

The Case Against “Alternatives To Detention”



DETENTION
WATCH NETWORK





INTRODUCTION

For the past twenty-five years, Detention Watch Network has been exposing the injustices of the immigration detention system. With our members and allies, we have been laser focused on abolishing immigration detention through organizing and advocacy to shut down individual detention centers, shrink the pipeline into detention, and cut funding for the agencies that arrest, detain, and deport our community members. But our vision extends beyond abolishing detention centers themselves as they are only one part of a larger racist, exclusionary system that targets and harms our communities. We imagine a world where every individual lives and moves freely and a society in which racial equity is the norm and immigration is not criminalized.

Like detention, so-called alternatives to detention (ATD), including ankle monitors, mobile phone apps, case management, and other forms of control and surveillance, are unjustified and inconsistent with the belief ATDs stop short of the freedom all people deserve and cause immense physical and psychological harms. Contrary to what the name alternatives to detention implies, ATDs only further entrench and expand the detention system rather than reduce reliance on detention. To date, Immigration and Customs Enforcement (ICE) ATD programs have not reduced the number of people in ICE detention. This trend also persists in the criminal punishment system: the use of so-called ATDs has gone up in tandem with the rise of mass incarceration.

As we fight to end immigration detention, we must oppose the creation and expansion of different forms of movement control and surveillance. In this statement, we make the case against ATDs both as a short-term solution and a long-term strategy for abolishing immigration detention. **The only alternative to detention is freedom.**

Historical Context

The story of the United States is inextricably linked to controlling movement, including colonial invasion, forced migration, forced displacement and confinement, immigration, deportation and exclusion at the border. US laws have always been rooted in white supremacy, exploitation, and exclusion, seeking to control who is allowed or forced to enter or stay in the US, and who is deserving of full citizenship rights. These laws have allowed only certain people to immigrate and pursue citizenship while extracting labor from enslaved people and exploited workers to build and sustain the country’s infrastructure and economy.¹ Confinement has been used along with many other methods to control

the movement of people into and within the U.S. including but not limited to:

- **Slavery and Jim Crow**
- **The Chinese Exclusion Act & the National Origins Act**
- **The Bracero programs**
- **Reservations and boarding schools for Indigenous people**
- **Concentration camps and curfews for people of Japanese descent**
- **Curfew laws enacted to prevent Black people from organizing for civil rights (even as recently as the racial justice uprising of 2020 after the murder of George Floyd)**
- **Modern social welfare programs that coerce and punish, and**
- **The criminalization of bodily autonomy, including laws criminalizing gender affirming care for transgender people and reproductive care including abortions.²**

A NOTE ON TERMINOLOGY

“Alternatives to detention”[†] is a misleading phrase that obscures the harms inherent in the programs and mechanisms that bear the name. We prefer to call them what they are: alternatives to freedom. However, recognizing that ATD is used broadly, we use the terms interchangeably to refer to any programs that curtail freedom of movement by subjecting people to restrictions or surveillance of any kind, including office check-ins, electronic surveillance such as ankle monitors or phone apps (also called e-carceration), house arrest, curfew, or case management.

[†] Also referred to as “alternatives to incarceration” in the criminal punishment context.

The commonalities among these varied examples are undeniable. Although not always confining people to the four walls of a prison, all have been designed to criminalize, stigmatize, and restrict people’s ability to live and move freely. All are based on the premise that certain communities should be deterred, coerced, detained, surveilled, managed, or punished to exclude them from social, economic, and political life in the US.

These examples demonstrate how criminalization has been used as a primary tool to oppress marginalized communities. In the immigration context, detention, deportation, and criminal prosecution are deliberately used to deter and punish migration. By design, US immigration laws exclude and deport vast categories of people from the United States with very few pathways to obtain legal status.³ Those who are allowed to migrate legally or move freely between borders often fit into broader domestic or foreign policy goals that uphold white supremacy, capitalism, and US global dominance. Immigration detention exists in the context of this broader system, facilitating exclusion and deportation by isolating people from their communities, consolidating people

for swift deportation, and creating horrific and unlivable conditions to coerce people into deportation. In this context, we must recognize that surveillance and other alternatives to freedom are designed to achieve the same goal of deportation and exclusion through criminalization, stigmatization, and coercion. ATDs do not disrupt this broader scheme, rather they fit squarely into it by focusing on compliance outcomes as justification for their existence. We owe it to our communities to always keep this bigger picture at the forefront and fight for solutions that lead to true liberation.



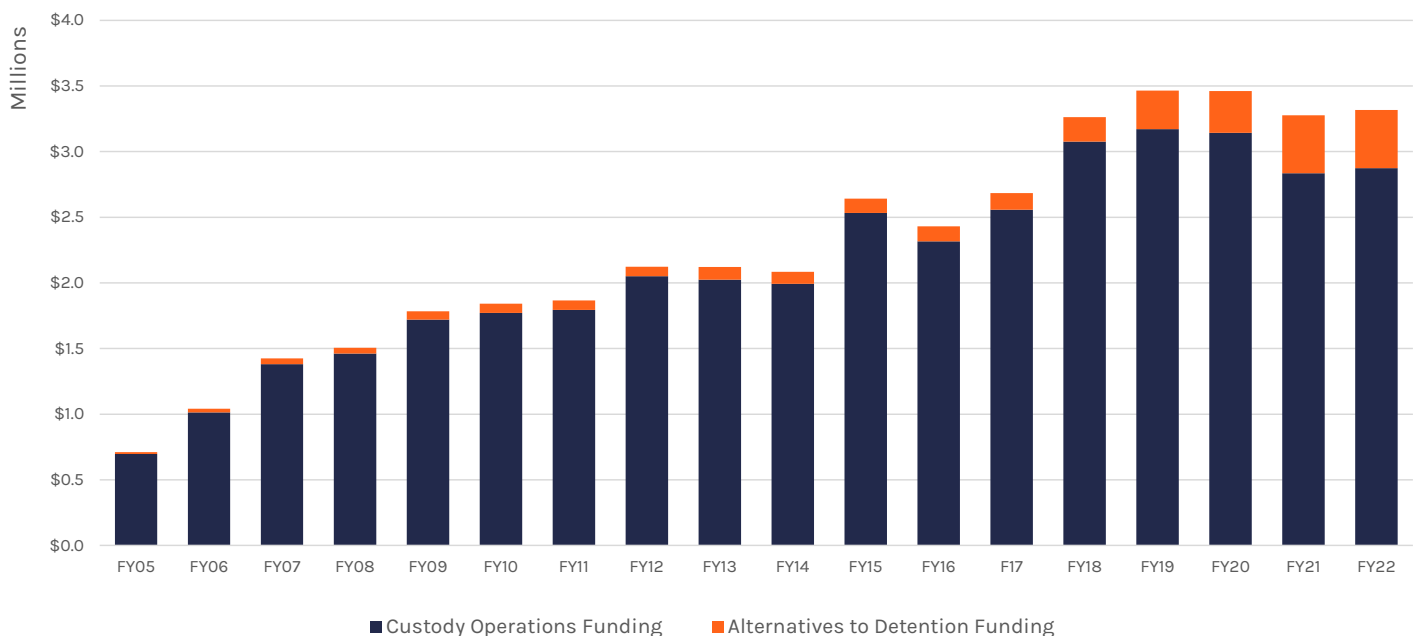
ATDs Do Not Reduce Detention

ICE operates both the largest detention system and the largest electronic monitoring program of any US law enforcement agency.⁴

Over the last two decades, as funding for detention has soared, so has funding for ICE ATDs. The result has been massive increases in both the number of people in ICE detention and the number of people surveilled by the agency, despite a drop during the first year of the Covid-19 pandemic. Given the lowest number of people in detention in 20 years, President

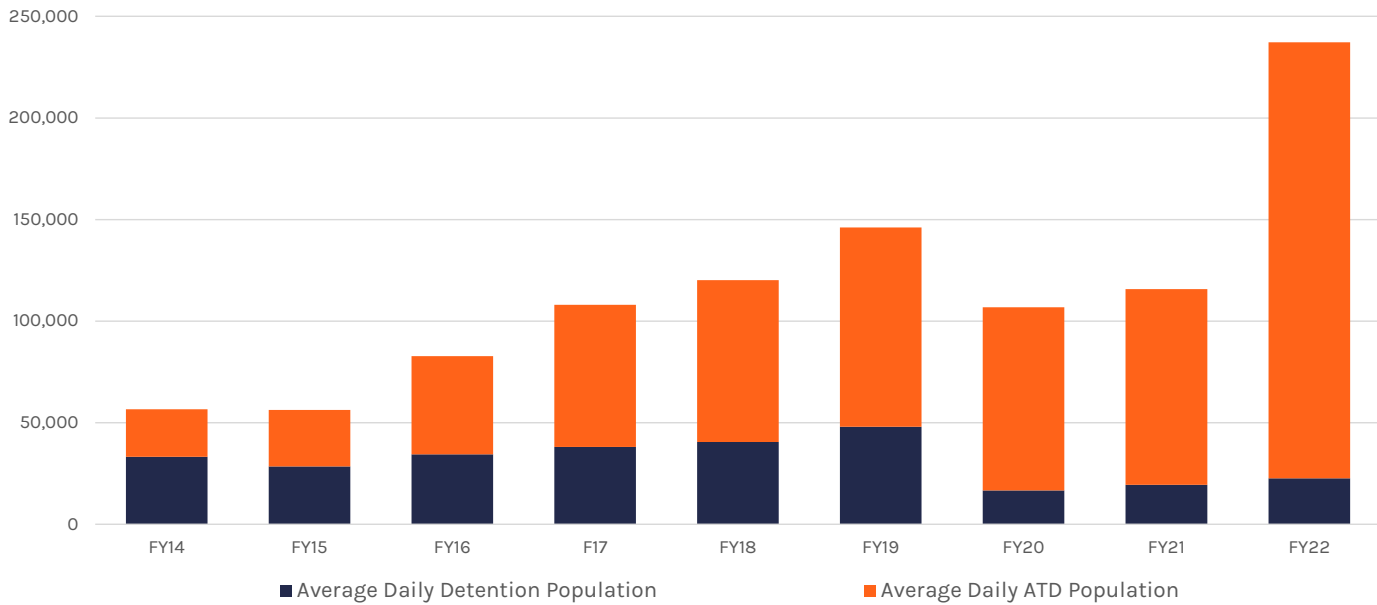
Biden had a unique opportunity to reverse course and reduce reliance on detention. Instead, since President Biden took office, the total number of people enrolled in ICE's ATD program, the Intensive Supervision Appearance Assistance Program (ISAP), has risen exponentially, nearly quadrupling from about 86,000 to over 300,000 people as of October 2022, while the number of people in detention has doubled during that same time.⁵

FUNDING LEVELS FOR ICE CUSTODY OPERATIONS AND ALTERNATIVES TO DETENTION



*Data on file with DWN and in Appendix B, based on information released by ICE at ice.gov.

AVERAGE DAILY POPULATION SUBJECT TO ICE DETENTION & SURVEILLANCE



*The drop in numbers during Fiscal Year 2020 and 2021 is attributable to impacts of the COVID-19 pandemic, including both the Trump and Biden administrations' unjustified utilization of Title 42, a public health law, effectively shutting down the Southern border, as well as a decrease in domestic enforcement activities.

**The average daily ATD population is estimated based on data made available by ICE, which is released inconsistently and incompletely. Data is available in Appendix B. Sources: ice.gov, dhs.gov, <https://trac.syr.edu/immigration>

The numbers demonstrate that ATDs do not actually move us closer to detention abolition. They move us in the opposite direction, widening the dragnet, in part because alternative framing concedes the purpose of detention (to ensure compliance with immigration laws which control and limit freedom of movement) as legitimate. Advocates have long relied on rates of compliance for immigration

hearings to argue for more ATD programs in place of detention. Self-interested corporations have adopted similar talking points. GEO Group, which owns and operates many ICE detention centers and other private prisons and helps operate ICE's existing ATD program, regularly parrots these talking points, including in recent social media ads.

ICE itself is also clear on this purpose in its promotional materials, defining its ATD program as a compliance tool (to ensure that the agency can successfully deport people) and not a replacement for detention.⁶ ICE’s definition underscores that

the government sees ATDs as a supplement to detention serving the same purpose – to ensure that people attend their legal proceedings and comply with final orders of removal.



Screenshots of social media ads by GEO Group promoting ICE’s ATD program, the Intensive Supervision Appearance Assistance (ISAP), which is operated by the private prison corporation.

ATDs Harm People

Though ATDs are touted by the government, corporations, and some advocates as a more humane option, ATDs lead to more people caught in the immigration enforcement system, inflicting severe harm on people both inside and outside

detention centers. While people may be outside the walls of a prison, alternatives to freedom cause lasting physical and psychological trauma.⁷ These lasting harms have been documented by advocates working to dismantle the criminal punishment

system where the use of ATDs has also seen a steady rise.⁸ Immigrant rights advocates have also more recently begun to document similar outcomes in ICE ATD programs.⁹

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JULIA

"When I was looking for a school for my daughters, one of the most unpleasant experiences I had was due to the ankle shackle.

They initially told me they had spots available for them. But once they realized that I was wearing an ankle shackle, they told me that they were canceling their spots. It affected my family very much. Even worse, when we left the place, we felt watched by the personnel [at the school]. It was a very unpleasant, shameful, and difficult experience for my kids that I don't wish on any family. That was only one of many terrible moments, which is why I made the decision to not go outside while I had the ankle shackle on."

*Excerpt from Tracked & Trapped, Experiences from ICE Digital Prisons.*¹⁰



Today, ISAP includes GPS tracking through ankle monitors, facial recognition and tracking through a smartphone application called SmartLINK, telephonic reporting, home visits, case management, ICE office check-ins, and a new home confinement program.¹² Physical harms from ankle monitors include burns, bruises, and shocks while

frequent malfunctions and onerous reporting requirements put people in danger of being re-detained. The lack of clear guidelines for being released from the program means that some people remain under ICE surveillance for years.¹³

ATD technologies also stigmatize and prevent people from participating

MARIO PEREZ

"The constant fear and anxiety of being surveilled at all times has led me to physically and emotionally break down. ATD makes it difficult to hold a job that will be understanding of multiple check-ins on a weekly basis...

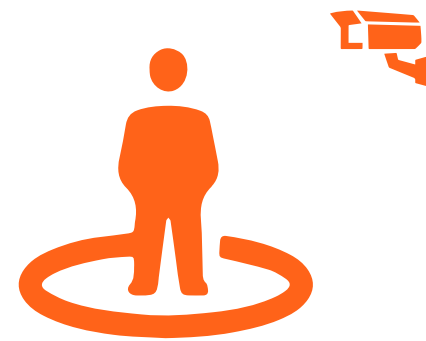
Realizing that I am not free or autonomous has caused a great deal of stress and anxiety for me. One of the worst moments was when I was celebrating my first birthday since my release, and the ankle monitor wasn't charging and it kept beeping, vibrating, and telling me to "charge battery." It was a Friday afternoon and I was not able to get a hold of anyone to help me. It was not only embarrassing but also extremely frustrating."

Excerpt from Tracked & Trapped, Experiences from ICE Digital Prisons.¹¹

fully in their communities by making it difficult to obtain jobs, perform day-to-day tasks, and fulfill family obligations.¹⁴ In addition to the embarrassment and stress felt when wearing a visible ankle monitor, the devices are loud, require frequent charging, and often malfunction making it difficult for people to be out of the house for more than short periods of time and present serious privacy concerns.¹⁵

People on both ankle monitors and using the SmartLink app report a feeling of being constantly watched, impacting not only the person directly tied to the technology but their families as well. In fact, ICE

deliberately uses ATD technology to track whole families by enrolling them in ISAP with one parent directly tied to ATD technology.¹⁶ The surveillance technology extends even beyond individual family units, allowing ICE to not only track an individual's location but also gives them data points to surveil and target extended family, friends, and whole communities.¹⁷ In other words, ICE's ATDs inflict new and different traumas into an already unjust immigration system.



Case Management or Voluntary/Opt-in Services — “Service Is Not Liberation”¹⁸

As the harms of traditional ATDs have become more apparent, a consensus has emerged among advocates that ICE's current ATD programs are unacceptable. Many have turned their attention to case management or opt-in services, sometimes referred to as "true alternatives," to support people navigating their immigration cases. Whether intended as a replacement

for immigration detention or as service to help people navigate the immigration system, case management funded and managed by the federal government would necessarily serve the same purpose as detention: to ensure compliance and facilitate eventual deportation.

In fact, data supporting increased rates of court appearance and

compliance with final orders of removal for people enrolled in ICE ATD programs are often used to support arguments for immigration case management alternatives. By focusing on compliance rates, the emphasis is on an individual's success or failure, versus addressing the systemic failures of the immigration and deportation system. One example often referred to is the Family Case Management Program, a pilot case management program abandoned by the Trump administration. While recognizing the program as far from ideal, advocates often tout its promising outcomes, relying primarily on compliance rates as proof of success. In this way, case management reinforces and fails to address the overarching problems with US immigration law. The same can be said for various iterations of ICE case management over the years.

Opt-in programming has been offered as a solution to the problems of traditional ICE case management programs. Whether compulsory or opt-in, these types of programs are still designed to track people to ensure compliance with a fundamentally unjust system. Service based and voluntary programs have long been a part of US social welfare systems where we see

the harms that can result. Rather than providing the support and care people need to make it through difficult times, these programs paternalize, stigmatize and attempt to control behavior. When people enroll in voluntary social services or welfare programs, such as food assistance, drug treatment, and domestic violence programs, the state gains far-reaching influence over and access to their lives. Beyond limiting freedom of movement and choice, the consequences can be cascading, often leading to contact with the criminal punishment or family policing systems.

In the social welfare, family policing, and criminal punishment context, professional case managers and social workers are often mandated or choose to report any real or perceived disobedience or threat to authorities, entangling people who came to them voluntarily looking for support into punitive systems where they are further stigmatized, criminalized, caged, or stripped of parental rights.¹⁹ Despite best



intentions, any case management or opt-in service program operating within the existing immigration enforcement system would involve some level of reporting and communication between case workers and other service providers to the federal government, leading to similar outcomes.

Further, as in these other contexts, whether an opt-in program would

actually be voluntary is debatable. When the choice is between food on the table or not; between keeping custody of your children or not; between a prison cell or your home; between detention or an ankle monitor; or between an ankle monitor or a case manager, there is no real choice.

If Not Detention or ATDs, Then What?

There can be no alternative to a system that should not exist in the first place. Nothing needs to replace detention, which is illegitimate and unnecessary. Until our unjust immigration laws are overhauled, parole is one option that already exists and allows people to live freely while they navigate their immigration cases. The US has granted parole to many groups of migrants over the years. In May 2022, 95 percent of Ukrainians seeking safety at the US-Mexico border were admitted on parole, meaning they lack any legal immigration status, but are allowed to live freely while their immigration cases proceed. Compare that number to the 11 percent of non-Ukrainians granted

parole during that same time, with the rest instead detained or enrolled into ISAP.²⁰ All people deserve to navigate their immigration journey in community and to move freely without the threat of detention or

There can be no alternative to a system that should not exist in the first place. Nothing needs to replace detention.

surveillance regardless of where they were born or why they migrate.

To ensure that people receive timely and important information they need regarding their immigration cases, a simple, non-invasive text reminder system can easily serve that purpose and has been tried in several jurisdictions across the country in the criminal court context.²¹ Mutual aid efforts across the country also provide a model for how local communities can support migrants who do not already have support systems in the United States, without intrusion from federal agencies whose mission it is to deport. Together, parole, timely and accurate information from immigration authorities, and local community aid efforts preserve freedom of movement, keep people informed, and provide support to those who need it without detention and surveillance.

Our aim is a world where everyone can live and move freely and where fewer people are caught in ICE’s enforcement dragnet. In failing to challenge the system, alternatives to freedom do not meet our vision. Instead we should focus our efforts on abolitionist steps that chip away at the enforcement system and ultimately dismantle it.

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Appendix A - Recommended Resources

- » [Welfare as Policing and Calls to the Defund the Police](#) (July 2020)
- » Alina Das, [Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation](#) (2018)
- » Jesse Franzblau, National Immigrant Justice Center, [Landmark Decision Finds "Illegal Reentry" Charges Are Racist In Origin, Discriminatory In Practice](#) (2021)
- » Andrea Ritchie, et al., Movement for Black Lives, [Reparations Now Toolkit](#) (2019)
- » [Densho: Preserving Japanese American stories of the past for the generations of tomorrow](#) (2022)
- » Nick Estes, [The U.S. stole generations of Indigenous children to open the West: Indian boarding schools held Native American youth hostage in exchange for land cessions](#), High Country News (2019)
- » [Bracero History Archive](#), (2022)
- » Maria Thomas, et al., [Abortion Decriminalization is Part of the Larger Struggle Against Policing and Criminalization: How Our Movements Can Organize in](#)
- » [Solidarity With Each Other](#) (2021)
- » Gabriel Arkles, Jessica Kant, Maria Thomas, [We Must Fight In Solidarity With Trans Youth: Drawing the Connections Between Our Movements](#) (2022)
- » Jack Arnholz, Ivan Pereira, Christina Carrega, [US protests map shows where curfews and National Guard are active](#), ABC News (2020)
- » Ryan Devereaux, [What Law Did We Break? How the NYPD Weaponized a Curfew Against Protesters and Residents](#), The Intercept (2020)

Appendix B – Data

AVERAGE DAILY POPULATION SUBJECT TO ICE DETENTION & SURVEILLANCE

Fiscal Year	Average Daily Detention Population	Average Daily ATD Population
FY14	33,227	23,342
FY15	28,449	27,871
FY16	34,376	48,380
FY17	38,106	69,873
FY18	40,520	79,595
FY19	47,975	98,114
FY20	16,626	90,194
FY21	19,416	96,342
FY22	22,578	214,620

FUNDING LEVELS FOR ICE CUSTODY OPERATIONS AND ALTERNATIVES TO DETENTION

Fiscal Year	Custody Operations Funding	Alternatives to Detention Funding
FY05	\$696,490	\$14,202
FY06	\$1,013,329	\$28,497
FY07	\$1,381,767	\$43,600
FY08	\$1,461,212	\$43,889
FY09	\$1,721,268	\$63,000
FY10	\$1,771,168	\$69,913
FY11	\$1,794,406	\$72,075
FY12	\$2,050,545	\$72,373
FY13	\$2,025,016	\$96,557
FY14	\$1,993,770	\$91,444
FY15	\$2,532,593	\$109,740
FY16	\$2,316,744	\$114,275
FY17	\$2,557,542	\$125,883
FY18	\$3,075,686	\$187,205
FY19	\$3,170,845	\$294,621
FY20	\$3,142,520	\$319,213
FY21	\$2,836,128	\$440,122
FY22	\$2,874,481	\$442,662

Endnotes

- 1 Forced migration is glaring feature of US history, both the kidnapping and enslavement of Black people and the genocide and displacement of Indigenous people from their lands. These and later immigration policies always carried racial undertones and were designed to extract and exploit resources and labor. Take for example the Chinese Exclusion Act of 1882, which barred people of Chinese descent from entering the United States and from citizenship, but only after Chinese labor had been exploited for decades to build the US railroad system. Similarly, the National Origins Act implemented quotas and effectively barred migration from Asia and vastly limited migration from all but Western Europe. Criminalization also became a key method of continuing to extract labor and deny rights through Jim Crow laws designed to continue the exploitation of Black people’s labor and laws that criminalized entry and re-entry into the US, aimed at curbing Mexican migration while allowing certain Mexicans to temporarily migrate to fulfill the labor needs of US farms. Race and economy continue to be a key driver of immigration law, consider more recent policies such as the Muslim and African bans and advocacy around the Farm Worker Modernization Act.
- 2 For more on these foundational issues, see Appendix A for a list of recommended resources.
- 3 Angélica Cházaro, [Due Process Deportations](#) (April 15, 2022). New York University Law Review (last visited Aug 2, 2022).
- 4 [Immigration Detention 101](#), Detention Watch Network (last visited Aug 2, 2022) and Johana Bhuiyan, [‘Constantly afraid’: immigrants on life under the US government’s eye](#), The Guardian (March 20, 2022).
- 5 [Detention Management](#), U.S. Immigration & Customs Enforcement (last visited October 2022) and Camilo Montoya Galvez, [ICE Ramps Up Vaccinations of Immigrants in U.S. Custody, but Thousands Have Refused](#), CBS News (August 13, 2021) (last visited October 2022).
- 6 [Enforcement & Removal Operations, Alternatives to Detention](#) (April 2021) (last visited Aug 2, 2022).
- 7 Maya Schenwar & Victoria Law. Prison by any other name: The harmful consequences of popular reforms. New York, The New Press, 2021 and Aly Panjwani, Hannah Lucal et al, [Tracked & Trapped: Experiences from ICE Digital Prisons](#) (last visited Aug 2, 2022).
- 8 James Kilgore, Understanding E-carceration: Electronic Monitoring, the Surveillance State, and the Future of Mass Incarceration. New York, The New Press 2022.
- 9 Tracked & Trapped, Supra note 7
- 10 Tracked & Trapped, p. 23, Supra Note 7
- 11 Tracked & Trapped, p. 27, Supra Note 7
- 12 Aly Panjwani, Just Futures Law, [ICE Digital Prisons: The Expansion of Mass Surveillance as ICE’s Alternative to Detention](#) (last visited Aug 2, 2022) and Jordana Signer, Human Rights First, [Dismantling Detention: International Alternatives to Immigration Detention](#) (last visited Aug 2, 2022).
- 13 Id.
- 14 Id.
- 15 Id.

- 16 [Detention Management](#), U.S. Immigration & Customs Enforcement (last visited Aug 2, 2022).
- 17 Take for example the 2019 raid of seven food processing plants in Mississippi, made possible in part by ICE’s ability to track individuals enrolled in its ATD program through ankle monitors, in addition to other surveillance technology, to target people’s workplaces and extended community. For more on this see James Kilgore, *Understanding E-carceration: Electronic Monitoring, the Surveillance State, and the Future of Mass Incarceration*, p. 107 (2022) and Jimmie E. Gates and Alissa Zhu, [ICE used ankle monitors, informants to plan immigration raids where 680 people were arrested](#), USA Today (Aug 12 2019) (last visited Aug 2022).
- 18 Richie, Beth E., and Kayla M. Martensen. [Resisting Carcerality, Embracing Abolition: Implications for Feminist Social Work Practice](#). *Affilia*, vol. 35, no. 1, Feb. 2020, pp. 12-16 (last visited Aug 2, 2022).
- 19 For further reading on these issues, see
 - » Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *J. Crim. L. & Criminology* 643 (2008-2009) which explores welfare policies, for example, people may apply voluntarily for assistance through the Temporary Assistance to Needy Families program, but when an individual expresses a need for drug treatment, they can get kicked out of program and criminally penalized
 - » Maya Schenwar & Victoria Law, *Prison by any other name: The harmful consequences of popular reforms*, p. 94 (2021), which tells the story of Project Rose, a program designed to “save” sex workers by first arresting them and then giving them the false choice of jail time or participating in an alternative social services program.
 - » Dorothy Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families – and How Abolition Can Build a Safer World*. New York, Basic Books. 2022, p. 5 & p. 33 which explores the family policing system, including how voluntary drug treatment programs and voluntary domestic violence support services can lead to both criminal consequences and tearing apart of families.
 - » Also see Beth Richie and Kayla M. Martensen. [“Resisting Carcerality, Embracing Abolition: Implications for Feminist Social Work Practice.”](#) *Affilia* 35, no. 1 (February 2020): 12-16. (last visited Aug 2, 2022).
- 20 [Ukrainians at the U.S.-Mexico Border: Seeking Admission at U.S. Ports of Entry by Nationality](#), Transactional Records Access Clearinghouse, Syracuse University (May 17, 2022) (last visited Aug 2, 2022) and [Ukrainians at the U.S.-Mexico Border: Seeking Admission at U.S. Ports of Entry by Nationality](#), Transactional Records Access Clearinghouse, Syracuse University (May 17, 2022) (last visited Aug 2, 2022).
- 21 Taylor Walker, [LA to join Host Of CA Counties Sending Text Reminders To Improve Court Appearance Rates](#), Witness LA (2020); [Text message reminders help people remember their court dates](#), Associated Press (2019).



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