WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

Immigration Enforcement

Submitted to the U.S. House of Representatives Committee on Appropriations, Subcommittee on Homeland Security

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I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to preserving and defending the fundamental rights of individuals under the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants, including those detained by U.S. Immigration and Customs Enforcement (ICE).

The ACLU submits this statement to the U.S. House of Representatives Committee on Appropriations' Subcommittee on Homeland Security on the occasion of its hearing addressing Immigration Enforcement. The hearing will address the recently reported release of between several hundred and several thousand immigration detainees from ICE custody.[1] The ACLU lacks complete information about the number of detainees who were released, the reasons for the releases, how release decisions were made in individual cases, and the specific conditions under which detainees were released. Nonetheless, ICE's stated justification for the releases—that it had determined these individuals could be "placed on an appropriate, more cost-effective form of supervised release"[2]—raises a fundamental question, posed among others by Secretary Janet Napolitano herself[3]: why were these individuals detained in the first place?

The ACLU firmly believes that curtailing our immigration prisons is urgently needed as a fiscally responsible measure that would also improve the immigration enforcement system's respect for our nation's fundamental commitments to liberty and due process of law. Releases based on an assessment of who must be incarcerated, as opposed to supervised effectively in the community, are a step in the right direction. Indeed, the ACLU has long contended that ICE is detaining thousands of individuals whose complete loss of liberty is not actually necessary—either because they pose no danger or flight risk, or because alternative forms of supervision are available. These alternatives serve the government's purposes at significantly less cost to taxpayers and less hardship to immigrants and their communities.

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[1] Reports of the number of released detainees ranged from several hundred to several thousand. *Compare* Alicia P. Caldwell, *DHS Released Over 2,000 Immigrants*, Associated Press (Mar. 1, 2013), *available at* http://bigstory.ap.org/article/documents-us-released-more-2000-immigrants, *with* Alan Gomez, *Feds free hundreds from immigration detention*, USA Today (Feb. 26, 2013) *available at* http://www.usatoday.com/story/news/politics/2013/02/26/illegal-immigrants-released-sequester/1949151

[2] Associated Press, DHS *releases hundreds of illegal immigrants from immigration jails ahead of budget sequester*, Wash. Post (Feb. 26, 2013), *available at* http://articles.washingtonpost.com/2013-02-26/politics/37301571_1_immigration-jail-illegal-immigrants-ice-jails

[3] See Jim Avila and Serena Marshall, "Homeland Security Secretary Janet Napolitano Regrets Surprise Announcement of Immigrant Release." ABC News (Feb. 28, 2013), *available at* http://abcnews.go.com/Politics/homeland-security-secretary-janet-napolitano-regrets-timing-immigrant/story?id=18622711 ("When asked why the detainees were in jail in the first place, Napolitano replied, "That's a good question. I've asked the same question myself ... so we're looking into it.").

As detailed below, immigration detention is enormously expensive, costing approximately $2 billion in fiscal year ("FY") 2012, at a time of lengthy and persistent fiscal crisis. Yet because ICE's detention budget is tethered to an inflexible mandatory bed quota, this money is largely wasted on locking up 34,000 men, women, and children every day who, in many cases, do not need to be incarcerated to achieve the government's goals. In addition to the serious constitutional concerns raised by the widespread use of unnecessary detention, the bed mandate guarantees the waste of scarce federal budgetary resources. ICE's budget should instead encourage the use of effective alternatives to detention ("ATDs"), which, as long recognized in the criminal justice context, are effective and available to meet the government's interests in preventing flight risk and ensuring public safety—at a fraction of detention's profligate costs.

Reducing detention—through the use of careful risk assessment, appropriate conditions of supervision, and other measures to ensure that ICE limits detention to cases where it is necessary—is critical to fiscal responsibility and will aid in bringing immigration detention into compliance with constitutional requirements. The ACLU therefore recommends that Congress: (1) eliminate any mandate that ICE maintain and fill a fixed number of daily detention beds so that the agency detains only where necessary; (2) permit ICE flexibility to use its detention budget on ATDs that have been proven effective in ensuring appearance for court proceedings and removal, and appropriate additional funds to ATD programs and pilot projects; and (3) prohibit the use of appropriated funds for detention except where ICE has determined, based on a uniform risk assessment, that no condition or combination of conditions of release would be sufficient to address an individual's dangerousness or flight risk, and where this determination is subject to review by an Immigration Judge.

I. The Rapid and Costly Expansion of Immigration Detention Has Been Abetted by Congress's Mandate that ICE Maintain a Specified Bed Count Regardless of Operational Needs, a Quota that is Fiscally Irresponsible and Needlessly Incarcerates Immigrants.

Immigration detention has grown at an irrational and wasteful rate. Over the last 15 years, detention levels have more than tripled—from 85,730 detainees in 1995[4] to an all-time high of 429,247 individuals in FY 2011.[5] In FY 2011, ICE held an average daily population of 33,034 individuals in more than 250 immigration prison facilities nationwide.[6] The men, women, and children ICE put behind bars include survivors of torture, asylum-seekers, victims of trafficking, families with small children, the elderly, individuals with serious medical and mental health conditions, and lawful permanent

[4] Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, (Jan. 2013), 126, *available at* http://www.migrationpolicy.org/pubs/enforcementpillars.pdf

[5] John Simanski & Lesley M. Sapp, DHS Office of Immigration Statistics, *Immigration Enforcement Actions: 2011*, 4, *available at* http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf

[6] ICE Office of Enforcement and Removal Operations, *ERO Facts and Statistics* (Dec. 12, 2011), *available at* www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf

residents with longstanding family and community ties who are facing deportation because of old or minor crimes for which they have already served their sentences. Notably, almost double the number of people are detained in civil immigration detention every year than are serving sentences in federal Bureau of Prisons facilities for all federal crimes.[7]

This mushrooming detention system is extremely expensive for American taxpayers. Over the years, Congress has steadily appropriated more and more funds to expand immigration prisons—from $864 million eight years ago[8] to $2 billion annually today, an increase of 131 percent.[9] ICE currently spends approximately $122 to $164 each day to detain each person in its custody, or $44,530 to $59,860 per person per year.[10]

The steep rise in ICE detention expenditures corresponds to two key shifts that effectively guarantee tens or hundreds of thousands of individuals will be unnecessarily detained every year. First, mandatory custody provisions enacted by Congress in 1996 have been interpreted by ICE to require incarceration without bond for virtually all noncitizens who are removable because of criminal convictions—including nonviolent misdemeanor convictions for which they may have received no jail sentence.[11] As a result, thousands of immigrants—including many longtime lawful permanent residents—are held without ever being afforded the basic due process of a bond hearing before an independent adjudicator while their deportation cases are being decided.

Moreover, because of ICE's overly expansive interpretation, mandatory detention is being improperly applied to, among others, individuals who have substantial challenges to removal on which they ultimately prevail;[12] individuals who have old convictions and have subsequently demonstrated rehabilitation;[13] and individuals who are

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[7] There were 209,771 prisoners held by federal correctional authorities as of December 31, 2010. In contrast, ICE detained 363,064 individuals that year, and 429,247 in 2011. *Compare* Paul Guerino, Paige M. Harrison, & William J. Sabol, *Prisoners in 2010* (DOJ, Bureau of Justice Statistics, Feb. 9, 2012), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf *with Immigration Enforcement Actions: 2011*, *supr*a, at 4.

[8] *Immigration and Customs Enforcement (ICE) Budget Expenditures FY 2005 - FY 2010*, Transactional Records Access Clearinghouse, Syracuse University (2010), *available at* http://trac.syr.edu/immigration/reports/224/include/3.html.

[9] *U.S. Dep't of Homeland Security Annual Performance Report, Fiscal Years 2011-2013* (Feb. 13, 2012), 1036, *available at* http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf (requesting $1,959,363,000 for Custody Operations in FY 2013).

[10] National Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* (Aug. 2012), 2, *available at* http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf

[11] *See* 8 U.S.C. § 1226(c).

[12] *See* Appendix, *e.g.* Warren Joseph, Alejandro Rodriguez, Ahilan Nadarajah.

[13] Although section 1226(c) limits the application of mandatory custody to persons who are arrested by ICE "when released" from criminal custody, the agency insists that it applies *any time* after an individual's release. *See Matter of Rojas*, 23 I. & N. Dec. 117 (BIA 2001). As a result, ICE applies mandatory detention to individuals who have been leading law-abiding lives in the community for years following completion of their criminal sentences. *See Saysana v. Gillen*, 590 F.3d 7, 17-18 (1st Cir. 2009) ("By any logic, it stands to reason that the more remote in time a conviction becomes and the more time after a

detained for prolonged periods of time—sometimes years—far beyond the "brief" period of detention contemplated both by Congress and the Supreme Court in *Demore v Kim*.[14]

Second, Congress fosters costly over-use of detention by its inefficient and unnecessary micromanagement of ICE detention beds. The FY 2012 DHS appropriations bill increased the number of beds to their current level of 34,000.[15] By barring ICE from employing flexible, fact-based decision-making about custody, the mandatory bed requirement undermines the administration's commitment to reform the civil immigration detention system and incarcerate only those individuals who need to be detained: namely, those who pose a risk to public safety or are a flight risk.

This bed mandate—effectively, a detention quota—has no basis in sound detention management and raises serious due process concerns. No other detention system in the United States, criminal or civil, specifies that a minimum number of individuals be incarcerated. Instead, prudent best practices sensibly afford law enforcement officials the discretion to determine, based on an assessment of individual flight risk and danger, who should be detained. The bed mandate ensures that individuals who pose no significant flight risk or danger will be locked up based on Congress's orders that ICE satisfy its quota. Such detention is wholly unjustified and runs counter to the basic constitutional requirements that civil detention be reasonably related to its purpose,[16] and that "liberty [be] the norm, and detention . . . the carefully limited exception."[17]

Indeed, as a practical matter, the bed mandate severely restricts ICE's discretion over a large portion of its detained population. Although ICE data indicate that, in FY 2011, between 45% and 64% of immigration detainees are designated as "mandatory" on any given day, the remaining 33% to 55% of detainees are detained at the agency's discretion.[18] These individuals generally have no criminal records and are being detained solely on the basis of flight risk. Nothing precludes their release except the government's refusal to set a bond or grant release on recognizance, or the detainees' inability to post a prohibitive bond that has been set.

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conviction an individual spends in a community, the lower his bail risk is likely to be."); *see also* Appendix, Errol Barrington Scarlett.

[14] *See Demore v. Kim*, 538 U.S. 510, 513 (2003) (authorizing mandatory detention for a "brief period"); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) (due process requires a hearing once the duration of mandatory detention becomes unreasonable); *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005) (8 U.S.C. § 1226(c) only authorizes mandatory detention if removal proceedings are "expeditious").

[15] Consolidated Appropriations Act of 2012, Pub. L. 112-74, 125 Stat. 966 (Dec. 23, 2011), *available at* www.gpo.gov/fdsys/pkg/BILLS-112hr2055enr/pdf/BILLS-112hr2055enr.pdf

[16] *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[17] *United States v. Salerno*, 481 U.S. 739, 755 (1987).

[18] These statistics are based on data obtained through a Freedom of Information Act request and on file with the ACLU. ICE informed the ACLU that "mandatory" detention in ICE's data reporting refers to individuals who are categorically ineligible for release under 8 U.S.C. § 1226(c) because they are in removal proceedings based on their criminal records, as well as detainees who are in fact eligible for certain forms of discretionary release, but do not receive bond hearings before an Immigration Judge.

Yet under the current ICE budgetary rules mandated by Congress, there is little incentive and no requirement for the agency to consider whether alternative forms of supervision short of incarceration would meet the government's purposes of ensuring an individual's appearance at removal proceedings and at removal if ultimately ordered. The predictable result of mandates that prevent a case-by-case evaluation of detention needs is that—as confirmed by the government's own data—far too many individuals are locked up when they do not need to be. Over the years, much of the justification for mass incarceration has been the need to protect the public from "dangerous criminal aliens." But in practice, those who are detained generally do not fit this profile.

Although immigration detention facilities look like prisons, individuals held there are *not* serving criminal sentences. Indeed, more than half of immigration detainees have never been convicted of any crime.[19] In most cases, the trigger for immigration detention is not criminal activity at all, but instead some other kind of immigration matter, such as overstaying a visa or entering the country without inspection.[20] And even for those who become ICE detainees due to a previous criminal conviction, the majority of convictions triggering immigration detention are nonviolent and/or minor,[21] and the detainees have already completed serving their criminal sentences. Indeed, ICE itself classifies most immigration detainees as "low custody" or having a "low propensity for violence," and views them as posing no threat to the public.[22]

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[19] According to ICE data, only 46 percent of detainees had a criminal record in FY 2011. MPI, *Immigration Enforcement in the United States*, *supra*, 128 (citing data); *see also* TRAC Immigration, Detention of Criminal Aliens: What Has Congress Bought? (Feb. 11, 2010), http://trac.syr.edu/immigration/reports/224/index.html (reporting, based on ICE data, that the majority of immigration detainees from 2005 through 2009 had no criminal convictions). Moreover, studies repeatedly have shown that immigrants are *less likely* to commit crimes than native-born Americans. *See* Stuart Anderson, *Immigrants and Crime: Perception vs. Reality*, Immigration Reform Bulletin, Cato Institute (June 2010), *available at* http://www.cato.org/pubs/irb/irb_june2010.pdf (discussing studies).

[20] According to DOJ data, a mere 15.5 percent of deportation proceedings in FY 2012 were made up of "criminal cases"—that is, cases based on criminal activities. In contrast, 81 percent of cases involved immigration law violations such as overstaying a visa or entering the country without inspection. *See* TRAC Immigration, *U.S. Deportation Proceedings in Immigration Courts* (Jan. 31, 2013), *available at* http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php

[21] According to DOJ data, only 27.5 percent of crime-based deportation cases in FY 2012 were filed based on offenses charged as "aggravated felonies." *See* TRAC Immigration, *U.S. Deportation Proceedings, supa.* Similarly, in a report analyzing enforcement data from 1997 to 2007, Human Rights Watch found that some of the most common crimes for which people were deported are relatively minor offenses, such as marijuana and cocaine possession or traffic offenses. Among legal immigrants who were deported, 77% had been convicted for such nonviolent crimes. Human Rights Watch, *Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses* (Apr. 15, 2009). The Office of Immigration Statistics reported that in 2005, 56% of criminal convictions forming the basis for deportations were nonviolent drug or illegal reentry crimes; an additional 14.6% were non-specified but nonviolent crimes. *See* Mary Dougherty, Denise Wilson, and Amy Wu, DHS, Office of Immigration Statistics, *Immigration Enforcement Actions: 2005* (Nov. 2006), Table 4, 5.

[22] *See* Dora Schriro, ICE, *Immigration Detention Overview and Recommendations* (Oct. 2009), 2, *available at* http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf According to more recent ICE data, as of May 2, 2011, 41% percent of ICE detainees were classified as Level 1 (lowest-risk) detainees, while only 19 percent of detainees were classified as Level 3 (highest-risk) detainees. Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two Year Review* (Human Rights First 2011), 2 (citing data received through a Freedom of Information Act request to ICE, on file

Detention is often unnecessary to prevent an immigrant's risk of flight. As set forth below, the criminal justice system has long recognized that alternatives to incarceration in ICE detention facilities, such as telephonic and in-person reporting, curfews, home visits, and electronic monitoring, can ensure appearance at court hearings, and for removal if ordered, at a tenth of the cost of incarceration.[23] Many immigrants are ideal candidates for these alternatives, which Congress should fund and make accessible by ending the ICE detention bed quota.

II. The Prevalence of Unnecessary Immigration Detention

The economic and human costs of overreliance on immigration detention are made evident when we look at the kinds of people subject to immigration detention. What follows are just a few stories of individuals who recently benefited from ICE's release decisions—survivors of domestic violence and torture, longtime residents with nonviolent offenses and U.S. citizen children, and individuals who were deemed eligible for release on bond but remained detained simply because they were unable to come up with the money. As reflected in these examples, ICE routinely detains individuals for whom there is no justification for incarceration, particularly in light of the availability of alternative forms of supervision that would ensure their appearance at removal proceedings. The question Congress should be asking is not why these people were released, but rather why ICE was detaining them in the first place?

1. A domestic violence survivor, Dolores (a pseudonym) is an asylum applicant who had been imprisoned at the Sherburne County Jail in Elk River, Minnesota for nearly two years. She had one conviction for criminal reentry – the result of her fleeing Honduras to escape an abusive boyfriend. Although she posed no danger and was an ideal candidate for supervised release, she languished in immigration detention and suffered immense hardships, unable to maintain contact with her three children and or to get the psychiatric care she desperately needed to deal with the post-traumatic stress resulting from her abuse. During this period Dolores was deprived of all sunlight (apart from the times she was transferred to and from immigration court) and lost one-third of her hair due to anxiety. Meanwhile, her asylum case, based on the domestic violence she suffered, has been pending at the Board of Immigration Appeals for approximately a year. On February 26, 2013, she was released by ICE on conditions of supervision, including wearing an ankle-monitoring bracelet and regular reporting.[24] According to her attorney, she is now living in a women's shelter.[25] ICE would have paid an estimated average of $80 per

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with Human Rights First), *available at* www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf

[23] *Math of Immigration Detention*, *supra*, 8.

[24] According to a newspaper article about Dolores's case, she was awakened by ICE officials on February 26, 2013 and told "You're very expensive to have here in jail. The budget isn't good and you've got to go." Allie Shah, "Immigrant held in Sherburne County jail glad to 'breathe fresh air'" Star Tribune (Mar. 3, 2013), *available at* http://www.startribune.com/local/194713181.html?refer=y

[25] *See id.* and email to ACLU from attorney Sarah Brenes (Mar. 7, 2013).

day to the Sherburne County Jail for Dolores's detention. Thus, her two-year detention cost taxpayers approximately $58,400.[26]

2. Marco (a pseudonym), a 20-year-old Mexican national who came to the United States on his own four years ago in order to provide for his mother and younger siblings, was imprisoned by ICE for four months at the Keogh-Dwyer Correctional Facility in Sussex, NJ, even though he posed no danger or flight risk. Marco's father abandoned his family when Marco was a young child. For the last four years Marco has been working in New York in order to pay for his siblings' schooling and necessities. In October 2012, Marco was, he says, wrongfully arrested at his place of employment when an undercover officer allegedly bought marijuana from someone else on the premises. Shortly thereafter Marco was transferred to ICE custody.

   Although early on in his case, the District Attorney's office was clear that it had no intention of proceeding with the charges against Marco – and although, based on his father's abandonment and other circumstances, Marco is eligible to obtain legal immigration status through the Special Immigrant Juvenile process – ICE nonetheless detained him without bond. In December, Marco obtained immigration counsel and received a bond hearing. On January 30, 2013 – at which point Marco had already been detained for more than three months – an Immigration Judge approved his release on a $5,000 bond. Marco was in the process of trying to collect the money to post bond when, on February 25, 2013, ICE released him, subject to the requirement that he report after each of his court hearings, which he has done. Taxpayers spent an estimated $13,500 for Marco's four-month detention.[27]

3. Victoria (a pseudonym), a domestic violence survivor from Mexico who has lived in the United States since 2000, was detained at the Eloy Detention Center in Arizona for two years and four months, even though she poses no danger or flight risk and is pursuing relief from removal in the form of both asylum and cancellation of removal. Her asylum claim is based on the domestic violence she suffered and would face if returned to Mexico; her cancellation claim is based on the hardship her deportation would cause to her nine-year-old U.S. citizen daughter. Although denied relief by the immigration court, her case is pending on appeal before the U.S. Court of Appeals for the Ninth Circuit, which issued a stay of removal until her case is finally decided. Prior to her detention, Victoria worked steadily and took care of her U.S. citizen daughter. She has two convictions for nonviolent offenses, for which she received probation and no jail time.

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[26] Paul Rignall, "Jail food: County switches to another provider," Star News (Oct. 5, 2012), *available at* http://erstarnews.com/2012/10/05/jail-food-county-switches-to-another-provider/

[27] This figure is based on an estimate from a Newark Star Ledger article which showed that ICE paid approximately $108/day per detainee to the Essex County Correctional Facility in New Jersey. Figures for the Keogh-Dwyer Correctional Facility are unknown. *See* Eunice Lee, "ICE detainee release due to sequester raises ire of advocates: 'Why were they ever detained?'" Newark Star Ledger (Feb. 28, 2013) *available at* http://www.nj.com/news/index.ssf/2013/02/why_were_they_detained_at_all.html

On August 7, 2012 – at which point Victoria had already been in immigration detention for nearly two years without a bond hearing – she finally appeared before an Immigration Judge who granted her release on a $6,000 bond. Her family was unable to raise the money, so she remained imprisoned another seven months until March 2, 2013, when she was released by ICE under conditions requiring her to wear an ankle bracelet and check-in weekly. She is now home living with her daughter and lawful permanent resident husband. Figures from 2010 show that the cost of detention per day at Eloy was $65.[28] Victoria's two years and two months of detention therefore cost taxpayers at least $55,000.

4. In Florida, nine female asylum seekers, six of whom are domestic violence survivors, were recently released from Broward Transitional Center in Pompano Beach, Florida. One had been detained for nine months, the others for between five months and six days. None had any criminal convictions apart from one who had a conviction for driving without a license. All were released on conditions of supervision, including regular reporting and, in some cases, ankle bracelets. ICE paid GEO Group to detain these women and taxpayers spent an estimated $127,592 to detain this group of asylum-seekers who are survivors of domestic violence and in some cases torture.[29]

While we have no way of knowing whether these detainees are representative of the recent releases, their stories are far from unique. Rather, the above cases—as well as the additional cases included in the appendix—represent only a fraction of the many individuals subjected to unnecessary immigration detention when they pose neither a danger or flight risk, or could be released on alternative conditions of supervision.

III. Alternatives to Detention Save Vast Sums of Money While Ensuring Court Appearances and Protecting Public Safety.

ICE's own Alternatives to Detention ("ATD") program has been very successful in ensuring that immigrants appear for removal proceedings. BI Incorporated, the company with which ICE contracts for its Intensive Supervision and Appearance Program II ("ISAP II"), has reported 99% attendance rates at immigration court hearings.[30] Earlier pilot programs like the Vera Institute's Appearance Assistance Project

[28] ACLU of Arizona, *Immigration Detention in Arizona* (Feb. 24, 2010), *available at* http://www.acluaz.org/sites/default/files/documents/Detention%20in%20Arizona%20One-Pager%202-24-10.pdf, 2.

[29] All of these women were helped by Americans for Immigrant Justice.

[30] *See* ISAP II 2011 Annual Report (in 2011, ICE referred 35,380 participants to ISAP II, ICE's ATD intensive supervision appearance program that in its "full service" option produced a 99.4% attendance rate at all Immigration Judge hearings and a 96.0% attendance rate at the final court decision); ISAP II 2010 Annual Report (in 2010, ICE referred 25,778 participants to ISAP II ; "full service" option had a 99% attendance rate at all Immigration Judge hearings and a 94% attendance rate at the final court decision).

(AAP) had similar appearance rates. Even for those with criminal records, ATDs were effective in ensuring a greater than 90% appearance rate.[31]

Alternatives to detention are also widely used by the federal and state pretrial systems, with both the federal system and several states authorizing detention only when no conditions of release are sufficient to protect against danger or flight risk, and employing a presumption of release on the least restrictive conditions of bail.[32] As in the immigration context, ATDs in the pretrial detention setting have proven to be effective in preventing danger to the community or flight risk pending proceedings. For example, according to Department of Justice ("DOJ") statistics, among federal defendants granted pretrial release during fiscal years 2008-10, only 4% were rearrested for a new offense (felony or misdemeanor) and 1% failed to make their court appearances.[33] State ATD programs report similarly low rates of recidivism and flight. One example involves Harris County, Texas, where the pretrial services program reported only a 5% failure to appear rate and a 3.3% rearrest rate in 2011.[34]

Moreover, ATDs save tremendous amounts of taxpayer money, costing ICE less than $15 per person per day,[35] as opposed to the $122 to $166 per person per day required for incarceration. Not surprisingly then, experts from across the political spectrum have recommended using ATDs to cut costs while still ensuring high appearance rates. For example, the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy concluded that alternatives to detention can "ensure that the vast majority of those facing deportation comply with the law, and at much lower costs."[36] The Heritage

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[31] Eileen Sullivan et al., *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program, Final Report to the Immigration and Naturalization Service*. (Aug. 1, 2000), 6, *available at* www.vera.org/content/testing-community-supervision-ins-evaluation-appearance-assistance-program; see also Alfonso Serrano F., "ICE Slow to Embrace Alternatives to Immigrant Detention." New America Media (Apr. 10, 2012) ("In 2010, for example, government programs that provided alternatives to detention resulted in a 93.8 percent appearance rate for immigration hearings. And in 2009, the government's electronic monitoring programs yielded a 93 percent appearance rate, while its enhanced supervision reporting program resulted in a 96 percent compliance rate.").

[32] *See* 18 U.S.C. § 3142(e), (c)(1)(A); *see also, e.g.*, Cal. Penal Code § 1270(a) (2012); Tex. Code Crim. Proc. Ann. art. 17.40; 725 Ill. Comp. Stat. 5/110-2 (2012); Conn. Gen. Stat. § 54-63b; Ky. R. Crim. Pro. 4.12; Or. Rev. Stat. § 135.245

[33] DOJ, Bureau of Justice Statistics, *Pretrial Release and Misconduct in Federal District Courts, 2008-2010* (Nov. 2012), 13 tbl. 11(Nov. 2012), *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4535

[34] Pretrial Services of Harris County, Texas, *2011 Annual Report*, 20-21, *available at* http://www.harriscountytx.gov/CmpDocuments/59/Annual%20Reports/2011%20Annual%20Report-0410.pdf. *See also, e.g.*, Partnership for Community Excellence, *Pretrial Detention & Community Supervision: Best Practices and Resources for California Counties* (San Francisco County reported less than a 3% failure to appear rate and a 0% long-term recidivism rate for its pretrial program), *available at* http://caforward.3cdn.net/7a60c47c7329a4abd7_2am6iyh9s.pdf; James Austin et al., The JFA Institute, *Florida Pretrial Risk Assessment Instrument* (2012) (in samples from five Florida counties in 2011, 6.5% failure to appear rate and 8.4% rearrest rate), *available at* http://www.pretrial.org/Setting%20Bail%20Documents/FL%20Pretrial%20Risk%20Assessment%20Report%20(2012).pdf

[35] *Math of Immigration Detention*, supra, 8; *see also* Press Release, Alternatives to Detention for ICE Detainees, ICE, Oct. 23, 2009, at 9.

[36] Jeb Bush, Thomas F. McLarty III, and Edward H. Alden, Council on Foreign Relations, *U.S. Immigration Policy*, Independent Task Force Report No. 63 (2009), 29.

Foundation also recognized the importance of ATDs to "bring costs down" and recommended that more be done "to identify the proper candidates for ISAP-like programs" and that "[o]ther commonsense programs should be analyzed and, if effective, expanded."[37] One estimate suggests that even if the most expensive ATD program were used to monitor detainees who have no violent criminal histories—the overwhelming majority of ICE detainees—"the agency could save nearly $4.4 million a night, or $1.6 billion annually, an 82% reduction in costs."[38]

Indeed, in its strategic plan for FY 2010-14, ICE recognized "the value of enforcing removal orders without detaining people" and committed to developing "a cost-effective Alternatives to Detention program that results in high rates of compliance."[39] Moreover, in its FY 2013 Budget Request, DHS sought "flexibility to transfer funding between immigration detention and the ATD program."[40] However, to date, ICE's ATD program is still dwarfed by the immigration detention system.[41] ICE requested only $72 million for ATDs in FY 2012, compared to $1.9 billion for detention operations,[42] and requested $111.6 million for FY 2013, compared to another $2 billion for detention operations.[43] Most importantly, citing its congressionally-imposed bed mandate discussed above, ICE has *not* used ATDs to reduce its overall level of detention, but merely as a supplement to its detention practices.

Finally, along with being costly and inefficient, ICE's overreliance on detention where alternatives are available raises serious due process concerns. Under federal law, pretrial detention is typically imposed only where the government demonstrates before an impartial adjudicator "that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."[44] Yet in the immigration detention system, the burden is reversed. Detention is treated as the default rule and release the exception, with immigration detainees—who are overwhelmingly unrepresented by counsel—bearing the burden of proving that they pose no danger of flight risk. Moreover, for many categories of detained immigrants, ICE engages in no case-by-case detention assessments whatsoever.

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[37] Matt Mayer, Heritage Web Memo 3455, "Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies." (Jan. 10, 2012), *available at:* http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies

[38] *Math of Immigration Detention*, *supra*, 2.

[39] ICE, *ICE Strategic Plan FY 2010-2014* (2010), 7, *available at* www.ice.gov/doclib/news/library/reports/strategic-plan/strategic-plan-2010.pdf

[40] Written testimony of ICE Director John Morton for a House Committee on Appropriations, Subcommittee on Homeland Security hearing on The President's Fiscal Year 2013 budget request for ICE, *available at* http://www.dhs.gov/news/2012/03/08/written-testimony-us-immigration-and-customs-enforcement-ice-director-house

[41] As of January 22, 2011, there were 13,583 participants in the Full Service program, in which contractors provide the equipment and monitoring services along with case management, and 3,871 participants in the Technology-Assisted (TA) program, in which the contractor provides the equipment but ICE continues to supervise the participants. FY 2012 Budget Justification, 43.

[42] DHS, U.S. Department of Homeland Security Annual Performance Report FY 2011-2013, 3-4.

[43] *See id*. at 35, 53.

[44] 18 U.S.C. § 3142(e)(1).

Instead, the agency treats detention as "mandatory," and does not even consider alternative conditions of custody that are properly calibrated to an individual's flight risk or dangerousness to ensure effectiveness. ICE's practice is contrary to all other civil and criminal detention contexts and raises serious Due Process problems.

IV. Recommendations

In order to curtail the government's wasteful and unnecessary reliance on immigration detention, the ACLU makes the following recommendations:

- Congress should direct ICE to reduce costs by utilizing alternatives in place of unnecessary detention (not as a supplement to existing levels of detention). Thus, Congress should (1) eliminate language requiring a specific number of detention beds to be maintained or filled, and (2) permit ICE flexibility to shift funds from detention to more cost-effective yet reliable ATDs.

- Congress should appropriate additional funds to ATD programs that have been proven to ensure appearances for court proceedings and removal, including funds for pilot projects to test ATD programs.

- Congress should prohibit the use of appropriated funds to detain an individual unless ICE has determined, through a uniform risk assessment tool,[45] that no condition or combination of conditions of release would be sufficient to address an individual's dangerousness or flight risk, and where this determination is subject to review by an Immigration Judge. Such a requirement is fiscally prudent as well as constitutionally sound, and would bring the immigration detention system in line with the standards applied for federal pretrial detainees under the Bail Reform Act of 1984.

The existing ICE detention system, by failing to mandate proper risk assessments and consideration of alternatives to detention, guarantees the wasteful and expensive incarceration of men, women, and children who pose no public safety danger or flight risk. ICE's releases from detention of people like those described in this statement's appendix demonstrate how flawed incarceration decisions had become. Congress should require reform of custody determinations aimed at preventing unnecessary detention and the wasteful use of taxpayer dollars. In addition to reversing the ballooning growth of the immigration detention budget, such reform would redress some of the immigration detention system's worst constitutional infirmities.

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[45] In July 2012, ICE began implementing its automated Risk Classification Assessment that "contains objective criteria to guide decision making regarding whether an alien should be detained or released, and if detained, the alien's appropriate custody classification level." ICE, Detention Reform Accomplishments, *available at* http://www.ice.gov/detention-reform/detention-reform.htm. These assessments should be applied to all individuals already in ICE custody, including "mandatory" detainees, as well as those being considered for detention. ICE does not use risk assessment to evaluate the possibility of using ATDs for "mandatory" detainees, even though there is nothing prohibiting the placement of "mandatory" detainees under other secure forms of custody, such as electronic monitoring, rather than requiring their incarceration.

APPENDIX: EXAMPLES OF UNNECESSARY DETENTION

Detainees Recently Released By ICE

Anna (a pseudonym) has lived in the United States for 23 years. She is a survivor of domestic violence and has applied for immigration relief to stay in the United States through Cancellation of Removal and a U Visa. Anna has four U.S. citizen children but was detained at Eloy Detention Center in Arizona for 19 months based on two misdemeanors from five years ago, for which she completed all probation requirements. Although the Immigration Judge granted her bond, Anna was unable to pay the $9,500 to be released and was incarcerated away from her family while fighting her case. Since her release on February 25, 2013, Anna is back living with her children and has been complying with all the conditions of her release including checking in with ICE.

Carmen (a pseudonym), fled to the United States from her home country seeking safety from an abusive domestic partner. Carmen was also fleeing from another assailant who had brutally attacked her with a machete and almost taken her life. Apprehended at the border in Texas, she was detained at Florida's Broward Transitional Center (BTC) in 2012, and placed in removal proceedings where she applied for asylum.

Due to the extensive trauma Carmen suffered, she began to display symptoms of PTSD and depression. Carmen's condition was so severe that the medical staff at BTC identified her as a domestic violence survivor and made arrangements for Carmen to seek therapy at a local domestic violence shelter.

After Carmen had been incarcerated for more than six months, American for Immigrant Justice (AI Justice) requested that ICE release her. AI Justice provided documentation to her deportation officer that Carmen had family members in the U.S. who were able and willing to support Carmen throughout the pendency of her asylum case. Though it was evident that Carmen's continued detention was exacerbating her pre-existing trauma, Carmen was not released.

When released in late February, Carmen had been detained for 9 months, at a cost of about $30,000 because ICE paid an average of $124-$164 per day to the private prison company GEO Group to detain Carmen, an asylum seeker with no criminal history who is a survivor of domestic violence and torture.

Carmen reports that when she was released from BTC ICE put an ankle-monitoring device on her. Carmen then travelled out of state to live with her family members who have been waiting to assist and support her. When Carmen reported to ICE in that state the ankle-monitoring device was removed and she is monitored via regular home visits and telephonic reporting.

Dolores (a pseudonym), a domestic violence survivor and asylum applicant, was held in the Sherburne County Jail in Elk River, Minnesota since May of 2011. After fleeing Honduras to escape an abusive boyfriend, Dolores was arrested and imprisoned for

reentry, her only criminal conviction. When Dolores was transferred to immigration custody almost two years ago, she suffered immense hardships. She was unable to get the psychotherapy she needed for her post-traumatic stress due to the abuse, and she was unable to maintain regular contact with her three children. She lost one-third of her hair due to all the anxiety she suffered. The detention center she was in had no outdoor space, so Dolores had not seen the sun, aside from transfers to and from immigration court, for almost two years.

While detained, Dolores was seeking asylum and her case has been pending at the Board of Immigration Appeals for approximately a year. She was awakened in detention by ICE officials on February 26, 2013 and told "You're very expensive to have here in jail. The budget isn't good and you've got to go." She was released under conditions of supervision, including wearing an ankle-monitoring bracelet and complying with other reporting requirements. She is currently living in a women's shelter.

John (a pseudonym), was detained at Florence Detention Center in Arizona since January 28, 2013. He is married to a U.S. citizen and has two U.S. citizen children. John has no criminal history and has lived in the United States for 14 years. He has been in removal proceedings before an Immigration Judge and is eligible to adjust his status to lawful permanent residence through his U.S. citizen wife. Since his recent release on February 25, 2013, John has returned to his family. He is complying with all of the conditions of his release.

Marco (a pseudonym), is a 20-year-old Mexican national who came to the United States on his own four years ago in order to provide for his mother and younger siblings. He was imprisoned for four months at the Keogh-Dwyer Correctional Facility in Sussex, NJ, even though he posed no danger or flight risk. Marco's father abandoned his family when Marco was a young child. Hence, for the last four years Marco has been working in New York in order to pay for his siblings' schooling and necessities.

In October 2012, Marco was, he says, wrongfully arrested at his place of employment when an undercover officer allegedly bought marijuana from someone else on the premises. Shortly thereafter, Marco was transferred to ICE custody. Although the District Attorney's office was clear that it had no intention of proceeding with the charges against Marco – and although, based on his father's abandonment and other circumstances, Marco is eligible to obtain legal immigration status through the Special Immigrant Juvenile process – ICE nonetheless detained him without bond.

In December, Marco obtained immigration counsel and received a bond hearing. On January 30, 2013 – when Marco had been detained for more than three months – an Immigration Judge approved his release on a $5,000 bond. Marco was in the process of trying to collect the money to post bond when, on February 25, 2013, ICE released him, subject to the requirement that he report after each of his court hearings, with which he has complied.

Robert (a pseudonym), a long-term lawful permanent resident who is severely disabled from childhood polio, was subject to mandatory detention at the Eloy Detention Center in Arizona for more than two years based on a nonviolent conviction from more than ten years before. Before his detention, Robert lived with his family, including his U.S. citizen spouse, parents, and siblings. While he was detained, Robert became a father to a U.S. citizen daughter. On December 4, 2012, Robert finally was given a bond hearing and granted release on a bond of $10,000. He was, however, unable to raise the money and therefore stayed in detention until his release on February 23, 2013. Since that time, he has returned home to his family and complied with all the conditions of his release.

Victoria (a pseudonym), a domestic violence survivor from Mexico who has lived in the United States since 2000, was detained at the Eloy Detention Center in Arizona for two years and four months, even though she poses no danger or flight risk and is pursuing both asylum and cancellation of removal. Her asylum claim is based on the domestic violence she suffered and would face if returned to Mexico; her cancellation claim is based on the hardship her deportation would cause to her nine-year-old U.S. citizen daughter.

Although denied relief by the immigration court, her case is pending on appeal before the U.S. Court of Appeals for the Ninth Circuit, which issued a stay of removal until her case is finally decided. Prior to her detention, Victoria worked steadily and took care of her daughter. She has two convictions for nonviolent offenses, resulting in probation and no jail time. On August 7, 2012 – when Victoria had been incarcerated for nearly two years without a bond hearing – she finally received a hearing before an Immigration Judge who granted her release on a $6,000 bond. Her family was unable to raise the money, so she remained imprisoned another seven months, until March 2, 2013, when she was released by ICE under conditions of supervision which require her to wear an ankle bracelet and check-in weekly. She is now home living with her daughter and lawful permanent resident husband.

Other Examples of Unnecessary Detention Unrelated to the Recent Releases

M.B. is a 39-year-old citizen of Haiti who has resided continuously in the United States as a lawful permanent resident since 1986. Mr. B was subject to mandatory detention for nine years while making his case against removal to Haiti, where he faces torture at the hands of the authorities.

Mr. B suffers from paranoid schizophrenia and takes anti-psychotic medication to manage his condition. He was placed in removal proceedings in April 2000 based on a 1997 conviction for attempted robbery. The incident underlying the conviction stemmed from Mr. B's attempt to get five dollars back from a street vendor who had sold him two beers, which Mr. B wanted to return because they were warm.

The Immigration Judge granted Mr. B. relief under the Convention Against Torture (CAT) because as a deportee with a criminal record, he would be imprisoned upon return to Haiti, deprived of his medication, and face severe physical abuse by guards. The

government, however, appealed the decision, and the Board of Immigration Appeals reversed it, beginning a ten-year legal struggle.

Mr. B was in immigration detention in a New Jersey jail for nine of the ten years that his removal case has been pending - three times longer than his sentence for the conviction that gave rise to the removal proceedings. ICE released Mr. B in January 2009. At that time, due to inadequate management of his psychiatric disability while in immigration detention, Mr. B was deemed by doctors to be psychotic. After extensive treatment, Mr. B has regained his ability to think rationally and function well. Though he continues to reside in a psychiatric facility, he is now able to be employed and leave the facility on weekends to visit his family - all U.S. citizens and permanent residents - without supervision.

Aurora Carlos-Blaza, a citizen of the Philippines, lawfully entered the United States as a teenager. Ms. Blaza has been deeply committed to her family, working in California fruit orchards during school vacations to help her parents finance a house and attending a local community college in order to serve as a caregiver for members of her extended family. However, after her husband conceived a child in an extramarital affair, divorced her, and left her deeply in debt and ashamed of asking her family for assistance, Ms. Blaza was convicted on charges arising out of loans she took out for herself in the name of her aunt and cousin. For two and a half years, ICE kept Ms. Blaza in detention while she pursued her claim that the statute under which she was convicted did not make her deportable. ICE maintained custody despite an outpouring of support from Ms. Blaza's family and her U.S. citizen partner, and her strong equities as a committed worker and caregiver. Moreover, ICE detained Ms. Blaza in a facility in Hawaii, far from her home and family in Fresno, California.

In December 2008, Ms. Blaza was given a bond hearing under the Ninth Circuit's decision in *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008). An Immigration Judge granted Ms. Blaza release on a $5,000 bond, holding that the government failed to show that she presented a sufficient danger or flight risk to justify her continued detention. Upon her release, Ms. Blaza returned to Fresno, worked as an office assistant, and gave birth to a son. After ultimately losing her immigration case, Ms. Blaza returned to the Philippines with her child without incident.

R.C., a native and citizen of Ireland, entered the United States as a lawful permanent resident in 1955 at the age of five. His entire immediate family is in the United States. In recent years, Mr. C has struggled with a drug problem and, in August 2006, was convicted of a misdemeanor drug possession offense, for which he was sentenced to time served and a six-month suspension of his driver's license. On the basis of this offense alone, Mr. C was placed in removal proceedings and subject to mandatory detention for approximately ten months while fighting his case. Ultimately, in March 2011, Mr. C was granted cancellation of removal and released. He now lives in Queens, New York with his brother. Mr. C had to celebrate his 60th birthday in detention.

Amadou Diouf has lived in this country for approximately fifteen years. He entered the United States on a student visa, obtaining a degree in information systems from a university in Southern California. The government initiated removal proceedings against him for overstaying his student visa after he was arrested and charged with possession of a small quantity of marijuana—an offense that did not render him deportable. Nevertheless, Mr. Diouf was detained for over 20 months during the pendency of his removal proceedings, even though he was *prima facie* eligible for adjustment of status to lawful permanent residence through his marriage and had not been convicted of a removable offense.

Notably, the only process Mr. Diouf received during his prolonged imprisonment was two perfunctory reviews of his administrative file in which ICE summarily continued his detention. Ultimately, a federal district court ordered that Mr. Diouf receive a bond hearing before an Immigration Judge where the government was required to show that his detention was still justified. The Immigration Judge found that Mr. Diouf did not present a flight risk or danger sufficient to justify detention and ordered his release on bond. Despite this decision and the fact that Mr. Diouf was living on conditions of supervised release without incident after being released, the government continued to argue that he should be detained without a bond hearing. Mr. Diouf eventually won his immigration case and was granted a U Visa. He works as a car salesman.

Warren Joseph is a lawful permanent resident of the United States and a decorated veteran of the first Gulf War. He moved to the United States from Trinidad nearly 22 years ago and has five U.S. citizen children, a U.S. citizen mother and a U.S. citizen sister. A few months after coming to the U.S., when he was 21 years old, Warren enlisted in the U.S. Army. He served in combat positions in the Persian Gulf, was injured in the course of duty and received numerous awards and commendations recognizing his valiant service in the Gulf War, including returning to battle after being injured and successfully rescuing his fellow soldiers.

Like many Gulf War veterans, Warren returned from the war with symptoms that were only later diagnosed as PTSD. His sister recalls that she "was shocked to see how much Warren had changed." He was anxious, had recurring nightmares about killing people, and would wake up in a cold sweat. He became withdrawn and thought about suicide constantly. In 2003, he drank rust remover and had to be hospitalized.

In 2001, Warren unlawfully purchased a handgun to sell to individuals to whom he owed money. He fully cooperated with an investigation by the ATF, and his actions were not deemed sufficiently serious to warrant incarceration. Two years later, however, suffering from partial paralysis and debilitating depression, Warren violated his probation by moving to his mother's house and failing to inform his probation officer. He served six months for the probation violation. Upon his release, in 2004, he was placed in removal proceedings and subjected to mandatory immigration detention.

Warren remained in immigration detention for more than three years while he fought his deportation. During his entire period of incarceration, Warren was never granted a

hearing to determine whether his detention was justified. Indeed, even after the U.S. Court of Appeals for the Third Circuit found that he was entitled to apply for relief from removal, and remanded his case back to the immigration court, the government continued to subject him to mandatory detention. He was not released until he finally prevailed on his application for relief before the Immigration Judge.

Commenting on his ordeal, Mr. Joseph said: "I joined the Army because I love the United States; I am very disappointed that I have been treated this way, but I still love this country."

Ahilan Nadarajah, an ethnic Tamil farmer who was tortured in his native Sri Lanka, was detained for nearly five years while seeking asylum in the United States. From the age of 17, Mr. Nadarajah was brutally and repeatedly tortured by Sri Lankan Army soldiers who arrested him and accused him of belonging to the Liberation Tigers of Tamil Eelam (LTTE). Over the course of several arrests, soldiers beat him, hung him upside down, pricked his toenails, burned him with cigarettes, held his head inside a bag full of gasoline until he lost consciousness, and beat him with plastic bags full of sand. Eventually, Mr. Nadarajah fled to the United States in October 2001, where he was immediately arrested at the border. ICE then held Mr. Nadarajah in detention for nearly five years while he fought his case, despite an Immigration Judge twice holding that he was entitled to asylum and rejecting the government's claims, based on false and secret evidence, that he was in fact a member of the LTTE. The BIA affirmed the grant of asylum, and the Attorney General declined further review, giving Mr. Nadarajah lawful status.

Although Mr. Nadarajah was initially granted parole with bond, ICE subsequently rejected his attempt to tender money for the bond years later on the grounds that the bond order was "stale." ICE also denied Mr. Nadarajah's further parole requests after he won relief from the Immigration Judge and BIA. At no point during his lengthy detention did Mr. Nadarajah receive an opportunity to contest his detention before an immigration judge. Ultimately, in March 2006, Mr. Nadarajah was ordered released from detention by the U.S. Court of Appeals for the Ninth Circuit, which held that the immigration laws did not authorize his detention where his removal was not reasonably foreseeable, and that the government lacked any facially legitimate or bona fide ground for denying his parole request.

Hiu Lui Ng, a Chinese national with a U.S. citizen wife and two young U.S. citizen children, was detained by ICE when he appeared for his green-card interview. Mr. Ng clearly posed no danger or risk of flight: he was a computer programmer with a good job and no prior criminal history, and he was eligible for a green card based on a petition filed by his wife. Yet he was detained for more than a year while he sought to reopen a past in absentia removal order, the validity of which he contested. His case became front-page news when he died in detention after failing to receive proper medical care and suffering horrendous abuse from prison guards, including an injury that caused him to break his spine. The *New York Times* criticized not only the way Mr. Ng was treated, but also the fact that he was detained in the first place.

Lobsang Norbu, a Buddhist monk from Tibet, fled China after he was arrested, incarcerated, and tortured twice on the basis of his religious beliefs and political expressions in support of Tibetan independence. He arrived in New York and was immediately placed in immigration detention pending the adjudication of his asylum claim. Mr. Norbu's attorney filed a parole application that included an affidavit from a member of the American Tibetan community who pledged to provide Mr. Norbu lodging and ensure his appearance at any hearings. During Mr. Norbu's ten-month detention, the government provided no response to this parole request, and Mr. Norbu was never given the opportunity to argue for his release before an Immigration Judge. In August 2007, the Board of Immigration Appeals reversed the Immigration Judge's denial of Mr. Norbu's asylum claim. Mr. Norbu is currently living in a Tibetan group home on Long Island, New York and working at a restaurant. He was granted adjustment of status.

Alejandro Rodriguez, a Mexican national who has been in the United States since he was a baby, was detained for more than three years without a meaningful hearing on the propriety of his prolonged detention in light of the non-violent nature of his convictions and his strong community ties. Prior to his detention, Mr. Rodriguez lived near his extended family in Los Angeles, working as a dental assistant to support his two U.S. citizen children.

His claim against removal hinged on whether he could be deported for two non-violent convictions—joyriding when he was 19, and misdemeanor drug possession when he was 24. Mr. Rodriguez was denied release by ICE on the basis of administrative file custody reviews in which ICE rejected his requests for release based entirely on a written questionnaire, without even interviewing him. After Mr. Rodriguez filed a habeas petition in district court—but before the petition was adjudicated—ICE released him in 2007 on his own recognizance, revealing that the agency had never considered him a flight risk or danger to the community. He has remained released on conditions of supervision without incident.

Melida Ruiz, a 52-year-old grandmother, was detained for seven months at Monmouth County Jail in New Jersey before she was finally released after winning her case. A longtime lawful permanent resident of the United States, with 3 U.S. citizen children and 2 U.S. citizen grandchildren, she was arrested by ICE officers at her home in the spring of 2011. She was placed into mandatory immigration detention based on a misdemeanor drug possession offense from nine years before for which she had not even been required to serve any jail time, and which was her sole conviction during thirty years of living in the United States.

Although Ms. Ruiz was eligible for various forms of discretionary release from removal, and posed no danger or flight risk, and although she was the primary support for her U.S. citizen mother who suffers from Alzheimer's disease, her 17-year-old and 11-year-old daughters, and her 5-year-old granddaughter, she was nevertheless forced to endure seven months of immigration incarceration. While she was in detention, her 17-year-old daughter gave birth to a boy.

Prior to her incarceration by ICE, Ms. Ruiz had worked full-time as a roofer with the United Union of Waterproofers and Allied Workers from 1996 until an accident in 2009, which left her with severe back and neck pain, pain which was aggravated to such extent while she was in detention that at one point her doctor feared she would require surgery to avoid paralysis. In granting her application for cancellation of removal, the Immigration Judge emphasized the "substantial equities in [her] favor" including her "work history, tax history and property ownership" as well as the fact that her family "would suffer significant hardship if she were deported." The Immigration Judge also found that, despite the one conviction from 2002 which was "out of character," Ms. Ruiz has been "a law abiding resident of the United States and a stalwart positive force for her family and friends." ICE chose not to appeal the decision. Ms. Ruiz is now once again reunited with her family but at considerable emotional and financial cost, not to mention the approximately $28,595 that the taxpayers spent for her detention.

Errol Barrington Scarlett is a longtime lawful permanent resident from Jamaica who has lived in the United States for over thirty years. The government subjected him to mandatory detention for five years without a bond hearing at various detention facilities even though he had successfully reentered society for a year and a half after his release from incarceration and before ICE took him into custody. He had found employment with his brother's real estate business and had been enrolled in a drug treatment program for over a year. Nonetheless, DHS placed him in removal proceedings and subjected him to mandatory detention. After a Federal District Court ordered that he was entitled to a bond hearing, he was released on bond.

Raymond Soeoth is a Christian minister from Indonesia. In 1999, when Reverend Soeoth and his wife fled Indonesia to escape persecution for practicing their faith, they could not have anticipated the treatment they would receive in the United States. Initially, Reverend Soeoth was allowed to work in the United States while applying for asylum and eventually became the assistant minister for a church. He and his wife also opened a small corner store. Yet when his asylum application was denied in 2004, the government arrested him at his home and took him into detention.

Even though Reverend Soeoth posed no danger or flight risk, had never been arrested or convicted of any crime, and had the right to seek reopening of his case before both the immigration courts and federal courts, ICE insisted on keeping him in detention. He spent over two and a half years in an immigration detention center while the court decided whether or not to reconsider his asylum claim. During that time, he never received a hearing to determine whether his detention was justified.

While in detention, Reverend Soeoth was isolated from his family and community as well as his congregation. His wife was unable to maintain the store that the couple had jointly run and she was forced to shut it down. In February 2007, Reverend Soeoth finally received a bond hearing as a result of a successful habeas corpus petition filed by the ACLU. Following that hearing Reverend Soeoth was released on a $7,500 bond. Although his asylum case was subsequently denied, the government granted him

"deferred action" status, a temporary form of relief that can be renewed annually on a discretionary basis, as part of a settlement reached because the government had subjected him to illegal forcible drugging during his detention. He and his wife subsequently prevailed on a motion to reopen their asylum case.

Commenting on his ordeal, Reverend Soeoth stated that "I can't understand why in America I must choose between two evils: going back to Indonesia to face persecution or being detained while I fight for asylum."

Saluja Thangaraja, who was released from immigration detention on her 26th birthday, fled Sri Lanka in October 2001 after being tortured, beaten and held captive there. She was detained at the United States-Mexico border later that month, on her way to reunite with relatives in Canada, and was imprisoned in a federal detention center near San Diego for over four and a half years, until March 2006.

During years of civil unrest and turmoil, Saluja and her family were displaced from their home and forced to live in a police camp after conflict broke out in their small town between the Sri Lankan Army and the Liberation Tigers of Tamil Eelam. After finally returning to her home, Saluja was twice abducted, beaten and tortured by the Sri Lankan army. Saluja went into hiding after her second abduction, and soon after the family decided she needed to leave the country to protect her life.

Despite finding that she had a credible fear of persecution, the government refused to release her from detention while she sought asylum before the immigration court, the Board of Immigration Appeals (BIA), and ultimately the U.S. Court of Appeals for the Ninth Circuit. In August 2004, after almost three years in detention, the Ninth Circuit found that Saluja faced a well-founded fear of persecution if she were returned to Sri Lanka and granted her withholding of removal—a form of relief that prohibits the government from returning her to that country. In addition, the Court found Saluja eligible for asylum.

Despite this stinging rebuke, the government continued to pursue Saluja's removal and insist on her detention. Indeed, even after the Immigration Judge granted Saluja asylum in June 2005, the government appealed that decision to the BIA and refused to release Saluja. Saluja finally gained her freedom in March 2006, but only after the ACLU petitioned the district court for her release. Upon her release, she was finally able to reunite with her family in Canada, where she has now married and had a child.