



## **Alternatives to Immigration Detention: A Literature Review**

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## **EXECUTIVE SUMMARY**

### **Background**

This literature review was commissioned as part of the follow-up independent review of policies and procedures affecting the welfare of those held in immigration removal centres, by Stephen Shaw, CBE. This review examines a range of literature on alternatives to immigration detention according to the following terms of reference:

### **Summary**

To provide a literature review of reputable academic work and government and NGO reports that may provide insight into implemented and piloted alternatives to immigration detention and their outcomes, both internationally and within the UK.

### **Detail**

- To outline the models of alternatives to immigration detention which have been implemented or piloted internationally and in the UK.
- So far as possible, to assess the outcomes of these programmes in terms of overall number of removals in comparison to those kept in immigration detention.
- So far as possible, to outline compliance levels for those on such programmes.
- So far as possible, to consider the overall financial cost of these programmes in comparison to immigration detention.
- So far as possible, to consider the outcomes of these programmes in terms of the physical and mental wellbeing of those involved in comparison to immigration detention.

### **Methods and Summary of Evidence**

This report draws on relevant qualitative and quantitative academic literature along with statistics and reports produced by governments and NGOs in the UK, USA, Australia, Canada and a selection of European Union (EU) Member States. Initial research informed later searches. In compiling the material used in this review, I conducted an extensive online

search using academic databases, e.g. ProQuest, Lexus Nexus, Thomson Web of Science, as well as academic journal data bases like <http://journals.sagepub.com> and <http://taylorandfrancis.com>. I searched [www.ssrn.com](http://www.ssrn.com) and <https://www.academia.edu> to locate working papers. I also searched government websites, the EU commission, and Hansard debates. Finally, I consulted a selection of international experts to ensure that material was as up to date as possible.<sup>1</sup> Studies based solely on media analysis were excluded, as were those whose methodology was unclear or not robust. These searches yielded over 100 reports, briefings, book chapters and articles on practices in Australia, the UK, Canada, and the US, as well as material about a number of European Union (EU) member states. All works cited appear in the reference section at the end of the review.

## **Main Findings**

1. Most people subject to immigration control, in any jurisdiction and whatever their immigration status, are not detained.
2. Alternatives to detention (ATDs) refer to a set of measures that are employed only after a detention determination of some kind has been made in the individual case, and the government has determined that a less coercive measure than confinement and the loss of liberty could be applied. ATDs are part of immigration and asylum law.
3. Governments across the world deploy a diverse range of programmes and practices under this rubric including: temporary admission, reporting requirements, parole, bail, appointment of a guarantor, open, semi-open centres, or alternative places of detention (including family detention and community detention), house arrest, curfew, voluntary return incentives, electronic surveillance, case-worker support, surrender of identification and travel documents, and assisted voluntary returns schemes (AVRs).
4. Like immigration detention, the justification of which is contested and unclear, there is no common set of agreed principles underpinning ATDs. Yet, without agreement on the rationale(s) for alternatives to detention, it is difficult to determine the form they should take to achieve their goal, nor the measure of their success or failure.
5. Only a small number of ATD programs have been independently evaluated.

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6. Evidence suggests that the vast majority of individuals in ATD programs comply with the immigration process.
7. Evidence suggests that alternatives to detention are cheaper than immigration detention, although such cost-analysis does not take into account the net-widening effect of alternatives, but rather assumes a like-for-like substitution.
8. Evidence about the impact of alternative to detention programmes on physical and mental-health is mixed. Case-work based alternatives to detention engender better outcomes than immigration detention, whereas temporary admission and bridging visas generates mental distress that may be similar to that caused by immigration detention. Those who have been subject to electronic monitoring report feelings of shame and criminalisation.
9. Official statistics about removals suggest that alternatives to detention can assist governments enforce immigration control although there is no academic scholarship explicitly comparing removal rates under both schemes of comparable populations. Indeed, there is very little academic literature on the impact of border controls on removals at all.
10. Evidence on compliance levels for alternatives to detention programs finds that well-funded, and well-supported case-management programs offering legal advice, housing and access to social and health care have high levels of compliance with all stages of the immigration system, including removal.
11. A range of studies from all jurisdictions identify a consistent set of concerns about ATDs including: the difficulty or absence of monitoring and regulation of these programs; their expansionist impact (net widening) on migration control; the growing role of the private sector in delivering these programs; the potential economic incentives for NGO involvement in border control; the blurring of populations (asylum seekers, former offenders, economic migrants); the reliance on criminal justice practices, particularly electronic monitoring; the de-facto detention caused by restrictions on residence; the difficulty of residing in the community without leave to work; and the negative impact of the uncertainty of visa regimes (ie temporary admission).
12. There is no consistent evidence that 'alternatives to detention' decrease the use of immigration detention other than in instances where there has been a prohibition on detention for specific populations, e.g. with children.
13. Literature from across all the different bodies of work and jurisdictions consistently reveals the need for more independent academic research to better understand these practices, their justification and their impact.

## Conclusion

This review reports on a wide-range of international academic research, government and non-governmental literature relating to alternatives to immigration detention. Studies include a range of sample sizes and use a variety of research methods. They report on current projects as well as ones that have ceased to operate some years ago.

Whereas NGOs, the government and the private sector, as well as a number of academics broadly support ATDs, their reasons offer differ. For governments, the appeal of alternatives tends to rest almost entirely in their cost-effectiveness; they are cheaper and often efficient mechanisms of border control. They are also less controversial and are relatively quick to set up, as there is considerable appetite in the private and voluntary sector to be involved in their design and delivery. For NGOs, by contrast, there is a widespread belief that alternatives to detention offer a more 'dignified' treatment of migrants and asylum seekers (IDC, 2013). ATDs, in their view, offer a humane approach to border control that minimises the negative impact on the mental health and wellbeing of irregular migrants (see, for example, IDC, 2015; Detention Action, 2016; Katz, et al, 2013).

Alternatives to detention are not without their critics. Together, the literature, which spans over two decades, and a number of legal systems, tells a complex albeit familiar story about the challenges of balancing care and coercion in the community. Although designed for use instead of detention, there is little evidence that ATDs actually reduce the reliance on confinement (Acer and Magner, 2013). Instead, in part because of their lower costs, as well as their relatively uncontested nature, alternatives to detention potentially expand the administration of border control. Electronic monitoring offers a clear example: it is relatively inexpensive and easy to use, with a wide range of people. As such it can be, and is, deployed against people who were previously not subject to methods of control (Khoulish, 2015; Beyens, 2017; McNeill, 2017).

Alternatives raise other challenges. Certain strategies, like home curfew for example, have been contested in court, generating new costs and risks for the government. Questions are also raised about scale. Evidence from the criminal justice system suggests mass supervision raises new challenges of administration in structures that are already under financial and operational strain. In quite practical terms, increasing the number of participants in programs without increasing the staff to manage them, undermines effectiveness (van der Vennet, 2015).

In order to move forward, the report concludes by sketching some key principles that inhere in any alternative to detention, the most important one of which is the right to liberty. In addition to this basic premise, ATDs remind us of the obligations faced by governments to safeguard vulnerable people, whatever their citizenship, and the complexity of doing so while enforcing border control. Fairness and transparency are key, in this area of public policy as in any other. So too is a robust system of monitoring, complete with a clear structure of accountability, complaints and legal redress. These matters co-exist with those of cost-efficiency and effectiveness.

Underpinning them all, are issues of community and fellowship. Under conditions of border control, not everyone may live where they wish. States retain the right to determine this matter. The task then is to design programs which do the least damage not only to those who must leave, but to the communities they will leave behind in the UK, and those they will rejoin, abroad. ATDs have an important part to play in this discussion, and there is much reason for optimism. At the same time, familiar risks remain about coercion, expansion and efficiency. Bringing such matters into balance remains a challenge.

## Definition of Terms

**Alternatives to Detention:** A wide category of practices used by governments as part of managing asylum seekers, refugees and irregular migrants in the community, instead of placing them in closed confinement. These measures, which are inscribed in immigration and asylum law, are employed only after a detention determination of some kind has been made in the individual case, and the government has determined that a less coercive measure than confinement and the loss of liberty could be applied.

**Assisted Voluntary Return and Reintegration:** Also known by the acronyms AVR and AVRR, Assisted Voluntary Returns schemes are funded and delivered by national governments and transnational agencies like the International Organization for Migration (IOM). They offer foreign nationals within the immigration and asylum systems financial incentives to return to their state of national origin. Sometimes they are twinned with employment opportunities or other schemes in the countries to which people are returned.

**Asylum Seeker** - An asylum seeker is someone who has applied for asylum and is waiting for a legal decision on refugee status.

**Bail:** The temporary release of a person from immigration detention for a specific period of time. Detainees can apply for bail from an immigration tribunal. Bail is usually set with restrictions over residence and reporting and recognisance. Those on immigration bail do not have the right to engage in paid work.

**Case Management:** Unlike much of the terminology of Alternatives to Detention, Case Management is an idea taken from social work. It refers to a collaborative process of assessment, planning and advocacy. In the immigration system, case management schemes allow residence in the community, and operate alongside more coercive methods of control, such as reporting requirements.

**Community Detention:** Terminology taken from the criminal justice system that has been used in immigration control in Australia. Also known as '**Residence Determination**' or as '**alternative places of detention**' community detention is legally considered to be a form of detention that allows irregular migrants and asylum seekers to live in the Australian Community while they await resolution of their immigration status (or removal). It is primarily used for families with children, with unaccompanied minors and with vulnerable adults who live in the community with support from welfare agencies who provide access to health and community services as well as to social support networks.

**Electronic Monitoring:** Also known as 'Tagging' this surveillance practice is drawn from the criminal justice system to monitor the location and movement of people instead of or after a prison sentence. Electronic monitoring can rely on radio frequency and GPS tracking systems. It is often twinned with intensive supervision and/or home curfew.

**Home Curfew:** A practice common in a number of criminal justice systems, whereby individuals who have been convicted of a criminal offence may serve some or all of their sentence outside a prison, in a residential setting. It usually comes with restrictions on time spent outside the residence area, (the 'home'), and often includes electronic monitoring. Curfew practices for ex-offenders under immigration control in the UK were subject to a successful legal challenge in 2016 (*R (on the application of Abdiweli Gedi) vs Secretary of State for the Home Department*, [2016] EWCA Civ 409 (Admin), 17 May 2016).

**Intensive Supervision:** Terminology taken from the criminal justice system where it typically refers to community-based sentences such as probation or parole. In the immigration system, as it does in the criminal justice system, intensive supervision includes regular reporting requirements, either in person or via the telephone.

**Net widening:** A concept developed by sociologist Stanley Cohen (1985) in relation to the criminal justice system, net-widening refers to administrative or practical changes that, often unintentionally, result in a greater number of people being subject to systems of state control.

**Pilot project:** A small-scale experiment or study that is usually conducted to explore the feasibility, cost and effectiveness of a practice, in order to determine whether it should be rolled out more widely.

**Qualitative Research** – Qualitative research is often more exploratory than quantitative research. It typically includes observations and interviews, which may be semi-structured or unstructured, drawing together testimonies from participants to better understand the object of study.

**Refugee** - A refugee is a person who, 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is

unwilling to avail himself of the protection of that country,' as defined in Article 1, of the *1951 Convention relating to the state of refugees*.

**Risk Assessment:** A process for determining the potential risks involved in undertaking an activity. In the immigration system risk assessment tools are used to determine the likelihood of absconding and the suitability for placement in specific programs.

**Status Resolution Support Services (SRSS):** Funded by the Australian Department of Immigration and Border Protection (DIBP) (now Home Affairs), the SRSS refers to a single integrated program designed to provide flexible support services to people seeking to resolve their immigration status. Through SRSS individuals who are detained under the Immigration Act are accommodated in the community under Residence Determination where they receive assistance from social welfare agencies for varying lengths of time depending on their status.

**Temporary Admission/Temporary Release:** Refers to a particular legal status in immigration law in which a person liable to detention or detained, may, under the written authority of an immigration officer be temporarily admitted into the United Kingdom to live in the community, either instead of being detained, or following release from detention. Those who are temporarily admitted face a number of restrictions e.g. on residence, reporting and on work, and may be detained (or re-detained) at any point.

**Vulnerability** – In psychological terms vulnerability refers to the susceptibility of people to mental disorders and distress. Certain characteristics and populations are associated with higher levels of mental distress.

## **Methodology: Search terms and years of review**

This literature review draws on a wide array of studies from a number of jurisdictions and time periods. While care must be taken to acknowledge distinct national practices, as well as variety in the scale and nature of the populations subject to ATDs, this aspect of border control, like immigration detention has experienced considerable policy transfer. Consequently, even within different systems, important similarities exist. For all these reasons, this report draws on literature from a variety of countries, to understand better the nature and effect of alternatives to immigration detention.

## **Search terms and types of literature**

In compiling this review, I identified and consulted relevant qualitative and quantitative academic literature from the UK, USA, Australia, Canada and a selection of EU Member states. Initial research informed later searches. In compiling the material I conducted an extensive online search using academic databases, e.g. ProQuest, Lexus Nexus, Thomson Web of Science, as well as academic journal databases like <http://journals.sagepub.com> and [www.ssrn.com](http://www.ssrn.com) to locate working papers. I also searched government and NGO websites, the EU commission, and Hansard debates. Finally, I sought advice from a range of international experts to ensure that material was as up to date as possible.

Publications fell into three main groups: academic literature, government reports, NGO and voluntary sector reports. Within the academic literature I included qualitative and quantitative studies from law and a range of social sciences. These were supplemented by statistics and reports produced by governments, NGOs and the voluntary sector. All works cited appear in the reference section at the end of the review.

## **Years of the review**

The research for this literature review was conducted in December 2017 and January 2018. Most items consulted date from the past decade. Reflecting the fluid nature of immigration policy, a number of the programs which have been evaluated are no longer in operation. However, it is hoped that broader issues can be learned from synthesising literature on previous practice.

## **Introduction: What are Alternatives to Detention?**

As governments around the world pursue border control in the face of mass mobility, they turn to a variety of methods of population management. Unlike immigration detention, which has attracted considerable (critical) attention in recent years (AAPG, 2015; Shaw, 2016), non-custodial methods of border control have often been overlooked (although see Klein and Williams, 2009; Noferi, 2015; Turk and Edwards, 2011). As a result, it is easy to forget that the vast majority of people subject to immigration control, in any jurisdiction and whatever their immigration status, are managed in the community. Detention, it is worth recalling, is the exception; liberty, albeit with restrictions, is the norm (see also Flynn, 2017; 2013).

States manage and process foreign nationals without custody through a variety of programs that, together are known as ‘alternatives to detention’ or ATDs (Tardis and Morovan, 2010). The grounds on which someone may be placed in an alternative to detention is set out in immigration and asylum law, with most countries advocating the least coercive form of management in order to enforce immigration control.

While ATDs can be grouped into a series of common forms, there is considerable debate over their definition, its goal and justification. In the broadest view, ATDs may refer to “any of a range of policies and practices that States use to manage the migration process, which fall short of detention, but typically involve some restrictions” (Costello and Kaytaz 2013: 10). More narrowly, the UNHCR reminds us, ATDs are used only when a person has been ordered detained but has been diverted into a less coercive measure than detention that is deemed adequate to ensure fulfilment of their immigration or asylum procedure (UNHCR, 2014). In all cases, alternatives to detention are rooted in the legal framework of immigration detention and removal and allow “asylum-seekers, refugees and migrants to reside in the community while their migration status is being resolved or while awaiting deportation or removal from the country, albeit subject to some restrictions on movement or liberty.” (Costello and Kaytaz, 2013: 10 – 11).

Current practices include: temporary admission, reporting requirements, parole, bail, appointment of a guarantor, open, semi-open centres, or alternative places of detention (including family detention and community detention), house arrest, curfew, voluntary return incentives, electronic surveillance, case management, case-worker support, surrender of identification and travel documents and assisted voluntary returns (AVR). In a recent document produced by the European Commission (2017), the UK was among the most wide-ranging in its adoption of ATDs, offering examples of nearly all of these programmes.

Unlike immigration detention, which is deeply contested around the world on a range of grounds from cost to the impact on mental health, access to justice and efficiency (Shaw, 2016; Costello, 2015; Chacon, 2014; Ceccorulli and Labanca, 2014), alternatives to detention currently enjoy a wide-range of support within government, the NGO sector and the academy (See, inter alia, IDC, 2015; Detention Action, 2016; Amnesty International, 2009). The UNHCR (2012; 2014; 2015a; 2015b), among others, has published guidelines on their

form and development, urging states around the world to adopt them instead of administrative confinement, while the private sector has taken on the development of new partnerships and programs enthusiastically (GEO, 2017). Thus, despite extensive evidence from the criminal justice system (Aebi et al, 2015; McNeill and Beyes, 2013) concerning the net-widening effect of non-custodial alternatives (Cohen, 1985), and notwithstanding similarly negative accounts of ‘care in the community’ within the health sector literature (Killaspy, 2007), for the most part the literature on ATDs is upbeat (although see Rutgers School of Law and American Friends Service Committee, 2011; Flynn, 2017).

### **What do we know?**

On the one hand, as this literature review makes clear, there is a large body of international work on alternatives to detention. Much of it is produced by governments and NGOs (see, for example Bieska et al, 2011; EMN, 2014). While there is a body of academic work, it is still, largely, in development (Noferi, 2015; Costello and Kaytaz, 2013; Sampson and Mitchell, 2013)<sup>2</sup>. Evaluations and systematic analysis are, likewise, few in number (although see ODS Consulting, 2011; Stockmans et al, 2013; Detention Action, 2016). Perhaps most problematically, there has been little attempt to theorise or justify these practices. As a consequence, the goals, form and legitimacy of ATDs, remain unclear, as do their impact on broader detention policy. Do these programs reduce reliance on custody or merely expand the options available to the state? (Flynn, 2017; Doering-White, 2018)

Nonetheless, certain themes can be identified in the literature. Where figures exist, alternatives are typically cheaper than detention (ACLU, 2014; Edwards, 2011). Mainly, they are less harmful on mental and physical health of migrants (Costello and Kaytaz, 2013; IDC, 2015; Wisher, 2011). Examples from around the world suggest that community-based case-management interventions, when accompanied by sufficient legal and other assistance, including education, housing and healthcare, generate high levels of compliance with immigration decisions (see, for example, Katz et al, 2013; van der Vennet, 2015; Edwards, 2011; Mitchell and Kirsner, 2004).

There are, of course, exceptions and caveats. In border control terms, evaluations have found that some ATDs fail (ODS Consulting, 2011). In legal terms, certain programs or practices have been subject to successful legal challenge (see, for example, *R (on the application of Abdiweli Gedi) vs Secretary of State for the Home Department*, [2016] EWCA Civ 409 (Admin), 17 May 2016). In political terms, too, programs adopted under one administration have been abandoned under another. Like other aspects of immigration policy, ATDs are subject to shifts in political discourse and finances.

Advocates of ATDs do not necessarily support all programs. Interventions based on criminal justice practices like electronic monitoring, for instance attract extensive critique (CCR, 2015; JRS, 2010; Khoulish, 2015; AILA, 2008). Concerns about such practices range from the impact of tagging on civil liberties – the manner in which people may be placed under

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<sup>2</sup> For a good overview of practices around the world see Issue 44 of *Forced Migration Review* from 2013.

surveillance without compelling reason – to fears about the pressure these programs place on the overall system. In quite practical terms, given the conditions of enduring fiscal restraint, expanding options may put the whole system under pressure; such has been the experience in many criminal justice systems (McNeill, 2017).

So too, critics raise questions about the potential financial incentives ATDs offer to the private sector (Rutgers School of Law and American Friends Service Committee, 2011) and NGOs (Bosworth, 2017), while the growth in schemes has led some to ask about the dangers inherent in eliding quite different populations (Flynn, 2017). What might be some unintended consequences of extending formal oversight to a wider-range of people? Can the distinct legal needs and protections of groups be managed?

From a legal and human rights perspective, there is some evidence to suggest that there may be problems in accountability and transparency of some programs. Who best holds the legal responsibility or expertise to monitor non-custodial alternatives is not always clear. The Royal Commission into Institutional Responses to Child Sexual Abuse (Commonwealth of Australia, 2017) for example, found worrying levels of child abuse in Community detention, with fears that even higher levels were going unreported (see also Child Protection Panel, 2016; Australian Human Rights Commission, 2016). Without robust monitoring systems, this abuse was very hard to root out.

Governments too, tend to prefer certain schemes over others, although practices can shift suddenly. Whereas Belgium, for many years, for instance, was committed to lowering its closed detention population through operating open detention facilities (Schockaert, 2013), it has recently abruptly changed tack, ending its scheme of family houses (Cartuyvels et al, 2017; Global Detention Project, 2017a). Similarly, in 2016, under the Trump Administration, the US federal government terminated a family case-work scheme that had witnessed some success with women and children (GEO, 2017), in favour of expanding its reliance on electronic monitoring. Critics draw into question the appropriateness of this strategy for all claimants (Khoulish, 2015).

A number of NGOs and the UNHCR advocate case-management based programs in the community (IDC, 2015; UNHCR, 2015a; 2015b; Detention Action 2016). These programs, which take a number of forms and examples of which can be found across a number of years and jurisdictions deploy a social work model to support people in the community who are subject to immigration control. These schemes, which generally have high levels of compliance, are based on the belief in early and sustained engagement. Participants are offered guidance on their legal matters along with assistance on matters of social care, health, education and housing (IDC, 2015; Detention Action, 2016; Mitchell and Kirsner, 2004).

In immigration, as in the criminal justice system, which has a longer and more developed field of practice and research on non-custodial outcomes (McNeill and Beyens, 2013), alternatives to detention offer the government a choice in population management. They are cheaper and, for the most part, less controversial. Far less clarity exists over their goal, however, or their impact.

## **Why alternatives?**

After 2010, when the coalition government announced the end of child detention in the UK, Britain pursued a series of alternatives for families who were subject to deportation. For this group, the justification of alternatives was clear; detention had been ruled incommensurate with contemporary values about children. Its negative impact on their physical and mental health was too great, and the law changed (Crawley and Lester, 2006; Campbell et al, 2011). Alternatives had to be developed.

Other populations may be placed into alternatives for similar reasons, some of which have also been inscribed in law. Pregnant women in Britain can no longer be detained for more than 72 hours, for instance, and following recommendations from the 2016 Shaw Review (Shaw, 2016) other vulnerable people should also be diverted under the 'Adults at Risk' policy (Home Office, 2016). For the most part, however, the decision to detain, and, therefore, the choice not to detain, remains discretionary, and unless challenged in court, unexplained.

The sheer numbers of people who remain in the community under Immigration Act powers (estimated at around 80,000), reminds us, that, for the most part, immigration officers decide not to confine. It is worth recalling that the immigration detention estate, relatively speaking, is modest. There simply is not room to detain everyone. The gap between the number of beds in detention and those in the community, however, is not just evidence of resources, but also, of the appetite to detain. That is to say, despite an increasingly tough rhetoric over the past decade, which has been thoroughly documented in the academic, NGO and policy literature, the immigration system does not seek to confine everyone. Despite much criticism of its reliance on immigration detention, the Home Office does, for most, follow its own guidelines that detention should be used as a last resort. Case law, if not always public opinion, is clear: liberty is valued and protected.

In the next section, I lay out a series of national case studies, that demonstrate the range of alternative to detention programs. Each is considered in practical terms of immigration compliance, cost and outcome as well as in terms of justification and impact. As will be clear, the majority of evidence suggests that ATDs are effective and less harmful than detention. Yet, questions remain, as like detention, ATDs are also shaped by a series of contradictory goals and aspirations concerning care, control and community (Doering-White, 2018). Resolving such matters is beyond the scope of this literature review, yet important for considering in any analysis of border control.

## Case Studies: What works and why?

As has been already stated, the literature on alternatives to detention is both broad and narrow. While there are plenty of reports, and numerous documents advocating alternatives to detention, there has been limited academic qualitative or quantitative research on the nature or impact of these programs (although see EMN, 2014; Marouf, 2017). So, too, the literature spans a number of years, meaning that many programs that have been evaluated are no longer operational. They may have been developed to respond to specific populations who are no longer considered a priority, or they have been superseded by changes in law and policy.

In those countries where immigration detention is mandatory (e.g. Australia), the goals of alternatives may be different from the UK where detention remains discretionary. The national framework is important to understand for other reasons too. Australia once again provides a signal example, as its immense financial investment in the 'regional processing centres', designed to prevent entry of a small number of refugees, reveals the threshold of what some governments are prepared to do with foreign nationals is not the same everywhere. We might be cautious at adopting policies developed under quite different circumstances.

Nonetheless a comprehensive account of national and international programs is helpful, as it identifies a set of common concerns and practices. From the government's perspective, matters of cost and compliance are high on the agenda. These are public policies that need to be justified as forms of expenditure. From the point of view of advocates and academics, however, access to rights, dignity and security are more salient. One perspective that is almost entirely missing from the literature is that of the individuals subject to these programs or who administer them on behalf of the state (although see Detention Action, 2016; Klein and Williams, 2012). Such absence of first-hand accounts is regrettable, and, should be addressed by greater research in this area.

## United Kingdom

The United Kingdom uses an array of mechanisms to divert people from detention. The most common strategy has typically been to allow for **temporary admission**. This administrative measure can be handed out by an immigration officer in lieu of detention, or as a means of release from an Immigration Removal Centre (IRC). Temporary admission/release is usually accompanied by a series of restrictions on work, residence and reporting (Klein and Williams, 2012).

**Bail** offers another option to detainees for release. Granted in an immigration tribunal, like temporary admission, bail is accompanied by restrictions, including financial payments provided by financial supporters (previously known as sureties), residency requirements, reporting, and electronic monitoring (BID, 2018; Costello and Kayaz, 2013). Under the terms of the Immigration Act 2016 (Section 61 and Schedule 10), Temporary Admission and Bail are to be replaced by a single category of Immigration Bail. Those placed on this status will

be diverted or released from detention, but will face extensive restrictions on housing, work, and education (ILPA, 2016). While some research has been conducted into the process of obtaining bail (see, for example, The Bail Observation Project Website), we know little about the outcomes for those placed on bail, other than a 2002 study published by South Bank University (Bruegel and Natamba, 2002). This study, cited in Alice Edwards' 2011 overview of ATDs for UNHCR, "traced the compliance rates for 98 asylum-seekers released on bail between July 2000 and October 2001 and found that 90 per cent satisfied the conditions of their bail, despite having been originally detained because of an allegedly high risk of absconding." (Edwards, 2011: 77)

Both bail and temporary admission come with reporting requirements. In a 2016 report Detention Action noted that the previous year then Immigration Minister James Brokenshire had referred to reporting as "the primary default alternative to detention" (Detention Action, 2016: 29). This strategy the report went on "allows the Home Office to maintain regular contact with individuals, and is used on occasion to detain them. However, reporting is generally not used to sustain a dialogue with individuals or seek to resolve their cases. Approximately 60,000 people report regularly; the compliance rate is 95%. The Government has estimated costs at £8.6 million." (Detention Action, 2016: 29).

As part of his review into the Welfare of Vulnerable People in Detention Stephen Shaw (2016) urged the government to extend the practice of **electronic monitoring** (tagging) as an alternative to detention. Tagging was initially introduced for asylum seekers following the Immigration and Asylum Act 2004. A small pilot, with 150 individuals in 2005 (House of Commons Home Affairs Committee, 2006), was assessed by the Home Office, yet the results were never published. The practice was widely condemned at the time by the voluntary sector at the time as a form of criminalisation (JCWI, 2006; Bonomi, 2006). The UK remains the only EU member state to use this practice in immigration matters.

Today, information remains hard to come by. In 2016, the government announced plans to tag all released foreign offenders facing deportation. This action, when paired with home curfew, however, was, ruled unlawful in *R (on the application of Abdiweli Gedi) vs Secretary of State for the Home Department*, [2016] EWCA Civ 409 (Admin), 17 May 2016.

According to the National Audit Office (NAO) (2017: 16), 3% of all people who were electronically monitored in 2016 were placed under this form of surveillance for immigration matters. Whereas qualitative literature on immigration detention (Bosworth 2014), has found that detainees sometimes claim they would prefer to be tagged than to be detained, the Jesuit Refugee Society (2011) and Bail for Immigration Detainees (Campbell et al, 2011) have both reported that clients who had been tagged had found the experience demeaning and upsetting (see also Bloomfield, 2016; Abraham, 2016; Camayd-Freixas, 2013).

Evidence from the criminal justice system about electronic tagging is quite clear. It expands the system of surveillance, drawing people in who would previously have been managed more informally. While the mechanism is effective in ensuring compliance with the legal restrictions with which it is associated, unless it is paired with additional case-worker based

engagement it does not help with community reintegration or lowering recidivism (McNeill, 2017; Beyens, 2017). Moreover, although initially cheaper, due to its expansionist effect, electronic monitoring creates new costs for the overall system.

**Case work management** systems for immigration control in Britain are only relatively recent. In the first decade of the twenty-first century, in response to the outcry over child detention, the government piloted a small number of case-work schemes for families facing removal, with limited success. Two in particular, the Millbank pilot in Dover, which ran from November 2007 to July 2008 and the Family Return Project in Glasgow, which ran from June 2009 to 2010, were found to be ineffective in ensuring the families left (The Children's Society et al, 2009; ODS Consulting, 2011; Edwards, 2011). Evaluations found that the schemes in question had not sufficiently carefully selected the families nor did they sufficiently support them in the process of navigating and understanding the immigration system. Their narrow focus on returns meant that other opportunities were missed (Edwards, 2011), while poor selection and review was also found to be crucial, with 68% of the 524 families referred to the Millbank project ineligible (The Children's Society et al, 2009).

CEDARS, as a **pre-departure accommodation unit**, was not officially a form of detention, and so arguably falls within the broad, albeit contested, arena of 'alternative places of detention', like Australia's community detention. While CEDARS had a high rate of compliance and succeeded in removing a number of families (Home Office, 2013), it was closed following the first Shaw Review (2016), in large part due to his recommendation, about its cost and efficiency.

CEDARS was run as a partnership between G4S, the Home Office and the Children's Charity Barnardos (Tyler et al, 2014). In this, too, it represented one of the characteristics of many 'alternatives to detention'; the involvement of the voluntary sector and NGOs either alongside the private sector or instead of the private sector. For a number of years, Refugee Action ran a case-work pilot in Liverpool known as the 'Voluntary Sector Key Worker Pilot', on behalf of the Home Office for asylum seekers in the community (Edwards, 2011). Currently Detention Action, one of the government's fiercest critics, operates the Community Support Project, a case-work management scheme with a small number of foreign ex-offenders (Detention Action, 2016).

Although not strictly speaking an 'alternative to detention', as the individuals in question were unlikely to be detained while their asylum case was underway, the Voluntary Sector Key Worker Pilot relied on a case work model to try to assist asylum seekers avoid detention in the future, by understanding their options. Key workers were assigned 35 – 40 individuals, whom they met at regular intervals. Participation was voluntary. Within the first 7 months, five people returned voluntarily, three were removed by force and one was sent to detention. Among similarly situated individuals who were not in the Key Worker pilot program, one only voluntary removal occurred during the same period. Just under 5% of those in the pilot had absconded (Edwards, 2011: 80).

Detention Action's Community Support Project which has been running since April 2014, is modelled on the International Detention Coalition's (2015) Community Assessment and Placement Model (CAP), for a group of male ex-offenders aged 18 – 30. These former prisoners face barriers to removal and have either already experienced long-term detention or are at risk of doing so. A recent report by Detention Action (2016: 51) states that participants in the program "have a range of issues, including severe mental health problems, complex family situations, substantial offending histories, lack of confidence, precarious accommodation and subsistence situation and low self-esteem."

Men come to the program via detention, where they are first assessed for suitability based on a set of criteria to establish "levels of risk of reo ending and absconding and willingness to engage actively." (Detention Action, 2016: 51). Risk levels are constantly reassessed via meetings and phone calls. After they are accepted into the program the individual meets with the project coordinator and together they devise goals and actions. So far, the numbers on the project are small, but the results are positive; of 21 participants, there has been a compliance rate of at least 90%. One man returned voluntarily to his country of origin. The project saves the government between 83 – 95% of the cost of detention depending on whether or not the individual needs to be housed (Detention Action, 2016: 52; IARS, 2015).

Finally, the UK has operated an '**assisted voluntary returns**' scheme since 1999. While the Home Office has administered the program since 2015, previous incarnations, for foreign national prisoners as well as detainees and irregular migrants, have been run by a range of organisations including the International Organisation of Migration (IOM), Choices, Refugee Action, and Capita (Swan, 2017; Home Office, 2010; 2015; EMN, 2015; Black et al, 2011; Clery et al, 2006). According to a recent study for the Home Office by the European Migration Network (2015: 3), in 2014 the UK, enforced removal of 8,963 migrants. In addition, 25,815 more departed voluntarily including 2,403 cases of Assisted Voluntary Return (AVR).

According to the European Migration Network (2015: 23), AVRs offer a "dignified, cost-effective alternative to enforced removal for migrants illegally present who wish to depart the UK but need assistance to do so." (see also Swan, 2017; National Audit Office, 2009). Yet, AVRs in the UK as elsewhere are not without their critics. On the one hand, these schemes are found to be ineffective (Black et al, 2011), on the other, they are accused of deepening social control via forms of 'penal humanitarianism' that occur largely outside public scrutiny (Bosworth, 2017; Walters, 2016).

In 2013, the British government piloted a 'go home or face arrest' scheme that included a small number of mobile vans, leaflets and advertisements in local newspapers, they sought to encourage voluntary return. Rapidly withdrawn in the face of strenuous criticism for its racialised targeting of neighbourhoods (Jones et al, 2017), this pilot was considered to have failed, despite resulting in a small number of departures. In the public outcry over the scheme, concerns were raised about the targeting of ethnic minority communities and the nature of the 'choice' being offered to those without immigration status. As such, responses to the program reflected the European Migration Network's view of AVR

programs in general, that they should provide “access to information without threat of arrest”, and that their success reflects the capacity of the government to build “relationships and trust.” (European Migration Network, 2015).

## **Australia**

Australia has, for some years now, operated one of the harshest legal regimes for irregular migrants and refugees in the world, particularly for those arriving without visas by boat. Nearly all detention and alternative to detention policies are designed to manage people arriving to seek asylum. A small number of former offenders are subject to mandatory deportation orders under section 501 of the Immigration Act (Powell and Segrave, 2018; Weber, 2017; Grewcock, 2010; 2011; 2014).

Anyone in Australia without a valid visa faces mandatory detention in Australia (Commonwealth of Australia, 2005). Under the terms of the ‘Pacific Solution’, then subsequently the ‘No Advantage Policy’ and ‘Operation Sovereign Borders’, asylum seekers arriving by boat without a visa have been processed in offshore sites. Since the passage of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*, those who arrived by boat and are living in the community are no longer eligible to apply for permanent protection. Instead they may only apply for a three-year temporary protection visa (TPV) or a five-year Safe Haven Enterprise Visa (SHEV).

At the time of writing, the most straightforward of these sites to describe is the Christmas Island Immigration Reception and Processing Centre (IRPC), which is run under contract by Serco. Additional processing centres exist on Manus Island, Papua New Guinea and on the island nation of Nauru, which, under the terms of the so-called Pacific Solution have been fully-funded by the Australian government, yet the legal definition of which is contested and somewhat outside the parameters of this review (Australian National Audit Office, 2017; Kneebone and Pickering, 2007). While, for instance, the Manus Island Regional Processing Centre officially closed on 31 October 2017, the residents of that institution most of whom have been recognised as refugees have been moved to new accommodation at East Lorengau Transit Centre and West Lorengau House under a complicated financial and geo-political agreement between the Australian and Papua New Guinea Government (REF).

In addition to the offshore detention sites, Australia operates a number of onshore detention centres, all of which, at the time of writing, are contracted out to Serco. Since 2010, the Australian government has also run a range of alternative forms of detention known under a range of appellations including ‘**Community Detention**’, ‘**Residence Determination**’ and ‘**Alternative Sites of Detention**’. All are designed to house ‘vulnerable detainees’, particularly children in families and unaccompanied children (Katz et al, 2013) in the community with support from welfare agencies who, with funding from the government, source housing, ‘provide payment of essential living expenses and ensure access to relevant health and community services as well as social support networks.’ (AMES, 2018) Although contracted to offer welfare support, these agencies also play an important surveillance role, reporting to Department of Immigration and Border Protection

(DIBP), any breaches of visa conditions, which can be very minor e.g. children not attending school.

According to a recent fact sheet produced by the Andrew & Renata Kaldor Centre for International Refugee Law at the University of New South Wales (2017), that summarises data released by the National Commission of Audit (2017) the costs of the various Australian options ranges from around \$40,000 (AUD) for asylum seekers to live in the community on a bridging visa while their claim is processed to \$400,000 (AUD) to be held in an offshore detention site. Detention within the mainland territory of Australia costs an estimated \$239,000 (AUD) per person, whereas it is less than \$100,000 (AUD) for someone to live in community detention. Figures produced by other organisations find the economic costs of detention on Nauru and Manus to be even higher. The social costs are likewise enormous (Amnesty International, 2016; UNICEF and Save the Children, 2016).

Before being allocated to an alternative to 'hold detention', individuals are risk assessed, for their likelihood of absconding. While in these houses, individuals are given temporary 'Bridging visas' (Nelson et al, 2017). They may volunteer and engage in activities arranged by the charitable organisations, which run the institutions. Individuals in community detention are supported by case managers who are meant to help them understand their immigration and asylum case and sign post them to welfare and social services. Children in community detention may attend local schools. Families are kept together (JSS, 2015).

Evidence suggests these programs are cheaper than closed detention and have high rates of compliance (Mitchell et al, 2004; Mitchell, 2009). In a 2009 report, for instance, the International Detention Coalition reported that "On average, there has been a 94% compliance rate, with only 6% those individuals who have exited the programs absconding and 67% of those not granted a visa to remain in the country voluntarily departing (Mitchell, 2009: 10; Edwards, 2011). Among families, the absconding rate was less than 1%.

Similarly, evidence suggests that programs were better for the mental and physical health of their inhabitants (Marshall et al, 2013; Mitchell, 2009; Katz, et al, 2013). In a 2013 evaluation of Community Detention, for example, the authors found that: "community detention appears to assist in improving the wellbeing of clients when compared with other forms of detention and does not exacerbate existing trauma for clients." (Katz et al, 2013: 23).

Questions remain, however, about the impact of the uncertainty and long duration of time in community detention. As with detention, the lack of clarity can be painful and corrosive on mental health and family cohesion (Nelson et al, 2017). Individuals in these forms of housing have little say over their location and can be moved at any time. Some find this level of uncertainty hard to bear (JRS, 2015; ASRC, 2010).

In 2014, Australia rebranded its somewhat piecemeal case management system the **Status Resolution Support Services (SRSS)**, a single integrated program designed to provide flexible support services to people seeking to resolve their immigration status. Funded by the DIBP, now part of Home Affairs, the SRSS has three main strands: case co-ordination, accommodation services and financial assistance. Through contractual arrangements with a

range of social welfare agencies, asylum seekers can access carer and case worker support, community accommodation and some financial assistance through Centrelink. Assistance is time limited and depends on the immigration status of the individuals. Those who are eligible for the program are placed onto one of six bands (Jesuit Social services, 2015: 2-3).

- People on bands 1 to 3 (for unaccompanied minors or people assessed as having significant vulnerabilities in Community detention) are eligible for support services and limited income support.
- Band 4 transitional support is for asylum seekers released from an immigration detention facility and placed on a Bridging Visa. This involves six to 12 weeks support including temporary accommodation and income assistance. After this period they must make their own efforts to access the private rental market.
- Band 5 is for those assessed as having complex barriers to resolving their immigration status but able to live independently. They may receive a range of supports (including case management services) and income assistance.
- Band 6 is for those assessed as having low to medium level of need - they generally only receive income assistance.

Under this system, those subject to immigration controls receive partial access to aspects of the welfare state. While this allows for some benefits to their mental and physical health, organisations like the Jesuit Social Services point to the complex needs of the asylum-seeking population in Australia, many of whom have endured immense trauma (JSS, 2015).

Finally, Australia also operates an Assisted Voluntary Returns scheme (AVR). Dating to 2002, these range from travel assistance to in-country housing assistance. Delivered by the International Organization for Migration (IOM), there is little evidence that these programs alone affect removal rates (Koser, 2015; see also Black et al, 2011). Rather, a host of other factors, from gender, to pre-migration experiences, family ties and circumstances in the country of origin are better predictors of people's decision making. According to figures obtained from DIBP by the Australian Deportation Project, numbers of those who have left under AVR have remained stable over the past five years, around 400 per year, a sum that corresponds to 4% of the total population removed (The Australian Deportation Project, 2018). Over the same period, while monitored departure accounted for the vast majority, 'voluntary removals' from detention increased

In a recent Senate debate in the Legal and Constitutional Affairs Legislation Committee (23 October 2017), nearly all of which focused on the closure of the Manus Island Regional Processing Centre, the government reported that Assisted Voluntary Return from these processing centres costs \$25,000 (USD). At the time of the debate the government was expecting 52 people to have returned to their country of citizenship by the end of the calendar year.

## Canada

Canada has very few sites of immigration detention and has, historically, been a country with a relatively liberal immigration control system (Pratt, 2005; Dauvergne, 2016). Over the last five years, the numbers in detention have declined by 27%. Although new sites of detention are currently under development, the numbers in them remain low. According to a recent report by the Canadian Border Security Agency (CBSA) on any one day, around 400 – 500 people are detained, a number that, in 2015- 16 corresponded to “a total of 6,596 individuals, approximately 0.02% of the near 32 million non-citizens who entered Canada.” (CBSA, 2017) The average length of detention that year was 23 days (CBSA, 2017).

In 2014 – 15 the whole system of detention was reviewed in a process that identified a series of concerns over: the reliance on correctional facilities to house immigration detainees, the care and monitoring of detainees with mental health issues, the detention of children, conditions in some detention centres and the lack of nationally-available Alternatives to Detention (CBSA, 2017). In the New National Immigration Detention Framework, the government committed itself to expanding ATDs nationally by expanding **community programs** and voice reporting and other forms of **electronic supervision**. In terms of the former, a 2017 report by the CBSA, notes that:

“Community programming could be considered for eligible foreign nationals or permanent residents who are adequately supported by family/kin to ensure in-person reporting and/or a cash and/or performance bond. Alternatively, the person could be entrusted to a third-party community case management partner that would act as a guardian and assist clients to ensure their compliance with any and all terms and conditions, and provide them with social support that will enable them to comply with immigration requirements.” (CBSA, 2017)

Electronic supervision, the same report sets out, would allow “for voice registration and recognition and as required, based on level of risk, the ability to track the person's location should there be a failure to comply with reporting conditions or an attempt to abscond.” (CBSA, 2017).

While such developments are still in the process of being established, Canada hosts one of the few alternatives to detention programs that has been evaluated. The Toronto Bail Project, which deals with individuals under immigration and criminal justice powers, has been in operation since 1996. The organisation identifies eligible detainees through a screening and assessment process before supporting their application for release on bail. Participants include a wide range of individuals from former prisoners, to refugee claimants, and others who have been detained for reasons of a perceived flight risk (Costello and Kaytaz, 2013; IDC, 2015).

Participants are supported through **case management** and regular reporting. Due to an agreement with the government, those who agree to the terms of the project, avoid the financial costs of bail that they would otherwise face, as the Bail project acts as their surety. According to the International Detention Coalition (IDC) (2015), “The program costs CA\$10-

12 per person per day compared with CA\$179 for detention. In the 2009-2010 financial year, it maintained a 96.35% retention rate; in the 2013-2014 year, it was 94.31%.”

The Toronto Bail Program is not without its critics, however. In particular, questions have been raised on the reliance on intensive supervision system that draws directly on a criminal justice model (CCR, 2015). The Canadian Council for Refugees also warn against extending enforcement measure against people who would otherwise be released (CCR, 2015). “There is a tendency” they write, “for a program such as Toronto Bail Program to become normative, rather than being seen as exception. Such a program should be available as a last resort for people who have no other options for release.” However unintentionally, the CCR claim, the Toronto Bail Project has become a standard against which other alternatives are measured and found wanting. Because it only exists in one region of Canada, it has also created an internal inconsistency. They likewise raise questions about its funding by CBSA. (CCR, 2015).

Other, less coercive systems have been found to be as effective in Canada, with the IDC reporting that the FCJ Refugee Centre, which provides housing for women and children without the supervision, has a 99.9% compliance rate. Sojourn House, Hamilton House and Matthew House, all of which offer assistance to refugees and asylum seekers likewise have very high rates of compliance (Edwards, 2011: 83; Fields and Edwards, 2006).

Between 2012 – 2015 Canadian Border Services Agency (CBSA) piloted an **AVR scheme** with the IOM to increase departures for failed asylum seekers with no legal right to remain (Citizenship and Immigration Canada, 2012; Swan, 2017). An in-house evaluation for the 2013 – 14 period, found that while the overall program had little impact on the speed of removing failed refugee claimants, that overall the program was popular and effective for those who volunteered rather than were referred by the CBSA. According to the final report, the “pilot program processed departures for failed refugee claims with older Immigration and Refugee Board decision dates faster than low-risk, non-AVRR removals. However, failed refugee claims that were filed and decided after the refugee reform came into effect were processed slower.” Likewise, take-up was better in the first year than in the second.

## **United States of America**

As it has been with prison in the criminal justice system, the US is an enthusiastic proponent of immigration detention, in its immigration system (Kalhan, 2010; Legomsky, 2007). In 2016, more than 350,000 men, women and children were detained, while over 462,000 were removed or deported (Global Detention Project, 2018). Detainees are placed in purpose built facilities and in bed set aside in state, local and federal correctional institutions. most of whom are held in beds set aside in state and federal prisons or local jails. The US detains unaccompanied children.

Alongside this system of detention, the US has a strong track record in developing and piloting alternatives to detention (Schuck, 1997). While funding for ATD programs “started small”, Robert Khoulish (2015: 100) points out, it “quickly grew into a significant financial commitment. In 2002, Congress appropriated \$3 million for ATD. In FY 2005, Congress

authorized \$5 million. The following year its commitment to ATD jumped to \$28.5 million.” ATDs in the US take a number of forms, including **reporting requirements** (known as ‘Orders of Supervision’), bail (‘Order of Release on Recognizance’), **community-based practices**, that are often delivered by faith-based groups, **tagging** and **intensive supervision** (Legomsky, 2007; Marouf, 2017; Khoulish, 2015; Rutgers school of law and American Friends Service Committee, 2011).

Well before the current interest in ATDs, the Vera institute of Justice in New York City, pioneered a case-work based community alternative (Stone, 2000). Over a three-year period, from 1997 – 2000, the Appearance Assistance Program (AAP), allowed 165 irregular migrants to live in the community while their immigration case proceeded. While some were subject to an ‘intensive’ form of supervision, others were not. In all cases, migrants were assisted in accessing a range of welfare provision, including housing, food pantries, education and legal advice. They were also referred to English lessons, health clinics and other aspects of social services.

According to a 2000 evaluation, the program was highly successful in ensuring clients attended court hearings, with 91% of AAP intensive participants appearing for all of their required hearings, “compared to 71% for the comparison groups that faced no risk of re-detention.” (Stone, 2000: 681). The scheme was particularly successful with ‘criminal aliens’; “Of the 111 criminal aliens who entered the regular supervision program, 102 (92%) appeared for all of their required hearings. Of the 62 participants who finished, 51 (82%) fully complied with their legal obligations. These data suggest, in short, that criminal aliens who do not pose a threat to public safety and who have a good history of compliance with prior legal proceedings are particularly amenable to supervision.” (Stone, 2000: 682)

AAP staff wielded considerable coercive power. They could, and did, recommend re-detention, if participants failed to comply, likewise they escorted participants to the airport to confirm departure from the United States (Stone, 2000: 677-678). Overall, the evaluation concluded it was possible to “build and operate alternatives to detention with real teeth that improve integrity even while they relieve hardship. Implementing such alternatives will result in more deportations of those whom the law excludes, and less detention of those permitted to remain in the United States.” (Stone, 2000: 687). “Most people”, the report found “want to comply” and “good supervision more than makes up for any deterrent impact that the possibility of immediate redetention might have.” (Stone, 2000: 686)

Other examples can be found with even higher rates of compliance for asylum seekers. Thus, the Lutheran Immigration and Refugee Services experimental project from the 1990s operated a case-management based system with a 99% compliance rate (Edwards, 2011: 83). A similar program, operated in 1998 by the Catholic Church in New Orleans, for asylum-seekers and other persons with over 90-day-old removal, had a 96% court appearance rate. (Edwards, 2011: 84).

More recent examples of **case management** can be found. Throughout 2015 growing numbers of Central American women and children entered the USA from the Southern border with Mexico seeking refuge (Gomez Cervantez et al, 2017). After extensive legal

action on behalf of these families, who had been subjected to mandatory detention in hastily constructed detention sites near the border, the US government looked into alternatives, one of which was the Family Case Management Program (FCMP). In operation from September 2015 – June 2017, the program, run by Geo Care, reported high levels of compliance with the immigration and asylum system (GEO, 2017).

Working in partnership with community-based organisations in Maryland and the District of Columbia, Los Angeles, Chicago, Miami and New York, Geo offered essential support in housing, healthcare, trauma counselling and clothing. Children were registered in schools. Participants were subjected to intensive supervision, including a mix of office and home visits and telephone check-ins. They were instructed in the legal rights and obligations in Spanish and, were assisted in gathering relevant documentation such as passports prior to departure.

According to an internal report, published after the program was terminated, the FCMP was broadly successful. Participants were highly compliant with check-in requirements (97.3% success rate) and in attending court (99.3% success rate) (Geo, 2017: 6). Absconding levels were low (2.5%) (Geo, 2017: 7).

Notwithstanding these success rates, current policy in the US favours electronic monitoring. Electronic Monitoring for immigration matters may take different forms depending on the technology of the tagging device and the reporting requirements. The Intensive Supervision Program (ISAP), which was initiated in 2004 has become the most popular of the programs. Currently delivered by GEO under a national contract, the ISAP are based on a criminal justice model. Immigrants are subject to a risk assessment (Noferi and Khoulish, 2014), developed by ICE, and then allocated to this program.

People on ISAP are equipped with a GPS monitor and required to report. According to ICE's own statistics, the ISAP program is both cheap and engenders high rates of compliance for all court hearings including the final removal hearing (Office of Inspector General, 2015). Thus, in a recent overview of US alternatives to immigration detention Marouf, (2017: 122) reported that:

“Under the Technology-Only program, telephonic monitoring costs just \$0.17 per participant per day, and GPS monitoring costs \$4.41 per participant per day. The “Full-Service” option that includes case management costs \$8.37 per participant per day. ICE estimated that the average cost per ISAP participant would be \$5.16 in FY 2016, compared to \$123.54 per day for detention.”

On other parameters, however electronic monitoring is less successful. It does nothing to help people resolve their immigration case or navigate the legal system. Evidence suggests it makes it more difficult for participants to engage with community-based assistance. It is “more restrictive, more invasive of privacy and a greater affront to dignity” than any other alternatives (Marouf, 2017: 123). Along with other critics (AILA, 2008; Khoulish, 2015), Marouf raises concerns about the ‘degrading and dehumanizing’ nature of tagging, commenting on the physical discomfort of the GPS device and its stigmatizing effects. “The GPS device must be charged for several hours a day, which means that participants in the

program have to plug themselves into the wall, constraining their movement for hours at a time. This can be a degrading and dehumanizing experience,” he notes, before observing that people often assume “that individuals wearing ankle bracelets are criminals.” (Marouf, 2017: 123). Such matters, “can lead to discrimination and create problems at work or in school.” (Martin, 2017: 123; see also Camayd-Freixas, 2013)

Perhaps more compellingly from the government’s perspective, an internal review of ICE’s own methodology draws at least some of their claims of efficacy into question (Office of Inspector General, 2015). Specifically, in a recent review of the program by the Office of the Inspector General (2015), questions were raised about the efficacy of the program in preventing absconding. The report also drew into question the utility of the risk assessment tool.

Estimates of the cost of ATDs in the US range widely from a purported 17 cents per day for telephonic monitoring (Marouf, 2017) to an average of \$22 per day overall (Khoulish, 2015). All estimates are always considerably less than the daily rate cited of around \$122 for detention (Rutgers School of Law and American Friends Service Committee, 2011). Nonetheless, the scale of cost-saving remains unclear, as there has been no evidence that the use of alternatives like electronic monitoring has reduced the reliance on detention (Acer and Magner, 2013).

## **European Union**

Wherever they are implemented, alternatives to detention, like detention itself, exist within a legislative framework. Across the EU, (other than the UK), alternatives are legal responses to the obligation in the 2008 Returns Directive, to examine ‘less coercive measures’ (Feldman, 2012; Ceccorulli and Labanca, 2012). ATDs have been further entrenched in law by the 2013 Reception Conditions Directive which “explicitly requires Member States to establish national rules concerning alternative schemes, and lists examples of ATDs” (Bloomfield, 2016: 32).

In response to such matters, according to a 2015 report by the European Commission (2015: 4), “The majority of (Member) States (24 in total) have developed alternatives to detention, which can include: reporting obligations; residence requirements; the obligation to surrender identity or a travel document; release on bail; electronic monitoring; provision of a guarantor; and release to care workers or under a care plan.” In 2013, the same report found, the largest number of third-country nationals provided with an alternative to detention occurred in France (1,258), followed by Austria (771), Belgium (590) and Sweden (405).

Despite these figures, data about effectiveness or impact remains slight (European Commission, 2015: 5). In the sections below I will summarize examples from a selection of EU member states to draw out some of the variety of practice and effect (see also Bloomfield 2016, Bloomfield et al, 2015; Council of Europe, 2017; European Migration Network, 2015).

## **Belgium**

Until recently, Belgium was a great proponent of alternatives to detention for families (Schockaert, 2013; European Migration Network, 2014; Cartuyvels et al, 2017). They had an emphasis on voluntary returns, which were administered through open family housing units. This strategy increased removals and was widely considered successful. However, in response to a growing number of families absconding from this program, as well as hardening public opinion about irregular migration and asylum seekers, it is now being scaled back and more emphasis is being placed once again on closed detention (Global Detention Project, 2017a).

Open family units, also known as 'returns houses' were initially introduced in Belgium in 2008, in response to concerns over the negative impact of detention on the wellbeing of children. They were created as an 'alternative to detention' for families with minor children who had been served with a detention order, although some families continued to be detained (Global Detention Project, 2017a). Asylum seekers were assigned a case manager to work with them throughout the status determination process. In practical terms, open family units include individual houses and apartments. Within them, adults are allowed a certain freedom of movement, and children attend local schools. Adults are not allowed to work, nor do they receive payments in cash. Instead they receive coupons to use at a local supermarket. Similarly, while they can access healthcare, appointments must be made on their behalf by their case worker. In addition to legal advice, information is provided by the IOM about AVRs.

From October 2008 to December 2012 406 families had passed through the units. All had been given an immigration detention order, but were diverted to these houses due to the presence of minor children. Within the total number, 185 departed to their country of origin or to a third country; 33 of whom departed with IOM assistance. 105 families absconded, usually within hours or days of arrival. 115 families were released to live freely in the community, either due to being recognised as refugees or under other forms of protection. One family was disqualified from the program (Schockaert, 2013: 54).

Since 2015, return houses have also been used for destitute irregular families who have applied for social welfare assistance, but have not been served an immigration detention order (Global Detention Project, 2017a: 10). As the numbers housed has grown over time, rates of absconding have increased as well. Without a corresponding growth in the numbers of 'coaches' to assist them, families have found it harder to access services. Their reduced contact seems to have diminished the program's effectiveness (van der Vennet, 2015: 95 – 96).

## **Sweden**

Although numbers are currently dropping, Sweden remains a primary destination for and recipient of asylum seekers in Europe. As such, much of its immigration control system concerns managing asylum seekers while their legal case for sanctuary is under review and,

for those facing removal if their case has been refused. Sweden has a very small immigration detention estate, although has recently been opening new facilities (Barker, 2017; EMN, 2016; 2013; Global Detention Project, 2016a). It uses a variety of strategies including community-based case-management, reception facilities, reporting and AVR's (Swedish Migration Board, 2014).

While much is made of Swedish case-management, this strategy is largely concerned with asylum seekers and so, strictly speaking, is not relevant for a comparison of ATDs in the UK, where few asylum seekers are detained while their case is underway. Instead, as the Global Detention Project observes (2016a), Chapter 10, Sections 6 – 8 of “the Aliens Act provides one non-custodial alternative measure to detention, “supervision” (*uppsikt*). Both adults and children may be placed under “supervision,” which entails an obligation to report to the police or to the Swedish Migration Agency regularly. A foreign national’s passport may also be confiscated for the duration of the supervision period.” Supervision orders are reviewed within six months, and cease immediately if grounds for detention are no longer valid.

### **Germany**

Federal law in Germany does not include special provision for ATDs. Yet, Section 62(1) of the Residence Act states that “pre-removal detention is not permissible if the purpose of custody can be achieved by other, less severe means” (Global Detention Project, 2017b). In response, some states have created alternatives to detention, particularly for unaccompanied minors who, in German law, may be detained. One such program, based in Brandenburg State, was evaluated by the Jesuit Refugee Service (JRS) in 2011.

Known as Alreju, this ATD was founded in 1993 as a pilot project. Run by a Protestant church-based social service agency, it offers housing, some education and social assistance to up to 40 unaccompanied minors in six housing units that are located within a former Red Army barracks. While young people are placed in education in the community as quickly as possible, they face a curfew in the evening and must reside in the facility. The program, the JRS found, had had little discernible impact on the use of detention for unaccompanied minors, despite years of success in integrating them into the community (JRS, 2011).

### **The Netherlands**

Despite fairly high levels of immigration and a growth in the number of asylum seekers, the Dutch immigration detention system is small and has recently been shrinking in size, with the numbers dropping from 6, 104 in 2011 to 2, 176 in 2015 (Global Detention Project, 2016b). Article 59 of the Aliens Act “Provides that detention can be ordered only if less coercive measures cannot be applied effectively” (Global Detention Project, 2016b: 8) and thus, like other EU member states, Holland runs a variety of alternatives to detention, which are inscribed in the law, and gathers statistics on their impact (EMN et al, 2014). Alternatives include reporting obligations and bail. Non-citizens whose application for a residence permit has been refused may be required to stay in a designated area or place,

which could include a reception facility or family centre (Global Detention Project, 2016b: 8).

Numbers placed in alternatives are low. According to official statistics, between 1 January 2012 and 1 June 2013, for instance, 75 foreign nationals were required to report. Of these, 55 had left the Netherlands independently while 10 continued to report. In less than 5 cases forced departure took place and in 10 cases individuals left independently without supervision. An even smaller number were managed through a pilot financial caution system known as 'Borgsom.' Of the fifteen participants between 2012 and 2013, fewer than five had left independently. A number of pilot projects have been trialed with church-based and other voluntary sector organisations. In a 2013 government report, these were found to be largely successful; from a total of 180 participants, 75 had left the Netherlands independently, while 85 remained in the programs. Two programs in particular, Stichting Bridge to Better and Stichting Dalmar, which targeted Somali nationals were found to be most successful (Ministerie van Veiligheid en Justitie, 2013).

## **Outcomes of Alternatives to Immigration Detention on Mental and Physical Health**

Evidence is clear that immigration detention is strongly correlated with poor mental and physical health outcomes (For an overview see Bosworth, 2016). In contrast, nearly all the material reviewed for this report found that alternatives to detention are less damaging to the mental and physical health of migrants (see in particular Bloomfield et al 2015; Detention Action, 2016; Katz et al, 2017). In particular, case-management based schemes in the community, which facilitate contact with health care and mental health care, have better mental health outcomes (Katz et al, 2013).

In contrast, certain ATDs, such as reporting and intensive supervision may have negative effects on mental and physical health. In a 2011 report, for instance, the Rutgers School of Law and American Friends Service Committee (2011: 16) observed that: “Psychological effects of the check-in requirements include, but are not limited to, inability to sleep, loss of appetite, anxiety, stress, paranoia, and general lack of willpower to continue with one’s immigration proceedings’.” They likewise found that the distance people often had to travel for reporting requirements was not just costly but could be damaging for their physical health (p. 17). One way to mitigate such problems, the report suggested, was to ensure better consistency in check-ins, allowing people to report to the same officer each time to allow for rapport and trust to develop (p.22).

From Australia, some troubling evidence exists about the particular vulnerability of unaccompanied children placed in **Community Detention** (Commonwealth of Australia, 2017). Not only are these children particularly vulnerable to sexual assault, but their pre-existing mental health needs are complex and may not always be met. Research by the Jesuit Social Services (2015) in Australia has found, for example, that asylum seekers in the Australian community suffer a range of health problems including chronic diseases, and psychological illness at a significantly higher rate than other immigrants. Although under the terms of **Community Detention** they have access to healthcare, they are unable to make their own appointments and so may face barriers to seeking and receiving appropriate care. Furthermore, they may be unable to afford medication or access to secondary care.

In those countries like Australia (and Sweden) where ATDs are primarily used for asylum seekers, recipients exhibit high levels of PTSD, anxiety and depression (Jesuit Social Service, 2015). For these people, uncertain visa regimes under which many people may live for years pose significant challenges to mental health. Thus, while evidence is broadly supportive of ATD programs to assist with well-being (Katz et al, 2013), and self-esteem (Detention Action, 2016), attention needs to be paid to the wider immigration system in which these programs operate.

## CONCLUSION

As the range of examples summarised in this review suggest, there is widespread support for Alternatives to Detention across many jurisdictions, groups and individuals. Yet, there is little consistency in the design, rationale or application of alternatives to detention. In this final section, I wish to set out some thoughts on how we might come to some agreement about such matters. In so doing, I seek to build on Alice Bloomfield's observation about the roots of support for ATDS, which, as she notes (2016: 32), "has emerged in response to more restrictive migration policies and tougher measures against irregular migration in a number of States around the world, of which detention is only one of the symptoms. In this sense, it was built as a reactive rather than a proactive advocacy campaign." I also take note of Michael Flynn's (2013; 2017) warnings about unintended consequences, with which the field of immigration control, like much public policy, is often marked. On this matter, the UNHCR is explicit: ATDs, they write, "must not become alternative forms of detention, nor imposed where no conditions on release or liberty are required. They should respect the principle of minimum intervention and pay close attention to the specific situation of particular vulnerable groups." (UNHCR, 2014: 5)

Part of the problem, is that, as the Rutgers School of Law-Newark Immigrant Rights Clinic in conjunction with the American Friends Service Committee (2011: iv) observed in 2011, "Despite their designation as "alternatives to detention," many ATD programs are used on individuals who have been released from detention or who were never detained in the first place, rather than individuals who would otherwise be detained in a detention facility and for whom the government's goals of ensuring compliance with removal orders and court appearances could be accomplished with alternative measures." The challenge then remains how to devise programs that can assist without unnecessarily extending costly forms of state oversight and control.

In order to develop a robust, defensible, humane and effective system of ATDs, it is necessary to be clearer about their principles and goals and their basis in law. In this, three simple concepts are pertinent: liberty, proportionality and parsimony. When they work best, alternatives to detention restate our commitment to the right to liberty. In so doing, they remind us that detention is always the alternative.

In safeguarding liberty, ATDs have the potential to operationalize concerns about proportionality and parsimony. They allow us to consider not only what is the least intrusive action by the state possible, but also what might be the most useful, for the individual and the community?

As a matter of public policy, ATDs need to be cost effective. Yet what the appropriate elements should be in that calculation remains unclear. Evidence from around the world finds alternatives always to be cheaper than confinement, yet rarely do they reduce the reliance on detention, without an explicit commitment to ending detention, such as we saw in Britain with the end to child detention.

ATDs have the potential also to minimise harm. While case-management systems are not entirely uncoercive, in their roots in social work rather than criminal justice, they seek to

safeguard the dignity of the individual and involve them as agents in their own decision-making.

Like any form of coercive power, ATDs need to be subject to stringent oversight and monitoring. So, too, those subject to them need to have a clear pathway for lodging complaints, seeking redress, and challenging their treatment in the courts.

Certain schemes, like electronic monitoring may exacerbate problems already evident in the immigration control system, namely the withdrawal of face-to-face encounters, and the criminalisation of migration (Khoulish, 2015). Evidence from the criminal justice system raises urgent questions about the growing reliance on this form of technology, not only for individual rights and safeguards, but also for community cohesion and the erosion of civil liberties (McNeill, 2017; Beyens, 2017). The financial incentives for the private sector (or indeed the voluntary sector) in delivering mass-supervision are clear; the benefits to the rest of us are not.

As states around the world are faced with growing numbers on the move within an enduring era of fiscal restraint, alternatives to detention offer a potential way forward in managing migration. Extensive attention is now being paid to these schemes by the voluntary sector and by international agencies. As people are search for less coercive means than confinement, it is a good time to restate a commitment to liberty and to the ideal of a diverse community, as well as to the rule of law and the development of human rights based protections, checks and balances. In so doing, the UK government has the opportunity to build a new system of border control, based on best practice from around the world.

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