

**Immigration Priorities for a Just Budget in 2023**  
**Deep Dive: Decrease Detention Funding**  
**September 2021**

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*Just a few decades ago, the U.S. did not systematically detain immigrants and people seeking asylum. But since its inception, Immigration and Customs Enforcement (ICE)'s detention system has expanded exponentially and squandered billions in federal funding while inflicting trauma and harm on immigrants. It is immoral and unnecessary: studies overwhelmingly show that immigrants can better navigate the legal system when they are free from detention—with greater access to counsel, and at home with their loved ones and in their communities. **Significantly reducing immigration detention capacity is a critical first step to reversing this sordid history and working towards a just immigration system.***

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**Context and State of Play:** The Biden administration has the power to ensure that people navigating the immigration enforcement system do so with their families and within their communities—rather than in dangerous, inhumane immigration detention facilities. The COVID-19 pandemic threw the horrors of detention into stark magnification—with a death toll not seen in [15 years](#). Now, the Delta variant underscores the continued imperative of reducing detention to save the lives of detained people, staff, and entire communities.

The Trump administration politicized people seeking asylum and made them a target of racist rhetoric; that rhetoric led to policies that forced asylum seekers to remain in Mexico in horrific and inhumane conditions and to the near-total detention of those who managed to enter the U.S. Such extreme policies diverge from those of previous administrations, under which many asylum seekers received humanitarian parole and were permitted to pursue their cases from outside detention. There is no reason to detain asylum seekers. Most people seeking asylum appear for their hearings, and those rates approach 100% when they receive adequate community-based support including [counsel](#). Detention is more expensive than this alternative approach and particularly traumatizing for asylum seekers, many of whom have already experienced torture and persecution. An influx of asylum seekers should not justify the obscene levels of immigration detention currently funded.

At the start of this administration, the White House had an opportunity to act on the moral imperative of the pandemic by capitalizing on the historically low numbers of people in ICE custody—less than 15,000 people in January—to begin dismantling this system of mass incarceration. Doing so would have been amply justified. As highlighted by [the Government Accountability Office](#) (GAO), this system ballooned under the Trump administration and squandered millions of taxpayer dollars, to the benefit and profit of private prison corporations. At the same time, ICE detention has grown increasingly unpopular, as is evident from the recent passage of anti-detention legislation in [New Jersey](#), [Maryland](#), [Washington state](#), and [Illinois](#).

Unfortunately, neither the White House nor Congress has seized the opportunity so far. The Fiscal Year (FY) 2021 appropriations bill funded the Department of Homeland Security (DHS) to detain an average daily population (ADP) of 34,000. The White House FY 2022 budget request sought funds to detain 32,500 people daily, and the FY 2022 appropriations bill for DHS that passed the House Appropriations

Committee proposes funding for an ADP of 28,500 people—still higher than the current detained population.

The COVID-19 pandemic has further exposed how mass ICE detention is unnecessary. In late 2020, ICE reduced the ADP by nearly 70 percent from its peak level under the Trump administration, in part due to COVID-19-related lawsuits. Free from detention, immigrants [overwhelmingly complied](#) with their court-ordered release conditions as their immigration cases moved forward. This massive reduction in detention and its positive outcomes are more evidence of what is possible when the safety and liberty of immigrants is prioritized. Now, it is up to the administration to heed this lesson and work with Congress to finally shift our immigration enforcement system away from mass detention.

**Budgetary Ask:** The Biden administration should significantly reduce the immigration detention population by proposing a budget for FY 2023 that decreases funding for ICE Custody Operations by at least 55 percent from the FY 2022 President’s Budget Request. This reduced budget would fund the equivalent of the number of people who were in detention when the Biden administration took office. Our system of mass immigration detention is unnecessary and comes at great financial and moral cost. Transformative change that delivers a just immigration system cannot take place if the expansive detention infrastructure through which immigrants are criminalized and dehumanized persists.

**Policy Asks:** In addition to reducing funding for detention in FY 2023 and beyond, the White House budget should request specific policy language that requires DHS to cease detaining both families and transgender individuals entirely. Also, the White House must support the inclusion of language in the FY 2023 DHS bill that ensures DHS’s authority to release individuals, regardless of whether they are subject to mandatory detention under section 236(c) of the INA. DHS should be required to make individualized custody determinations within 20 days of detaining any person. Finally, DHS should refrain from detaining asylum seekers. Though the border and asylum seekers have been politicized in recent years, immigration detention is harmful and unnecessary, especially for people who are fleeing harm.

A. Prohibiting the detention of family units and minors

Medical experts, including the [American Academy of Pediatrics](#), have vocally opposed family detention because the practice of detaining children, no matter the conditions, jeopardizes their health and safety. Indeed, DHS’s own contracted medical experts have [spoken out](#) against the practice based on their concerns over the potential expansion of family detention. The physicians found egregious examples of inadequate care that included severe weight loss in children detained in family detention centers as well as “an infant with bleeding of the brain that went undiagnosed for five days.” The experts [informed Congress](#) that, “In our professional opinion there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers.” As the Biden administration [takes important steps](#) toward reducing the use of family detention, Congress must do its part by ensuring that taxpayer dollars are not used for this harmful practice.

**Proposed Bill Language:** No funding shall be used for the detention of family units or children under the age of 18.

B. Prohibiting the detention of transgender individuals

In FY 2019, ICE detained [more than 280](#) transgender asylum seekers, a significant increase from previous years. Immigration detention is notoriously dangerous and harmful for transgender immigrants, many of whom are fleeing transphobic violence in their home countries. Transgender immigrants endure unique challenges and vulnerabilities in detention, including mental health conditions manifesting from past traumas and the need for specialized medical care including hormone therapy and HIV treatments. LGBTQ migrants are [97 times more likely](#) to be assaulted in immigration detention. Physical and mental health concerns faced by those in detention are exacerbated by ICE's persistent and [abusive use of solitary confinement](#) for transgender migrants in custody. There is simply no safe way for transgender people to be detained. This provision would ensure that they can live in the community in safety, under conditions of supervision if deemed necessary, during their proceedings.

**Proposed Bill Language:** Funds shall not be used for the detention of individuals who self-identify as transgender.

C. Ensuring ICE's discretion to make individualized custody determinations

Currently, no law or regulation requires that ICE conduct [timely and individualized custody determinations](#), resulting in thousands of people being detained for months as they await a bond hearing or a parole determination by ICE. Studies show that detained people are far less likely to have access to legal counsel and to succeed in their cases, despite the merits of their claims. People often spend years in immigration detention fighting their cases in conditions that cause and exacerbate physical and mental illness. This provision would require ICE to assess each person's case in a timely manner, protect important due process considerations, and limit unnecessary spending of federal funding.

Section 219 of the draft FY 2021 DHS Appropriations Act that passed the House Appropriations Committee in July 2020 included similar language.

**Proposed Bill Language:**

(a) Notwithstanding section 236(c), 235(b), 238, and 241 of the Immigration and Nationality Act (8 U.S.C. 1225(b), 1226(c), 1228, 1231), or any other provision of law, no Federal funds may be used hereafter by the Department of Homeland Security to detain an individual for more than 20 days unless it is determined by the Director of U.S. Immigration and Customs Enforcement, following an individualized assessment, that the person is likely to pose a specific and substantial risk of causing bodily injury or using violent force against the person of another. The government shall carry the burden of proof in establishing such likelihood, based on clear and convincing evidence, including credible and individualized information. A criminal conviction, arrest, pending criminal charge, or combination thereof may not be the sole factor relied upon to justify continued detention.

(b) Not later than 30 days after the date of enactment of this Act, the Director shall provide the Committees on Appropriations of the Senate and the House of Representatives the defined metrics used to make such assessments.

## Resources:

- National Immigrant Justice Center, *Roadmap to Dismantle U.S. Immigration Detention System* (Jul. 28, 2021), <https://immigrantjustice.org/research-items/white-paper-roadmap-dismantle-us-immigration-detention-system>.
- National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration* (Apr. 22, 2019), <https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration>
- Human Rights First, *Detaining People Seeking Protection: Inhumane, Unnecessary, and Wasteful* (July 2021), <https://www.humanrightsfirst.org/sites/default/files/DetentionInhumaneUnnecessaryWasteful.pdf>.
- “Preventing the Spread of COVID-19 in Immigration Detention Centers Requires the Release of Detainees,” *American Journal of Public Health* (Nov. 19, 2020), <https://tinyurl.com/yevdleab>.
- Defund Hate Campaign; letter re: FY 2022 Department of Homeland Security (DHS) Appropriations Bill (August 17, 2021), <https://defundhate.org/2021/08/17/more-than-190-non-governmental-organizations-send-letter-to-senate-leadership-reiterating-the-need-for-congress-to-significantly-decrease-funding-for-ice-detention/>.

## Contact Information:

- Gabriela Viera, Detention Watch Network, [gviera@detentionwatchnetwork.org](mailto:gviera@detentionwatchnetwork.org).
- Caitlin Bellis, National Immigration Project of the National Lawyers Guild, [caitlin@nipnlg.org](mailto:caitlin@nipnlg.org).
- Naureen Shah, American Civil Liberties Union, [nshah@aclu.org](mailto:nshah@aclu.org).
- Sophia Gurulé, The Bronx Defenders, [sophiag@bronxdefenders.org](mailto:sophiag@bronxdefenders.org).