-with-cca/cca-partners/](http://www.cca.com/partnering-with-cca/cca-partners/).

<sup>36</sup> The GEO Group Inc. Financial Overview, 2012 Annual Report, pg. 18. Available at [https://materials.proxyvote.com/Approved/36159R/20130314/AR\\_159415/](https://materials.proxyvote.com/Approved/36159R/20130314/AR_159415/).

<sup>37</sup> Corrections Corporation of America, 2012 Annual Report on form 10-K, pg F-4. <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-reportsannual>.

<sup>38</sup> See note 36, pg. 18.

<sup>39</sup> "The GEO Group Announces Acquisition of BI Incorporated," GEO Group (Dec. 2010), Available at [http://bi.com/geo\\_group\\_announces\\_acquisition\\_of\\_bi\\_incorporated](http://bi.com/geo_group_announces_acquisition_of_bi_incorporated).

<sup>40</sup> See note 6.

<sup>41</sup> See note 24.

<sup>42</sup> See note 6.

<sup>43</sup> Laura Sullivan, "Prison Economics Help Drive Ariz. Immigration Law," National Public Radio, (Oct. 28, 2010). Available at <http://www.npr.org/templates/story/story.php?storyId=130833741>.

<sup>44</sup> Justice Policy Institute, "Gaming the System" (June 22, 2011), p. 30. Available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming\\_the\\_system.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf).

With the recent activity on immigration reform in both the House and the Senate, these companies have a vested interest in any reform related to interior enforcement. While both GEO and CCA have denied lobbying on immigration reform, the Lobbying Disclosure Act database shows that both companies have regularly lobbied the House and Senate on immigration matters in recent years.<sup>45</sup> With regards to the current effort to pass immigration reform legislation, GEO initially told media outlets that “The GEO Group has never directly or indirectly lobbied to influence immigration policy. We have not discussed any immigration reform related matters with any members of Congress, and we will not participate in the current immigration reform debate.” However their recent lobbying disclosure forms show that they have hired the DC based lobby group Navigators Global to lobby on behalf of the company with both houses of Congress on “issues related to comprehensive immigration reform”<sup>46</sup>. In June, S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, which is the Senate’s version of a comprehensive immigration reform bill, passed the Senate. The CBO estimates this bill could increase the prison population by 14,000, and further estimates a \$1.6 billion budget over the next decade.<sup>47</sup> Private estimates suggest that private prisons will acquire 80 percent of the bed increase in government contracts, a significant profit for shareholders.<sup>48</sup>

The influence of private prison corporations is even more troubling given persistent and numerous complaints by detainees held at private facilities, including sexual abuse,<sup>49</sup> inadequate access to translators, prolonged detention, and insufficient medical treatment.<sup>50</sup> ICE detention standards, designed to guide the operation of immigration detention facilities, are not expressly enforceable at many of the facilities under contract with ICE.<sup>51</sup> Given the lack of strict standards and proper oversight at these facilities, it is no surprise that sub-par conditions persist at these locations.

In March 2012, the high profile private immigration detention facility in Karnes, Texas, was opened by GEO Group. The facility was built to specifically house ICE detainees and to be the first “civil detention center” intended to house low-risk, adult males.<sup>52</sup> The Karnes facility has been controversial; some say that the accommodations are too plush for the detainees housed there and others note that alternatives to detention would be a more cost-effective option for detainees in the facility.<sup>53</sup> The Karnes facility allows for greater unescorted movement, more recreational

<sup>45</sup> Anna Fifield, “Private Prisons Fear Immigration Reform Plans: Lobbying Surge” World News, Financial Times, March 21, 2013.

<sup>46</sup> See note 6. Also see Lee Fang, “Disclosure Shows Private Prison Company Misled on Immigration Lobbying” The Nation, June 4, 2013. Available at <http://www.thenation.com/blog/174628/disclosure-shows-private-prison-company-misled-immigration-lobbying#>

<sup>47</sup> See note 14.

<sup>48</sup> Patrick O’Connor, “Private Prisons are Likely to Benefit From Rewrite of Immigration Laws; Lawmakers’ Plans to Crack Down on Border Violations Promise a Steady Stream of Detainees for Two Federal Contractors”, The Wall Street Journal, July 5, 2013. Available at <http://online.wsj.com/article/SB10001424127887324260204578587850002860188.html> [subscription required].

<sup>49</sup> Between the creation of ICE detention centers in 2003 and August 2010, there have been more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment, involving more than 50 alleged detainee victims. See, National Immigration Forum, “Summaries of Recent Reports on Immigration Detention” (June 2011) p. 11, available at <http://www.immigrationforum.org/images/uploads/2010/DetentionReportSummaries.pdf>.

<sup>50</sup> Written Testimony of Michelle Brane, Director, Detention and Asylum Program, Women’s Refugee Commission, “Holiday on ICE: The US Department of Homeland Security’s New Immigration Detention Standards”, Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Washington DC March 26, 2012. Available at <http://judiciary.house.gov/hearings/Hearings%202012/Brane%2003282012.pdf>.

<sup>51</sup> See note 24.

<sup>52</sup> “ICE opens its first-ever designed-and-built civil detention center”, ICE News Release (March 13, 2012). Available at <http://www.ice.gov/news/releases/1203/120313karnescity.htm>.

<sup>53</sup> Testimony of Jessica M. Vaughan, Director of Policy Studies, Center for Immigration Studies. “Holiday on ICE: The U.S. Department of Homeland Security’s New Immigration Detention Standards” U.S. House of Representatives Judiciary Committee, Subcommittee on

opportunities, and better visitation.<sup>54</sup> The facility cost GEO \$32 million to build, but their FY 2012 report to shareholders projects \$15 million in annual revenues directly from the project.<sup>55</sup> The company also reported a 650 bed expansion at the Adelanto detention facility in California. They report operating their ICE contracts at 95-96 percent capacity for which they receive a per diem rate. ICE will reimburse GEO at a rate of \$68.75 per day per detainee for the first 480 detainees and \$56.48 for all detainees above 480. In total, they saw an aggregate increase of \$55.6 million in FY2012 from their ICE contracts.<sup>56</sup>

The Karnes facility further raises the question whether incarcerating low-risk detainees, like those housed at this type of facility, is appropriate and economically wise when the government could use less costly alternatives. While the facilities at Karnes are arguably a step up from state prisons and county jails, where ICE leases bed space for detainees, it only reinforces the government's dependence on the detention system for immigrants. Furthermore, it enhances the influence of private prison companies, which have the most to gain from increasing the number of immigrants in detention facilities.

### **The Need to Detain and Alternatives to Detention**

Questions surround ICE's need to detain individuals on such a massive scale. For example, in 2009, an ICE report found that only 11 percent of detainees had committed what ICE considered to be violent crimes and the majority of detainees posed no threat to the general public.<sup>57</sup> Given the predominantly non-criminal make-up of the immigration detention population as well as the expense and civil rights concerns surrounding detention, more humane and cost-effective alternatives should be pursued. Many immigrants currently in ICE custody could be safely released and, if necessary, monitored with alternative methods, such as telephonic and in-person reporting, curfews, and home visits.<sup>58</sup>

Recognizing that individual circumstances should be considered when making detention determinations, ICE launched a risk assessment tool pilot program in Washington and Baltimore in May 2010 that was designed to assist ICE employees in determining the detention and medical needs of detainees during the intake process, including when it may be appropriate to use an Alternative to Detention (ATD) program.<sup>59</sup> Work began to automate the risk assessment process in April 2011.<sup>60</sup> Standardizing the use of the risk assessment tool could reduce unnecessary detention and optimize the use of ATD programs by enrolling appropriate individuals.

In her testimony to the House Judiciary Committee in May 2013, former Assistant Secretary for ICE Julie Myers Wood, testified about the successes of the ATD program. She stressed the need for individual assessment to determine if an individual should be detained or if they could be

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Immigration Policy and Enforcement, Washington, D.C. (March 28, 2012) Available at <http://judiciary.house.gov/hearings/Hearings%202012/Vaughan%2003282012.pdf>.

<sup>54</sup> Id.

<sup>55</sup> See note 36, pg. 10.

<sup>56</sup> Id.

<sup>57</sup> Dr. Dora Schriro. "Immigration Detention Overview and Recommendations" U.S. Immigration and Customs Enforcement, October 2009, p. 2. Available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

<sup>58</sup> Anil Kalhan. "Rethinking Immigration Detention" Side Bar: Columbia Law Review, 42(110) p. 55. Available at [http://www.columbialawreview.org/wp-content/uploads/2010/07/42\\_Anil\\_Kalhan.pdf](http://www.columbialawreview.org/wp-content/uploads/2010/07/42_Anil_Kalhan.pdf).

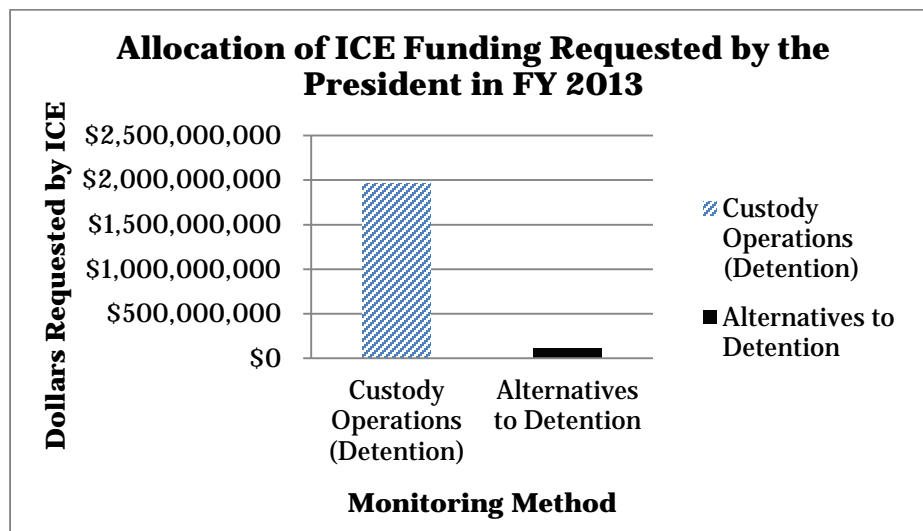
<sup>59</sup> ICE Detention Reform Accomplishments, Last updated September 2012. Available at <http://www.ice.gov/detention-reform/detention-reform.htm>.

<sup>60</sup> See note 57.

monitored by less restrictive means. Speaking of the program's successes, she noted that "[w]hat we have seen in is that immigrants who are in the system . . . show up for their hearing . . . 99 percent of the time . . . [and comply with] removal 84 percent of the time"<sup>61</sup>

Currently, ICE's ATD program has two primary components: Full-Service (FS) in which contractors provide equipment and monitoring services along with case management, or Technology-Only (TO) in which the contractor provides equipment but ICE continues to supervise the participants.<sup>62</sup> ICE has grown the size of these ATD programs. During FY 2012, ICE maintained an average daily participant level of 23,034 in the ATD program. This represents a notable increase in enrollment from the same date in 2011 when 17,957 total individuals were enrolled in ATD programs.<sup>63</sup> Budgetary figures reflect this growth; for the 2014 fiscal year (Oct. 1, 2013 – Sept. 30, 2014), the House has allocated \$96.5 million for ATD programs.<sup>64</sup> However, as illustrated in Figure 2, spending on ATDs remains dwarfed compared to spending on traditional detention

**Figure 3**<sup>65</sup>



As with ICE's decisions as to who should be detained, concerns exist about how ICE uses ATD programs. Currently, intensive electronic monitoring is used on some individuals who pose no danger to the community and are a low flight risk. These individuals could simply be released on bond or their own recognizance. ICE could use their ATD resources for those who are deemed to be a flight risk. Alternatives to *detention* should not be alternatives to *release*.

<sup>61</sup> Oral testimony of Julie Myers Wood. "S. 744 and the Immigration Reform and Control Act of 1986: Lessons Learned or Mistakes Repeated?" U.S. House of Representatives Committee on the Judiciary, May 22, 2013. Audio recording available at [http://judiciary.house.gov/hearings/113th/hear\\_05222013\\_2.html](http://judiciary.house.gov/hearings/113th/hear_05222013_2.html).

<sup>62</sup> DHS FY 2014 Budget Justification, pg. 1398-1399.

<sup>63</sup> DHS FY 2014 Budget Justification, pg. 1396.

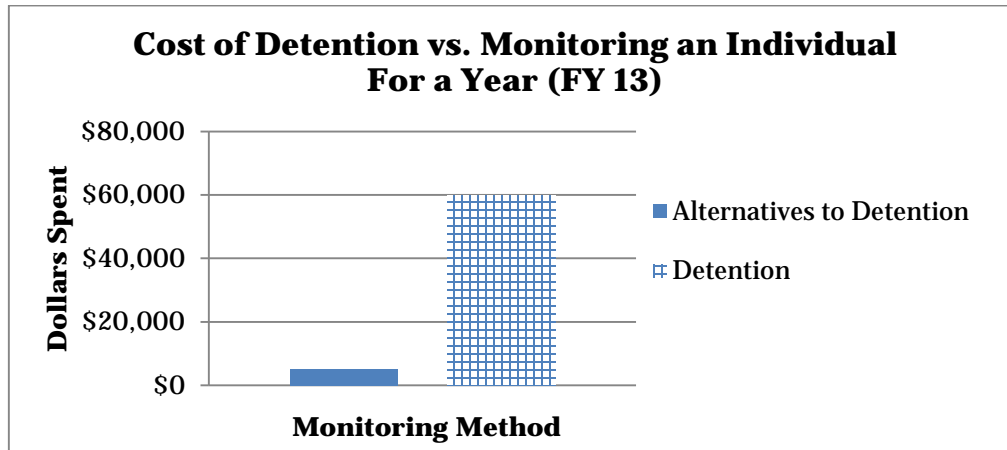
<sup>64</sup> See note 1, Department of Homeland Security Appropriations Bill Committee Report, pg. 40.

<http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2014-hsecurity.pdf> The Senate Department of Homeland Security Committee provided \$96,181,000 for the Alternatives to Detention Program. These levels are \$249,000 below the FY 2013 enacted levels. In their recommendations the Committee stated it was their belief that DHS has not used the ATD program to its full potential and that they would like to see more transparency with ICE's use of the program. Senate Report 113-007 Department of Homeland Security Appropriations Bill, 2014. Available at [http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp113&sid=cp113oXrdE&refer=&n=sr077.113&item=&&sel=TOC\\_176930&](http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp113&sid=cp113oXrdE&refer=&n=sr077.113&item=&&sel=TOC_176930&).

<sup>65</sup> See note 1, DHS FY 2014 Budget Justification, pg. 3.

Financial justifications support expanding ATD programs. Existing alternatives range in cost from as low as 0.17 cents up to \$17 dollars a day per individual.<sup>66</sup> In FY2012 the average cost per participant was \$5.94.<sup>67</sup> Thus, even if the most expensive alternative programs<sup>68</sup> were used to monitor the overwhelming majority of detainees without violent criminal histories, a tremendous amount of resources and money would be saved. If ICE limited its use of detention to individuals who have committed violent crimes, the agency could save nearly \$4 million a night, or \$1.44 billion annually—a 79 percent reduction in costs.<sup>69</sup> ( $\$3,950,194 \text{ saved each night} * 365 \text{ days per year} = \$1,441,820,810 \text{ savings per year}$ ).<sup>70</sup>

**Figure 4**<sup>71</sup>



In FY 2010, the last year for which appearance data is available, ATD programs exceeded the target for appearance rates for immigration hearings by 35.8 percent (the target was 58 percent). The actual appearance rate was 93.8 percent.<sup>72</sup>

## Conclusion

Fiscal accountability by the Federal Government is critical in our current economy, yet immigration detention continues to raise enormous fiscal concerns. The urgency for an alternative approach is further fueled by numerous humanitarian concerns endemic to immigration detention. ICE must reexamine and modify how and why it detains individuals, including maximizing the use of alternatives to detention programs to take advantage of cost savings. In addition, the government must be prudent with limited resources by detaining only those who

<sup>66</sup>See note 1, DHS FY 2014 Budget Justification, pg.6.

<sup>67</sup> See note 1, DHS FY 2014 Budget Justification, pg. 64.

<sup>68</sup> Dep't of Homeland Security, ICE Detention Reform: Principles and Next Steps (Oct. 2009), available at [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf).

<sup>69</sup> 11% of detainees have committed violent crimes (.11) \* 31,800 detainees per night = 3,498 violent detainees per night. 31,800 detainees per night – 3,498 violent detainees = 28,302 nonviolent detainees. 28,302 nonviolent detainees \* \$17 a day for alternative to detention monitoring = \$481,134 a day to monitor nonviolent detainees. 3,498 violent detainees \* \$164 a day for detention = \$573,672 a day to detain violent detainees. \$481,134 on alternatives to detention for nonviolent detainees + \$573,672 on detention for violent detainees = \$1,054,806 a night to monitor and detain. \$5,005,000 currently spent each night to detain immigrants - \$1,054,806 a night if only detaining those who committed violent crimes = \$3,950,194 saved each night.

<sup>70</sup> Alternatively a savings of over 78.9% as compared to the current costs for Custody Operations.

<sup>71</sup> \$17 a day for alternative detention procedures \* 365 days a year = \$6,205 a year to monitor an individual using alternatives, \$164 a day to detain an individual \* 365 days a year = \$59,860 a year to detain an individual. See note 1 DHS FY 201 Budget Justification.

<sup>72</sup> Department of Homeland Security, U.S. Immigration and Customs Enforcement, Salaries and Expenses, FY2014 Congressional Budget Justification, pg. 925. Available at <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>.

actually pose a risk to public safety. The fiscal interests of private prison corporations are insufficient rationale to maintain the current wasteful immigration detention system. Prioritizing the use of scarce resources is the responsible thing to do, is consistent with other immigration policies, and will help accomplish the important objectives of enforcing immigration laws and protecting public safety. A close examination of the figures makes it clear: the numbers behind immigration detention simply do not add up to sensible policy.