Department of Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism

"Crossing the Border: Immigrants in Detention and Victims of Trafficking"

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The U.S. Department of Homeland Security (DHS) arrests over 1.6 million undocumented people each year, of which over 230,000 are subsequently held in administrative immigration detention.[1] The conditions and terms of immigration detention in the U.S. are equivalent to prison, where freedom of movement is restricted, and detainees wear prison uniforms. This is the case even though under U.S. law an immigration violation is a civil offense, not a crime. Nevertheless, the U.S. uses facilities owned and operated by Immigration and Customs Enforcement (ICE), the enforcement bureau within DHS, in addition to over 300 local and county jails from which ICE rents beds on a reimbursable basis.[2] Only half of these immigrants held in detention have actual criminal records, yet more than half of them are held in jails where non-criminal immigrants are mixed with the prison's criminal population.[3] In the case of families held toghether, none have a criminal conviction or background, and over 80% are held in a former prison where freedom of movement is restricted and children and their parents sleep in prison cells.

Dominica, a pregnant woman detained at Hutto with her two daughters, pointed out the impact that this penal environment has on a families' health and well-being, telling us:

At night we all sleep together in the bottom bunk of our cell because we are afraid. As my daughter Nelly says, "If you aren't good, they will take you away from your mom."

[1] "Detention and Removal of Illegal Aliens," Office of Inspector General, Department of Homeland Security, April 2006; www.ice.gov, August 7, 2006; "Detention and Removal Operations: Alternatives to Detention," ICE Fact Sheet dated July 14, 2004, http://www.ice.gove/pi/news/factsheets/06170detFS2.htm, last modified March 17, 2006.
[2] "Treatment of Immigrant Detainees Housed at Immigration and Customs Enforcement Facilities," Office of Inspector General, Department of Homeland Security, December 2006, pp 2, available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-01_Dec06.pdf.
[3] "Critics Decry Immigrant Detention Push," Associated Press, June 25, 2006, stating that over 57% of ICE detainees are held in local and county jails.

I am almost seven months pregnant. The doctor has told me for months that I need to eat more. But I can't. The food doesn't work here and I can't eat it. We don't get much time for meals -- only a maximum of 20 minutes -- and I have to feed my children first. They do not eat quickly. We are not allowed to take food out of the cafeteria, even if we haven't had time to finish. Something like bread or an apple…they take it away. It is so sad to throw something like that away because we couldn't eat it fast enough.

My mother has legal status in the United States. I am applying for asylum and am eligible for parole. But I requested parole over two months ago and I still haven't received a response. I'm afraid that I will have my baby in jail.[4]

Even without criminal convictions, immigrants may remain detained for months or even years as they go through procedures to decide whether they are eligible to stay in the U.S. or, after being issued a final order of removal, as the U.S. arranges for their deportation. The Department of Homeland Security has increasingly failed to follow its own policy directives for paroling these asylum seekers.[5] In addition, several recent studies and reports have demonstrated that the Department has failed to comply with its own detention standards at these facilities. The recent report from the Department of Homeland Security Office of the Inspector General found violations of the Immigration and Customs Enforcement's own Detention standards at all five adult facilities it visited, including failure to provide timely and responsive medical care and a safe and appropriate environment.[6]

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[4] Interview conducted by Michelle Brane, Don T, Hutto Residential Center, December 4, 2006, the name has been changed to protect the individual while her case is pending.

[5] Asylum-seekers are technically eligible for parole. (see: Memorandum from Office of INS Deputy Commissioner, "Implementation of Expedited Removal," March 31, 1997, reprinted in 74 *Interpreter Releases* (April 21, 1997). §212(d)(5)(A) reads " The Attorney General may, except as provided in subparagraph (B) or in section 214(f) , in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.") Official DHS policy tends to favor their release so long as their identity has been verified, they have established a credible fear of return, demonstrated they have community ties, and pose no risk to national security. However, parole release rates for asylum seekers vary widely depending upon where in the country the individual is detained, ranging from districts that have rather liberal parole policies to districts that parole virtually no one. For example, in FY 2003, only 0.5% of asylum seekers subject to expedited removal were released in the New Orleans district prior to a decision on their case. By contrast, during the same year, in Harlingen, Texas 98% of asylum seekers were released on parole. Despite these dramatic inconsistencies, DHS has not promulgated regulations to promote a consistent implementation of parole criteria. The authority to grant parole rests with ICE, the same authority that detains asylum seekers and there is no independent review of parole decisions, not even by an immigration judge. (See U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal,* (Washington, D.C., February 8, 2005))

[6] Department of Homeland Security Office of the Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, Report No. OIC-07-01, December 2006. p. 1-2.

Rebecca, detained at Hutto with her three sons, underscored the reality of these health concerns, stating:

My children and I were sick a lot but we didn't receive good medical care. Mostly the guards told us not to bother them with sick requests. But sometimes I would try anyway. My children all had a skin infection but I couldn't get any medicine for them until they began to bleed from the rash. My son vomited frequently, but when I asked for medical attention the staff told me that they would need to see vomit to believe that he was sick. Another time I had uterine pain, and I went to see the nurse. The nurse told me that she wasn't allowed to prescribe medicine and put me on the list of detainees who needed to see the doctor. But I had to wait for the doctor to be called in on an emergency. The doctor doesn't have time to see everybody because he's only there one day a week. Finally, more than a week later, the doctor came for an emergency call in the middle of the night, and the guards woke my children and me up at 3:00 am and took us to see him. [7]

For all immigrant detainees, ICE reported an average stay of 64 days in 2003 (32 percent for 90 days or longer).[8] By contrast, asylum-seekers who were eventually granted asylum spent an average of 10 months in detention, with the longest period being 3.5 years.[9] Some individuals who have final orders of removal, such as those from countries with whom the U.S. does not have diplomatic relations or those from countries that refuse to accept the return of their own nationals, may languish in detention indefinitely.[10] At the Berks Family Shelter in Pennsylvania we met with a woman asylum seeker and her three young daughters who had been detained for more than two years.

Unless other reasons exist, such as danger to the community or threat to national security, detention is an inefficient solution for asylum seekers or individuals for whom removal is not a possibility. For such situations, where detention does not meet the ends for which it is intended, the individual should either be released on parole or to an alternative to detention program so that detention space is used in an effective and humane manner. DHS has systems in place to facilitate this, but continues to expand detention rather than utilize these other demonstrably workable options.

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7 Interview conducted by Emily Butera, Don T, Austin, Texas, December 5, 2006, the name has been changed to protect the individual while her case is pending.

8 US Detention of Asylum Seekers and Human Rights, By Bill Frelick, Amnesty International USA, March 1, 2005, http://www.migrationinformation.org/Feature/display.cfm?id=296

9 Id. citing *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*. Boston: PHR and the Bellevue/NYU Program for Survivors of Torture, 2003.)

10 *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that the US does not have the power to hold non-citizens indefinitely in these situations, required a case-by-case basis review for supervised release of detainees within a reasonable period after the non-citizens are ordered removed. Unfortunately, these reviews mandated by Zadvydas have never operated effectively and most detainees do not receive timely custody reviews and fewer are released as a result of these determinations. In a series of reports, CLINIC tracked these review programs and found them to be empty promises for most indefinite detainees. For more information see http://www.cliniclegal.org/Programs/IndefiniteDetainees.html.

On any given day the U.S. government has the capacity to detain over 600 men, women and children apprehended as family units along the U.S. border and within the interior of the country. The detention of families expanded dramatically in 2006 with the opening of the new 512-bed T. Don Hutto Residential Center. This facility is owned and operated by the Corrections Corporation of America (CCA), a private company that is the founder of the private corrections industry and owns and operates correctional facilities across the country. The Hutto facility has been at the center of a flurry of media reports criticizing the harsh treatment of families, and in particular of children.[11]

The recent increase in family detention represents a major shift in the U.S. government's treatment of families in immigration proceedings. The Department of Homeland Security has presented this shift as the end of "Catch and Release," but the situation is more complex. This one size fits all approach to deterring by detaining has unintended consequences, including creating a situation in which the US government is violating its own standards for care and custody, as well as its obligations under international law. In addition, this emerging preference for family detention is an effort to comply with a Congressional directive to preserve family unity, but the policies and procedures for family detention in their current guise are effectively undermining Congress's intent. Prior to the opening of Hutto, the majority of families were either released together from detention or separated from each other and detained individually. Children were placed in the custody of the Office of Refugee Resettlement (ORR) Division for Unaccompanied Children's Services, and parents were detained in adult facilities.

Congress discovered this and took immediate action to rectify the situation, in keeping with America's tradition of promoting family values. In the report language of the 2006 appropriations bill Congress articulated concern over the on-going separation of parents from their children, some as young as nursing infants, during DHS detention. In S.Rept. 109-273 (2006), the Senate "directs ICE to submit a report by February 8, 2007, assessing the impact of the Hutto Family Center in Williamston, Texas, on the number of families required to be separated, and providing updated forecasts of family detention space needs for the next 2 years." In H.Rept. 109-476 (2006), the House of Representatives "encourages ICE to work with reputable non-profit organizations to consider allowing family units to participate in the Intensive Supervision Appearance Program, where appropriate, or, if detention is necessary, to house these families together in non-penal, homelike environments until the conclusion of their immigration proceedings."

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[11] See Sylvia Moren, *Detention Facility for Immigrants Criticized, Organizations Laud DHS Effort to Keep Families Together but Call Center a 'Prison-Like Institution*, Washington Post February 22, 2007, p A03; Lisa Ogle**,** *Williamson orders more schooling for detainee kids, In renewing jail contract, court says Taylor facility must follow state and federal education guidelines*, American Statesman, January 31, 2007; *Don't punish children for acting their age. Our Opinion: Mistreatment of Families in Immigration Prisons Must End,* The Miami Herald, Editorial, March 7, 2007*;* Hernán Rozemberg, *Center that houses detained families scrutinized,* San Antonio Express News, February 10, 2007; Paul Meyer, *Media gets look at immigrant center*, The Dallas Morning News, February 10, 2007; Nicole Gaouette and Miguel Bustillo, *Immigration's net binds children too*, Los Angeles Times, February 10, 2007; Ralph Blumenthal, *U.S. Gives Tour of Family Detention Center That Critics Liken to a Prison* New York Times, February 10, 2007; and over 200 other media outlets.

Such Congressional directives were intended to preserve and protect the role of the family as the fundamental unit in our society. However, ICE chose to develop a penal detention model for the detention of families with no criminal backgrounds, that is fundamentally anti-family and un-American.

This Committee, therefore, should insist that DHS submit its report to Congress as mandated by Congress for February 8, 2007 concerning family detention. Congress should also insist that DHS articulate the specific steps it will take to work with non-profit organizations to facilitate family participation in alternatives to detention such as the ISAP program and housing in non-penal, homelike environments.[12]

Lutheran Immigration and Refugee Service and the Women's Commission for Refugee Women and Children visited both the T. Don Hutto Residential Center and the Berks Family Shelter Care Facility in the period between October 2006 and January 2007 and talked with detained families as well as former detainees. What we found was disturbing:

- Hutto is a former criminal facility that still looks and feels like a prison, complete with razor wire and prison cells.
- Some families with young children have been detained in these facilities for up to two years.
- The majority of children detained in these facilities appeared to be under the age of 12.
- At night, children as young as six are separated from their parents.
- Separation and threats of separation were used as disciplinary tools.
- People in detention displayed widespread and obvious psychological trauma. Every woman we spoke with in a private setting cried.
- At Hutto pregnant women received inadequate prenatal care.
- Children detained at Hutto received one hour of schooling per day.
- Families in Hutto received no more than twenty minutes to go through the cafeteria line and feed their children and themselves. Children were frequently sick from the food and losing weight.
- Families in Hutto received extremely limited indoor and outdoor recreation time (only one hour per day, five days a week) and children did not have any soft toys.
- Access to Counsel is extremely limited due to the remote location.

Some changes have been made since media attention and our report "Locking Up Family Values: The Detention of Immigrant Families"[13] raised questions about the Hutto facility in particular. Children at Hutto now receive more than one hour of recreation five days a week, they receive 8 hours of education a day, razor wire has been removed from the perimeter of the facility, children are no longer required to wear uniforms, hair

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[12] A homelike setting is not akin the "Hutto Family Center", a euphemism, since "the Hutto Family Center" is a private prison operated for profit which houses over 500 members of family units with parents and children in prison uniforms at any given time.

[13] Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families*, New York, February 2007, (available at www. womenscommission.org)

conditioner is now provided free of charge, and accommodations have been made in the cafeteria including baked potato instead of mashed and a spice bar. However, these changes are cosmetic and do not address the fundamental issue that the system of family detention is overwhelmingly inappropriate for families and that the Department of Homeland Security has failed to consider more appropriate, effective and cost efficient alternatives. Immigration and Customs Enforcement has initiated discussions to develop a set of standards for these facilities, but thus far there has not been willing to discuss an end to family detention or the development of a non-penal, homelike model. Yet the current system of family detention, which relies on a prison model, is not appropriate or efficient for these reasons:

- The model strips parents of their role as arbiter and architect of the family unit.
- It places families in settings modeled on the criminal justice system.
- There are no licensing requirements for family detention facilities because there is no precedent for family detention in the United States.
- There are no standards for family detention, but both facilities violated the 1996 Flores v. Reno settlement agreement outlining standards for children and Immigration and Customs Enforcement Detention Standards. [14]

In the Homeland Security Act of 2002 (HSA), Pub L. No. 107-296 S. 49, 116 Stat. 2153 (2002), Congress transferred the responsibilities for care, custody and placement of unaccompanied children from Legacy Immigration and Naturalization Service to the ORR, acknowledging that the INS had a poor track record in caring for children over the last two decades. The INS suffered from a fundamental conflict of interest while acting as police officer, prosecutor and guardian of the children at the same time. Additionally, the INS typically prioritized law enforcement considerations over child welfare considerations in violation of the Flores Settlement. For example, the INS placed one third of unaccompanied children, including those children with very minor behavioral problems and those lacking any serious physical threat, in secure detention juvenile jails due to lack of bed space in shelter facilities.

Neither of the family detention facilities currently in use provides an acceptable model for addressing the reality that there are families in our immigration system. Although there is precedent in the adult detention system for the use of alternatives to detention and other pre-hearing release systems,[15] The Department of Homeland Security has unfortunately made no effort to expand these programs to include families.

Based upon these findings, our report recommends the following systemic changes to the U.S. government's treatment of families in immigration proceedings:

- Discontinue the detention of families in prison-like institutions.

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[14] Stipulated Settlement Agreement, *Flores v Reno*, Case No CV85-4554-RJK (C.D. Cal. 1996) and U.S. Immigration and Customs Enforcement, *Detention Operations Manual*. http://www.ice.gov/partners/dro/opsmanual/index.htm.

[15] See Appendix D, "UNHCR Report on Alternatives to Detention of Asylum Seekers and Refugees."

- Parole asylum seekers in accordance with international standards and ICE's own policy guidelines.
- Expand parole and release options for apprehended families.
- Implement alternatives to detention for families not eligible for parole or release.
- House families not eligible for parole or release in appropriate, nonpenal, homelike facilities.
- Expand public-private partnerships to provide legal information and *pro bono* legal access for all detained families, and to implement alternative programs.

The Department of Homeland Security has presented the dilemma of what to do with these families as a choice between catch and release, splitting families, or detaining them in facilities like Hutto. We acknowledge that the appearance rates under "catch and Release" were problematic. We also acknowledge DHS's concerns regarding trafficking and cases in which prospective migrants would "rent" children to accompany them on the border crossing, thereby ensuring that they would be released on their own recognizance should they be caught.[16] However, the concerns regarding trafficking can be addressed through more rigorous screening of family relationships and are already being addressed through ICE's new policy of fingerprinting everyone who is apprehended - including children - and entering them into a database. With this new procedure, any child who comes through more than once with a different adult will be identified. This practice both protects children from trafficking and serves as a deterrent to traffickers. The detention of families is not necessary or helpful in addressing trafficking concerns. The current approach fails to take into consideration both Congress's directive to explore alternatives and the reality that alternatives exist . Such alternatives are less costly to the taxpayer while ensuring that immigrants in proceedings appear for their hearings.

These alternatives range from releasing specific groups such as asylum seekers, on their own recognizance or 'paroling' them, to programs currently in use through an Immigration and Customs Enforcement Program known as ISAP – the Intensive Supervised Appearance Program. In addition, our criminal justice system uses a wide range of pre-hearing release programs that are effective and cost efficient. Some of these have already been tried in the immigration context. These alternative programs are infinitely less expensive than traditional detention, are more humane, and still meet the valid enforcement concerns of the government. Some government-initiated programs labeled as "alternatives to detention" may in fact be "alternative forms of detention." This is the case if they impose undue restrictions on an individual's liberty, even if the individual is not physically held in a prison or prison-like setting. The ideal model for an alternative to detention program for immigrants in the U.S. creates partnerships between DHS and private, non-profit organizations that are granted the responsibility to supervise and refer people to community services. These programs, as explained below, have shown great success. The use of detention should be limited to situations when it is necessary and proportional. There are instances in which detention may be the only appropriate way of protecting community safety or national security, ensuring appearance

[16] Department of Homeland Security Immigration and Customs Enforcement, "DHS Closes Loopholes by Expanding Expedited Removal to Cover Illegal Alien Families," news release, May 15, 2006, http://www.ice.gov/pi/news/newsreleases/articles/060516dc.htm.

rates at immigration hearings, or guaranteeing effectuation of orders of removal. Beyond these limited justifications, however, detention is the most expensive and inhumane way of achieving results that may be met through alternative programs. Nevertheless, DHS continues to expand its detention capacity, despite the availability of effective alternative programs.

In the past decade, the use of detention as an immigration enforcement mechanism has tripled, with detention becoming more the norm than the exception in U.S. immigration enforcement policy. In 1996, the INS[17] had a daily detention capacity of 8,279 beds.[18] By 2006, that daily capacity had increased to 27,500 with plans for future expansion.[19] At an average cost of $95 per person/per day, immigration detention costs the U.S. government $1.2 billion per year.[20] Thousands of those in immigration detention are individuals who, by law, could be released. Two such groups are asylum seekers without sponsors for parole and people whose removal orders are over 90 days old and who pose no danger to the community or national security of the United States. Both of these groups are in need of alternative programs as holding them any longer than immediately necessary is not only inhumane, it is fiscally irresponsible and an inefficient and ineffective use of detention. While the absconding rate for immigration cases in general may be high – there is no indication that it is high for these particular groups and in fact community based alternatives programs have shown that the large majority (up to 96%) of these individuals appear for their hearings when released.

In H. Rept. 109-699 (2006), Congress appropriated a record funding of $43,600,000 to the Department of Homeland Security for alternatives to detention for detained adults. According to H. Rept. 109-476 (2006), the House of Representatives explained that "The Alternatives to Detention program addresses aliens who are not mandatory detainees, but are deemed likely to appear at their immigration hearings. Programs for electronic monitoring devices and telephonic reporting, and especially the intensive Supervised appearance Program (ISAP), contribute to more effective enforcement of immigration laws at far less cost ($22/night) than for detention ($95/night). The first full year of the ISAP program has seen significant success with 94 percent of participants in the eight pilot cities appearing at immigration proceedings, compared to 34 percent for non-ISAP participants. In at least one case, the results showed a 98 percent appearance rate, a much higher rate of compliance with court orders, and gained EOIR agreement to expedite such cases. The Committee recommends an additional $5,000,000 for this promising program, with the expectation that it be expanded to at least two more cities."

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[17] The Homeland Security Act of 2002 abolished the Immigration and Naturalization Services (INS) and created three separate immigration bureaus now within the Department of Homeland Security. These three agencies consist of the U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). Since 2003, ICE has had jurisdiction over immigration enforcement, including detention and removal responsibilities.

[18] U.S. Commission on Immigration Reform, *Becoming An American: Immigration and Immigrant Policy,* September 1997, pp. 139, 140.

[19] DHS Fact Sheet: ICE Accomplishments in Fiscal Year 2006, Release Date: October 30, 2006, stating, "ICE also increased its detention bed space by 6,300 during the fiscal year 2006, bringing the current number of funded beds to 27,500 immigration detainees."
http://www.dhs.gov/xnews/releases/pr_1162228690102.shtm

[20] "Immigration Enforcement Benefits Prison Firms," The New York Times, July 19, 2006; "Detention and Removal of Illegal Aliens," Office of Inspector General, Department of Homeland Security, April 2006; www.ice.gov, August 7, 2006.

In FY 2007, Congress appropriated an increase of $16.5 million to DHS in order to expand its alternatives to detention programs such as ISAP. DHS, however, did not spend this$16.5 million on alternatives but instead used it to repay accounts which supplemented the FY 2006 funding. The total increase in FY 2007 therefore amounted to approximately $5,388,000.

In appropriating funds to DHS for alternatives to detention, Congress has indicated that its intent is to fund community-based, supervised release programs modeled after the Vera Institute of Justice's Appearance Assistance Project (Vera Project). The Vera Project was a three year study (February 1997 – March 2000) of a supervised release/assistance program funded by INS. It studied over 500 participants at both general and intensive levels of supervision in three groups: asylum seekers, people convicted of crimes and facing removal, and undocumented workers from detention facilities in the New York area. Generally, the Vera Project proved to be significantly less expensive than detention. Overall, 91% of non-citizens released to the Vera Project appeared at all required hearings, compared to a 71% appearance rate for comparison groups of non-citizens who had been released on bond or parole but did not have any of the extra supervision of the Vera Project.

ICE's main alternatives program, ISAP, was commenced in July 2004 and has been operated in eight cities: Baltimore, Philadelphia, Miami, Kansas City, St. Paul, Denver, San Francisco and Portland with 1,600 participants including asylum seekers, immigrants undergoing removal proceedings and others. The FY 2007 increase allowed for the expansion of ISAP to two additional sites.

The Intensive Supervised Appearance Program (ISAP) is a pilot program for aliens who who are not subject to mandatory detention. ICE has contracted with an organization called Behavioral Interventions to run ISAP. Participants are assigned to a case specialist who monitors them with tools such as electronic monitoring (bracelets), home visits, work visits and reporting by telephone. Case specialists will also assist participants in obtaining pro-bono counsel for their hearings and help them to receive other types of assistance to which they may be entitled and which help ensure appearance. The Department of Homeland Security has reported that ISAP has a 94% appearance rate. It also costs a fraction of what formal detention costs. While some detainees in the current system are in expedited removal and held for short periods of time and therefore it may not be precticalble to assign them to programs like ISAP, many are asylum seekers or have court cases pending and as mentioned above, are detained for longer periods. In the case of the Hutto facility – most of the families detained are seeking asylum and will have cases pending in court for several months. The costs of the ISAP program are approximately $22 per individual per day as opposed to an average of about $95 a day for detention and closer to $200 a day for family detention.

Reports from the field indicate that the ISAP program is being used for persons who would not normally be detained at all instead of as an alternative to detention. The program is a better solution for resolving "catch and release" than the tent cities and

traditional prison facilities currently being used by the Department. It is more in keeping with our American value and a more efficient use of tax dollars.

The government pays the Corrections Corporation of America (CCA) $2.8 million dollars per month to run the Hutto facility in Taylor Texas. This sum is intended to cover the expenses of running the facility at its full capacity of 512 individuals. Currently and since its opening the facility has not been at full capacity and has housed an average of about 400 individuals, at a cost to the government of $212 a day per person costing the taxpayer $33.6 million per year or roughly $31 million over the cost of using ISAP. Although a simple mathematical calculation would suggest that with this low average occupancy rate CCA should have additional resources in their budget for the administration of Hutto, charitable organizations have been requested to provide toys and religious materials for the facility.Williamson County receives $1 a day per person detained.

At the Berks facility we met a woman who had been detained with her 15 year old son after going to pick him up from ORR custody where he had been held after being apprehended crossing the border to join her. She had left behind her U.S. citizen infant son with a neighbor, thinking that she would only be away for one day. When we met her she had not seen her baby in over 9 months. The child was still with the neighbor and the child's father was visiting occasionally. This situation of U.S. citizen children being separated from their parents and left in precarious situations is unnecessary and can be avoided with programs that already exist.

NGO based Alternative Pilot Programs have been shown to be effective as well. Non-governmental organizations under contract to the immigration service have provided supervision, and, in some cases, housing in community shelters and assistance in locating pro bono attorneys to help with their claims. These projects have been cost-effective and have produced high appearance rates at hearings. A study conducted by the Vera Institute for Justice between February 1997 and March 2000 found that alternatives saved the federal government almost $4,000 per person while showing a 93% appearance rate for asylum seekers at all court hearings.[21] Other NGO programs have met with similar success. In New Orleans, the legacy INS released asylum seekers and people with over 90-day-old removal orders to a program run by Catholic Charities with a 96% appearance rate.[22] In another program coordinated by Lutheran Immigration and Refugee Service (LIRS), the legacy INS released 25 Chinese asylum seekers from detention in Ullin, IL to shelters in several communities. This program achieved a 96% appearance rate.[23] There are currently NGO's across the country that could modify or expand their current programs if approached by the Department of Homeland Security as encouraged in

[21] Vera Institute of Justice, Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program, June 7, 2000, Volume I, pg. 32.
[22] Joan Treadway, "Detainees get chance to change their lives," New Orleans Times Picayune, Jan. 22, 2001, pg. B-3.
[23] Esther Ebrahimian, "The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention," Detention Watch Network Nes, August/September 2000, p. 8.

H.Rept. 109-476 (2006), where the House of Representatives encouraged "ICE to work with reputable non-profit organizations to consider allowing family units to participate in the Intensive Supervised Appearance Program, where appropriate.."

In sum, DHS has declared an end to catch and release and presents detention as the only solution, citing lack of appearance at hearings as the primary reason. There are however many less restrictive forms of detention and many alternatives to detention that would serve our nation's protection and enforcement needs more economically, while still providing just and humane treatment. In the rare cases in which detention is necessary, DHS should cease to contract with companies imposing a corrections model on a population that is in administrative detention. Standards should be effectively enforced. The detention of families where detention is necessary should be in non-penal, homelike environments as recommended by Congress. Parole policies should be implemented. DHS should work with the NGO community to develop alternative programs and DHS should expand its use of ISAP to families and others who would fit well into the program.

We understand that DHS is responsible for the difficult task of protecting our borders and enforcing immigration laws. We are confident that our recommendations provide a valuable framework for enforcing our laws, ensuring appearance at immigration hearings, and preserving American values through the humane and just treatment of those seeking protection at our borders. I welcome the interest this committee has taken in this matter and encourage you to continue to press for viable, cost effective solutions.

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Immigration Detention has expanded exponentially in the past decade and has failed to comply with detention standards – both under the Flores Stipulated Settlement Agreement and the ICE Standards laid out in the Detention Operations Manual. The models used for family detention in particular are inappropriate and often inhumane. DHS has failed to explore the use of alternatives to detention. Alternatives to detention are available that ensure law enforcement while also maintaining just and fair treatment of immigrants. These Alternative programs have the added benefit of being exponentially more cost effective than the traditional penal detention models begin used by DHS.