

The Math of Immigration Detention

An Overview of Immigrant Detention Costs

The Department of Homeland Security's immigration detention program, operated by Immigration and Customs Enforcement ("ICE"), will cost taxpayers over \$1.7 billion during FY 2010. The \$1.7 billion budget for "Custody Operations" provides ICE with funding to maintain its current detention capacity of 33,400 people in over 500 facilities on any given night, including operational expenses.¹ Two figures are used in calculating the average daily cost of immigration detention per person: \$99 per bed², and \$141 per bed, including ICE's operational expenses³.

- 33,400 immigrant detainees * \$141 nightly cost to taxpayers = \$4.7 million per night, or \$1.7 billion per year.

The Custody Operations budget has doubled since 2003, and ICE continues to obtain funding for additional detention bedspace and staffing. In its FY 2009 Salaries and Expenses Report to Congress, ICE requested \$46 million to add 74 positions within ICE to support additional bedspace. It also requested \$26.2 million in non-personnel costs to add 725 beds.⁴ However, it appears as if no additional bedspace or Detention and Removal personnel will be created in FY 2010 appropriations.⁵ Federal payments to local jails, which house two-thirds of immigrant detainees, are also increasing. California law enforcement agencies alone received over \$55 million in federal funding for immigrant detention in FY 2008 and are on track to receive \$58 million this year.⁶ The federal government also contracts with private prison operators to detain immigrants. The two largest private prison companies in the U.S. each receive over ten percent of their revenue directly from ICE, which pays an average per diem fee of \$87.99 for every immigrant detainee.⁷

¹ See, ICE Fact Sheet on Fiscal Year 2009 (May 7, 2009) available at <http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc>; House Committee Report for Department of Homeland Security Appropriations Bill, 2010, pg. 53; GAO Report, DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, pg. 14, available at <http://www.gao.gov/new.items/d09308r.pdf>.

² Dep't of Homeland Security, U.S. Immigration and Customs Enforcement Salaries and Expenses, Fiscal Year 2009 Congressional Justification, p. 45.

³ Based on the amount budgeted for fiscal year 2009, each individual in custody costs ICE approximately \$141 per day of detention. Michelle Roberts, "Immigrants Face Lengthy Detention with Few Rights."

⁴ A conflicting request of \$71.7m, which includes funding for 1400 additional beds, personnel and removal costs, is reported in the ICE Fact Sheet on Fiscal Year 2009 (Oct. 23, 2009).

⁵ Senate Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 49; House Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 53.

⁶ Anna Gorman, "Cities and Counties Rely on U.S. Immigrant Detention Fees," L.A. Times, Mar. 17, 2009, available at <http://www.latimes.com/news/local/la-me-immigjail17-2009mar17,0,764607.story?page=1>.

⁷ Industry experts credit the surge in immigration detention contract for saving the private prison system from near bankruptcy. See, Leslie Bernstein, "Tougher Immigration Laws Turn the Ailing Private Prison Sector into a Revenue Maker," The San Diego Union-Tribune, May 4, 2008.

Most immigrants in detention, however, could be effectively monitored with more cost-effective and humane alternatives to detention. Some alternative programs cost as little as \$12 per day and still yield an estimated 93 percent appearance rate before the immigration courts.⁸ Electronic ankle monitoring, for example, achieves an almost perfect compliance rate for final decision hearing attendance.⁹ The ICE budget for electronic monitoring and its intensive supervision appearance program is \$58 million for the current fiscal year, and ICE is on track to receive between \$64 and \$74 million in FY 2010.¹⁰ This funding could accommodate over 13,000 immigrants per day, but currently fewer than 3000 people are on electronic monitoring.¹¹ The alternative program could substantially reduce the number of noncriminal immigrants in detention and thereby lower detention costs. Critics suggest that instead, ICE is placing electronic monitoring only on those who would already have been released on bond or their own recognizance.

Privatization of ICE-owned Detention Facilities

ICE currently owns and operates eight detention facilities,¹² called Service Processing Centers (SPCs), which it augments with seven, privately run contract facilities,¹³ as well as over 500 state and local jails which contract with ICE using Intergovernmental Service Agreements (IGSAs). There appears to be some disagreement over the exact number of operating IGSA facilities, which together hold close to 65 percent of all immigrant detainees,¹⁴ with some reports citing a number over 500,¹⁵ and others using a number close to half that amount.¹⁶ This discrepancy is most likely due to the fact that ICE uses state and local jails on a daily, need oriented basis. Thus, although ICE has contracts with over 500 facilities, the actual number in use at any given time is likely much smaller. However, no matter which data is used, the detention facilities owned and operated by ICE itself make up a very small percentage of the total available,¹⁷ and hold a correspondingly small percentage of the total detainees.¹⁸

⁸ See, Detention Watch Network, "About the U.S. Detention and Deportation System" (June 25, 2009), available at <http://www.detentionwatchnetwork.org/aboutdetention>

⁹ Dep't of Homeland Security, U.S. Immigration and Customs Enforcement Salaries and Expenses, Fiscal Year 2009 Congressional Justification, p. 39.

¹⁰ According to its Salaries and Expenses Program Performance Justification Report to Congress, ICE requested \$58.2 million for the Alternative to Detention Program. An ICE Fact Sheet on Fiscal Year 2009 (Oct. 23, 2009) reports a conflicting figure of \$63 million; Senate Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 49; House Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 54.

¹¹ Michelle Roberts, "Immigrations Face Lengthy Detention with Few Rights."

¹² They are located in Aguadilla, Puerto Rico; Batavia, New York; El Centro, California; El Paso, Texas; Florence, Arizona; Miami, Florida; Los Fresnos, Texas; and San Pedro, California.

¹³ These facilities are located in Aurora, Colorado; Houston, Texas; Laredo, Texas; Seattle, Washington; Elizabeth, New Jersey; Queens, New York; and San Diego, California.

¹⁴ GAO Report, DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, pg. 15.

¹⁵ Id. at 14. (514 facilities)

¹⁶ Michelle Roberts, "Immigrations Face Lengthy Detention with Few Rights." (260 facilities)

¹⁷ SPCs make up approximately 1.5 percent of all detention facilities used by ICE. See GAO Report, DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, pg. 14.

¹⁸ SPCs hold 17 percent of daily immigrant detainee population. See ICE's Semiannual Report on Compliance with ICE National Detention Standards, January - June 2007, pg. 6, available at http://www.ice.gov/doclib/pi/news/newsreleases/articles/semi_annual_dmd.pdf.

Despite the small number of SPCs, the condition of ICE-owned detention facilities is considered to be very poor and many are in need of basic and emergency maintenance, a situation exacerbated by ICE, which has neglected maintenance by refusing to request funds to perform it.¹⁹ An ICE-commissioned study estimates that SPCs will need approximately \$400 million in repairs and alterations between 2007 and 2016.²⁰ In an effort to avoid these costs, ICE proposed a plan in its FY 2010 budget request to completely privatize the detention system by including a general provision which would allow ICE to sell its SPCs and retain the proceeds to pay for the cost of consolidating field offices for ICE agents and officers.²¹ ICE uses the poor conditions of its facilities, conditions which the agency itself helped to create by not requesting sufficient funds, and the associated repair costs to justify this proposal.

However, in their FY 2010 appropriation bills, the House and the Senate took different approaches to the ICE request. The House rejected the requested provision, stating that a move to an exclusively contract detention model would be premature until ICE can show that it can adequately provide for the medical care and oversight of detention standards at its existing contract detention facilities.²² Conversely, the Senate included the provision and gave ICE the authority to dispose of ICE-owned facilities.²³ As a result, until the bills are reconciled in Conference, the fate of the ICE SPCs is yet to be sealed.

Snapshot of a Day in Detention Costs

According to ICE data obtained by the Associated Press under the Freedom of Information Act, on the night of January 25, 2009 exactly 32,000 immigrants were in ICE detention.²⁴

- 32,000 detainees * \$141 nightly cost to taxpayers = \$4.5 million on Jan. 25, 2009

The data shows that 18,690 of these 32,000 immigrants had no criminal conviction. A switch to electronic ankle bracelet monitoring for this segment of the detainee population would have reduced the overall detention costs on January 25th from \$4.5 million to \$2.1 million.

- 18,690 noncriminal detainees * \$141/ night in detention = \$2.6 million taxpayer cost
- 18,690 noncriminal detainees * \$13/ day electronic monitoring = \$242,970 taxpayer cost

Case example: Sarjina Emy

Sarjina Emy, 20 years old, arrived in the U.S. with her parents 15 years ago. Her parents believed that the permanent labor certificate they had been granted gave them legal status, and the family purchased a home and small business in Florida. Sarjina, an honors student, was planning to apply to colleges in 2007, when ICE officials arrived at her home and arrested the entire family. Her parents were deported, and Sarjina spent 20 months in detention before withdrawing her appeal and conceding to deportation.²⁵ U.S. taxpayers spent around \$85,000 to detain Sarjina.

¹⁹ House Committee Report for the Department of Homeland Security Appropriations Bill, 2009, pg. 60.

²⁰ Id.

²¹ Dep't of Homeland Security, The Budget for Fiscal Year 2010, pg. 566.

²² House Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 60.

²³ Senate Committee Report for the Department of Homeland Security Appropriations Bill, 2010, pg. 53.

²⁴ Id.

²⁵ Id.

Asylum Seekers in Detention

The availability of statistics on asylum seekers in detention, albeit outdated, offers a deeper look into one subset of the detainee population. It has been estimated that from 2003 to February 2009, ICE spent more than \$300 million to detain asylum seekers.²⁶ However, obtaining accurate data can be difficult as ICE does not consistently report the amount it spends to detain asylum seekers and does not precisely track the number of detained asylum seekers or the actual length of their detention.²⁷ In 2006, the last year in which ICE released statistics, the agency reported that it detained 5,761 asylum seekers.²⁸ Over 1,000 of these detained asylum seekers were ultimately granted relief. In its report, ICE classifies asylum seekers into three groups: affirmative asylum applicants, aliens who have met the “credible fear” screening standard, and defensive asylum applicants.²⁹ Of the asylum seekers detained in 2006, 487 detainees were affirmative asylum applicants. Fifty-one of these persons were detained for over six months. ICE also detained 257 asylum seekers who had met the credible fear screening standard, including sixteen persons who were detained for longer than six months. Defensive asylum applicants, who applied for asylum relief after being ordered to appear before an Immigration Judge, comprised the largest portion of asylum seekers in detention with a total of 5,017 persons, including 1,492 detainees who spent more than six months in ICE custody. Over half of the defensive asylum applicants were held in more than one facility, adding transportation costs to the overall cost of detention.

Detaining asylum seekers longer than six months costs at least \$28.2 million

- 51 affirmative asylum applicants * 183 days * \$99/day (non-personnel costs) = \$923,967 taxpayer cost
- 16 persons who had met the “credible fear” standard * 183 days * \$99/day = \$289,872 taxpayer cost
- 1,492 defensive asylum applicants * 183 days * \$99/day = \$27 million taxpayer cost

As of July 2005, the average length of stay for an asylum seeker who had been detained and then released was 46.9 days for affirmative applicants (13.9% granted asylum or some other form of relief), 48.1 days for those who had met the credible fear standard (14.9% granted relief), and 109.1 days for defensive asylum seekers (14.5% granted relief).³⁰ Using the average days in detention for each group, the asylum applicants granted relief spent an aggregate 128,501 days detained, at a cost of over \$12.7 million.³¹

²⁶ Human Rights First, “US Detention of Asylum Seekers: Seeking Protection, Finding Prison”, pg. 8, available at <http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-sum-doc.pdf>

²⁷ Id.

²⁸ U.S. Immigration and Customs Enforcement, “Report to Congress, Detained Asylum Seekers Fiscal Year 2006,” Oct. 30, 2007.

²⁹ Generally, the term “affirmative asylum seekers” refers to non-citizens who apply for asylum prior to the initiation of removal proceeding and are not subject to detention. ICE does not specify what subset of affirmative asylum seekers are detained or at which stage of the application process they are taken into ICE custody.

³⁰ U.S. Immigration and Customs Enforcement, “Report to Congress, Detained Asylum Seekers Fiscal Year 2004.”

³¹ Using the percentages and total detainee statistics provided, 23 affirmative filers, 1041 credible fear referrals and 709 defensive filers were detained and ultimately granted relief. The dollar calculation is based on the \$99 per night non-personnel cost of detention.

Detaining asylum seekers ultimately granted relief costs over \$12.7 million

- 23 affirmative applicants granted relief * 46.9 days at \$99/day = \$106,791
- 1041 persons who had met the credible fear standard and were granted relief * 48.1 days at \$99/day = \$5 million
- 709 defensive applicants granted relief * 109.1 days at \$99/day = \$7.7 million

Furthermore, many asylum seekers faced particularly long detention stays. Of the 6,818 credible fear referral asylum seekers detained and released during FY 2004, 532 persons were detained for over 180 days, with an average length of stay of 284.4 days.³²

- 532 detainees * 284.4 days at \$99/day = \$15 million

An additional 94 persons detained during FY 2004 remained in detention as of July 2005, having already spent over 180 days in custody.³³ The data on lengthy detention stays suggest that ICE detention practices combined with the backlog in Immigration Court dockets lead to a severe and inefficient use of resources.

Use of detention for asylum seekers also varies greatly by locality. For example, in FY 2003 authorities in Harlingen, Texas released almost all asylum seekers who had been referred for a credible fear interview upon entering the United States before their hearing date. The release rates in Los Angeles and Atlanta were around 30 percent and in New York City under ten percent.³⁴ Based on these and other findings, in 2005 the U.S. Commission on International Religious Freedom issued a report recommending new parole policies for asylum seekers. However, in November 2007 an ICE Policy Directive established additional criteria for release from detention.³⁵ The new policy increases the risk that more asylum seekers are unnecessarily subject to detention.³⁶

³² U.S. Immigration and Customs Enforcement, "Report to Congress, Detained Asylum Seekers Fiscal Year 2004," Table 8b.

³³ Id.

³⁴ United States Commission on International Religious Freedom, "Study on Asylum Seekers in Expedited Removal As Authorized by Section 605 of the International Religious Freedom Act of 1998," Feb. 2005, available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/detentionStats.pdf.

³⁵ An asylum seeker who meets the basic criteria of established identity, no national security or flight risk and credible fear of persecution, must also now establish that a serious medical condition warrants release, that he or she is a juvenile, witness in another proceeding or pregnant, or that release is in the "public interest." U.S. Immigration and Customs Enforcement, "Parole of Aliens Found to have a "Credible Fear" of Persecution or Torture," Nov. 6, 2007, available at <http://www.bibdaily.com/pdfs/Parole%20of%20Arriving%20Aliens%20Found%20to%20Have%20a%20Credible%20Fear%20of%20Persecution%20or%20Torture.pdf>.

³⁶ See, Letter from U.S. Commission on International Religious Freedom to DHS, Jan. 9, 2009, available at http://www.uscirf.gov/index.php?option=com_content&task=view&id=2340&Itemid=126; see also "Bipartisan Group Of Senior Senators Introduces Bill To Provide Humane Treatment To Immigration Detainees," Press Release on introduction of S. 3114, June 11, 2008, available at http://hsgac.senate.gov/public/index.cfm?Fuseaction=PressReleases.Detail&PressRelease_id=b8ff4b06-3a0d-4338-ad8c-9c45a2d15666&Month=6&Year=2008&Affiliation=C.