Negative Brief: Child Detention – not a problem

By Jonathan T. Helton & “Coach Vance” Trefethen

**Resolved: The European Union should substantially reform its immigration policy.**

The AFF case tries to eliminate detention for migrant children. They cite cost savings and improved conditions for the migrant children. In fact, the cost savings don’t happen, and the plan actually makes things worse. But even more important, the plan is merely restating Status Quo policy and law. It’s already official EU policy that children should not be put into migration detention except as a last resort.

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Negative: Child Detention

TOPICALITY

1. Not a “reform”

Status Quo policy does exactly what AFF plan does: Tries to find the best alternatives to detention for migrant children. Outside evaluation by the UN agrees the EU is already doing it

**[…and once they figure out what the best practices are, they will implement them]**

UNICEF 2019 (UN agency for child welfare) 20 Feb 2019 “Protecting children in migration across the European Union: Learning from practices” <https://reliefweb.int/report/world/protecting-children-migration-across-european-union-learning-practices>

The huge spike in numbers of migrant and refugee children arriving in Europe between mid-2015 and mid-2017 put significant strain not only on asylum systems but also protection and welfare services. However, it also led to national and EU authorities putting in place promising and innovative responses to protect children on the move in Europe. UNICEF’s Office for Relations with EU Institutions in Brussels has outlined five promising practices that show successful models and measures to address the needs of children with and without families. “While the dust may have settled on the so-called migration crisis in Europe, it is important to document what worked and what didn’t work for refugee and migrant children so that no matter how many children on the move may or may not flee to Europe in the future, systems will not and should not fail them as they once did.” Sarah Crowe, UNICEF Innocenti senior advisor, said. “These models and measures can serve as a template to do the right thing for them and treat them first and foremost as children in need of care and protection.” The promising practices showcase reception and care arrangements in Greece, Italy and Germany; procedural safeguards to support and assist children and ways to improve identification of lasting solutions for each child.

SIGNIFICANCE

Latvia: Few rights abuses substantiated in detention facilities

European Commission 2014 (Synthesis Report for the European Migration Network Focussed Study 2014) 2014 “The use of detention and alternatives to detention in the context of immigration policies” (no month given in the published article) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf>

In Latvia, over the course of 2008-2014, the Ombudsman received no complaints at all from persons placed in alternatives to detention (whether obliged to register at regular intervals at the State Border Guard, or obliged to surrender a third-country national’s travel and identity documents to the State Border Guard). During this period at least nine violations of fundament rights were lodged with the Ombudsman by persons placed in detention. These tended to concern complaints about detention conditions or about the availability of legal assistance. All complaints were subsequently inspected by the Ombudsman and in the majority of cases no violations were substantiated; in at least two cases, the Ombudsman concluded that all of the requirements had been fulfilled.

INHERENCY

1. Non-detention of minors is already Status Quo policy

Status Quo EU policy forbids detention of minors and only allows it as “last resort”

Global Legal Research Directorate Staff at the Library of Congress, Law Library 2018. May 2018 Provisions on Child Asylum Seekers <https://www.loc.gov/law/help/asylum-seekers/children.php>

The Asylum Procedures Directive creates a common asylum system in the EU. Article 25 deals with procedural guarantees for unaccompanied minors, in particular the appointment of a representative and medical examinations to determine the age of a minor. Personal interviews must be conducted in a child-appropriate manner. The Reception Conditions Directive establishes common standards of conditions of living for asylum seekers. It addresses minors and unaccompanied minors in articles 11, 21, 22, 23, and 24. Minors are identified as a vulnerable group. National authorities are therefore, for example, obligated to make the health, including mental health, of minors in detention a primary concern and only detain them as a last resort, in exceptional circumstances, and in age-appropriate accommodations.

European Court of Justice (ECJ) ruling: Must use least coercive method

Galina Cornelisse 2016 (lecturer in international and European law at the Faculty of Law of the Free University Amsterdam) October 2016 “The Constitutionalisation of Immigration Detention: Between EU Law and the European Convention on Human Rights” <https://www.globaldetentionproject.org/wp-content/uploads/2016/12/cornelisse-gdp-paper.pdf>

Member States “must carry out the removal using the least coercive measures possible.” The Directive lies down a step-by-step approach, and according to the ECJ, detention—the most restrictive measure in order to enforce return—is justified only if the enforcement of the return decision in the form of removal runs the risk of being compromised by the conduct of the person concerned. The existence of such a risk needs to be individually assessed. El Dridi was the first in a string of cases addressing the conformity with the Return Directive of national criminal law sanctions on illegal stay in the form of imprisonment or home detention.

2. Detention numbers are trending down

EU has made great progress on reducing detention of children over the last decade

Claire Connellan 2020. (Senior Programme Officer - Unaccompanied Migrant and Refugee Children with Lumos Foundation, an international non-governmental organisation, founded by author J.K. Rowling, working to end the institutionalisation of children globally by 2050 ) January 2020 (month determined by references in the footnotes) <https://lumos.contentfiles.net/media/documents/document/2020/04/UMRC_Report_2020_v2_ABZD7Uz.pdf>

The European region has made great progress to transform the care of children over the last decade, with many countries in the region implementing deinstitutionalisation strategies and establishing family and community-based alternative care services for their national children. For example in Bulgaria the number of children in institutions has reduced by 86% since 2010, with a national plan in place to close all institutions by 2025.

Recent EU Directive has significantly decreased detention’s use

Nicola Delvino 2020 (Senior Researcher at the Global Exchange on Migration and Diversity at COMPAS, University of Oxford; research focuses on EU and national laws and policies on irregular migration) 21 May 2020 A chapter in the book: Migrants with Irregular Status in Europe “European Union and National Responses to Migrants with Irregular Status: Is the Fortress Slowly Crumbling?” <https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#Sec5>

Moreover, while detention became a systematic migration management practice across the EU, data suggest that following the adoption of the Directive, EU countries have actually significantly reduced, rather than increased, the use of detention. According to the European Migration Network (EMN [2014](https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#CR11)) in 2009—before the Directive’s transposition—116,401 people were in pre-removal detention in Europe compared to 81,221 in 2014 and 64,334 in 2015 (EMN [2016a](https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#CR12)). EMN in 2016 also reported that several member states had reduced their detention capacity over the years, with the Netherlands, for example, reporting a 65% decline since 2010 in the use of administrative detention (EMN [2016a](https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#CR12)). This suggests that the enthusiasm of European governments towards the use of detention has tapered over the years, probably because the impact of policies of extensive or prolonged detention have proven “rather insignificant” in increasing returns (EMN [2014](https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#CR11)) against high costs, both in terms of funds and fundamental rights.

3. Detention standards and limits already in place

The EU has limits on detention and high standards for the conditions of detention

Nicola Delvino 2020 (Senior Researcher at the Global Exchange on Migration and Diversity at COMPAS, University of Oxford; research focuses on EU and national laws and policies on irregular migration) 21 May 2020 A chapter in the book: Migrants with Irregular Status in Europe “European Union and National Responses to Migrants with Irregular Status: Is the Fortress Slowly Crumbling?” <https://link.springer.com/chapter/10.1007/978-3-030-34324-8_5#Sec5>

Art. 15 of the Directive establishes that member states *may* keep in detention a third-country national who is the subject of return procedures, “unless other sufficient but less coercive measures can be applied effectively in a specific case” in order to prepare their return or carry out the removal process or both, and only when: 1) there is a risk of absconding; or 2) the migrant hampers the preparation of return or the removal process. It is noteworthy that member states thus have the option, and not an obligation, to detain returnees. It is one aspect where the European Parliament succeeded in securing a more favourable provisions for migrants against the opposition of member states, as the original draft of the Directive provided the mandatory character of detention. The Directive imposes the immediate termination of detention where a reasonable prospect of removal no longer exists. It also provides for procedural guarantees (e.g. judicial reviews) and limitations to the maximum duration of detention, which “shall be for as short a period as possible”; Art. 16 requires that detention conditions should reflect the non-criminal nature of the measure and guarantee detainees’ rights, including the possibility to establish contact with legal representatives, family members, and consular authorities; the right to obtain emergency health care and essential treatment of illness; the possibility for relevant and competent national, international, and non-governmental organisations and bodies to access the detention facilities to provide information about rights and obligations of detainees. Art. 17 provides specific guarantees for minors and families in detention.

4. The UNICEF program

UNICEF is intervening with alternatives to detention in Europe

UNICEF 2019 (UN agency for child welfare) 20 Feb 2019 “Protecting children in migration across the European Union: Learning from practices” <https://reliefweb.int/report/world/protecting-children-migration-across-european-union-learning-practices>

Since 2015 1.4 million people applied for asylum in Germany, around three quarters of them are children and adolescents. Many children and families on migration remained in reception centres for long without proper care and protection. In 2016 UNICEF and the German Ministry for Family Affairs, Senior Citizens, Women and Youth launched an initiative with over 30 partners, aiming to improve the protection of migrants in the reception centres and their integration, which led to the development of the Minimum Standards for the protection of Refugees and Migrants Living in Refugee Centre, based on six main components:  
Key principles for developing a site-specific protection plan;  
Key personnel measures;  
Internal structures, an external independent complaints and counselling body and active involvement of local external partners;  
Standard procedures for addressing violence and suspected violence;  
Humane and protective conditions;  
Monitoring and evaluation of the implementation of the protection plan.

MINOR REPAIR - More funding for existing programs

More EU funding for existing programs could increase child protection using Status Quo mechanisms

EU Parliament Liaison Office 2019. “Recommendations from the Roundtable Conference “Child Protection & EU Funding for migrant populations in Greece: A reality check and the way forward” 16 May 2019 <https://www.rescue-uk.org/sites/default/files/document/2013/childrenneedanswersrecsaugust2019.pdf> (brackets added)

EU funding could bridge gaps and provide much needed solutions in child protection by supporting the implementation of innovative programmes, such as the Supported Independent Living Schemes (SIL) for UASC [Unaccompanied and Separated Children] over 16 years of age , at a larger scale. Foster Care, another type of quality alternative care implemented only in a small scale in Greece so far, could be more widely implemented, following the recent legislative amendments.

SOLVENCY

1. Alternatives to detention aren’t actually cheaper, for multiple reasons

Reason #1. Net widening

**Analysis: What this means is: the alternative may be cheaper, but a cheaper alternative often motivates law enforcement to then go out and arrest more people, so the net social cost is the same.**

Dr. Mary Bosworth 2018 (Director of the Centre for Criminology and Director of Border Criminologies, an interdisciplinary research group focusing on the intersections between criminal justice and border control. In addition to being Professor of Criminology, she is a Fellow of St Cross College at the University of Oxford and Professor of Criminology at Monash Univ.) 2018 (no month given in the publication) “Alternatives to Immigration Detention: A Literature Review” <https://www.monash.edu/__data/assets/pdf_file/0004/1627897/ALTERNATIVESTODETENTIONReview.pdf>

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.  
**[END QUOTE. She goes on later in the report to write QUOTE:]**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.

Reason #2. Longer duration. US study found that even if it’s cheaper “per day,” those in non-detention stay there longer than those in detention, plus they create more social costs out in the community

Dan Cadman 2015 (retired INS / ICE official with thirty years of government experience. Mr. Cadman served as a senior supervisor and manager at headquarters, as well as at field offices both domestically and abroad) 24 June 2015 “Why Alien Detention Is Necessary” <https://cis.org/Report/Why-Alien-Detention-Necessary>

Although the per diem costs, when compared to daily detention rates, are in fact lower, this is a false financial analogy because aliens on supervised release are placed into a much more crowded court docket than those actually in detention, one with immigration court backlogs (445,000 cases as of April and growing daily[13](https://cis.org/Report/Why-Alien-Detention-Necessary#13)). It sometimes takes close to two years *just to initiate the removal proceeding*. Thus, any comparison of fiscal costs must be adjusted to recognize the reality that recipients of ATD will burn substantially more of those per diem dollars. For instance, the Government Accountability Office (GAO), in a report discussed below, found that between 2011 and 2013 the amount of time aliens spent on some form of ATD had risen by 80 percent — from 10 months to 18 months. In the mean time, aliens released on forms of ATD must either be supported through governmental programs — thereby straining federal, state, and local resources, including the educational and health systems — or be provided with work permits even though they are illegally in the country — thereby directly competing economically against persons here lawfully who are un- or under-employed. These latter issues, straining the social service networks of state and local governments and increasing job competition for citizens and legal aliens (especially those most vulnerable to unemployment and poverty in minority communities) are precisely the factors that led 26 states to file suit against the federal government to block the president's executive immigration actions to begin with and should be factored in when considering the arguments put forward by groups that advocate wholly replacing detention with ATD programs, in addition to the other considerations of public safety and flight risk.

US Study: Alternatives to Detention don’t save money. Even if cheaper “per day,” alternatives take longer to complete, so the “savings” are wiped out

Andrew W. Arthur 2019 (Resident Fellow in Law and Policy for the Center for Immigration Studies; former Trial Attorney in the San Francisco District Counsel’s Office, and later the Baltimore District Counsel’s Office, of the former Immigration and Naturalization Service (INS). In 1999, he was promoted to the INS’s General Counsel’s Office in Washington) 16 Dec 2019 ICE Report: 'Alternatives to Detention' Don't Work (ellipses in original) <https://cis.org/Arthur/ICE-Report-Alternatives-Detention-Dont-Work>

Long-story short: ICE's ability to perform interior enforcement in FY 2019 was significantly impeded by its need to respond to the massive influx of aliens encountered by U.S. Customs and Border Protection at the Southwest border, and by an increase in sanctuary policies. I omitted the report's findings about so-called "alternatives to detention" (ATD). Basically, they don't work. The section of the report relating to ATD begins by explaining what it is: "ICE's [ATD] program uses technology and case management to monitor aliens' court appearances and compliance with release conditions while their removal proceedings are pending on the non-detained immigration court docket." The [Center](https://cis.org/Fact-Sheet/Why-Alternative-Programs-Dont-Eliminate-Need-Immigration-Detention) has previously explained the limitations of the program:   
*ATD is, on a daily basis, cheaper than detention, but because ATD participants are placed into the "non-detained" docket of the immigration courts (as opposed to the significantly faster hearings that aliens receive on the detained docket), those savings may be wiped out over the course of two, three, or four years on the program while aliens await the docketing and conclusion of their cases. ...Long-term data do not conclusively establish the value of the programs in actually ensuring removal from the United States of ATD participants once they have been ordered removed.*

U.S. example: Non-detained immigrants linger for years and years

John Burnett 2018 (National Public Radio’s Southwest correspondent based in Austin, Texas; won a national Edward R. Murrow Award from the Radio-Television News Directors Association for continuing coverage of the immigration beat. In December 2018, Burnett was invited to participate in a workshop on Refugees, Immigration and Border Security in Western Europe, sponsored by the RIAS Berlin Commission.) 18 July 2018 “'Alternatives To Detention' Are Cheaper Than Jails, But Cases Take Far Longer” <https://www.npr.org/2018/07/18/629496174/alternatives-to-detention-are-cheaper-than-jails-but-cases-take-far-longer>

Figures with the Executive Office for Immigration Review (EOIR), which runs the immigration courts, [show that four out of ten](https://www.justice.gov/eoir/page/file/fysb16/download) non-detained immigrants do not show up for their final removal. Some are absconding, and melting into the huge undocumented, Spanish-speaking population. But there's another explanation for why there are so few deportations of immigrants on ATDs each year, versus more deportations of immigrations who are held in detention. "Those low numbers are not because people are failing to appear or cutting off their bracelets and running. Those low numbers are because those cases are not prioritized and they just linger for years and years and years," said John Sandweg, acting ICE director from 2013-2014.

Reason #3: US study finds high supervision costs and “success” stories ignore fugitive apprehension cost

Dan Cadman 2019 (retired INS / ICE official with thirty years of government experience; served as a senior supervisor and manager at headquarters, as well as at field offices both domestically and abroad.) 29 Jan 2019 Why Alternative Programs Don’t Eliminate the Need for Immigration Detention <https://cis.org/Fact-Sheet/Why-Alternative-Programs-Dont-Eliminate-Need-Immigration-Detention>

Consider, for instance, that according to the report, it cost ICE $17.5 million to contract out supervision of 781 family units in the initial pilot of the program. That amounts to a per-unit cost of just over $22,407, a substantial sum of taxpayer money. Multiply that figure by a factor of 100 ($2,240,700) and you still haven’t scratched the surface of the number of family units who would need to be housed under such a scheme. Also not factored into the "pennies-on-the-dollar" equation put forward by ATD advocates is the cost to the government for its agents to conduct extensive "fugitive apprehension" investigations for each and every alien who flees the program rather than report for removal if asylum or other forms of relief are denied by an immigration judge. Clearly, this expense is not present when an alien is detained for the duration of his hearing and has no choice about being taken to his removal flight if/when ordered.

Reason #4. US empiric: Translators can be expensive

Melinda Young 2017 (journalist with Relias Media, part of Relias, provides medical information, publications and continuing education to healthcare professionals with the ultimate goal of improving patient care and outcomes.) 1 April 2017 “Case Management for Refugees Can Be Challenging and Rewarding” <https://www.reliasmedia.com/articles/140321-case-management-for-refugees-can-be-challenging-and-rewarding>

Another challenge is systemic. Refugees often come from parts of the world where English and Spanish are not taught. Most arrive from Africa, East Asia, and South Asia, and primary care providers do not have staff that can speak their language. While interpreter services are available, these are expensive and sometimes beyond a practitioner’s budget, so they sometimes will turn down refugees as patients.

2. Not scalable

EU countries have already tried family and community-based care for child migrants, but can’t scale it up more than 4%

**[Analysis: Note last sentence “…even in countries which are familiar with the family-based care…” This is talking about EU countries that agree with the AFF’s position. They have already tried, and failed, to get it above 4%.]**

Claire Connellan 2020. (Senior Programme Officer - Unaccompanied Migrant and Refugee Children with Lumos Foundation, an international non-governmental organisation, founded by author J.K. Rowling, working to end the institutionalisation of children globally by 2050 ) January 2020 (month determined by references in the footnotes) <https://lumos.contentfiles.net/media/documents/document/2020/04/UMRC_Report_2020_v2_ABZD7Uz.pdf>

Family- and community-based care, such as foster care and supported independent living, better meet international and European standards and benchmarks, as well as children’s best interests. Across all countries analysed, family-based care and supported independent living are considered to be the most appropriate care arrangements for children, but they are under-utilised in response to unaccompanied migrant, asylum-seeking and refugee children. Most countries analysed provide family-based care to at most 4% or less of the unaccompanied children in their care. This shows that in many cases authorities struggle to bring these small examples to scale at the right pace to address the rate of arrivals, even in countries which are familiar with the family-based care approach for national children.

3. More study needed

1) Even the AFF plan is vaguely worded because they don’t know what the solution is

Note that the AFF mandates don’t say what the acceptable alternatives to detention are. There’s a good reason for that. The research isn’t finished yet and the data isn’t clear. The evidence below, from Claire Connellan is telling because she generally supports the goals of the AFF (eliminating child migrant detention) but admits that efforts to do so haven’t been successful and there are many barriers still left. A solution cannot simply be fiated by an Affirmative ballot – it doesn’t make reality go away.

2) Cross-apply the “family-based care non-scalable” problem above. Affirmative sympathizer Claire Connellan says the solution to detention is family/community-based care, but we need to study it more because we don’t know what the effective strategy is for implementing it yet.

Claire Connellan 2020. (Senior Programme Officer - Unaccompanied Migrant and Refugee Children with Lumos Foundation, an international non-governmental organisation, founded by author J.K. Rowling, working to end the institutionalisation of children globally by 2050 ) January 2020 (month determined by references in the footnotes) <https://lumos.contentfiles.net/media/documents/document/2020/04/UMRC_Report_2020_v2_ABZD7Uz.pdf>

Strategy development and action planning  
 3. Prioritise the development of strategies and action plans to improve care provision. Key elements of such strategies should include high-quality effective guardianship, more integrated child protection systems, and greater focus on transition from institutional responses to family- and community-based care for all children in the country.

3) We need to study emerging practices to determine how to scale-up quality care for children

**Affirmative sympathizer Claire Connellan in January 2020 says we don’t have enough data yet to determine how to scale up potential solutions.**

Claire Connellan 2020. (Senior Programme Officer - Unaccompanied Migrant and Refugee Children with Lumos Foundation, an international non-governmental organisation, founded by author J.K. Rowling, working to end the institutionalisation of children globally by 2050 ) January 2020 (month determined by references in the footnotes) <https://lumos.contentfiles.net/media/documents/document/2020/04/UMRC_Report_2020_v2_ABZD7Uz.pdf>

Data and monitoring 13. Support the establishment of standardised migration-sensitive child protection indicators to allow for comparable data and regional monitoring of alternative care arrangements. Data collection and research on outcomes for children, should also be considered to help identify promote and scale up best practice models. 14. Facilitate the identification, costing, sharing and learning from emerging promising practices across Member States, encouraging the scaling-up of successful models of quality alternative care systems for unaccompanied migrant, asylum-seeking and refugee children.

4) And before we can do that study, we need EU countries to implement centralized data collection systems

Claire Connellan 2020. (Senior Programme Officer - Unaccompanied Migrant and Refugee Children with Lumos Foundation, an international non-governmental organisation, founded by author J.K. Rowling, working to end the institutionalisation of children globally by 2050 ) January 2020 (month determined by references in the footnotes) <https://lumos.contentfiles.net/media/documents/document/2020/04/UMRC_Report_2020_v2_ABZD7Uz.pdf>

In a number of European Member States, the care system is decentralised, which leads to differing standards and forms of care. The forms of care provided to unaccompanied migrant, asylum-seeking and refugee children are varied across the region and within countries. This is largely due to the decentralised nature of national child protection systems, where the care for refugee and migrant children is the responsibility of regional authorities and/or delegated to NGOs (p. 28 & 39). This can lead to inconsistent implementation of legislative provisions, a lack of coordination and varying standards of care. However, it can also allow for more appropriate care provision which fits the needs of children in the community. Child protection services which fall within the remit of local authorities, but with standards monitored by a national body would ensure appropriate care solutions for children. There is a lack of centralised and inter-operable data systems which poses challenges for monitoring and evidence-based decision making. Data collection and management systems are decentralised, and data is often not collected, analysed or adequately disaggregated at both national and subnational level in many countries. This makes it difficult to conduct country-wide or multi-country analysis and hampers policy making, planning and programming in each country (p. 28). With insufficient monitoring of care provision, it is difficult to understand the short- and long-term impact of different approaches regarding care across the region.

DISADVANTAGES

1. Human smuggling and more danger to children

Link: Special rules for non-detention of minors encourages smuggling children to take advantage of the new rules. That’s what happened in the U.S. when it tried the AFF plan in 1997

Andrew R. Arthur 2019 (Resident Fellow in Law and Policy for the Center for Immigration Studies; former clerk to Administrative Law Judge Joseph E. McGuire in the Office of the Chief Administrative Hearing Officer at the United States Department of Justice, Executive Office for Immigration Review.; former Trial Attorney in the San Francisco District Counsel’s Office, and later the Baltimore District Counsel’s Office, of the former Immigration and Naturalization Service) 1 Apr 2019 “Unaccompanied Alien Children and the Crisis at the Border“ <https://cis.org/Report/Unaccompanied-Alien-Children-and-Crisis-Border> (brackets added)

Once UACs [Unaccompanied Alien Children] have made it to the United States through these perils with the assistance of criminal organizations, they generally go into the care of ORR [Office of Refugee Resettlement]. That agency has had jurisdiction over UACs for more than 16 years, beginning with section 462 of the Homeland Security Act of 2002.That provision is codified at 6 U.S.C. § 279.Prior to the passage of that bill, responsibility for the detention and release of UACs rested with the former Immigration and Naturalization Service (INS). In exercising that responsibility, since 1997, the INS [Immigration & Naturalization Service] had been operating under the restrictions set forth in the settlement agreement in Flores v. Reno. Human Rights First has explained that Flores "imposed several obligations on the immigration authorities," falling into three categories: to release children "without unnecessary delay to, in order of preference, parents, other adult relatives, or licensed programs willing to accept custody"; "to place children in the 'least restrictive' setting appropriate to their age and any special needs"; and to "implement standards relating to the care and treatment of children in immigration detention." The Ninth Circuit has made it clear that the Flores settlement agreement creates a presumption in favor of the release of alien minors. It should be noted that Flores does not apply only to UACs. In a July 2016 opinion, the Court of Appeals for the Ninth Circuit held that the settlement applies to accompanied and unaccompanied alien children. Under Flores, DHS can only detain alien minors for 20 days. The policies set forth in the Flores settlement agreement further encourage UACs to enter the United States illegally, and encourage the parents of UACs to hire smugglers to bring their children to the United States. Further, they encourage people to bring their own children (or children whom they claim to be their own) with them when they make the dangerous journey to the United States, thinking they will be released if they are traveling with those children. The agreement has also "incited smugglers to place children into the hands of adult strangers so they can pose as families and be released from immigration custody after crossing the border, creating another safety issue for these children."

Impact: Smuggling = human rights violations and deaths

EUROPEAN COMMISSION, 2017. (executive branch of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU.) “REFIT EVALUATION of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package” 22, March, 2017. <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/irregular-migration-return/20170322_-_refit_evaluation_of_the_eu_legal_framework_against_facilitation_of_unauthorised_entry_transit_and_residence_en.pdf>

Migrant smuggling is increasingly associated with serious human rights violations and deaths, in particular when it occurs by sea. According to the International Organization for Migration (IOM), an estimated 5 400 migrants died or were recorded as missing in 2015 worldwide. In 2016, 7,495 migrants are estimated to have lost their lives worldwide, over 68% of those (5,079) while attempting to reach Europe by sea in the Mediterranean. The United Nations High Commissioner for Refugees (UNHCR) also reports similar figures, with some 5,022 reported dead or missing in 2016, while some 361,709 refugees and migrants reached Europe by sea. In 2015, UNHCR reported 1,105,078 arrivals to Europe by sea.

2. Absconding and illegal immigration

Link: Detention creates deterrence

Dr. Arjen Leerkes and Mieke Kox 2017 (Leerkes is an Associate Professor of Sociology at Erasmus University Rotterdam and a research fellow at the Research and Documentation Centre (WODC). Kox is a PhD Candidate at the Criminology Department of the Erasmus University Rotterdam. Her PhD research focuses on the legal consciousness of unauthorized migrants.) 2017 (no month given) “Pressured into a Preference to Leave? A Study on the “Specific” Deterrent Effects and Perceived Legitimacy of Immigration Detention” <https://onlinelibrary.wiley.com/doi/pdf/10.1111/lasr.12297>

A first main conclusion is that immigration detention seems to be producing limited selective deterrent effects at the attitudinal level. At the time of the interview, 17 out of 81 respondents expressed a preference to go to their country of citizenship—in some cases in hopes of starting a new (legal or illegal) migration project from there—and in 16 cases that preference was reported to have been coerced, at least in part, by detention, including repeated detention. Additionally, the number of respondents preferring onward migration increased by seven when previous detention periods are taken into consideration. These results are obtained for a detention regime that is relatively punitive comparatively, especially in the European context given the relatively long maximum and actual detention duration, and the common practice of repeated detention.

Link: Absconding. Belgium Study: 23 times more likely without detention

European Commission 2014 (Synthesis Report for the European Migration Network Focussed Study 2014) 2014 “The use of detention and alternatives to detention in the context of immigration policies” (no month given in the published article) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf>

In Belgium, in 2013, the rate of absconding from family units is 23% whereas it is less than 1% for persons held in detention.

Link: US study found >25% absconding rate with Alternatives to Detention (ATD)

Andrew W. Arthur 2019 (Resident Fellow in Law and Policy for the Center for Immigration Studies; former Trial Attorney in the San Francisco District Counsel’s Office, and later the Baltimore District Counsel’s Office, of the former Immigration and Naturalization Service (INS). In 1999, he was promoted to the INS’s General Counsel’s Office in Washington) 16 Dec 2019 ICE Report: 'Alternatives to Detention' Don't Work (brackets in original) <https://cis.org/Arthur/ICE-Report-Alternatives-Detention-Dont-Work>

In this context, the absconder rate was determined by examining "the overall number of aliens who concluded the ATD program in a given time period ('overall terminations'), and the number of those terminations which occurred due to a participant absconding." In other words, when it came to family units, more than a quarter "terminat[ed]" the ATD program by disappearing. Given the large size of this population as a whole, that is a significant failure of the monitoring program, providing support for the CBP Families and Children Care Panel's [conclusion](https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf) that Congress should give DHS "discretion to detain a close relative with a non-parent family member when this is in the best interest of the child."

US Study: 84% of aliens on Alternative to Detention absconded

Dan Cadman 2015 (retired INS / ICE official with thirty years of government experience; served as a senior supervisor and manager at headquarters, as well as at field offices both domestically and abroad ) 24 June 2015 “Why Alien Detention Is Necessary” <https://cis.org/Report/Why-Alien-Detention-Necessary>

In sum, there is no empirical reason to believe that supervised release or other ATD methods truly bolster a system of immigration controls trying to cope with a huge backlog in immigration courts and a very large number of alien fugitives — both of which have risen exponentially because the administration declines to use legally authorized expedited means of removal in the first place, and make appropriate use of detention in the second. In fact, there is no clearer evidence of the failure of ATD than in recent Executive Office of Immigration Review (EOIR) statistics on the aliens who were taken into custody during the rolling surge in Texas between July 18, 2014, and May 26, 2015.As shown in Table 1, which is an extract of the EOIR statistics, *84 percent of aliens who were placed on supervised release or some other form of ATD fled*, as compared with 29 percent of those who were detained. (For those wondering how a detained alien might abscond, it is because at some point after their hearing was commenced, the government chose to release them from detention.)

Reason for absconding from non-detention programs: Because they have nothing to lose

Dan Cadman 2015 (retired INS / ICE official with thirty years of government experience; served as a senior supervisor and manager at headquarters, as well as at field offices both domestically and abroad ) 15 Oct 2015 “Immigration Detention Is a Necessary Function of Immigration Control” <https://cis.org/Immigration-Detention-Necessary-Function-Immigration-Control>

System Integrity — Opponents say because immigration is a civil, rather than criminal, offense detention is inappropriate. That argument holds no weight. Every legal system must have the means to enforce its rulings. Detention inhibits aliens from fleeing and protects the public. Aliens have repeatedly shown that when released on a promise to appear in court, or for removal if ordered by a judge, they break that promise. Why not? The worst that happens if absconders get caught is they will be deported—but that's what they face if they stick around.

Impact: Lost jobs from illegal immigration

Dr. Pia Orrenius and Dr. Madeline Zavodny 2016 (Pia M. Orrenius, holds a PhD in Economics from the University of California at Los Angeles. She is Vice President and Senior Economist at the Federal Reserve Bank of Dallas. Madeline Zavodny received a PhD in Economics from the Massachusetts Institute of Technology. She is a Professor of Economics at Agnes Scott College, Department of Economics & Business Management) January 2016 “Irregular Immigration in the European Union” <https://www.eapmigrationpanel.org/sites/default/files/2016_2_epa_eng_1.pdf>

Few studies of the labor market effects of immigration look specifically at unauthorized immigrants because of the difficulty of determining immigrants’ legal status. Evidence suggests that unauthorized immigrants typically earn less than natives or legal immigrants. In Italy, for example, irregular immigrants earn about 8 percent less than comparable legal immigrants; in Spain, 12 percent less (Baldacci, Inglese, and Strozza, 1999; Connor and Massey, 2010). Research shows that immigrants working illegally in the shadow economy in Italy reduce employment of legal labor there (Venturini, 1999). However, natives working illegally (off the books) have a more adverse effect on legal employment there than immigrants working illegally.

Impact: Black market work causes economic and social harm

Report by Solidarite and Diesis 2010 (With the financial support of the European Community Programme for Employment and Social Solidarity PROGRESS (2007-2013) “THE ILLEGAL WORK OF MIGRANTS IN THE EUROPEAN UNION” (no month given in the publication) <https://www.pourlasolidarite.eu/sites/default/files/publications/files/report_illegal_work_of_migrants_in_the_eu_0.pdf>

The development of an informal economy weakens the European social model. Since 2007, the European social affair Commissioner, Vladimar Spidla, has assessed the black market as being „extremely harmful to our economies. The fact that neither the employer, nor the employee pays taxes strongly weakens social security systems, which has already been put to the test by the economic crisis and Europe’s aging population. If we do nothing, these practices will lead to a form of social dumping, which means that salaries in some sectors will become very low for companies to stay competitive’ he underlines.

Link: Illegal immigrants destroy native jobs in irregular sectors

Prof. Alessandra Venturini 2004 (Associate Professor, Dept of Economics, University of Turin, Italy) January/February 2004 “Do Illegal Migrants Compete with National Workers?” <https://www.intereconomics.eu/pdf-download/year/2004/number/1/article/the-illegal-employment-of-foreigners-in-europe.html>

In their excellent field work in Northern Greece, Lianos, Sarris and Katseli estimated by interviews the gross substitution of native workers by foreigners, i.e. how many jobs previously done by Greeks are now done by foreigners. The gross substitution rate was very high: 12% with reference to regular immigrants and 21% with reference to irregular immigrants, but taking into account the reduced willingness of native workers to do certain kinds of jobs and tasks, the net substitution rate is reduced to 0.5% for regular and 5.8% for irregular labour. These results suggest that in each labour market immigrants play a competitive role, but in the irregular labour market their role is much larger, as is to be expected from neoclassical theory, because the effect is larger where the market is more flexible. In addition these results suggest that irregular labour damages native workers more than regular labour and thus it is better to legalise immigrants.

A/T “Net positive impact” – Mixed, depending on the migrant

Dr. Pia Orrenius and Dr. Madeline Zavodny 2016 (Pia M. Orrenius, PhD in Economics from the University of California at Los Angeles; Vice President and Senior Economist at the Federal Reserve Bank of Dallas. Zavodny received a PhD in Economics from the Massachusetts Institute of Technology. Professor of Economics at Agnes Scott College, Department of Economics & Business Management) January 2016 “Irregular Immigration in the European Union” <https://www.eapmigrationpanel.org/sites/default/files/2016_2_epa_eng_1.pdf>

There are no studies specific to the fiscal impact of irregular immigrants in the EU, and other fiscal impact studies of EU immigration find mixed results. In nations where immigrants are more dependent on the welfare system than natives, such as Austria, Belgium, Denmark, France, the Netherlands, and Sweden, the net impact is likely negative. In other nations, such as in Southern Europe and the UK, the net impact may very well be positive. Taken as a whole, the evidence suggests that skilled immigrants who work tend to make net positive contributions, while those who are older, have few skills, and arrive as refugees tend to make net negative contributions (Münz et al., 2006).

2. Terrorism

Link: Terrorist infiltration from illegal immigration

Todd Bensman 2019 (Center for Immigration Studies, Texas-based Senior National Security Fellow; formerly led homeland security intelligence efforts for nine years in the public sector. Bensman’s body of work with policy and intelligence operations is founded on more than 20 years of experience as an award-winning journalist covering national security topics, with particular focus on the Texas border.) 6 November 2019 “What Terrorist Migration Over European Borders Can Teach About American Border Security” <https://cis.org/Report/Terrorist-Migration-Over-European-Borders>

Between January 2014 and January 2018, at least 104 Islamist extremists entered Europe by way of migration over external sea and land borders among more than two million people who crossed external European Union borders. All 104 were killed or arrested in nine European nations after participating either in completed and thwarted attacks, or arrested for illegal involvement with designated terrorist groups. In all of these cases, the common circumstance was that the actors used illicit migration and later were implicated in specific terrorism activities, such as active plots and successful attacks, as well as past involvements that would reasonably indicate a heightened threat to destination countries.

Link: Detention = security policy

Izabella Majcher and Clément de Senarclens 2014 (Majcher: Global Detention Project; Graduate Institute of International and Development Studies (IHEID). Senarclens: University of Neuchatel - Centre for Migration Law) December 2014 “Discipline and Punish? Analysis of the Purposes of Immigration Detention in Europe” <https://poseidon01.ssrn.com/delivery.php?ID=760122118067097090110091124087065011060032009009023085005124118125009119025115026092041103027101109063041076117021024120019005050069029073037026069123092016126025003018086004082018123112101094026067122081067069072000106070107124097010004122091103066071&EXT=pdf>

Two interrelated implications may be drawn from the paper’s analysis. First, from a theoretical perspective, it shows that pre-removal detention under the EU and Swiss legislation may not only be employed as an administrative tool to prevent absconding. Rather, it may also include deterrent purposes that are traditionally restricted to (punitive) criminal sanction. Arguably, immigration detention should no longer be described as a merely administrative tool of immigration control. In fact, in practice it is often used as a deterrent to facilitate migration control. Secondly, the control of migrant populations is not only aimed at immigration control but also at crime control. Immigration detention thus constitutes a disciplinary and punitive instrument designed to shape the conduct of a category of migrants in terms of both immigration and crime control objectives. In that respect, it shall be considered not only as a measure to enforce removal but more generally as an apparatus designed to “discipline and punish” migrants considered “unwanted” while they cannot be expelled. “Unwanted migrants” are those who have no legal authorization to stay or persons who received a removal order but also—in the Swiss case—asylum seekers, pending examination of their asylum request. These conclusions regarding the EU and Swiss immigration detention regimes support the observations put forwards by several scholars that immigration and criminal mechanisms and objectives become increasingly intertwined.

Internal link: Terrorists impersonate legitimate refugees

Todd Bensman 2019 (He is the Center's Texas-based Senior National Security Fellow; formerly led homeland security intelligence efforts for nine years in the public sector. Bensman’s body of work with policy and intelligence operations is founded on more than 20 years of experience as an award-winning journalist covering national security topics, with particular focus on the Texas border.) 6 November 2019 “What Terrorist Migration Over European Borders Can Teach About American Border Security” <https://cis.org/Report/Terrorist-Migration-Over-European-Borders>

Of the 65 migrant-terrorists involved in completed or thwarted attacks, at least 40 appeared to have been purposefully deployed into migrant flows toward Europe, impersonating war refugees, to conduct or support attacks in Europe. ISIS was responsible for this infiltration operation. Eleven others apparently initiated attacks or plots in small groups of relatives or associates, not coordinated by any foreign group. The balance were self-propelled lone offenders or information was insufficient to determine whether they were deployed.

Impact: Destruction of life and property

Sean Ross 2019 (Sean has a background that includes working as a bankruptcy specialist, consultant, broker, financial advisor, and as a journalist; founder and manager of Free Lances Ltd., a hub for freelance editors, researchers, and writers.) 20 May 2019 “Top 5 Ways Terrorism Impacts the Economy” <https://www.investopedia.com/articles/markets/080216/top-5-ways-terrorism-impacts-economy.asp#:~:text=Terrorist%20acts%20can%20cause%20ripple,tourism%2C%20and%20increased%20insurance%20claims.>

The most immediate and measurable impact of terrorism is physical destruction. Terrorists destroy existing plants, machines, transportation systems, workers, and other economic resources. On smaller scales, acts of terrorism may blow up cafes, churches, or roads. Large-scale attacks, most infamously the World Trade Center bombings on Sept. 11, 2001, can destroy billions of dollars worth of property and senselessly kill thousands of productive workers. ﻿

3. Migrant abuse

Background: Australian Bridging Visas were part of detention reform – they get a temporary visa instead of being put into detention

**[Australian policy may be cited by AFF as a model their plan imitates]**

Ryan Essex 2013 (Counsellor, Villawood Immigration Detention Centre, New South Wales. Published in the AUSTRALIAN AND NEW ZEALAND JOURNAL OF PUBLIC HEALTH) “Asylum seeker health and bridging visas: history repeating” 2013 (no month given) <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1753-6405.12142>

The increase in arrivals resulted in overcrowding of the detention network and a number of deaths at sea. Responding to this in late 2012, the Federal Government resumed offshore processing on Nauru and Manus Island to act as a deterrent. These measures appear to have had little impact on arrivals and the Government announced on 21 November 2012 that it would be expanding its bridging visa scheme. The Bridging Visa E (BVE) is of particular relevance for those seeking asylum. This visa effectively sees those who would have otherwise been detained in an immigration detention facility being moved to the community, while waiting for their claim for protection to be processed.

Bridging Visas harm mental health. (BVE = Bridging Visa E)

Ryan Essex 2013 (Counsellor, Villawood Immigration Detention Centre, New South Wales. Published in the AUSTRALIAN AND NEW ZEALAND JOURNAL OF PUBLIC HEALTH) “Asylum seeker health and bridging visas: history repeating” 2013 (no month given) <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1753-6405.12142>

Under the current BVE regime, asylum seekers are forced to live in near poverty while access to comprehensive health services remains restricted. In the longer term, current policy is likely to exacerbate mental health conditions and harm social outcomes and settlement. This has been seen from past temporary visa regimes and is being further highlighted by a growing body of evidence. What we see today is history repeating itself and, unfortunately, it seems we haven’t learnt from our mistakes.

A/T “Australia” – Bridging visas allow abuse

Henry Sherrell and Dr Shanthi Robertson 2019 (Sherrell- previously worked for the then Department of Immigration and Citizenship, a Federal Member of Parliament, and the Federal Parliamentary Library;worked for the Development Policy Centre at the Australian National University and the Migration Council Australia. Robertson is a Senior Research Fellow at the Institute for Culture and Society at the University of Western Sydney. PhD in International Studies from RMIT Univ.) “Most migrants on bridging visas aren’t ‘scammers’, they’re well within their rights” 6 August 2019 <https://theconversation.com/most-migrants-on-bridging-visas-arent-scammers-theyre-well-within-their-rights-120989>

One of the most significant issues is the stigma around bridging visas in the employment market. Although many of these migrants have in-demand skills, local work experience, and the strong desire to work, many Australian employers refuse to hire workers on bridging visas, [leading to deskilling, exploitation and financial stress](https://journals.sagepub.com/doi/pdf/10.1177/1468796813504552). Long waits on bridging visas can create specific vulnerabilities for women on partner visas, making them highly dependent on their partners, and often [unable to access adequate support in situations of domestic abuse](https://www.secasa.com.au/assets/Documents/Promoting-community-led-responses-to-violence-against-immigrant-and-refugee-women-.pdf).

A/T “Australia” – Application: Malaysian immigrants are exploited

Jack Snape 2019 (journalist in the Press Gallery in Canberra.) “Bridging visa 'blow out' now bigger than Hobart and Government expects it to keep growing” 22 July 2019 <https://www.abc.net.au/news/2019-07-23/bridging-visas-surging-malaysians-horticulture/11314214> (ellipses in original)

A separate report from the University of Adelaide released in March found the horticulture sector was reliant on Malaysian workers, but also that workers were vulnerable to exploitation. As part of a series of interviews, it reported one stakeholder saying "the Malaysians … are the ones who are exploited". A labour hire contractor was reported to have said Malaysians "just use the visitor visa to come to Australia and they stay longer than three months and just work in Australia, and that's what happens … they are very hard workers and then they become illegal people".

A/T “Australia” – Immigration doesn’t tell migrants how long they can stay

Henry Sherrell and Dr Shanthi Robertson 2019 (Sherrell- previously worked for the then Department of Immigration and Citizenship, a Federal Member of Parliament, and the Federal Parliamentary Library;worked for the Development Policy Centre at the Australian National University and the Migration Council Australia. Robertson is a Senior Research Fellow at the Institute for Culture and Society at the University of Western Sydney. PhD in International Studies from RMIT Univ.) “Most migrants on bridging visas aren’t ‘scammers’, they’re well within their rights” 6 August 2019 <https://theconversation.com/most-migrants-on-bridging-visas-arent-scammers-theyre-well-within-their-rights-120989>

But living on a bridging visa is a form of migration limbo as the Department of Home Affairs does not disclose how long any individual case may take to process. Migrants do not know if their application will be approved tomorrow, or if they will be waiting on a bridging visa for another year or more. What’s more, employers and labour recruiters, especially in the horticultural industry, are [taking advantage](https://sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf) of these migrants as cheap temporary labour.

Numerous failures in Sweden [Sweden may be an AFF ‘success story’ model for their plan]

Frey Lindsay 2019 (Senior Forbes contributor; I write about business, migration and how the two intersect.) 13 February 2019 “Why Sweden Is Deporting High-Skilled Labor Migrants” <https://www.forbes.com/sites/freylindsay/2019/02/13/why-sweden-is-deporting-high-skilled-labor-migrants/#3cff49d24510>

And yet, many high-skilled migrants are seeing their work permit extensions rejected on the basis of small administrative errors made during their residency. The expulsions happen when a worker is applying for an extension to their work permit. Generally, new workers will get a two-year visa, which is renewed for another two years, after which the worker can apply for permanent residence. Very often it is only after two or four years that mistakes in the application or permit obligations are noticed, by which time it can be too late to fix. The mistakes often involve insurance, but can also be cases where someone was accidentally paid below the minimum wage for their sector or did not take enough holiday. There is a special word for these expulsions: Kompetensutvisning. It means the "expulsion of a person who has the skills required in the labor market," [according to a list](https://www.svt.se/kultur/nyordslistan-2017) of new words entering the Swedish zeitgeist in 2017, in which the word appeared alongside some more recognizable entries such as Cringe, #metoo, Kombucha and Alternativa Fakta.

Failures in Sweden: Administrative errors cause long wait times, forced removals, and mental health issues

Frey Lindsay 2019 (Senior Forbes contributor; writse about business, migration and how the two intersect.) 13 February 2019 “Why Sweden Is Deporting High-Skilled Labor Migrants” <https://www.forbes.com/sites/freylindsay/2019/02/13/why-sweden-is-deporting-high-skilled-labor-migrants/#3cff49d24510>

Diversify campaign for people affected by Kompetensutvisning. This week the foundation released the preliminary results from a survey of labor migrants whose permit extensions have been rejected. Though official numbers on Kompetensutvisningar are hard to come by (the Swedish Migration Agency said 85 % of applicants for a work permit extension in 2018 received a positive decision, but could not confirm the number of applications) this 'Kompetentsuitsvnining baseline’ includes 571 people who were at some stage of the process with the Migration Agency. Of these, 29% reported having their application denied due to an error by their employer, and a further 58% were still waiting on a decision. Diversify's survey also looked at the mental health effects of this process. Over 75% reported adverse mental health effects related to the fear of rejection, an inability to access state services such as childcare and the inability to leave Sweden during the application process. 69% of the people surveyed said they would not recommend another foreigner come to Sweden for work, citing unclear rules and extended waiting times.

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