

House Judiciary Committee Immigration Subcommittee Detention Oversight Hearing Briefing Memorandum

To: Members of the House Judiciary Committee, Immigration Subcommittee
From: Center for Victims of Torture; Detention Watch Network; Freedom for Immigrants;
National Immigrant Justice Center; Southeast Asia Resource Action Center
Date: September 17, 2019
Re: Immigration Detention in the United States—a Primer

Introduction

The purpose of this memorandum is to provide members of the House Judiciary Committee’s Immigration Subcommittee with a general overview of the immigration detention landscape of the United States in preparation for the upcoming HJC hearing on detention. The memo includes an analysis of key issues within the immigration detention system, focused primarily on the long-term (i.e. more than 72-hour) facilities run by Immigration and Customs Enforcement (ICE). The memo also includes recommendations for oversight measures that members of this committee and elected officials at large can take to alleviate the identified issues.

Table of Contents

I.	Who is Detained by ICE	1
II.	Corruption in Contracting and Sham Inspections	3
III.	Fiscal Mismanagement	7
IV.	Facility Conditions/Rights Abuses/Deaths	9
V.	Detention of Vulnerable Populations	17
VI.	What Members of Congress Can Do	21

The drafting of this memo was a collaborative effort by various advocacy groups.¹ For questions or more information on any of the topics covered in the memo, please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org.

I. Who is Detained by ICE?

As of August 31, 2019, ICE held 52,930 individuals in immigration detention facilities.² This number is so historically unprecedented as to represent a marked shift in the United States’ approach to migration management. Prior to the 1980s, the United States government rarely

¹ The following individuals contributed to this memo: Amy Fischer, Sarah Gardiner, Andrea Carcamo, Kham Moua, Heidi Altman, and Haddy Gassama.

² Prompted by heightened reporting requirements in recent appropriations bills and accompanying reports, ICE posts current detention data on its website at <https://www.ice.gov/detention-management#tab2> and uploads facilities lists at <https://www.ice.gov/facility-inspections>.

jailed individuals for alleged violations of the civil immigration code.³ This changed in the late 1980s, as the use of detention increased significantly after the government authorized the indefinite detention of Haitian asylum seekers at Guantanamo Bay in 1991.⁴ Using many of the same structures that were fueling mass incarceration of communities of color, the United States started locking up immigrants at unprecedented levels.⁵ Fueled by profit and fear, the immigration detention system quickly and massively expanded. The number of individuals locked up in immigration detention skyrocketed from an average of 7,000 per day in 1994 to the more than 50,000 we see today.

Migrants in ICE custody are detained during the pendency of immigration court or appellate proceedings to determine if they can remain lawfully in the United States or are subject to removal. While some individuals in detention have access to bond hearings, many are subject to “mandatory” or no-bond detention, without the possibility of individualized consideration of their detention.⁶ Those subject to mandatory detention include arriving asylum seekers who have not yet had their threshold interview to determine asylum eligibility, and most immigrants facing removal proceedings on the basis of involvement in the criminal legal system.⁷

People find themselves in ICE custody through two primary channels:

1. Individuals apprehended at the airport, border, or who present themselves at any port of entry are transferred to ICE custody by Customs and Border Protection (CBP) if they express a fear of return or have another claim to lawful status in the United States. As of August 2019, 66% of the population in ICE custody was originally apprehended by CBP.
2. Many individuals are taken into custody from the interior of the United States, including those who are undocumented or who ICE alleges to have violated a term of their lawful permanent residence, or other lawful status, in the United States. Especially under the Trump administration, ICE has largely abandoned discretion in its interior apprehensions, frequently arresting long-time community members in their homes,⁸ while they are in the

³ See 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>.

⁴ Lenni P. Benson, *As Old As The Hills: Detention and Immigration*, 5 *Intercultural Hum. Rts. L. Rev.* 11, 39-40 (2010). https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1416&context=fac_articles_chapters; A. Naomi Paik, *US Turned Away Thousands of Haitian Asylum-Seekers and Detained Hundreds More in the 90s*, *The Conversation* (June 28, 2018), <https://theconversation.com/us-turned-away-thousands-of-haitian-asylum-seekers-and-detained-hundreds-more-in-the-90s-98611>.

⁵ Minian, *supra* note 3.

⁶ For more information, see Detention Watch Network, *Facts About Mandatory Detention*, <https://www.detentionwatchnetwork.org/sites/default/files/Mandatory%20Detention%20Fact%20Sheet.pdf>.

⁷ *Id.*

⁸ William Lopez, *Truth Out*, “ICE Raids Make Families Afraid to Leave Their Homes,” Jan. 2019, <https://truthout.org/articles/ice-raids-make-families-afraid-to-leave-their-homes/>; Khalil A. Cumberbatch, *The Marshall Project*, “The Day ICE Knocked on My Door,” Feb. 2018, <https://www.themarshallproject.org/2018/02/01/the-day-ice-knocked-on-my-door>.

process of complying with mandatory check-ins at local ICE offices,⁹ on their way to schools and other safe spaces,¹⁰ and in their places of business and employment.¹¹ For people who are detained by ICE following interactions with the criminal legal system, ICE detention is separate and apart from any criminal proceedings—and typically occurs after an individual’s criminal case has been resolved and they have completed their sentence. As of August 2019, 34% of the detained population was originally apprehended by ICE.

II. Corruption in Contracting and Sham Inspections

A. Types of ICE Contracts and Facilities

“Immigration detention” refers to a wide variety of jails and prisons governed by different types of contracts. Generally, ICE utilizes the following five types of contracting mechanisms:¹²

1. *Service Processing Centers (SPCs)* are owned by ICE and are generally operated by contract detention staff. The Department of Homeland Security (DHS) Office of Inspector General (OIG) reports that at the end of 2017, approximately 9% of the overall immigration detention population was held in five SPCs.
2. *Contract Detention Facilities (CDFs)* are owned and operated by private prison companies that contract directly with ICE. DHS OIG reports that at the end of 2017, approximately 19% of the overall immigration detention population was held in eight CDFs.
3. *Non-Dedicated Intergovernmental Service Agreements (IGSAs)* are contracts between local or county jails and ICE allowing for the detention of individuals for immigration purposes within city or county jails. DHS OIG reports that at the end of 2017, approximately 25% of the overall immigration detention population was held in 87 non-dedicated IGSAs.
4. *Dedicated IGSAs (DIGSAs)* are contracts between local governments and ICE for facilities which house only individuals in ICE custody. DHS OIG reports that at the end of 2017, approximately 28% of the overall immigration detention population was held in 11 DIGSAs.

⁹ Liz Robbins, *The New York Times*, “Once Routine, Immigration Check-Ins Are Now High Stakes,” April 2017, <https://www.nytimes.com/2017/04/11/nyregion/ice-immigration-check-in-deportation.html>.

¹⁰ Sabrina Siddiqui, *The Guardian*, “On a mission to destroy families,” July 2018, <https://www.theguardian.com/us-news/2018/jul/14/ice-trump-administration-immigrants-arrested-safe-spaces>.

¹¹ Rogelio Solis and Jeff Amy, *Clarion Ledger*, “‘Let them go!’ Tears, shock over ICE raid at Mississippi food processing plants,” August 7, 2019, <https://www.clarionledger.com/story/news/local/2019/08/07/immigration-ice-raids-hit-mississippi-food-processing-plants/1945057001/>.

¹² For a chart outlining the five types of facilities and demographic break down jailed at each, see DHS Office of Inspector General, *OIG-19-18: ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, January 2019, at p. 3, <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

5. *Marshals Service Intergovernmental Agreements (IGAs)* are facilities operated by the U.S. Marshals Service that ICE utilizes, usually pursuant to a rider on the Marshals' contract. DHS OIG reports that at the end of 2017, approximately 19% of the overall immigration detention population was held in 100 IGAs.

ICE is increasingly reliant on private prison companies and contractors to operate its detention system. In January 2019, DHS OIG reported that ICE has paid more than \$3 billion to private contractors since the beginning of fiscal year 2016.¹³ As of 2017, approximately 70% of people in immigration detention were held in privately operated jails.¹⁴ In many of these cases, ICE contracts directly with a local government who then subcontracts the facility's operations out to a private company; this "middleman contracting" is improper under federal procurement guidelines,¹⁵ and serves to dilute accountability for violations that occur within the facility walls.

B. Concerning Contracting Practices

In order to expand detention at a rapid rate, ICE has engaged in reckless contracting methods that fly in the face of government accountability mechanisms and place the lives of those in its custody in danger.

In July 2018, ICE announced a new agreement to utilize the La Palma Correctional Center in Eloy, Arizona to hold 3,060 people.¹⁶ Instead of contracting directly with CoreCivic, the private corrections corporation that operates La Palma, it appears ICE modified an existing Intergovernmental Service Agreement (IGSA) with the city of Eloy and used Eloy as a "middleman" between ICE and CoreCivic to operate La Palma. This appears to be the same technique ICE used in 2014 to establish the Dilley Family Residential Center – a practice the DHS OIG deemed both improper and unnecessary.¹⁷ According to the OIG report, by entering into a contract with a "middleman," ICE has no assurances that it is executing detention center contracts in the best interest of the federal government, taxpayers, or those detained inside. Because of ICE's agreement and legal relationship with the City of Eloy in that case, CoreCivic's performance and its ability to adequately care for those in its custody were effectively insulated from government scrutiny.

¹³ See OIG-19-18, *id.*, at p. 4.

¹⁴ 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>.

¹⁵ DHS Office of Inspector General, *OIG-18-53: Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

¹⁶ Globe Newswire, *CoreCivic Enters Into New Agreement With Federal Government to Utilize the La Palma Correctional Center*, July 24, 2018, <https://www.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>.

¹⁷ See OIG-18-53, *supra* n. 15.

Also in July of 2018, ICE reopened the El Valle Detention Facility, formerly known as the Willacy County Correctional Center, in Raymondville, Texas.¹⁸ This new facility is contracted through the Management Training Center, a private prison company with whom ICE contracted from 2006 to 2011, but that contract was cancelled after reports of substandard conditions and sexual abuse.¹⁹ These reports prompted DHS to initiate thirteen criminal investigations into staff misconduct in the Willacy Detention Center,²⁰ resulting in at least one guilty plea to sexual abuse of a female immigrant by a contract security officer.²¹ After ICE terminated its contract with the Willacy Detention Center, the Bureau of Prisons (BOP) used the facility from 2011 to 2015 for immigrants in its custody. Conditions did not improve over those years, eventually resulting in a riot which nearly destroyed the facility due to mounting complaints about poor medical care, overuse of solitary confinement, and substandard conditions.²² The BOP declined to renew the contract with MTC for the Willacy Detention Center shortly after the riot, and it had been closed since early 2015 until it re-opened in the summer of 2018. While the facility now operates under the new name, El Valle Detention Facility, there is no indication of changes made or precautions taken to ensure the safety and wellbeing of those in custody.

C. What Standards Govern ICE Detention Centers

There are no formally binding regulations or statutory provisions governing the standards of care at ICE detention facilities. ICE has adopted three sets of detention standards that serve as guidance, but the agency does not require contractors to adopt the most recent standards when it enters into new contracts or contract extensions. The result is a patchwork system in which facilities are subject to different standards and some are subject to no standards at all. All three sets of standards were developed primarily based upon correctional incarceration standards, an inappropriate touchstone in the context of *civil* immigration detention.²³

These standards include:

1. 2000 National Detention Standards (NDS)²⁴
2. 2008 Performance-Based National Detention Standards (PBNS)²⁵

¹⁸ 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>.

¹⁹ Jeremy Raff, *The Atlantic*, “ICE Is a Godsend for One Small Town in Texas,” July 11, 2018, <https://www.theatlantic.com/politics/archive/2018/07/ice-prison-trump-immigration-crackdown/564539/>.

²⁰ Sarah Childress, *PBS*, “Why Immigrant Detainees Still Aren’t Safe from Abuse,” Nov. 20, 2013, <https://www.pbs.org/wgbh/frontline/article/why-immigrant-detainees-still-arent-safe-from-abuse/>.

²¹ Department of Justice, *Former Willacy Detention Center Contract Security Officer Pleads Guilty to Sexual Abuse of a Female Detainee in Texas*, August 4, 2011, <https://www.justice.gov/opa/pr/former-willacy-detention-center-contract-security-officer-pleads-guilty-sexual-abuse-female>.

²² Seth Freed Wessler, *The Nation*, “The True Story of a Texas Prison Riot,” June 23, 2015, <https://www.thenation.com/article/the-true-story-of-a-texas-prison-riot/>.

²³ Dora Schriro, DHS, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations*, (October 2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

²⁴ Available online at <https://www.ice.gov/detention-standards/2000>.

²⁵ Available online at <https://www.ice.gov/detention-standards/2008>.

3. 2011 PBNDS, as amended in 2016²⁶

Each set of standards varies greatly regarding critical issues such as medical care, suicide prevention, and access to basic recreational space. Only about 20% of detained immigrants are held in ICE jails that were last inspected under the PBNDS 2011, the most robust set of guidelines; and some immigration jails are not contractually governed by any standards at all.²⁷ Since early in the Trump administration, there has been reporting—confirmed by language in DHS’s own Congressional Budget Justifications—that ICE intends to weaken standards even further.²⁸

Congressionally imposed reporting obligations require ICE to notify congressional appropriators if it enters into new contracts or extends contracts without requiring PBNDS 2011 compliance. However, the few notifications ICE has made publicly available are cursory in nature and generally note merely that compliance with higher standards would be more expensive.²⁹

D. What Oversight Occurs in ICE Detention Centers

Advocates and DHS OIG have found ICE’s system of inspections insufficient to address the abuses and health and safety concerns endemic to the detention system. Generally, ICE uses four primary mechanisms to inspect its facilities:³⁰

1. ICE contracts with a private company called the Nakamoto Group to conduct annual or biennial inspections of facilities that hold immigrants for longer than 72 hours. ICE has utilized Nakamoto for this purpose since 2007, and last re-competed and awarded the contract in 2016.
2. The Office of Detention Oversight (ODO), a unit within ICE’s Office of Professional Responsibility, inspects most long-term detention facilities about once every three years.
3. ICE’s Custody Management office within Enforcement and Removal Operations has its own Detention Monitoring Program through which Detention Service Managers are present onsite at certain detention facilities.

²⁶ Available online at <https://www.ice.gov/detention-standards/2011>.

²⁷ See NIJC, Most Comprehensive Immigration Detention Data Yet, *supra* n. 14.

²⁸ Heidi Vogt, *Wall Street Journal*, “ICE drafts guidelines with fewer restrictions on detaining pregnant women,” (Dec. 21, 2018), <https://www.wsj.com/articles/ice-drafts-guidelines-with-fewer-restrictions-on-restraining-pregnant-women-11545339856>.

²⁹ See, e.g., DHS, *ICE Notification of Non-Performance-Based National Detention Standards 2011 Detention Contract (Webb County)*, Fiscal Year 2018 Report to Congress, April 2, 2018, <https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Notification%20of%20NON-PBNDS%202011%20Detention%20Contract%20-%20Webb%20County.pdf>.

³⁰ For a full description of the three types of inspection systems, see DHS Office of Inspector General, *OIG-18-67: ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, at p. 10, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

4. Facilities that hold fewer than 10 immigrants and/or hold immigrants for less than 72 hours at a time are allowed to conduct their own inspections, known as Organizational Review Self-Assessments (ORSAs).

In June 2018, DHS OIG released a report documenting the massive failings of ICE’s inspections systems. Specifically, the OIG found significant concerns regarding the scope and procedures used by Nakamoto, and found ODO’s inspections insufficiently frequent to meaningfully address concerns.³¹ The OIG’s findings were in some cases quite alarming, including comments by ICE staff that Nakamoto inspectors “breeze by the standards,” and do not “have enough time to see if the [facility] is actually implementing the policies.”³² One ICE employee went so far as to refer to Nakamoto inspections as being “very, very, very difficult to fail.”³³

III. Fiscal Mismanagement

A. ICE Overspending Appropriated Funds and Raiding Other Accounts

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 over 50,000 people.³⁴ 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. This expansion has been made possible by ICE essentially writing its own appropriation by systematically overspending, demanding a Congressional bail-out, overspending again, siphoning funds from other accounts within DHS to compensate, and subsequently using elevated fund levels as the floor to begin negotiations.

In part, ICE has been able to do this by taking advantage of Congress’ frequent use of continuing resolutions (CR) to cover short-term funding gaps in recent years. Despite the fact that CRs are intended to maintain level funding, ICE has achieved expansion of its detention system during recent CR periods in two ways:

1. Agencies can petition appropriators for an additional pot of money above what flat spending levels would provide, known as an anomaly. Small anomalies are intended for ordinary spending increases like higher health care costs for government employees, but are not intended to serve as a vehicle to accommodate an administration’s political agenda. ICE requested and received an anomaly for FY17.³⁵ In FY18, ICE requested a \$1

³¹ *Id.*

³² *Id.* at p. 4.

³³ *Id.* at p. 7 n.12.

³⁴ 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>.

³⁵ Congressional Research Service, *Overview of Further Continuing Appropriations for FY2017 (H.R. 2028)*, January 3, 2017, <https://fas.org/sgp/crs/misc/R44723.pdf>.

billion dollar anomaly, but it ultimately was not included in the final continuing resolution.

2. Agencies can also petition the Office of Management and Budget (OMB) for an increased amount of funds provided at the start of a CR period or an advance on their funding known as an exception apportionment. Agencies are only supposed to use this process when their spending needs differ dramatically during different seasons of the year or in truly extraordinary circumstances. OMB has previously approved an exception apportionment for ICE's detention account based on xenophobic and inaccurate claims from the agency about public safety concerns posed by releasing immigrants from detention. During the CR and subsequent partial government shutdown in early fiscal year 2019, ICE received an exception apportionment from the OMB that allowed the agency to expand detention to approximately 48,000 people, despite an appropriated average daily population of 40,500 people.³⁶

Each time ICE has taken advantage of a continuing resolution to expand detention, that expansion is then used as a starting point once negotiations begin for a final spending bill. For example, after ICE's expansion by exception apportionment during the FY19 continuing resolution and partial government shutdown, Congressional negotiators were negotiating based on a detention population of 48,000 people – the expanded population.

ICE not only takes advantage of continuing resolutions to overspend, but continues to overspend once a final spending bill has been reached. In order to compensate for the overspending, ICE has abused its authority given to the agency under Section 503 of the DHS Appropriations Act to transfer and reprogram funds within the Enforcement and Removal account, as well as across DHS as a whole. In FY18, ICE used this maneuver to transfer nearly \$10 million from FEMA as part of a larger transfer and reprogramming package that totaled over \$200 million.³⁷

In the current fiscal year, ICE has expanded to over 55,000 people detained per day, precisely by using this transfer and reprogramming authority to cover for an additional 16,000 beds. Specifically, ICE transferred \$116 million from CBP, Coast Guard and FEMA in order to compensate for this massive expansion. ICE also transferred \$155 million from FEMA to fund the dangerous Remain in Mexico program, showing that the agency is expanding this tactic of abusing its transfer authority to implement a full range of its anti-immigrant agenda.³⁸

³⁶ Hamed Aleaziz, *BuzzFeed News*, "ICE Might Be Violating Federal Law By Keeping Immigrants Detained During the Shutdown," Jan. 9, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/shutdown-ice-detention-may-violate-federal-law>.

³⁷ See DHS *FY18 Transfer and Reprogramming Notification to Congress*, available at <https://www.documentcloud.org/documents/4878224-CHC-REQ-DHS-FY-2018-Transfer-and-Reprogramming.html#document/p30>.

³⁸ Julia Ainsley and Frank Thorp V, *NBC News*, "Trump admin pulling millions from FEMA disaster relief to send to southern border," August 27, 2019, <https://www.nbcnews.com/politics/immigration/trump-admin-pulling-millions-fema-disaster-relief-send-southern-border-n1046691>.

This pattern and practice of overspending and fiscal mismanagement has not gone unnoticed by Congressional appropriators. Bipartisan report language from the 2017 supplemental appropriations bill expressed Congress's frustration with the "lack of fiscal discipline and cavalier management of funding for detention operations."³⁹ Congress has tried to reinforce the notion that ICE must live within its means, budget more effectively, and stop the perception that ICE has indefinite appropriation through report language, but without strict limitations written in statute, ICE has continued to overspend and expand detention.

IV. Facility Conditions, Abuses, and Deaths

A. Lack of Proper Medical Care

Lack of access to medical care and low quality medical care is one of the most pressing and pervasive issues in ICE immigration detention centers throughout the United States. Advocates, government officials, and detained individuals report myriad examples in which individuals in ICE detention centers have been subjected to significant delays in receiving medical care for serious medical issues or denied care all-together.

In August 2019, advocates filed a class action lawsuit against the Trump administration on behalf of detained individuals in 158 ICE facilities throughout the country.⁴⁰ The lawsuit alleges that ICE is systematically denying medical care to individuals in its custody and that lack of oversight has contributed to egregious lapses in health care.⁴¹ The case presents several on-going examples of negligent or non-existent care for serious medical issues in ICE jails, including an untreated brain parasite and the denial of surgery for a torn rotator cuff over a three year period.⁴² A large percentage of ICE detention centers are located in rural areas, hours away from the nearest medical center equipped to provide emergency care in the case that a detained individual falls ill.⁴³ ICE facilities are also frequently under-staffed or staffed with medical providers lacking in proper qualifications or oversight.⁴⁴

As the Trump administration has achieved a massive growth in its ICE budget, funding has been dedicated to an enormous expansion of the system rather than any improvement or investment in

³⁹ 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- this week/20170501/DIVISION%20F-%20HOMELAND%20 SOM%20OCR%20FY17.pdf>.

⁴⁰ Complaint for Declaratory and Injunctive Relief for Violations of Due Process Clause of the Fifth Amendment and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, et. seq. Case No. 19-cv-01546 (U.S. District Court Central District of California Eastern Division - Riverside) https://www.splcenter.org/sites/default/files/e-filed_- _fraihat_v_ice_complaint_to_file_8_19.pdf.

⁴¹ Renuka Rayasam, *Politico*, "Trump Administration Sued Over Poor Medical Care in Immigration Centers," August 19, 2019, <https://www.politico.com/story/2019/08/19/trump-administration-sued-medical-care-immigration-centers-1467605>.

⁴² See Complaint, *supra* n. 40.

⁴³ *Id.* Page 5.

⁴⁴ *Id.* Page 85.

the resources devoted to the care of those behind bars.⁴⁵ Over fiscal years 2017 and 2018, twenty-eight women reported miscarriages while in ICE custody.⁴⁶ This represents a nearly two fold increase from fiscal year 2016.⁴⁷ As recently as June 2019, the DHS OIG released a report expressing concern with inadequate medical care in four ICE detention centers: Adelanto ICE Processing Center in California, LaSalle ICE Processing Center in Louisiana, Essex County Correctional Facility in New Jersey, and Aurora ICE Processing Center in Colorado.⁴⁸

B. Deaths in Custody

Twenty-four individuals have died in ICE custody under the Trump administration, according to federal data analyzed by advocates and journalists.⁴⁹ Deaths in ICE custody have consistently been shown to be attributable, in approximately half of all cases, to medical negligence or insufficient care by ICE and/or its contractors.⁵⁰ The pattern of deaths by suicide in custody also raises red flags regarding ICE and its contractors' approach toward the detention of those with significant mental illness.

In June 2018, advocates published a report investigating how inadequate medical care has led to preventable deaths in detention.⁵¹ The report examined U.S. government records summarizing investigations into the deaths of 15 individuals in immigration detention between 2015 and 2017. Independent medical experts reviewed these records and determined that substandard medical care contributed or led to eight of the 15 deaths.⁵² In all but one of the deaths reviewed, experts found evidence of “subpar and dangerous practices including unreasonable delays, poor practitioner and nursing care, and botched emergency response.”⁵³ Perhaps most alarmingly,

⁴⁵ Rayasam, *supra* n. 41.

⁴⁶ Marie Solis, *Vice*, *28 Women Have Miscarried In ICE Custody in the Last Two Years* (March 5, 2018), https://www.vice.com/en_us/article/yw8egw/ice-detention-miscarriages-honduran-woman-stillbirth

⁴⁷ Scott Bixby, *Daily Beast*, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, March 2, 2019, <https://www.thedailybeast.com/immigrant-miscarriages-in-ice-detention-have-nearly-doubled-under-trump>

⁴⁸ 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, pages 3-6, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

⁴⁹ Hannah Rapple; Lisa Riordan Seville, *NBC News*, *24 Immigrants Have Died In ICE Custody During the Trump Administration*, June 9, 2019, <https://www.nbcnews.com/politics/immigration/24-immigrants-have-died-ice-custody-during-trump-administration-n1015291>.

⁵⁰ Human Rights Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>, American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Inspections Ignore Deaths in Detention*, (February 2016), <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>, Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

⁵¹ Human Rights Watch *et al.*, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention*, June 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

⁵² *Id.*

⁵³ *Id.*

these findings mirrored almost precisely the findings of two previous reports analyzing deaths from prior years.⁵⁴

The pattern of deaths in custody reveal persistent concerns at specific facilities that are blatantly ignored by ICE. In July 2019, Pedro Arriago-Santoya died of complications from cardiac arrest at a hospital in Georgia.⁵⁵ Immediately prior to his transfer to the hospital, Arriago-Santoya was detained at the Stewart Detention Center in Lumpkin, Georgia. His death is the fourth at Stewart in a period of just two years, including the suicide of Jean Carlos Jimenez-Joseph in 2017.⁵⁶ Officials at Stewart failed to refer Jimenez-Joseph for a mental health assessment, even after he attempted to kill himself by leaping from a second floor balcony and reported auditory hallucinations.⁵⁷ Instead, he was held in solitary confinement for 18 days, where he ultimately hanged himself.⁵⁸

In May 2018, Roxana Hernandez, a transgender woman seeking asylum from Honduras, died in a New Mexico hospital shortly after being released from the Cibola County Correctional Center, where she had been held for approximately six weeks.⁵⁹ An independent autopsy attributed her cause of death to dehydration and complications from HIV.⁶⁰ The autopsy also reported signs of physical abuse from her time in ICE custody.⁶¹ Other individuals detained with Hernandez at Cibola reported that Hernandez had displayed symptoms of severe dehydration over a period of days without receiving any medical care or attention.⁶² In June 2019, 29 individuals detained in Cibola sent an open letter alleging continued medical neglect and physical and psychological abuse from correctional facility staff.⁶³

C. Poor Quality and Lack of Food

Persistent complaints about the poor quality and insufficient quantity of food in ICE custody include problems with small portion sizes, unhealthy meals, and rotting, spoiled, or otherwise inedible food. “Food service issues” at Essex and Adelanto detention centers have been

⁵⁴ See n. 50 *supra*.

⁵⁵ Democracy Now, “Four Immigrants Have Died at Stewart ICE Jail in Lumpkin, Georgia. Advocates Want it Shut Down,” July 30, 2019, https://www.democracynow.org/2019/7/30/pedro_arriago_santoya_ice_custody_death.

⁵⁶ *Id.*

⁵⁷ Erin Donaghue, CBS News, “ICE Review Found Failures in Care of Mentally Ill Detainee Who Died by Suicide,” August 22, 2019, <https://www.cbsnews.com/news/jean-carlos-jimenez-joseph-ice-review-documented-failures-in-care-of-mentally-ill-detainee-who-died-by-suicide/>.

⁵⁸ *Id.*

⁵⁹ Susan E. Garcia, *The New York Times*, “Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse,” Nov. 27, 2018, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Ashton Blatz, *The Advocate*, “Migrants in ICE’s Trans Unit Describe Dire Conditions, Beg for Help,” July 11, 2019, <https://www.advocate.com/transgender/2019/7/17/migrants-ices-trans-unit-describe-dire-conditions-beg-help>.

described as “egregious.”⁶⁴ Inspections of facilities have resulted in the discovery of open packages of raw chicken leaking blood into refrigerators where other food was stored, slimy lunch meat, moldy bread, and expired meat in the freezer.⁶⁵ DHS OIG’s findings have corroborated observations of advocates and detained individuals at other ICE detention facilities. In 2018, individuals detained at the West County Detention Facility in Richmond, California reported lack of adequate and nutritious food.⁶⁶ Twenty-seven out of 31 detained individuals polled said they did not feel they received adequate portion of food and said they were frequently hungry.⁶⁷ In July 2018, immigrants at the Otero County Processing Center in New Mexico repeatedly expressed concerns regarding insufficient and poor quality food.⁶⁸

D. Hygiene

Detained individuals and advocates have also reported unsanitary conditions in detention facilities and barriers to accessing personal hygiene products. At the Otero County Processing Center in New Mexico, immigrants routinely experience limited access to hygiene supplies.⁶⁹ One individual reported having been given only bar of soap and one tube of toothpaste for a five month period, and others said they were given small slivers of soap on a semi-weekly basis.⁷⁰ Others reported instances in which Otero staff or ICE officials would withhold personal hygiene products as a means of punishment or retaliation.

The June 2019 DHS OIG report also expressed concern that unsanitary conditions in the Adelanto and Essex ICE detention facilities, including mold and mal-functioning toilets, were so severe that they created health risks.⁷¹ Barriers to accessing personal hygiene materials at Essex include the lack of an adequate stock of appropriately sized clothing and toiletry supplies.⁷²

⁶⁴ 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>.

⁶⁵ *Id.*

⁶⁶ Interfaith Movement, Freedom for Immigrants, Immigrant Defenders Research Group, & Carolina Prado, *An Analysis of Condition at West County Detention Facility* (2018), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5bdb29d7cd8366e93792e5ae/1541089754726/WCDF+Report+Final.pdf>.

⁶⁷ *Id.*

⁶⁸ Nathan Craig & Margaret Vega, *Why Doesn't Anyone Investigate This Place: An Investigation Into Complaints and Inspections at the Otero County Processing Center in New Mexico*, (July 2018), <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5b4c2f0b88251b376ed2d8fb/1531719451809/Otero+Report+Final.pdf>.

⁶⁹ *Id.* at p. 30.

⁷⁰ *Id.*

⁷¹ OIG 19-47, *supra* n. 64.

⁷² *Id.*

E. Barriers to Legal Counsel

Immigrants in deportation proceedings do not have a right to government-appointed counsel.⁷³ As a result, the majority of individuals in ICE detention must shoulder the burden of both finding and paying for their own legal representation. According to a September 2016 report by the American Immigration Council (AIC), only 37% of all immigrants nation-wide obtained legal representation in their removal cases, while only 14% of immigrants in detention acquired legal counsel.⁷⁴

ICE is rapidly expanding its network of detention centers throughout the country, and much of the recent growth is concentrated in the southeast. The number of individuals detained in Louisiana and Mississippi leapt from approximately 2,000 in 2017 to more than 8,000 individuals as of July 2019.⁷⁵ The majority of newly constructed facilities in these states are in isolated rural areas where there is a dearth of legal resources. According to the Executive Office of Immigration Review's list of pro bono legal service providers, there are only eight attorneys in Louisiana able to provide free representation services for adults in immigration court.⁷⁶ Immigration attorneys serving clients detained in rural jails and detention centers often must drive for hours to access their clients in detention.

Advocates and individuals in detention report additional restrictions to accessing legal counsel in specific facilities. For example, the Stewart Detention Center in Lumpkin, Georgia has a capacity of approximately 2,000 beds, yet has only three rooms for attorney-client meetings.⁷⁷ This shortage of rooms results in prolonged wait times for attorney-client meetings and significant loss of attorney hours. Attorneys at Stewart speak with their clients through a plate glass barrier and must shout to be heard. In addition, lawyers serving clients at Stewart are prohibited from bringing in laptops and smart phones during their visits, making it difficult to access online translation services in the absence of on-hand interpreters.⁷⁸

F. Transfers

ICE has the authority to transfer immigrants between facilities anywhere in the country.⁷⁹ Use of this transfer authority has expanded in recent years. Current rates of transfer mean that, on

⁷³ Ingrid Eagly & Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court*, September 28, 2016, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

⁷⁴ *Id.*

⁷⁵ Aaron Franco & Julia Ainsley, *NBC News*, "ICE Detentions Surge in Louisiana, Alarming Immigration Advocates," August 15, 2019, <https://www.nbcnews.com/politics/immigration/ice-detainments-surge-mississippi-louisiana-alarming-immigration-advocates-n1042696>.

⁷⁶ *Id.*

⁷⁷ Letter from Southern Poverty Law Center to Acting ICE Director Thomas Homan, ICE Atlanta Field Office Director Sean Gallagher, Acting ICE Atlanta Field Office Director Corey Price, & Stewart Detention Center Warden Bill Spivey, July 13, 2017, https://www.splcenter.org/sites/default/files/stewart_detention_center.pdf.

⁷⁸ *Id.*

⁷⁹ Immigrations and Customs Enforcement, *2011 Performance Based National Standards Part 7.4.*, <https://www.ice.gov/doclib/detention-standards/2011/7-4.pdf>.

average, every individual in ICE custody is transferred at some point in a given year.⁸⁰ Individuals are more likely to be transferred from high to low population density states than from low to high population states.⁸¹ Although ICE amended its transfer policy in 2012 to limit transfers of individuals who had retained counsel near their location,⁸² the widespread prevalence of transfers, including for individuals who have retained legal counsel, continues.

Transfers are frequently used as a means of retaliation against individuals who file grievances or speak publicly about conditions or abuses. For example, several men waging a hunger strike at the Northern Oregon Regional Corrections Facility in Tacoma, Washington were transferred to a more isolated jail elsewhere in the state in 2017.⁸³

G. Solitary Confinement

Both government oversight entities and advocates have documented widespread, inappropriate, and retaliatory use of solitary confinement in ICE detention centers throughout the country. ICE 2011 PBNDS outline parameters for which individuals can be placed in isolation in “special management units.”⁸⁴ The standards state that “administrative segregation” should be used as a means to remove individuals who pose a threat to others from the general population or for the purposes of ensuring “protective custody” when “no reasonable alternatives are available.”⁸⁵ The standards further state that segregation should only be used as a disciplinary measure following a finding from a disciplinary panel that the individual is guilty of “a prohibited act or rule violation classified at a ‘greatest,’ ‘high,’ or ‘high-moderate’ level.”⁸⁶

Yet investigations by advocates and Government oversight entities have found repeated violations of ICE’s own standards on the use of solitary confinement. A May 2019 report by The Intercept and the International Consortium of Investigative Journalists revealed the results of an investigation including more than 8,400 reports of solitary confinement in ICE detention and the testimony of DHS whistleblowers.⁸⁷ The report found that solitary confinement is used as a “go-to” response as opposed to a “tool of last resort” in ICE jails. Solitary confinement has been used to punish individuals for “infractions” as slight as consensual kissing and as a means of separating hunger strikers, persons with disabilities, and LBGTQ individuals from the general

⁸⁰ Roger C. Grantham Jr., *Detainee Transfers and Immigration Judges: ICE Forum-Shopping Tactics in Removal Proceedings*, Georgia Law Review Vol 53 Issue 1 (2018), <https://www.georgialawreview.org/article/7513-detainee-transfers-and-immigration-judges-ice-forum-shopping-tactics-in-removal-proceedings>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Anna Griffen, *OPB*, “Immigration Detainees at The Dalles, Oregon Jail Stage Hunger Strike,” May 2, 2017, <https://www.opb.org/news/article/the-dalles-oregon-jail-hunger-strike-immigration/>.

⁸⁴ Immigration and Customs Enforcement, *2011 Performance Based National Standards Part 2.12*, <https://www.ice.gov/doclib/detention-standards/2011/2-12.pdf>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Spencer Woodman, Maryam Saleh, Hannah Rappleye & Karrie Kehoe, *The Intercept*, “Solitary Voices: Thousands of Immigrants Suffer in Solitary Confinement in ICE Detention,” May 21, 2019, <https://theintercept.com/2019/05/21/ice-solitary-confinement-immigration-detention/>.

population. In some cases, individuals were placed in solitary confinement simply for having a disability, including the use of wheelchairs, prosthetic legs, or crutches. Individuals subject to solitary confinement are forced to spend weeks or months in isolation, an ordeal that may likely exacerbate or cause mental health conditions.

An August 2019 report released by the Project on Government Oversight reviewed 6,559 records of individuals placed in solitary confinement in ICE detention from the final year of the Obama administration to May 2018.⁸⁸ In approximately 40% of the records reviewed, individuals subject to solitary confinement had some form of mental illness.⁸⁹

In June 2019, the DHS OIG documented “overly restrictive” use of solitary confinement in three ICE detention centers: Adelanto ICE Processing Center in California, Essex County Correctional Facility in New Jersey, and the Aurora ICE Processing Center in Colorado.⁹⁰ Individuals in solitary confinement in Adelanto were strip-searched before placement in solitary, placed in physical restraints when outside their cells, and denied required recreational time.⁹¹ The OIG also found that officials at Adelanto and Essex routinely place individuals in disciplinary segregation before a disciplinary panel reviews an alleged violation.⁹²

H. Sexual Abuse

Reports of sexual assault and sexual abuse in detention are widespread, and ICE has routinely failed to investigate reports of such abuse. In April 2017, advocates filed a complaint with the DHS Office for Civil Rights and Civil Liberties (CRCL) referencing 33,126 reports of sexual and/or physical abuse received against component agencies of DHS between January 2010 and July 2016.⁹³ According to the complaint, less than one percent of these 331,126 cases resulted in an investigation by the OIG. More complaints were submitted against ICE than any other agency within DHS (nearly 44% of all total complaints). One of the parties to the complaint, Douglas Menjivar, alleges he was raped twice while detained at the Joe Corley Detention Facility in

⁸⁸ Project on Government Oversight, *Isolated: ICE Confines Some Detainees With Mental Illness In Solitary For Months*, August 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>.

⁸⁹ *Id.*

⁹⁰ 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, <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Letter from Community Initiatives for Visiting Immigrants in Confinement to ICE Director Thomas D. Homan, DHS Secretary John F. Kelly, Veronica Venture, April 11, 2017, https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9da297419202ab8be09c92/1520280217559/SexualAssault_Complaint.pdf.

Texas and subsequently denied medical care.⁹⁴ Another party to the complaint, R. Santos, said she was repeatedly assaulted by an immigration officer at York County Jail in Pennsylvania and then placed in solitary confinement for a prolonged period of time as retaliation for initiating the complaint.⁹⁵

In April 2018, the Intercept released an investigation reviewing the full narrative of 224 complaints filed between 2010 and September 2017 regarding incidences of sexual assault and/or abuse, primarily in ICE detention centers.⁹⁶ Approximately 59% of complaints identified an officer or private detention contractor as the perpetrator of abuse, while 34% of the complaints alleged that an officer either directly witnessed the abuse or was made aware that it was happening.

I. Forced Labor

ICE has so-called “voluntary work programs” at many of its detention facilities. Under these programs, individuals perform custodial and maintenance services in detention centers in exchange for a salary.⁹⁷ The minimum salary is set by the relevant detention standard at \$1 dollar per day.⁹⁸ As the majority of immigration detention centers are privately run, use of immigrant labor to fill custodial and maintenance positions results in significant costs savings for private prison companies.

There are several pending class action lawsuits challenging ICE’s “voluntary work program.” One lawsuit, filed by individuals currently and previously detained at the Northwest Detention Center in Tacoma, Washington against private prison company Geo Group, alleges that the “voluntary work program” is in violation of Washington state’s minimum wage laws.⁹⁹ A different lawsuit, filed by individuals currently or formerly detained at the Stewart Detention Facility in Lumpkin, Georgia against CoreCivic, the facility’s operator, alleges that the “voluntary work program” constitutes forced labor.¹⁰⁰ Complainants allege that the “voluntary work program” is not really voluntary, and they faced retaliation if they refused to participate.

⁹⁴ Safia Samee Ali, *NBC News*, “Sexual Assaults in Immigration Detention Rarely Get Investigated, Group Says,” April 12, 2017, <https://www.nbcnews.com/news/us-news/sexual-assaults-immigration-detention-centers-don-t-get-investigated-says-n745616>.

⁹⁵ *Id.*

⁹⁶ Alice Speri, *The Intercept*, “Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention,” April 11, 2018, <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

⁹⁷ Immigrations and Customs Enforcement, *2011 Performance Based National Standards Part 5.8*, <https://www.ice.gov/doclib/detention-standards/2011/5-8.pdf>.

⁹⁸ *Id.*

⁹⁹ Christopher Zoukis, *Prison Legal News*, “Lawsuit by Washington AG Against Geo Group for Wage Violations Proceeds, Granted Class-Action Status,” (Dec. 5, 2018, <https://www.prisonlegalnews.org/news/2018/dec/5/lawsuit-washington-ag-against-geo-group-wage-violations-proceeds-granted-class-action-status/>).

¹⁰⁰ Catherine E. Scholchet, *CNN*, “Lawsuit Alleges ‘Forced Labor’ in Immigration Detention,” April 17, 2018, <https://www.cnn.com/2018/04/17/us/immigrant-detention-forced-labor-lawsuit/index.html>.

J. Hunger Strikes and Force Feeding

As of August 20, 2019, there are at least four active hunger strikes in ICE detention facilities across Florida, Texas, and Louisiana. Hunger strikers are protesting a range of issues including due process violations stemming from arbitrary denials of bond, high rates of asylum rejections, and restrictions on visitor and lawyer access to facilities. Hunger strikers at Bossier Parish Medium Security Facility and Pine Prairie ICE Processing Center in Louisiana reported retaliation in the form of segregation from general population, rubber bullets, and pepper spray.¹⁰¹

On August 14, ICE began force-feeding a group of Indian national asylum seekers detained at the El Paso Service Processing Center.¹⁰² This is the second time force-feeding of hunger strikers has occurred at El Paso in 2019. In January and February 2019, nine asylum seekers on hunger strike were force fed.¹⁰³ In response, fifteen members of Congress called for an immediate halt of the force-feeding.¹⁰⁴ One week later, forty-nine members demanded an investigation by DHS OIG into ICE's use of force-feeding at its detention centers.¹⁰⁵ The results of the investigation, which was launched in April,¹⁰⁶ have not yet been published, despite demands by advocates.

V. **Detention of Vulnerable Populations**

A. Family Detention

Under current policy, families are routinely detained together in ICE custody in three main facilities: the South Texas (Dilley) Family Residential Center and the Karnes County Residential Center – both located in Texas – and a third facility in Leesport, PA.¹⁰⁷ With the abrogation of the Flores Settlement Agreement (FSA) by new regulations from HHS and DHS supposedly

¹⁰¹ Fernanda Echavari, *Mother Jones*, “Dozens of ICE Detainees Were Pepper-Sprayed By Guards for Protesting at a Louisiana Jail,” August 2, 2019, <https://www.motherjones.com/politics/2019/08/immigrant-detention-ice-bossier-louisiana-pepper-spray/>.

¹⁰² Cedar Attanasio, Martha Mendoza and Garance Burke, *Associated Press*, “Attorney: Officials force-feeding immigrants on hunger strike,” August 15, 2019, <https://www.apnews.com/ca98703afc364cbf89b6acea11b9cb98>.

¹⁰³ Amy B Wang, *Washington Post*, “ICE Confirms it is Force-Feeding Immigrants on Hunger Strike,” Feb. 2, 2019, <https://www.washingtonpost.com/dc-md-va/2019/02/02/ice-admits-force-feeding-detainees-hunger-strike/>.

¹⁰⁴ Erika Esquivel, *KFox14*, “Rep. Veronica Escobar Demands ICE to End Force-Feeding,” February 7, 2019, <https://kfoxtv.com/news/local/rep-veronica-escobar-demands-ice-to-end-force-feeding>.

¹⁰⁵ Garance Burke and Martha Mendoza, *Associated Press*, “Lawmakers seek probe of ICE force-feeding of immigrants,” February 19, 2019, <https://federalnewsnetwork.com/government-news/2019/02/lawmakers-seek-probe-of-ice-force-feeding-of-immigrants/>.

¹⁰⁶ Garance Burke, *Associated Press*, “Fed Watchdog Probes Treatment of Immigrants in Texas Lockup,” April 23, 2019, <https://www.usnews.com/news/us/articles/2019-04-23/fed-watchdog-probes-treatment-of-immigrants-in-texas-lockup>.

¹⁰⁷ Michael D. Shear and Zolan Kanno-Young, *New York Times*, “Migrant Families Would Face Indefinite Detention Under New Trump Rule,” August 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/flores-migrant-family-detention.html>.

implementing the FSA,¹⁰⁸ the Trump Administration has expressed its intention to substantially expand family detention in contravention of the FSA. Prior to the new regulations, the FSA and subsequent litigation placed substantial limits on the detention of children by ICE or CBP – especially on the length of time in detention.¹⁰⁹ However, the new regulations promulgated in August permit ICE to detain children with their families indefinitely.¹¹⁰ According to CBP, in the ten months prior to the promulgation, nearly 475,000 individuals who would be affected by the regulations have crossed into the United States.¹¹¹

The Trump Administration’s use of family detention has been met with backlash from politicians¹¹², medical professionals, child welfare professionals, and government whistleblowers.¹¹³ Experts have repeatedly stated that there is no situation in which detention is not contrary to the best interests of the child, and it is known to be “harmful to their health.”¹¹⁴ The risk of harm is amplified due to the history of compliance issues and abuse in family detention facilities.¹¹⁵

Medical and child welfare experts urge action to prevent the indefinite detention of children that “increase[es] the risk of serious health harm due to the dangerously inadequate conditions of confinement.”¹¹⁶ Experts report that children describe detention as “intimidating, scary, and inadequate,” and often report forced sexual contact.¹¹⁷ The harm to children in detention is compounded given that many of the children detained in family detention are also suffering effects of trauma from the journey and harm in their home country.¹¹⁸

¹⁰⁸ Due to the FSA, the new regulations will require the approval from the Federal Judge overseeing the FSA. See Michael D. Shear and Zolan Kanno-Young, *New York Times*, “Migrant Families Would Face Indefinite Detention Under New Trump Rule,” August 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/flores-migrant-family-detention.html>.

¹⁰⁹ Note: The Office of Refugee Resettlement in HHS has primary custody and responsibility of unaccompanied children.

¹¹⁰ Michael D. Shear and Zolan Kanno-Young, *New York Times*, “Migrant Families Would Face Indefinite Detention Under New Trump Rule,” August 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/flores-migrant-family-detention.html>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*; Miriam Jordan, *New York Times*, “Whistle-Blowers Say Detaining Migrant Families ‘Poses High Risk of Harm,’” July 18, 2018, <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html?>

¹¹⁵ *Id.*

¹¹⁶ *Id.*; Physicians for Human Rights, *‘There is No One Here to Protect You’: Trauma Among Children Fleeing Violence in Central American*, June 2019, pg. 4, <https://reliefweb.int/sites/reliefweb.int/files/resources/PHR-Child-Trauma-Report-June-2019.pdf>.

¹¹⁷ *Id.* at 17.

¹¹⁸ *Id.* at 8-16, *passim*.

B. Separated Parents

Parents separated from their children, either as a result of family separation at the border or a result of interior enforcement actions, are routinely detained in ICE detention. Approximately 20,000 medical and mental health professionals and researchers working in the United States stated that “the relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”¹¹⁹ Among refugees, one research study shows that individuals separated from their families “had worse mental health outcomes in terms of depression, PTSD, and psychological quality of life than those who remained with their families, after controlling for trauma. After testing the contribution of 26 types of trauma to these outcomes, only the experience of being beaten and tortured had a similar impact on all three mental health measures as family separation.”¹²⁰

C. Effects of Indefinite Detention on Asylum Seekers and Torture Survivors

Detention that is indefinite in nature, which is typically the case in the immigration context, is incredibly damaging to asylum seekers. The many factors that impact the length of their detention are out of the individual’s control and may not be understood, especially when language and cultural barriers are present. This uncertainty, particularly when prolonged, can cause such severe and protracted health problems that it rises to the level of cruel, inhumane and degrading treatment. The indeterminacy of indefinite detention can be overpowering—it creates such unpredictability and loss of control over the basic aspects of one’s life that it seriously harms healthy individuals, independent of other aspects or conditions of detention.¹²¹

Detaining asylum seekers is a matter of widespread international criticism, and was rarely practiced in the U.S. prior to 1980. Nearly half of asylum seekers are torture survivors.¹²² Clinicians from the Center for Victims of Torture have found that immigration detention, even for short duration, is extremely harmful to torture survivors: the presence of uniformed personnel and guns, being handcuffed and shackled, institutional surroundings and other detention experiences are acutely triggering, bringing the original torture experience back to mind.¹²³ The

¹¹⁹ Physicians For Human Rights, Letter DHS Secretary Kirstjen Nielsen and Attorney Jeff Sessions, (June 2018), https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf.

¹²⁰ *Id.*

¹²¹ Center for Victims of Torture. *8 Facts About Asylum*, <https://www.cvt.org/AsylumFact4>.

¹²² HHS Office of Refugee Resettlement, *Services for Survivors of Torture*, <https://www.acf.hhs.gov/orr/programs/survivors-of-torture>.

¹²³ Center for Victims of Torture, Letter to ICE Assistant Director Office of Policy Debbie Seguin, November 2016, https://www.cvt.org/sites/default/files/attachments/u101/downloads/cvt_comments-flores_proposed_rulemaking-final.pdf.

detention of torture survivors can bring back a “profound sense of powerlessness and loss of sense of self, contributing to further psychological damage.”¹²⁴

D. Detention of Members of the LGBTQ Community

According to an analysis by the Center for American Progress, LGBTQ immigrants held at federal detention centers are 97 times more likely to be sexually assaulted than those who do not identify as LGBTQ.¹²⁵ Although LGBTQ people constituted only 0.14 percent of the ICE detention population in FY 2017, they accounted for 12 percent of reported incidents of sexual abuse and assault in detention that year.¹²⁶ There were nearly 200 reports of abuse of LGBTQ individuals in ICE facilities between 2008 and 2013. However, since LGBTQ individuals in detention fear retaliation if they submit a complaint, the actual amount of abuses of LGBTQ individuals across the country is likely to be significantly greater.¹²⁷

Transgender women are at acute risk of violence and harassment in ICE custody, where they find themselves detained across more than a dozen different facilities, many of which require them to be housed with cisgender men.¹²⁸ Transgender women experience prolonged detention at higher rates than the average detained population, and consistently report harassment, assault and mistreatment from ICE officers due to their gender identity.¹²⁹

Detention policies such as physical isolation and solitary confinement of LGBTQ persons have proven to be especially harmful. The general lack of gender recognition, combined with the realities of sexually-segregated detention facilities, creates a situation in which transgender and intersex migrants are particularly at risk of suffering severe psychological, physical, and sexual harm. Such abuses exacerbate depression, anxiety and other psychological trauma experienced

¹²⁴ The Center For Victims of Torture and TASSC International, *Tortured & Detained Survivor Stories of U.S. Immigration Detention*, November 2013,

http://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf.

¹²⁵ Sharita Gruberg, *Center for American Progress*, “ICE officers overwhelmingly use their discretion to detain LGBT immigrants,” October 26, 2016,

<https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>.

¹²⁶ Sharita Gruberg, *Center for American Progress*, “ICE’s rejection of its own rules places LGBT immigrants at severe risk of sexual abuse,” May 30, 2018,

<https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>.

¹²⁷ Sharita Gruberg, *Center For American Progress*, “Dignity Denied LGBT Immigrants in U.S. Immigration Detention,” November 2013, <https://www.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>.

¹²⁸ Daniel Gonzalez, *AZ Central*, “Transgender Women in Migrant Caravan Face New Struggles Seeking Asylum in U.S.,” May 2018, <https://www.azcentral.com/story/news/politics/immigration/2018/05/29/transgender-women-central-american-migrant-caravan-seeking-asylum-now-inside-u-s/639448002/>.

¹²⁹ Gruberg, *supra* n. 126.

by LGBTQ persons during their migration journey. In spite of this clear vulnerability, the unique protection needs of LGBTQ persons have been largely ignored.¹³⁰

VI. What Can Members of Congress Can Do?

A. Support the Dignity For Detained Immigrants Act

The Dignity for Detained Immigrants Act (Dignity), H.R., 2415, is led by Congresswoman Pramila Jayapal and pursues the following four legislative principles, all of which are critical to ensure the health and safety of those in detention and accountability over the system:

1. *Removing the profit motive*: The Act requires DHS to eliminate the use of private prisons and county jails for civil immigration detention over a three-year transition period.
2. *Binding standards requiring humane treatment*: The Act obligates the government to a set of standards appropriate to a civil detention setting.
3. *Accountability and transparency*: The Act implements a robust and independent inspections process in the immigration detention system, and requires DHS to make inspections reports, death reviews, and critical information regarding the detention system publicly available.
4. *Ensuring individualized and fair bond determinations*: The Act remedies legal and ethical frailties in the current bond system by ending the use of “mandatory” or “no-bond” detention, requiring that DHS establish probable cause of removability within 48 hours of detention, and ensuring the right to a fair bond hearing for every detained immigrant.

B. Visit an ICE Facility Unannounced

Visits to ICE facilities by Members of Congress are a critical safeguard to ensure accountability. However, announced visits—whether as part of a congressional delegation or a formal inspection—allow ICE and the facility operator to temporarily ameliorate what may otherwise be immediately apparent harmful conditions. Immigrants in detention frequently report that during the day of a visit by a member of Congress or other important stakeholder, the facility conditions including food service, recreation, and even provision of medical care are significantly improved. ICE field staff recently explained to the DHS OIG that announced inspections “allow facility management to temporarily modify practices to ‘pass’ an inspection.”¹³¹ Particularly given the failings of ICE’s own inspections regime, and the discrepancies between what

¹³⁰ International Detention Coalition, *LGBTI Persons in Immigration Detention POSITION PAPER* (JUNE 2016), <https://www.refworld.org/pdfid/57d021d84.pdf>.

¹³¹ See, OIG-18-67 at p. 10, supra n. 30.

announced and unannounced inspections find, it is imperative that members of Congress gain an accurate and unhampered understanding of what happens inside our nation's immigration jails.

Members of Congress interested in engaging in visits to ICE detention facilities in their state or district are encouraged to utilize the Toolkit prepared by Detention Watch Network and the National Immigrant Justice Center.¹³²

C. Support Truly Community-Based Alternatives to Detention

Immigration detention has expanded despite the existence of proven alternatives to detention (ATD) in the form of community-based case management services which provide immigrants with social and legal support services while their cases work through the court system.¹³³ Studies exploring successful alternatives to detention have consistently shown that ATD programming is most effective when it treats immigrant participants with dignity and avoids the use of onerous surveillance and reporting mechanisms such as the use of electronic monitoring.¹³⁴ Despite such evidence, ICE's existing ATD programs are operated almost entirely at odds with established best practices.¹³⁵

According to FY18 data, the average cost of detaining an immigrant per day is \$208.¹³⁶ In contrast, community-based ATDs have been proven to operate for \$17 dollars per person per day.¹³⁷ In addition to their cost effectiveness, participants in ATDs also demonstrate a high rate of compliance with immigration check in appointments and court appearances. A 2015 report examining ATD programs around the world concluded that ATDs generally achieve compliance rates of 95% or higher.¹³⁸ The study identified several factors contributing to high rates of compliance, including legal representation and community support.¹³⁹

The U.S. government has piloted several ATD programs, including the Family Case Management Program (FCMP).¹⁴⁰ The program was terminated in June 2017 without

¹³² Detention Watch Network and National Immigrant Justice Center, *Detention Oversight and Accountability Toolkit*, May 2019, <https://www.immigrantjustice.org/research-items/toolkit-immigration-detention-oversight-and-accountability>.

¹³³ David Secor, Heidi Altman and Tara Tidwell Cullen, National Immigrant Justice Center, *A Better Way: Community Based Programming as an Alternative to Immigration Detention* (2019), <https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Laurence Benenson, National Immigration Forum, *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply* (2018), <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>.

¹³⁷ *Id.*

¹³⁸ International Detention Coalition, *There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (2015), <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>

¹³⁹ *Id.*

¹⁴⁰ Women's Refugee Commission, *Backgrounder: Family Case Management Program* (2018), <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>.

explanation, despite findings from DHS itself that the program was both cost-effective (operating at \$38 per family unit per day) and that participants demonstrated a compliance rate with immigration and court appointments of 99%.¹⁴¹ Although advocates expressed concern with DHS's decision to award the contract for the FCMP to Geo Care¹⁴², a subsidiary of private prison company Geo Group, the program demonstrated that scalable ATDs are possible.

DHS currently uses the Intensive Supervision Alternatives Program III (ISAP) as its sole alternatives program.¹⁴³ DHS continues to request additional funding to increase the capacity of this program at the same time as detention rates are at a record high.¹⁴⁴ This suggests that ATDs are not in fact being used as alternatives, but rather part of a sequence of detention followed by surveillance. ISAP is administered by Bi Inc, another subsidiary of Geo Group.¹⁴⁵ ISAP includes a combination of electronic ankle monitoring and case management services¹⁴⁶ and does not meet the definition of a community-based ATD or adopt any of the internationally-recognized best practices in ATD design and management.

Opacity regarding reporting of compliance rates and participant selection criteria; over-reliance on ankle monitoring and the subsidiaries of one private company to administer DHS ATD programming; and the fact that funding for ISAP III is increasing at the same time as detention rates continue to climb underscores the need for increased congressional oversight into the administration of ATDs. Congress should call for the DHS Secretary to submit a plan outlining how community-based ATDs can be used to reduce current levels of detention and request a formal justification as to why the FCMP was terminated.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Congressional Research Service, *Immigration: Alternatives to Detention (ATD) Programs* (2019), <https://fas.org/sgp/crs/homesecc/R45804.pdf>.

¹⁴⁴ *A Better Way*, *supra* n. 121.

¹⁴⁵ For more information about BI, see the company's website at <https://bi.com/>

¹⁴⁶ Congressional Research Service, *supra* n. 132.