Immigration and Customs Enforcement (ICE) of the Department of Homeland Security operates the largest detention system in the world. During FY 2010, almost 400,000 immigrants were detained in a patchwork of facilities—mostly penal institutions—in more than 300 locations run largely by county or state law enforcement authorities or private contractors with little direct federal oversight—at a cost of $1.77 billion. Reports of abuse and neglect of immigrants in detention facilities across the country are numerous and disturbing.

The system for detaining immigrants in this country has largely been unplanned and its conceptualization deeply flawed. If the purpose of the deportation process is to accomplish the administrative tasks required to remove from the U.S. individuals found to be lacking legal remedy to remain in the country, then persons need only be detained when found to be a flight risk or a danger to the public. If they must be held to complete their processing for removal—an administrative task—then they should be held in facilities where such processing can occur without the collateral harm to one’s dignity and personal liberty which is inevitable when immigrants are held in jails and prisons—facilities built and operated to punish people. Instead, the detention paradigm favored by U.S. immigration officials for many years has been to detain as many persons as possible in prison-like conditions.

Therefore, it was welcomed news when the Assistant Secretary of ICE, John Morton, announced in August 2009 that ICE intended to overhaul the country’s immigration detention system in a major reform effort. Secretary Morton stated that the goal of reform is to move ICE away from a decentralized, jail-oriented approach to “a system wholly designed for and based on ICE’s civil detention authorities” (emphasis added). Instead of relying primarily on excess capacity at penal institutions—another consequence of poor planning—Morton said that ICE intended to design and build facilities located near legal service providers and major transportation hubs and operate them for immigration detention purposes. Improved medical care, custodial conditions, and ICE oversight were promised as well.

One of the seven areas where ICE intends to focus its reform efforts includes Alternatives to Detention Management, with the goal of developing a “national strategy for the effective use of alternatives to detention including community supervision.”

A year later, advocates are disappointed in the pace of progress in implementing reform objectives, but nevertheless hopeful. A report by Detention Watch Network, the National Immigrant Justice Center, and the Midwest Coalition for Human Rights commends the leadership of ICE for its commitment to detention reform. In the area of Alternatives to Detention (ATDs), advocates were pleased that ICE had begun development of a risk assessment tool to make custody determinations based on an assessment of flight and security risks. Nevertheless, the tool is based on the presumption of detention unless an individual can prove eligibility for release, and it does not assess how particularly vulnerable people like victims of violence and survivors of torture will be affected by detention. The report also notes that, as of October 2010, no formal nationwide implementation plan for ATDs has been developed, and only 23,000 immigrants had participated in ATD programs in fiscal year 2010.

Up until November 2009, ICE operated three ATD programs. Private vendors on contract with ICE provided two of the ATD programs—the Intensive Supervision Appearance Program (ISAP) and Enhanced Supervision Reporting (ESR). Both involved the use of telephonic reporting, radio frequency tracking by means of signals emitted by ankle devices, global positioning via coordinates provided by ankle devices, and unannounced home visits. ISAP, the most costly and intensive of the three strategies, also used curfew checks and employment verification. The third ATD program, known as Electronic Monitoring (EM), is operated...
by ICE and utilizes telephonic reporting, radio frequency, and/or global positioning tracking. ICE reported that 87 percent of ISAP participants, 96 percent of ESR participants, and 93 percent of EM participants appeared at their removal hearings. ISAP cost only $14.42 a day per participant to operate, ESR costs were $8.52 per day, and the costs for ER are between 30 cents and $5 per day—not including the cost of ICE staff time on these programs. These costs are far lower than the average cost of detaining an immigrant, which was estimated to be $144 a day in 2009, including ICE’s operational expenses. The National Immigration Forum calculated that ICE could cut its detention costs in half if immigrants with no criminal convictions were routinely placed in an ATD instead of detained.

A frequent criticism of ICE’s ATD programs is that the reporting requirements are disproportionate to achieving the government’s objective that participants appear at their immigration court proceedings. The case management services provided by ICE’s ATD programs leave much to be desired as well. Instead of assisting clients in securing adequate legal representation, immigrants are often simply provided lists of sometimes-outdated legal service providers. Advocates report that ICE’s programs do not provide immigrants with adequate information on the requirements for compliance, how the immigration legal system works, or the consequences of not making court appearances. Another complaint is that the electronic monitoring used extensively by the programs through the use of ankle bracelets is not only intrusive and onerous (e.g. some immigrants have to sit by a wall socket three hours a day to recharge the devices), they are also de-humanizing. One of the women who were placed on ankle devices after the largest immigration raid in U.S. history at Howard Industries in Laurel, Miss., told a member of the Loyola Immigration Law Clinic, “We are not cattle. We do not need to be marked like this.”

Immigrant advocates have been urging ICE for years to release from detention individuals that do not pose a security or flight risk, or to refer individuals to community-based alternatives to detention programs when ICE has demonstrated that some level of supervision is required.

In the next JustSouth Quarterly, I will describe a community-based Alternative to Detention Program I administered at Catholic Charities Archdiocese of New Orleans that was cheaper, more effective, and more humane than detaining immigrants or placing them in one of ICE’s highly restrictive ATD programs.

ENDNOTES
6 Ibid.
8 In November 2009, ISAP and ESR were merged into ISAP II. ICE contracted with BI Incorporated to run ISAP II, the same private company that ran ISAP. In December 2010, BI was bought by the private prison company GEO Group.
9 Ibid., Schiro..