

Detention Watch Network submits the following testimony to the Immigration and Citizenship Subcommittee of the House Judiciary Committee for the hearing on “The Expansion and Troubling Use of ICE Detention.” Detention Watch Network is a national membership organization building power through collective advocacy, community organizing, and strategic communications to abolish immigration detention in the United States.

I. Size and Scope of the System

The Department of Homeland Security (DHS) operates a sprawling network of more than 200 long term (more than 72 hour) immigration jails across the country that are managed and overseen by Immigration and Customs Enforcement (ICE). As of September 14, 2019, ICE is detaining 51,814 individuals after reaching a historic high of over 55,000 people in detention in August of 2019.¹ This massive detention system is a recent development, as detention was rarely used prior to the 1980s. However, spurred by migration of individuals from Haiti and Cuba in the 1980s, the US began to detain migrants both as a way of managing immigration cases as well as a tactic to deter people from migrating in the first place.²

The ICE detention system arbitrarily detains tens of thousands of people every day in inhumane and punitive conditions. It is a rapidly expanding system that is wholly unaccountable and incentivizes profiteering and politics over human dignity and due process.

II. Perverse Financial Incentives and Dubious Contracting

In its current form, the system is largely operated by private prison companies and local and county jails. As of 2017, approximately 71% of people in immigration detention were held in privately operated jails, and 29% were held in jails where ICE is contracting with a local or county government, through an Intergovernmental Service Agreement.³ In both cases, private prison companies and local/county jails are motivated by profit rather than upholding human dignity.

Private prison companies are incentivized to cut corners, like cutting medical staffing and denying care, for a greater payout to shareholders, putting migrant lives at risk.⁴ Despite this risk, the agency’s reliance on private prisons continues to grow. Since February of this year, ICE has eight new contracts with detention centers in Louisiana and Mississippi alone, all operated by private prison companies.⁵

¹ ICE posts current detention data on its website at <https://www.ice.gov/detention-management#tab2>.

² Ana Raquel Minian, The New York Times, “America Didn’t Always Lock Up Immigrants,” Dec. 1, 2018, <https://www.nytimes.com/2018/12/01/opinion/sunday/border-detention-tear-gas-migrants.html>.

³ Tara Tidwell Cullen, National Immigrant Justice Center, “ICE Released Its Most Comprehensive Immigration Detention Data Yet. It’s Alarming,” (March 2018), <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

⁴ Carl Takei, Michael Tan, Joanne Lin, American Civil Liberties Union, “Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons,” (September 2016), https://www.aclu.org/sites/default/files/field_document/white_paper_09-30-16_released_for_web-v1-opt.pdf

⁵ Noah Lanard, “Congress told ICE to Detain Fewer People. Instead it Keeps Adding Private Prisons,” Mother Jones, August 22, 2019: <https://www.motherjones.com/politics/2019/08/congress-ice-louisiana-mississippi-private-prisons/>

Local and county jails have the same perverse incentives. The Department of Homeland Security's Office of the Inspector General (OIG) found that conditions in county jails that contract with ICE to augment municipal revenue prove just as harsh, if not worse, than private prisons.⁶ Last year, it was reported that a Sheriff in Etowah County, Alabama, the site of one of the harshest immigrant detention facilities in the country, retained over a million dollars in funds intended for food provision as personal profit.⁷

Yet ICE relies on the agility of private prison companies to move quickly, and regularly engages in concerning contracting practices in its effort to massively expand the detention system. In July of 2018, ICE modified the existing Intergovernmental Service Agreement with the city of Eloy, Arizona and private prison company CoreCivic to hold 1,000 additional adults at the La Palma Correctional Center.⁸ ICE used the city of Eloy as a "middleman" to broker this agreement between CoreCivic and La Palma, repeating a technique the agency previously used to establish the Dilley Family Residential Center and which the Department of Homeland Security's Office of Inspector General deemed both improper and unnecessary.⁹ In the same month of 2018, ICE also entered into a contract with the Management and Training Corporation (MTC) to reopen 1,000 beds at the former Willacy County Correctional Center, in Raymondville, Texas.¹⁰ This facility had previously been shuttered twice, the last time due to a rebellion by those held there amid accounts of poor medical care, sexual abuse, and oppressive conditions.¹¹ ICE renamed the facility to the El Valle Detention Center, but it is unclear what, if any, changes were made to prevent systemic abuse from plaguing the facility once again.¹²

III. Growth of the System by Manipulation of Appropriations

The immigration detention system has expanded by over 60% in the last two years, from an average of 34,000 people in detention per day in 2016 to a current population of nearly 52,000 people.¹³ Much of this growth has been facilitated by purposeful financial mismanagement by the agency in an effort to rapidly expand immigration detention, evade congressional oversight, and avoid accountability for detention abuses. Since 2015, ICE has perfected a scheme to expand

⁶ DHS Office of the Inspector General, *Issues Requiring Action at the Essex County Correctional Facility in Newark, New Jersey*, February 13, 2019, <https://www.oversight.gov/sites/default/files/oig-reports/OIG-19-20-Feb19.pdf>.

⁷ Connor Sheets, *Here's how federal inmates made an Alabama sheriff \$1.5 million*, al.com, <https://www.al.com/news/2019/09/high-risk-of-deadly-rip-currents-along-area-beaches-through-monday.html>.

⁸ Globe Newswire, *CoreCivic Enters Into New Agreement With Federal Government to Utilize the La Palma Correctional Center*, July 24, 2018, <https://globenewswire.com/news-release/2018/07/24/1541538/0/en/CoreCivic-Enters-Into-New-Agreement-With-Federal-Government-to-Utilize-the-La-Palma-Correctional-Center.html>

⁹ DHS Office of Inspector General, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 21, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>

¹⁰ Management Training Corporation, *MTC Signs Contract with ICE to Operate Detention Facility in Raymondville*, July 18, 2018, <https://www.mtcctrains.com/wp-content/uploads/2018/07/MTC-TO-OPERATE-FACILITY-IN-RAYMONDVILLE.pdf>

¹¹ Seth Freed Wessler, *The True Story of a Texas Prison Riot*, The Nation, June 23, 2015, <https://www.thenation.com/article/the-true-story-of-a-texas-prison-riot/>

¹² Jeremy Raff, *ICE Is a Godsend for One Small Town in Texas*, The Atlantic, July 11, 2018, <https://www.theatlantic.com/politics/archive/2018/07/ice-prison-trump-immigration-crackdown/564539/>

¹³ For the most recent Average Daily Population Data, ICE typically updates its Detention Management page every two weeks at: <https://www.ice.gov/detention-management#tab2>

detention beyond its appropriation and has ignored congressional direction to live within its appropriated means and improve its “lack of fiscal discipline and cavalier management of funding for detention operations.”¹⁴

Truly, ICE’s detention expansion is not an issue of mismanagement or lack of fiscal discipline, but rather a calculated scheme to bypass congressional power. Since 2015, ICE has taken advantage of series of continuing resolutions to expand detention by using either a lump sum bonus at the start of a continuing resolution, known as an anomaly, or an advance of funding granted by the Office of Management and Budget, known as an exception apportionment. Congress then negotiates the following year’s spending based upon this elevated detention level. During the course of the fiscal year, ICE will subsequently overspend its appropriated budget for detention and enforcement, typically by notifying Congress of their intent to transfer and reprogram funds from other parts of DHS.

ICE is on track to use this scheme once again as we enter fiscal year 2020. Throughout a series of continuing resolutions and a partial government shutdown from October through February of last year, ICE used an exception apportionment to expand detention by approximately 8,000 people per day above its appropriated average daily population of 40,500.¹⁵ Then in mid-February, Congress signed the fiscal year 2019 supplemental appropriations act which appropriates a historic high average daily population of 45,274.¹⁶ Congress made clear that the elevated average daily population in the FY19 supplemental appropriations package was to course correct for ICE’s overspending and instructed the agency to “glide down” to 40,500 by the end of the fiscal year. Yet, ICE expanded to over 55,000 people detained per day, precisely by using its transfer and reprogramming authority to cover for the additional 16,000 beds above its appropriated number. Specifically, ICE transferred \$116 million from CBP, Coast Guard and FEMA in order to compensate for this massive expansion.¹⁷

IV. Inhumane Conditions

ICE’s manipulation of the federal appropriation’s process is done with the explicit intent to grow the system at a rapid rate rather than invest in improving conditions or caring for those in its custody. Since 2003, 195 people have died in ICE detention; and eight people have died in ICE custody in fiscal year 2019 alone.¹⁸ Abuse and neglect is endemic to the massive ICE detention system. The DHS OIG has released reports decrying “egregious” food quality and safety issues,

¹⁴ See House Report, Division F (Homeland Security), Consolidated Appropriations Act of 2017, 131 Stat. 135, Public Law No. 115-31, May 4, 2017, <http://docs.house.gov/bills- thisweek/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>.

¹⁵ Julia Ainsley and Heidi Przybyla, *Why the Trump admin wants more detention space for migrants and Democrats want a limit*, NBC News, February, 11, 2019, <https://www.nbcnews.com/politics/immigration/why-ice-wants-more-detention-space-migrants-democrats-want-cap-n970071>

¹⁶ Dara Lind, *Congress’s deal on immigration detention, explained*, Vox, February 12, 2019, <https://www.vox.com/2019/2/12/18220323/immigration-detention-beds-congress-cap>

¹⁷ Julia Ainsley and Frank Thorp V, “Trump admin pulling millions from FEMA disaster relief to send to southern border,” NBC News, August 27, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-pulling-millions-fema-disaster-relief-send-southern-border-n1046691>

¹⁸ Detention Watch Network, *Another death in ICE custody after ICE grabs \$271 million from FEMA and other DHS agencies*, September 13, 2019, <https://www.detentionwatchnetwork.org/pressroom/releases/2019/another-death-ice-custody-after-ice-grabs-271-million-fema-other-dhs>

hygiene issues so severe that they cause health risks for individuals in detention, and limited basic clothing and hygiene supplies.¹⁹

This endemic abuse and neglect impact all individuals detained in ICE jails, but disproportionately impacts vulnerable populations. Autopsy reports from the death of trans asylum seeker Roxana Hernandez Rodriguez found that she died due to lack of medical treatment but also exhibited “deep bruising” indicative of physical abuse that she likely endured while detained in the Cibola County Correctional Center in New Mexico.²⁰ Roxana’s experience is not an anomaly, but rather symptomatic of the callousness of an agency working on behalf of an administration dedicated to cruel anti-immigrant policies.

V. Ineffective Inspections and Total Lack of Accountability

As the ICE detention system has been plagued by grossly poor conditions and mounting deaths, the agency has been totally unable to turn the tide due to its failure to invest in robust inspections or meaningful accountability. Recent investigations into deaths in ICE detention have found that in nearly half, violations of medical standards or medical neglect were contributing, or even causal factors.^{21 22 23} Despite this, in all but one case, the facility passed its inspection immediately before and immediately after the death occurred. The Department of Homeland Security’s Inspector General has found that ICE’s inspections process is entirely inadequate with some deficiencies unaddressed for years, and numerous inspections of individual facilities have found deficiencies severe enough to threaten the health and safety of detained people.^{24 25 26} Further, even when deficiencies are found in inspections, ICE routinely issues waivers to provide

¹⁹ Department of Homeland Security Office of the Inspector General, *Concerns About ICE Detainee Treatment and Care at Four Detention Facilities OIG 19-47*, June 3, 2019, p. 4, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

²⁰ Scott Bixby, Betsy Woodruff, Trans Woman Was Beaten Before Death, Autopsy Finds, *The Daily Beast*, November 26, 2018, https://www.thedailybeast.com/trans-woman-roxsana-hernandez-rodriguez-beaten-in-icecustody-before-death-pathologist-finds?source=TDB&via=FB_Page&fbclid=IwAR14MDowg4-edLHzaIzXo1tLkHIo4r1efMhLE5F5tIIPXi0bw3xmaxmE3c

²¹ Human Rights Watch, *Code Red: The Fatal Consequences of Substandard Medical Care in Detention*, June 20, 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>

²² American Civil Liberties Union, Detention Watch Network, National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths In Detention*, February 2016, <https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>

²³ Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, May 8, 2017, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>

²⁴ DHS Office of the Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 26, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>

²⁵ DHS Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities*, December 11, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>

²⁶ DHS Office of the Inspector General, *Management Alert – Issues Requiring Action and the Adelanto Processing Center in Adelanto, California*, September 27, 2018.

exemptions rather than penalizing contractors for failing to meet the relevant detention standards.²⁷

VI. Solutions

As the Immigration and Citizenship Subcommittee of the House Judiciary Committee considers the above testimony as well as the testimony from policy experts and people with experience in the detention system, Detention Watch Network sincerely urges committee members to consider the reports of abuse, neglect, mismanagement and callous cruelty not as anomalies, but as basic tenets of the immigration detention system. The alarming death toll in ICE detention underscores that the immigration enforcement system is plagued by egregiously poor conditions, a lack of accountability and a culture of violence and secrecy. As such, it is not a system that can be reformed through additional funding or minor changes to policy. Rather, it is a system that needs to be dismantled as the United States reimagines our approach to migration and works to build a society that is centered on dignity, freedom and justice. Detention Watch Network proudly endorses the Dignity for Detained Immigrants Act, H.R., 2415, an important step to provide accountability and protect the health and safety of those in ICE custody.

²⁷ DHS Office of the Inspector General, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, January 29, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>