

Mitigating the Violence of Mass Immigration Detention Through Community-Based Case Management

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Abstract: Immigration detention causes psychological, physiological, and financial harm, primarily to noncitizens of color. Following a mass release of “lower-priority” individuals, responses to the COVID-19 pandemic provide an opportunity to envision a system more focused on freedom and pragmatism rather than retributive and ineffective notions of human warehousing and deterrence. Utilizing community-based case management (CBCM), a majority of detained noncitizens could be immediately returned to their families and communities under agency discretion. While some alternatives to incarceration serve as extensions of the carceral state, CBCM maintains required court appearances and preserves occupational and familial obligations at a fraction of detention costs without the need for intensive surveillance or restrictions. Drawing upon available research, theories of violence, and strengths-based case management, this article critically examines the emergence of mass immigration detention in the United States and considers a noncarceral approach to mitigate such state violence against detained noncitizens, as well as their families and communities. The profession of social work is uniquely positioned to implement CBCM to address the mass detention crisis and the grand challenge of smart decarceration. Social workers are well-equipped to 1) advocate for sensible decarceration policy, 2) conduct action-oriented scholarly research on the impacts of detention and outcomes of CBCM, and 3) provide integrated case management for noncitizens in immigration removal proceedings.

Keywords: Immigration detention, criminalization, strengths-based case management, state violence, decarceration, alternatives to detention

The pandemic, while tragic, has shown that warehousing human beings may be less of a necessity than previously considered. As jails and prisons across the western world have released “lower priority” incarcerated persons from custody, so have immigration detention centers (Waterman et al., 2021). In February of 2021, the average daily detention population reached its lowest since 1997 (Kassie, 2019), with 13,258 noncitizens held in Immigration and Customs Enforcement (ICE) facilities (TRAC, 2021b), or about one-quarter of the 2019 average daily detention population (ICE, 2020). Numbers are still lower than pre-pandemic counts, but this is only temporary, given that no meaningful change has yet to occur to detention infrastructure or policy (Capps & Meissner, 2021). Furthermore, ICE detains tens of thousands of noncitizens every day despite having no legal mandate to do so (Schriro, 2021; TRAC, 2022b).

While many scholars consider mass immigration detention a “crisis” (American Public Health Association [APHA], 2020 Saadi et al., 2020; Torrey, 2015) and suggest vital policy changes to curb its proliferation (Das, 2018; Garcia Hernandez, 2014, 2017; Schriro, 2021;

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Copyright © 2023 Authors, Vol. 23 No. 2 (Summer/Fall 2023), 454-481, DOI: 10.18060/26691



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Stumpf, 2006), less inquiry has focused on practical solutions to fill the policy vacuum left in the wake of reform.

Many effective alternatives to human confinement remain available to mitigate the current mass detention crisis. The community-based case management (CBCM) model is especially promising, offering an evidence-based, humane strategy that connects noncitizens to social and legal resources without major disruptions to caretaking and financial responsibilities (IDC, 2015; Sullivan et al., 2000). Despite an intensifying call from scholars (Capps & Meissner, 2021; Giustini et al., 2021; Ly et al., 2021), legal advocates (American Immigration Lawyers Association [AILA], 2022), former ICE detention administrators (Schriro, 2021), and over 100 members of Congress (Jayapal et al., 2022) to utilize community-based alternatives rather than human confinement, government over-reliance on carceral methods persists.

In an attempt to reconceptualize immigration management, we discuss a noncarceral approach for transitioning to community-based alternatives, built upon core social work principles of social justice and strengths-based case management, to mitigate the harm resulting from an over-criminalizing and punitive immigration detention system. Social work is particularly well-poised to address the mass detention crisis given a workforce uniquely equipped to advocate for amending detention policy, conduct action-oriented scholarly research on community-based alternatives, and provide integrated case management to criminalized noncitizens facing immigration removal proceedings.

Addressing the Myth of Immigrant Criminality

Since the late 20th century, the criminal legal system has become increasingly intertwined with civil immigration law (Garcia Hernandez, 2014; Stumpf, 2006). Deemed “cimmigration” by legal scholars, work in this field has deepened awareness surrounding the ways carceral logics have been infused into a “non-punitive” field of law that has expanded its exclusionary capabilities without granting rights of due process to those it targets (Das, 2018; Eagly, 2017). This article examines damaging federal laws and agency policies that use misleading notions of criminality and dangerousness to justify incarcerating vast numbers of noncitizens in ICE detention centers. Moreover, the “illegal alien” trope commonly repeated in media and political outlets that overstates noncitizens’ association with deviance and criminality is categorically untrue yet results in racialized mass detention (Furman, Lamphear et al., 2016). Research investigating purported relationships between crime and immigration consistently reveals the lack of a relationship, or in some cases, an inverse relationship, indicating that as immigration increases, crime decreases (Ghandoosh & Rovner, 2017; Ousey & Kubrin, 2018; Wong, 2017). Despite this absence of empirical truth, the myth of immigrant criminality remains an unrelenting presence in political, legal, and mainstream rhetoric in the manufacturing of “criminal alienhood” to legitimize an overly punitive and racialized enforcement regime (Abrego et al., 2017, p. 696).

Racialized Mass Detention

Interaction with immigration law enforcement and the detention system is an inherently racialized and gendered process (Golash-Boza & Hondegne-Sotelo, 2013). Over 50% of the world's displaced persons are women (United Nations High Commissioner for Refugees [UNHCR], 2022), who are at greater risk of abuse during detention (Ellmann, 2019), as are detained transgender noncitizens (Vogler & Rosales, 2022). Paralleling mass incarceration, mass detention disproportionately impacts communities of color and overwhelmingly targets Latinx immigrants and asylum-seekers from Central America and Mexico (Golash-Boza, 2016; Massey, 2020; Sanchez & Romero, 2010), but all newcomers of color are detrimentally impacted, including those from Asia, Africa, and South America as well as non-Latinx Caribbeans (e.g., Haitians). While ICE does not provide racial demographics on individuals in its custody, data obtained by the Transactional Records Access Clearinghouse (TRAC), an organization dedicated to bringing hard-to-access governmental data to the public, provides a data snapshot collected in July 2019 indicating that over 97% of noncitizens in ICE detention facilities originated from non-white countries under United States Census Bureau demographic classification (TRAC, 2019; United States Census Bureau, 2022).

Race has been a dominant factor in immigration enforcement policy throughout history (Johnson, 1998) and an enduring catalyst underpinning the legislative framework for today's massive detention regime (Lindskoog, 2018). During the pre-civil rights era, such policies as the Chinese Exclusion Act of 1882 and Operation Wetback of 1954 broadcasted the influence of "animus towards Chinese and Mexican immigrants" (Das, 2018, p. 181). However, the Civil Rights Act of 1964 changed the way race could be used to exclude racialized Others. Explicitly exclusionary racist policy and rhetoric adapted to the new sociolegal generation, adopting an ostensibly colorblind yet duplicitously effective form of structural racism (Armenta, 2017; Bonilla-Silva 1997, 2001).

Recent computational analyses of congressional and presidential communication from 1880 to the present indicate that dehumanizing and criminalizing rhetoric, particularly among Republicans, are as present as ever, noting a "striking similarity between how Mexican immigrants are framed today and how Chinese immigrants were framed during the era of Chinese exclusion in the late 19th century" (Card et al., 2022, p. 1). Indeed, federal (Massey, 2020; Sanchez & Romero, 2010) and local immigration policy (Jones et al., 2015), as well as internal enforcement practices (Kohli et al., 2011; Ray, 2011; Waslin, 2011) and border control operations (Slack et al., 2015; Soto & Martinez, 2018) have primarily targeted Mexican and other Latinx migrants in recent decades.

While much of Arizona's SB 1070 was struck down in legal battles, it remains a poignant example of modern racially targeted anti-immigrant legislation. The bill authorized local law enforcement to investigate immigration status of anyone suspected of being unlawfully present in the state and has been widely criticized as state-sanctioned racial profiling aimed primarily at Latinx residents (Jones et al., 2015; Selden et al., 2011). While outside the scope of this article, a vast body of evidence suggests that increases in punitive immigration enforcement policies, such as SB 1070, are associated with more than anti-immigrant rhetoric. Latinx noncitizen communities face increased experiences of

discrimination, childhood trauma, limited financial opportunities, emotional stress, and poor physical health outcomes to name but a few (Androff et al., 2011; Ayón, 2015; Becerra et al., 2018).

Containing the Racialized Threat

Prior to the 1980s, immigration detention was rarely implemented (Garcia Hernández, 2014). Between 1954 and 1981, federal immigration detention was the exception, opting for a more humane policy of parole (Lindskoog, 2018). Yet, the Reagan administration abruptly put an end to this restraint in 1983 by initiating the Mass Immigration Emergency Plan (MIEP), which mandated the ongoing availability of 10,000 detention beds (Freedom for Immigrants, 2018). Initially applied exclusively to Haitian asylum-seekers, increasing numbers of Cubans prompted the Reagan administration to expand its practice to “all inadmissible aliens” (Lindskoog, 2018, p. 3; Organista, 2023). The administration’s strict carceral response intended to send a message to deter would-be asylum seekers (Bosworth & Kaufman, 2011; Ryo, 2019b). In a sense, the MIEP and the targeted use of detention as both a containment method and a deterrent mechanism for excluding racialized Others (Epps & Furman, 2016; Furman, Epps et al., 2016b) was an ad hoc pilot program for the present mass immigration detention regime.

Creating the “Aggravated Felon” Outcast

The Reagan administration not only piloted the first racialized mass detention regime but also codified a new American underclass into law. Labeled the “aggravated felon,” a caste of noncitizens identifiable by race/ethnicity, immigration status, and criminal history was established through amendments to the Immigration and Nationality Act (INA) via the Anti-Drug Abuse Acts (ADAA) of 1986 and 1988 (Das, 2018; Garcia Hernandez, 2014). It is worth noting that the aggravated felony provision is not a term borrowed from criminal legal doctrine, despite its resemblance to terminology indicating a serious crime. In fact, prior to 1988, it did not officially exist (Tosh, 2022). The 1986 ADAA expanded deportations related to drug offenses involving any federally controlled substance, while the 1988 ADAA created the term “aggravated felony” to identify the few noncitizens convicted of murder and illicit trafficking in drugs or firearms for apprehension, incarceration, and removal (Macías-Rojas, 2016). Noncitizens convicted of aggravated felonies could then be detained indefinitely while litigating their immigration cases (Garcia Hernandez, 2014). The magnitude of this new legal categorization cannot be understated.

The ADAAs contained the initial building blocks of parallel legislative foundations infused with the War on Drugs that emphasize human warehousing as a legitimate, and arguably preferable means of racialized social control and hierarchy (Alexander, 2010). In the years to come, a legal architecture heavily reliant on carceral logics was engineered, establishing a nationwide detention infrastructure alongside the mass incarceration boom. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 expanded the aggravated felony provision substantially. AEDPA broadened the definition of aggravated felony to include relatively minor, nonviolent crimes such as theft, receiving stolen property, and tax

evasion, making it much easier to apprehend and incarcerate lawful permanent residents (i.e., green card holders), as well as undocumented persons, under federal law (Brady, 2017; Solbakken, 1997).

The 1996 laws essentially stripped immigration enforcement “and Immigration Judges of their discretion” (Torrey, 2015, p. 880), disproportionately affected legal permanent residents, and disqualified unauthorized immigrants from seeking relief from detention or deportation based upon their length of stay in the US (Macías-Rojas, 2016). Heightened anti-immigrant moral panic following the terrorist attacks of September 11th provided an even more precarious sociopolitical situation for noncitizens, leading to the PATRIOT Act of 2001, which further amplified AEDPA’s stringent mandatory detention and deportation criteria (Massey & Pren, 2012). Subsequent pieces of legislation and the creation of DHS continued to increase the size, scope, militarization, and violence of immigration enforcement, making it one of the nation’s largest arms-bearing agencies, second only to the US military (Massey, 2020).

The ongoing chain of amendments to the INA signified the intensifying perceptions of anti-immigrant threat (Torrey, 2015), giving rise to what Noferi (2016) characterizes as a “noncitizen presumption of dangerousness” in which noncitizens are perceived to be more prone to crime and violence than citizens despite extensive evidence to the contrary (p. 13). Propagated by racially charged political rhetoric and a nation unified against the racialized noncitizen threat associated with the War on Terror, the “aggravated felon” caste broadened in scope to include a host of low-level crimes. The President and Vice President of the National Association of Immigration Judges explain the “perplexing conundrum” of immigration law’s mismatch between criminal and immigration law that developed as a result of inflating the definition of aggravated felony: “Some dispositions that states treat as rehabilitative and non-criminal are treated as a criminal conviction under the immigration laws...” and “some non-violent, fairly trivial misdemeanors are considered aggravated felonies” (Marks & Noonan Slavin, 2012, p. 92).

Immigration Detention as State Violence

Mass human confinement is perhaps the most recognizable form of punishment that has disproportionately inflicted violence on communities of color since its origins (Alexander, 2010). Aggravated felons in the custody of immigration enforcement face mandatory detention and an expedited deportation process in a legal realm devoid of constitutional protections. Regardless of the misleading label, given that crimes do not have to be “aggravated” nor “felonies,” the likelihood of obtaining relief from removal is quite slim. Similar in look and feel to criminal incarceration and an increasingly prevalent form of human confinement, immigration detention can be viewed as an instrument of violence enacted by a hierarchy of governing bodies (Cleveland et al., 2018; Esposito et al., 2019; Garcia Hernandez, 2017).

Informed by concepts of structural and symbolic interpretations, Menjivar and Abrego (2012) explain that the “complex manner in which the law exerts its influence and control,” deemed *legal violence*, inflicts harm that is not directly imposed upon the body but nevertheless subjects noncitizens to immediate and long-term damages that manifest in

physical and non-physical ways (p. 1383). Human confinement is certainly experienced in the physical environment, yet it can typify psychological, emotional, political, and many other types of violence. The law and policies that uphold mandatory human confinement and arbitrarily detain noncitizens contain embedded power imbalances that subject migrants to macro-level violence (Collins, 2009). Koulisch (2016) elaborates:

Mandatory detention is a violence that is exerted indirectly...Harm is created for the noncitizen along a lengthy process of denying procedural and substantive justice. The violence can be tracked to immigration law's harshly asymmetrical power dynamic, which diminishes the human dignity of noncitizens... Much of the structural violence that diminishes the quality of life for the subset of noncitizens with prior crimes is concealed by assertions of legitimacy and due process. (p. 2)

Human captivity remains a brutally effective means to impose carceral control upon racialized groups in the United States and abroad (Furman, Epps et al., 2016a), especially in the ostensibly race-neutral legal environment of the post-civil rights era (Hinton, 2016; Kurwa & Gurusami, 2022).

Impacts of Immigration Detention

The consequences experienced by persons subjected to immigration detention are vast and far-reaching, extending beyond individual hardship into family systems and community well-being. The mere presence or threat of detention or deportation can leave adults and their children in a chronic state of vulnerability and fear (Barajas-Gonzalez et al., 2021; Lopez & Minushkin, 2008; Rubio-Hernandez & Ayón, 2015), exacerbating an already pervasive fear of law enforcement (Dreby, 2012). This threat also leaves noncitizens more likely to withdraw from their communities (Kremer et al., 2009), and avoid social supports and activities (Androff et al., 2011).

Detention can result in long-lasting mental health consequences for the person subjected to incarceration (Zwi et al., 2017), including any remaining family members, especially children (Dreby, 2012). During and after detention, adults have higher rates of depression, anxiety, PTSD, and lower quality of life than non-detained persons (Coffey et al., 2010; von Werthern et al., 2018), and their children experience poor eating and sleeping habits, higher instances of crying and anxiety as well as more withdrawn, angry, clingy, and aggressive behaviors (Gulbas & Zayas, 2017; Zayas, 2015). Children of detained parents are also affected physiologically, leaving them more susceptible to adverse health outcomes (Wood, 2018). The detention of a caregiver leaves children much more likely to experience housing and food insecurity (Chaudry et al., 2010), often leaving the remaining single parent dependent upon state assistance for basic needs (Patler, 2015; Scheuths, 2018). Likewise, abruptly removing immigrant employees from the labor force negatively impacts local economies, especially in smaller municipalities (Patler & Golash-Boza, 2017).

Furthermore, individuals in detention facilities often face deplorable conditions and human rights abuses. Detained noncitizens often lack access to appropriate hygiene,

receive inadequate healthcare, and, in some cases, encounter severe illness and even death (Grassini et al., 2021). Medical abuses such as forced sterilizations (O'Toole, 2021) and miscarriages due to unsafe restraint techniques (Ellmann, 2019) have also been reported at multiple ICE facilities. Insufficient access to mental healthcare, inadequately trained staff, and lack of accountability also underscore issues in addressing and preventing suicides while in ICE detention (Marquez et al., 2021). An evaluative report by the Office of Inspector General (OIG, 2019) supports these claims, finding that "...ICE does not adequately hold detention facility contractors accountable for not meeting performance standards"(p. 7) despite thousands of documented "deficiencies and instances of serious harm to detainees that occurred at these detention facilities" (p. 15).

Legal Coercion

In addition to direct consequences, immigration detention can inhibit access to legal representation (Eagly, 2017; Eagly & Shafer, 2020) and lead to a higher likelihood of receiving removal decisions that result in deportation (Markowitz, 2009; Marouf, 2017). Detained noncitizens are also more likely to sign voluntary departure orders (Kremer et al., 2009; Ryo, 2019a). Historical analyses suggest that detention may have been used to preserve agency resources and expedite deportation processes for over a century by prompting noncitizens to "self-deport" (Goodman, 2021), even when they may have valid claims to remain in the country (Martin, 2012; Ryo, 2019b; Taylor, 1997). Detained migrants are thus often forced to choose from two potentially devastating outcomes: imprisonment or deportation.

Deciding to Detain: Discretionary or Arbitrary?

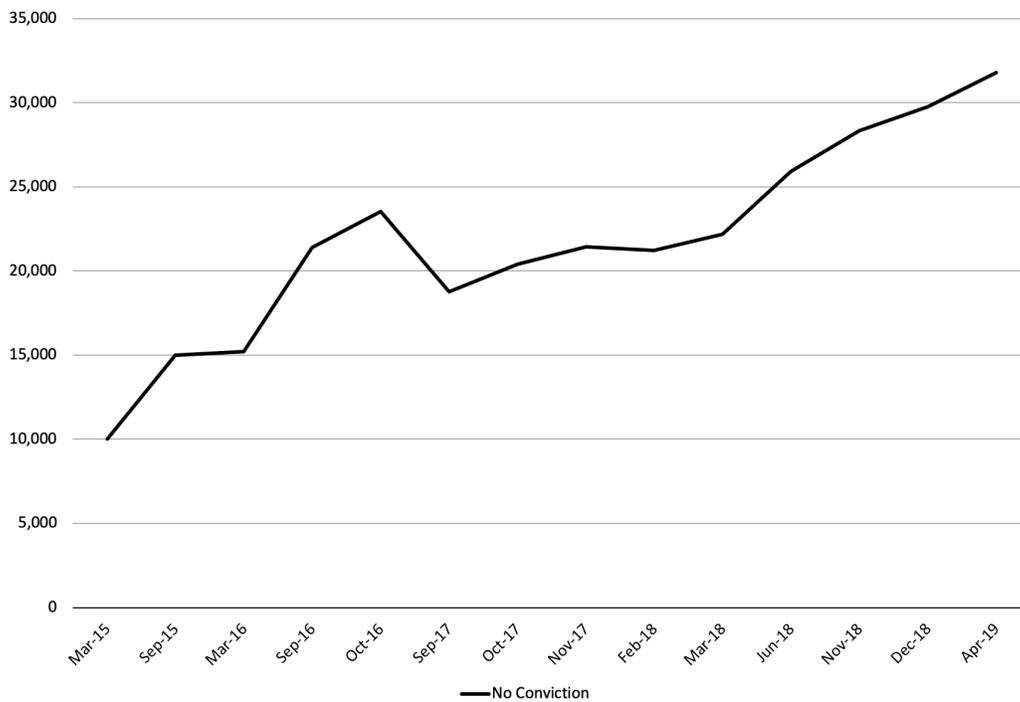
ICE is granted prosecutorial discretion for "a broad range" of decisions "at all stages of the enforcement process," including "whom to detain or release" (Johnson, 2014, p. 2). In the case of detention, this discretion is most salient among noncitizens for whom mandatory detention does not legally apply (GAO, 2022). ICE claims to decide whom to detain on an individual basis by assessing criminal and immigration violation history, community ties, suspected flight risk, and assumptions about an individual's threat to public safety (ICE, n.d.). Custody determinations are conducted through the Risk Classification Assessment system under the premise of a fair and balanced weight of the factors mentioned above. However, in addition to being time-consuming and resource-intensive, the OIG (2015) determined that the risk assessment was "not effective in determining which aliens to release or under what conditions" (p. 1, Exec. Summary OIG-15-22), and an evaluation by Koulis (2016) found that noncitizens were frequently detained without justification. Perhaps most telling is an account by Dora Schriro, former Senior Advisor to DHS Secretary Napolitano on Detention and Removal and ICE's first Director of the Office of Detention Policy and Planning:

ICE has never assessed risk correctly or responded proportionately, and despite its unfounded exaggerations as to detainees' dangerousness, many had never been convicted of a crime before they were detained, cause no trouble during their

detention, and do not engage in criminal activities of any kind after their release. (Schriro, 2021, p. 2)

Tens of thousands of individuals are incarcerated in detention centers every day who are not subject to mandatory detention (TRAC, 2022b). According to immigration law, detention is mandatory for noncitizens convicted of specific subsets of felony and misdemeanor criminal convictions and criteria, although not all criminal convictions apply. Not only was the average daily detention population accelerating annually before the onset of COVID-19, but the number and proportion of detained noncitizens with no criminal convictions were as well. A report by TRAC (2019) shows that noncitizens with no criminal history were increasingly detained, from an average of 9,999 (39%) per day in 2016 to 31,778 (64%) in 2019 (see Figure 1 below). Further, recent data show that even though total detention numbers are lower since the onset of COVID-19, approximately 70% of the detained population have had no criminal convictions or pending charges (TRAC, 2022b), underscoring ICE’s authority to discretionarily incarcerate noncitizens.

Figure 1. *Daily Detention Population of Noncitizens with No Criminal Conviction History (March 2015 - April 2019)*



Note. Each data point consists of a “snapshot” of the total number of individuals in ICE detention recorded on the month's final day as collected via TRAC’s FOIA requests. Numbers for some months were unable to be obtained. Data does not include persons detained by Customs and Border Protection nor minors in custody of the Office of Refugee Resettlement (TRAC, 2019).

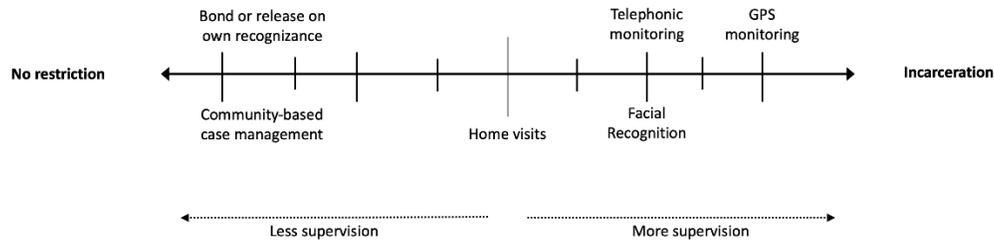
There is some indication of arbitrary detention practices alluded to in ICE reporting documents as well, referring to internal agency-appointed bed quotas. For example, a 2015

budget proposal to DHS indicates that some “lower-risk, non-mandatory aliens” may be “detained only to satisfy a higher mandated average daily detention level” (ICE, 2015, p. 4). The passage shows that at least a substantial proportion of noncitizens are detained for reasons not pertaining to public safety or individual risk but rather to fulfill internal agency quotas, presumably to maintain desired budget appropriations.

Alternatives to Mass Human Confinement

Many other viable means are available for managing immigration. Once a person has been incarcerated in a detention center, they may be granted relief from deportation in their removal hearing and released (extremely rare), voluntarily depart the country, or, in most cases, be deported. Otherwise, noncitizens will remain in custody unless approved for parole, bond, or release on either Orders of Own Recognizance or Orders of Supervision, which may also be supplemented with enrollment in an alternative to detention (ATD) program (GAO, 2022). ATDs can be defined as “...any law, policy or practice by which persons are not detained for reasons relating to their migration status” and typically allow noncitizens in immigration proceedings to remain in the community until their case is decided (IDC, 2015, p. II). Many variations have been proven effective at preventing flight and maintaining mandated court appearances, exhibit much lower operating costs than detention, and still allow the government to achieve various levels of compliance for noncitizen program participants (GAO, 2018; Schriro, 2009, 2015).

Common forms of alternatives may still include restrictive elements, such as location monitoring ankle devices (GPS) as well as telephonic and facial recognition reporting technology, while others are less intrusive and stigmatizing such as release on one’s own recognizance or parole (Schriro, 2009). The most promising method is, however, a case management approach that strives to minimize deprivation of individual liberty while maximizing the ability to comply with immigration court requirements (IDC, 2009, 2015; National Immigrant Justice Center [NIJC], 2010; Edwards, 2011). A continuum of least restriction is ideal, given that most noncitizens will be suitable for the least restrictive methods or require no supervision at all (Schriro, 2021). As seen in Figure 2, liberty is not conceptualized as a binary decision between confinement and no confinement. Rather, it must be conceptualized along a continuum spanning the boundaries of no restriction through incarceration with a variety of alternative programming situated within. Community-based case management is one of the least restrictive options currently available among known alternatives to incarceration.

Figure 2. *Continuum of Least Restriction and Supervision for Alternatives to Detention*

Case Management Programs

Despite several promising studies conducted globally, the literature on case management-centered programs is still relatively sparse. While the United States has yet to adopt a full community-based case management model, a pilot program featuring some elements of the approach was trialed by ICE between January 2016 to June 2017. The short-lived Family Case Management Program (FCMP) consisted of 952 heads of households with 1,211 children (2,163 total) noncitizen participants and was comprised of the following three features coordinated by a case manager: 1) referrals to resources such as English classes and legal, food, and medical assistance; 2) legal orientation programs; and, 3) frequent reporting requirements intended to reinforce important information to each individual's immigration case (Singer, 2019).

FCMP was exceptionally efficient, demonstrating 99% participant compliance rates with both ICE monitoring requirements and immigration court proceedings (Singer, 2019). Planned for five years, FCMP was terminated on the grounds that it was more expensive than other forms of high-surveillance alternatives even though it remains considerably less expensive than detention. The successes of FCMP influenced ICE to incorporate case management into its other ATD programs; however, it mostly supplements existing ICE surveillance methods as opposed to being a standalone program.

Other examples include Australia's Community Assistance Support Programme which operates under the rationale that treating people with dignity and fairness will result in greater compliance and efficiency throughout the immigration process (Edwards, 2011). The program manages asylum-seekers and other unauthorized migrants by assessing the individual's needs and unique situation in addition to potential risks of flight or perceived dangers to the community (IDC, 2015). The program implemented comprehensive case management, resulting in 93% (n=918) and 95% (n=596) compliance rates with mandated court hearings, all while maintaining operating costs that were less than one-third of detention (IDC, 2009). Consequently, the program expanded into a nationwide method of migration management in 2009 (NIJC, 2010).

Of the various alternative models evaluated, programs providing accessible information about rights and responsibilities, access to legal support, and basic needs assistance while prioritizing dignified, humane treatment obtain the highest rates of compliance and cooperation (Edwards, 2011; Ly et al., 2021). Pro-immigrant and human

rights organizations continue to advocate for case management alternatives in the face of formidable hurdles. Yet, heightened polarization, poor governmental data collection methods, the limited scope of pilot programs, and lack of political will attached to the issue make for a challenging environment to implement large-scale change.

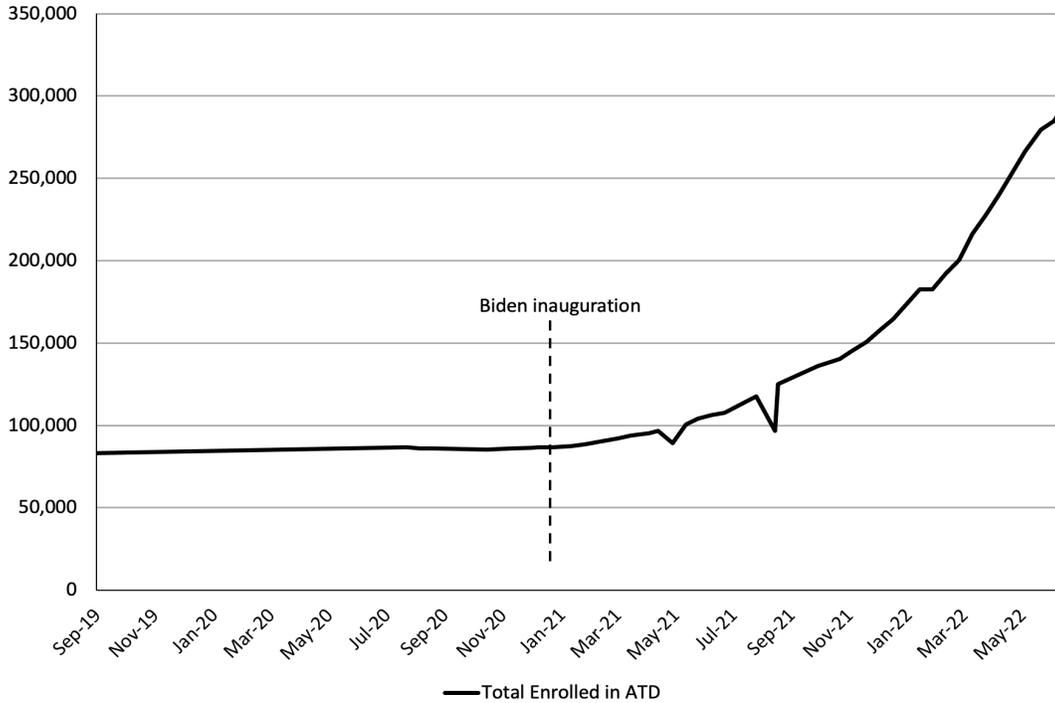
Alternatives “to” vs. Alternative “Forms of” Detention

Community-based case management (CBCM) is not a model for surveillance or enforced compliance. Rather, it is a comprehensive, client-centered program that promotes well-being while simultaneously increasing court compliance rates without additional coercive leverage or invasive supervision. The case management approach is deliberately dissimilar to other forms of supervised release because the level of support and concern for the client’s autonomy and dignity is a priority (IDC, 2015). The majority of alternatives currently in practice use methods that are deeply infused with carceral logics, such as global positioning systems (GPS) technology (ankle bracelets). Such forms of surveillance and control can result in both material and social harm to those forced to wear them (Martinez Aranda, 2022; Truong, 2022). These modes of release are more akin to alternative forms of detention.

Shortly after assuming office, the Biden administration implemented the Case Management Pilot Program to provide resources for noncitizens in removal proceedings, including access to legal information and other crucial support (Department of Homeland Security [DHS], 2021). The program adopts a similar framework as other successful community-based migration management programs with one exception. Instead of implementing CBCM as a substitute for detention as intended, much of the case management provided by ICE augments current alternative forms of detention (DHS, 2021). This is, by all means, intentional, as noted by the Congressional Research Service: “According to DHS, these programs have enhanced ICE’s ability to monitor more intensively a subset of foreign nationals released into communities” (Singer, 2019, p. 6).

Thus, despite the modest reduction of overall detention numbers since the onset of the COVID-19 pandemic, enrollment in various ICE surveillance ATDs has more than tripled since January 2021 (see Figure 3). These alternative forms of detention extend the carceral state’s reach into noncitizen communities of color and disrupt access to established social capital networks (Martinez-Aranda, 2022). In contrast, CBCM is a genuine, independent alternative to detention when carefully implemented as detailed in the following section.

Figure 3. *Total Enrolled in ICE Alternatives to Detention Programs: September 2019 to July 2022*



Note. ICE’s ATD programs consist of three different types of surveillance technologies: 1) GPS monitoring, 2) facial recognition, and 3) voice recognition. (TRAC, 2022a)

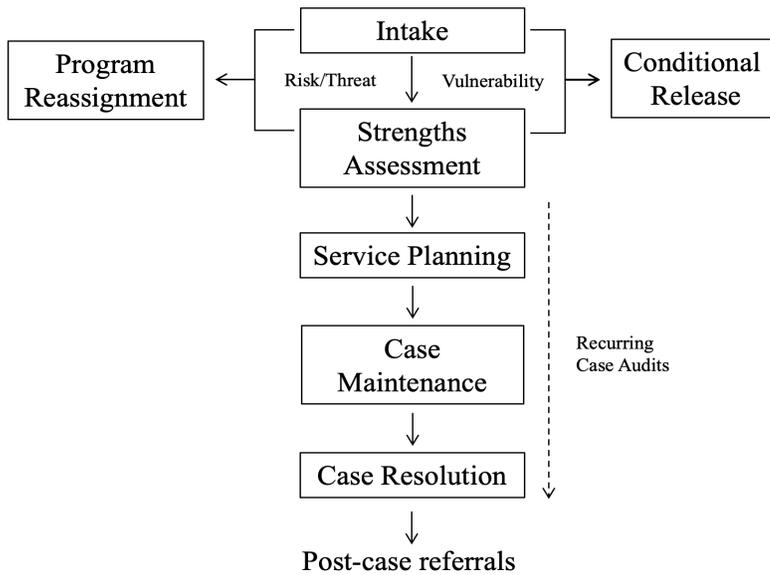
Foundations of Community-Based Case Management

Case management for noncitizen individuals and families has been integral to the field of social work since its origins. Indeed, Mary Richmond, one of the original proponents for the professionalization of social work, focused much of her efforts on developing immigrant integration strategies (Lieberman, 1990; Richmond, 1917) and much of early settlement house clients were newly arrived immigrants (NASW, 2018). The CBCM approach extends this tradition, incorporating key social work principles to alleviate the harm inflicted on individuals and families subjected to incarceration while undergoing immigration legal proceedings.

The CBCM approach draws upon the International Detention Coalition’s Community Assessment and Placement Model (IDC, 2015) and adopts a decision-making assessment on a spectrum from least to most restrictive (similar to the continuum shown in Figure 2). Most importantly, CBCM maintains a presumption against detention (Sampson, 2015). Community and respect for the person are at the heart of the model, centered around supportive resources, information sharing, and coordination with court-appointed requirements.

Successful applications of community-based alternatives apply the strengths-based approach which provides a guiding, holistic framework for case management with persons facing detention and deportation. Essentially, the strengths-based approach “is a strategy for seeing” in which the case manager aids the client in identifying the various intrinsic and extrinsic resources currently available in their lives (Weick et al., 1989, p. 354). A comprehensive service plan is then co-developed with the client to preserve a degree of personal dignity and self-determination in an otherwise degrading process. The following is a brief outline of the CBCM approach as conceptualized in Figure 4.

Figure 4. *The Community-Based Case Management Process*



Intake

Intake is a preliminary screening process for collecting personal information to verify identity and previous criminal and medical histories. Intake counselors also determine the immediate risks or needs unique to noncitizen clients. For example, some individuals may be at greater risk of abuse due to their gender identity or sexual orientation (Vogler & Rosales, 2022). As a general rule, a conditional release will initially be sought for asylum seekers, individuals without criminal histories, family units, and caregivers of children or other family members (Secor et al., 2019). Minors, older adults, pregnant or nursing mothers, and those with physical and/or cognitive disabilities also receive special consideration (Capps & Meissner, 2021). Individuals assessed as high-risk, although less common, may be reassigned to other means of management if necessary, using the continuum of least restriction. Program reassignments are relatively rare because most noncitizens in custody are best suited for CBCM. As the former director of ICE’s Office of Detention Policy and Planning has stated, “most [noncitizens in ICE custody] require little or no supervision” (Schriro, 2021, p. 17). Examples of questions addressed by case managers include: “Is this individual in urgent need of protection (i.e., credible fear)?” “Do

they have children or other dependents in the community?” “Is there a *legitimate and verifiable* indication that this individual threatens public safety or national security?”

Strengths Assessment

In an immigration case management setting, the initial in-depth assessment should be implemented as soon as possible through a comprehensive process including a systematic evaluation of risk, individual vulnerability, and emergent need to avoid arbitrary detention practices (Sampson, 2015). This should include an assessment of potential client strengths which are used as a foundation for case planning while incorporating principles of self-direction, informal helping networks, community involvement, and building a strong professional relationship between the case manager and client (Brun & Rapp, 2001). Client strengths may include established access to legal aid, steady employment with a living wage, a strong social support network, and community ties.

A rare but possible outcome of the intake and assessment stages may involve the identification of an individual that must be reassigned to a more restrictive program option (Schriro, 2021). However, resorting to human confinement should only occur under the most exceptional circumstances after all other options have been considered or attempted and due process afforded.

Service Planning

Noncitizen clients may have a wide range of needs. In addition to housing or food assistance, survivors of violence may require access to trauma-informed medical and mental health services, which may impact one’s ability to function in the community or comply with legal obligations (Capps & Meissner, 2021). Perhaps the most crucial support provided by CBCM is access to legal aid. A study analyzing immigration court data between 2008 and 2018 (N=1,829,049) observed that 96% of noncitizens who had legal assistance appeared for all of their court hearings (Eagly & Shafer, 2020). However, once someone is in immigration detention, access to legal aid is substantially inhibited (Markowitz, 2009; Marouf, 2017) and legal representation is not provided (Tosh, 2022). Very few legal resources are readily available to noncitizens facing deportation unless they have the financial capacity to hire a lawyer or are fortunate enough to procure pro bono services which are typically scarce and in high demand (IRC, 2021).

Case Maintenance

A key element to successfully implementing a CBCM service plan relies on maintaining clear and consistent communication between the case manager, the client, and the immigration official(s) in charge of the removal case (Sampson, 2015). The client’s risk of misunderstanding a requirement or missing a required court appearance is more likely without a strong link between these three parties throughout the service plan. It is also recommended that case managers be unaffiliated with governmental or for-profit contractors to fortify client trust and minimize conflicts of interest (Schriro, 2021).

The service plan may take years to complete depending on court backlog and case specifics which take, on average, 859 days to complete (TRAC, 2021c). Recurrent case audits are necessary to adjust for changes in the client's support network or to maintain contact to ensure clients continue to understand court requirements (Capps & Meissner, 2021).

Case Resolution

Upon reaching a final determination in the client's removal proceedings, case termination proceeds. In the event that relief from deportation is granted, the case manager facilitates connections with local providers to maintain access to resources as necessary. If the client is appealing their removal decision, the service plan will re-open following a meeting between stakeholders and a full audit of the case. If all legal avenues to remain in the United States have been exhausted, the case manager assists the client until they depart the country, including contacting organizations in the destination country (if available) that may offer aid or protection to deported migrants (Capps & Meissner, 2021). Return counseling is an option that several European countries have implemented in order to be certain that all options for relief have been considered and to assist clients with logistical and psychological preparation for return (Sampson, 2015).

Multilevel Implications for the Field of Social Work

The disenfranchised nature of non-citizenship, coupled with policies aimed at disrupting the livelihood of immigrant communities, results in a population of considerable precarity. Given social work's professional and ethical responsibilities to systematically oppressed and marginalized peoples, the mass detention crisis is of the utmost concern.

Accredited schools of social work train undergraduate and graduate students in competencies informed by the National Association of Social Workers (NASW) Code of Ethics & Principles (Council on Social Work Education, 2015; NASW, 2023). Beyond the Code of Ethics, the Grand Challenges of Social Work were launched in 2016 to urge meaningful progress toward some of the world's most pressing social injustices (Uehara et al., 2014). Several grand challenges stress the need to address the mass detention crisis, such as the *eliminate racism* and *achieve equal opportunity and justice* initiatives (Grand Challenges for Social Work, 2022). However, the *promote smart decarceration* challenge is most directly pertinent, which decidedly calls upon the field to "reallocate resources to community-based supports," among other mechanisms, to meaningfully reduce the use of human confinement (Epperson & Pettus-Davis, 2016, p. 1). Redistributing resources from carceral modalities, such as immigration detention, to establish a community-based case management infrastructure is essential to achieving successful decarceration objectives.

To answer the field of social work's call to address the embedded systemic racism and inequality inherent to the mass detention and mass incarceration crises, we rely on several tenets of the profession to guide the pursuit toward transformative decarceration. These can be simplified into three multilevel imperatives to achieve a more effective and just immigration management system: 1) policy advocacy, 2) research, and 3) direct practice.

Beyond this call to action, additional care must be taken to ensure that the voices of those directly impacted by the policies in question are preserved in the pursuit of reform. That said, social work's professional values may directly conflict with federal immigration detention policy and practices, juxtaposing social workers between the law and their professional and ethical commitments to social justice (Furman, Ackerman et al., 2015). Historically, the field of social work has had a mixed relationship with the carceral state, at times contributing to its proliferation while simultaneously advocating for its reform (Toraif & Mueller, 2023). Referring to the domains of social work that have sustained harm through mechanisms of social control and white supremacist ideologies, carceral social work has perpetuated the subjugation of systemically marginalized and oppressed groups (Jacobs et al., 2021). Thus, a social work praxis that maintains a presumption against human confinement and a commitment to uphold the dignity and worth of the person, must be at the forefront of change.

Policy Advocacy

Policy-focused advocacy, described as social work's "great tradition," has a rich history within the profession in which Jane Addams herself called upon social workers to concentrate efforts on influencing policy change (Schneider & Netting, 1999, p. 349). Reducing the demand for detention by passing sensible legal immigration policies would alleviate much of the disruption and violence associated with mass detention and deterrent immigration enforcement policies. While elusive, the pursuit of comprehensive immigration reform that considers humanitarian responsibilities, as well as market demands of the US economy, is imperative. Overall, a detention-focused advocacy agenda will address the immediate and long-term changes necessary to mitigate the current state of mass immigration detention. It is incumbent upon the field of social work to identify, challenge and advocate for the elimination of anti-immigrant and inhumane policies (Franco, 2020).

Immediate Priorities

The mass release during the COVID-19 pandemic emphasizes that incarcerating noncitizens for administrative purposes is: 1) a choice and 2) unnecessary. ICE can return discretionarily detained people to their communities in the same way as at the height of the pandemic, which would not require an act of Congress. Therefore, the release of all whose incarceration is not mandated under current immigration law is an immediate policy priority.

Advocates can pursue the expansion of CBCM modalities to replace detention while opposing more restrictive surveillance technologies (e.g., ankle monitors) that serve as extensions of carceral control and "extended punishment" (Martinez Aranda, 2020, p. 74). As mentioned previously, the Biden administration's moderate reduction in immigration detention is overshadowed by tripling the number of enrollments in restrictive surveillance alternatives and continued growth of enforcement funding. For this change to occur, DHS must alter internal policy, practice, and budgeting. For example, resources earmarked to sustain detention center operations must be reallocated to develop and expand CBCM

infrastructure. Given the much lower cost of CBCM methods, ICE operating budgets should markedly decrease with these changes.

Agency procedures must also be altered, most notably the ICE risk assessment, which has been dubiously restrictive and skewed toward confinement as a default (Koulisch, 2016; Schriro, 2021). Likewise, determining risk classification must not be the sole responsibility of ICE as it presents a conflict of interest, given that agency funding often hinges upon the number of individuals detained (Capps & Meissner, 2021).

Long-Term Priorities

INA Amendment. Primarily, policy advocates must focus on amending the INA to eliminate the aggravated felony construct and its companion, the mandatory detention and deportation provision. These laws systematically punish noncitizens, especially Black and Latinx immigrants from lower socioeconomic backgrounds, by funneling them into detention and deportation and reproducing structural inequalities (Tosh, 2022). Advocates can pursue revising the legal meaning of “custody” to encompass humane alternatives to detention programs (Schriro, 2021). Incorporating other forms of ICE supervision would make compliance with restrictive legal statutes more realistic and offer more flexibility to reduce the number of persons incarcerated. Some legal scholars suggest that DHS may have grounds to interpret the term more broadly, allowing the inclusion of alternatives into its meaning at the agency level without the need for legislative action (Torrey, 2015). Secondly, dismantling crime-based removal partnerships is also a necessary target of reform, as has been addressed by many municipal sanctuary ordinances. Crime-based removal partnerships work in tandem with the inflated legal definition of the aggravated felony and mandatory detention provisions to establish a prison-to-detention-to-deportation pipeline (Das, 2018; Macías-Rojas, 2016). They also perpetuate the spurious good-versus-bad immigrant narrative and reinforce the false trope of associating dangerousness with immigrants (Das, 2020).

Local Legislation. Given the challenges associated with amending federal legislation, particularly the polarization that has deadlocked the United States Congress on many issues related to immigration, advocates may also pursue state-level reforms. While state legislation cannot eliminate mandatory immigration detention or change the aggravated felony construct, creatively enacting state-level laws may mitigate resulting harm.

Universal Representation. Due to the gravity involved with the revocation of an individual’s freedom and the personal and familial damages that can result, due process is a necessity. New York demonstrates how local governments can make meaningful changes in the lives of those directly impacted by immigration detention without amending federal legislation. Funding for the New York Immigrant Family Unity Project began in 2013, offering universal representation for noncitizens in deportation proceedings if their income falls under 200% of the federal poverty line (Stave et al., 2017). An evaluation of the program (n=1,772) found that representation was associated with favorable outcomes in removal hearings, considering that just 4% of noncitizens’ deportation cases resulted in relief prior, but increased to a substantial 48% for noncitizens represented by the program (Vera Institute of Justice, 2017). Legal representation also notably impacted detention

rates, nearly doubling the release of individuals who would have otherwise been confined in detention centers while litigating their deportation cases (Stave et al., 2017).

Statewide Ban. Rather than appointing universal representation, the Illinois Way Forward (IWF) Act (SB 0667) prohibits local and state governments from contracting with ICE to detain noncitizens (Illinois.gov, 2021). Many individuals who would have remained in custody without its passage were released. Others were transferred to detention centers in neighboring states given that ICE retains federal authority to transfer individuals for whom they deem confinement necessary (Ballesteros, 2022). The first statewide ban on immigration detention, the IWF is an unprecedented advance in the pursuit of a more humane immigration management system.

Research

ICE data on immigration detention and alternatives are sparse and difficult to access (GAO, 2018). Currently, the most comprehensive and accessible data source on detention is provided by the Transactional Records Access Clearinghouse (TRAC) Immigration Project, which offers detailed information obtained from ongoing Freedom of Information Act requests (2021a). However, agency data are inconsistently collected and enrollment in programs is often sporadic or terminated before removal decisions are reached, preventing sufficient evaluation of program efficacy. As a fundamental first step, ICE must collect comprehensive data for thorough program evaluation, achieve more consistent enrollments in alternatives, and increase its availability to the public for greater transparency.

Second, at the organizational level, comprehensive systematic evaluations of all programming using case management as an alternative to human confinement are necessary (Singer, 2019). Findings will support cross-national comparative studies with the various case management versions implemented in other countries to identify successes and failures that may improve delivery and promote the expansion of CBCM programming domestically. However, researchers should approach programs implementing case management to supplement carceral methods cautiously given that they may impact the validity of results. The premise of CBCM relies upon its effectiveness as a standalone service to maximize the autonomy and dignity of persons, not as an auxiliary component to support restrictive surveillance and supervision technologies.

Third, at the individual level, lived experiences are an essential window into program performance. Focusing research efforts on lived experiences, including family systems and practitioner insight, will pinpoint potential areas of improvement, including high-functioning features that may be under-resourced. This inquiry must extend across demographic groups to holistically understand how the CBCM approach diversely impacts community well-being and cohesion.

Direct Practice

While the CBCM model may be new to social work per se, its case management roots are inextricably familiar. Effective case managers will require a broad yet specialized understanding of the complex immigration laws and processes when working with

noncitizen communities (Potocky & Naseh, 2019). Franco (2020) suggests that social work practitioners need to focus on fortifying community level bonds and cultivating a sense of empowerment among Latinx clients who are subjected to the destabilizing stressors of deportation and detention threat.

A wealth of knowledge exists among refugee resettlement case managers whose skills and experience would translate well to CBCM and bring many established resource networks. Furthermore, social workers assisting noncitizens undergoing deportation proceedings “bring unique knowledge and skills that enhance legal teams’ representation of immigrants,” which may impact removal decisions (Zayas, 2022, p. 33). As such, CBCM caseworkers can readily incorporate formal training to best support noncitizen clients in navigating their court requirements. Such practitioners are ready for the unique challenges that CBCM may present. Social work’s professional values, especially regarding immigration rights and decarceration, prepare workers for challenging federal immigration detention policy and practices, while grounding them in professional and ethical commitments to a more fair, just, and humane society.

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