

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, D.C. 20528

Acting Director Thomas Homan
Department of Homeland Security (DHS)
Immigration and Customs Enforcement (ICE)
801 I Street, Suite 910
Washington, D.C. 20536

April 5, 2018

Re: Immigration detention: accountability and transparency obligations imposed by the FY2018 omnibus spending bill

Dear Secretary Nielsen and Acting Director Homan:

In your leadership positions, you oversee ICE's sprawling system of more than 200 jails, prisons and detention centers holding approximately 40,000 men, women and children each day while they face civil removal proceedings.ⁱ In recent years, non-governmental organizations,ⁱⁱ DHS's Office of the Inspector General,ⁱⁱⁱ the Homeland Security Advisory Council,^{iv} the Advisory Committee on Family Residential Centers,^v and the Government Accountability Office^{vi} have called on you to address systemic failings in this system—failings that place human lives and safety at risk. Yet under your stewardship ICE has rejected these calls while jailing more immigrants for longer periods of time in unacceptable conditions.^{vii}

With passage of the 2018 Appropriations bill and accompanying report language, Congress has placed critical new limits on your agency's spending authority with regard to immigration detention. This letter is intended to highlight those limits and assure you that the undersigned organizations will carefully monitor DHS's compliance and seek accountability in case of failure.

Congress reprimanded DHS in its last omnibus spending report for a "lack of fiscal discipline and cavalier management of funding for detention operations."^{viii} Appropriators have long signaled, specifically, that ICE must improve its haphazard system of detention standards^{ix} and inspections.^x The current state of the detention system illustrates the agency's continuing disregard for these oversight concerns. According to the most recent publicly available data, only 63 percent of immigrants are held in detention centers that were last inspected under the most recent and robust detention standards; 22 percent of immigration jails are smaller detention centers which were permitted to conduct their own unregulated "self-assessment."^{xi} A close look at the inspections themselves reveals alarming evidence that they are sham assessments, best exemplified by facilities passing inspections before and after a death in custody where medical neglect or a violation of medical standards was a contributing or causal factor in the death.^{xii}

DHS and ICE's continued mismanagement of the detention system and disregard for oversight mechanisms comes at a high cost. Systemic disarray has led to problems that, according to the

Office of the Inspector General, “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.”^{xiii} Credible reports of recent abuses by ICE and facility officers serve as evidence of an alarming increase in incidents of assault and abuses against individuals in detention.^{xiv} In this context, we direct your attention to the following new or ongoing obligations your agency faces regarding the use of detention:^{xv}

- 1) Public posting of a full and detailed list of all detention facilities in use including their average daily population and governing contract and standards, monthly;
- 2) Public posting of all final inspection reports within 60 days of the inspection;
- 3) Public posting of all reports regarding in-custody deaths within 30 days of such death;
- 4) Weekly reporting to the Appropriations Committees on the rate of custody operations, while ensuring that ICE “manage its resources in a way that ensures it will not exceed the annualized rate of funding for the fiscal year” and “live within its means”;
- 5) Appropriate telephone access for individuals in detention, and briefing to the Appropriations Committees on the feasibility, benefits and costs of adopting some or all of the requirements of the Settlement Agreement in *Lyon v. ICE, et al.*^{xvi} which requires improved phone access in four California immigration jails;
- 6) Semi-annual reporting to the Appropriations Committees on the number of young people detained by ICE immediately subsequent to turning 18 while in the custody of the Office of Refugee Resettlement, along with a detailed reporting of the methodology used by ICE to ensure that such young people are placed in the “least restrictive setting available” as federal law requires^{xvii};
- 7) Reporting to the Appropriations Committees with at least 30 days’ notice any time ICE enters into any new or significantly modified detention contract or agreement that does not meet or exceed the most robust detention standards (the 2011 Performance Based National Detention Standards, as modified in 2016), providing a justification for such deviation from expectations;
- 8) Reporting to the Appropriations Committees by May 22, 2018 on ICE’s plans to achieve 100 percent compliance with the requirements of the Prison Rape Elimination Act;
- 9) Reporting to the DHS Office of the Inspector General by October 15, 2018, listing all grants and contracts awarded by any means other than full and open competition during fiscal years 2017 and 2018;
- 10) Timely and independent access to all facilities for non-governmental organizations seeking

to provide representation, legal education and programming, and/or monitoring and visitation;

- 11) Prompt upkeep of the ICE Detainee Online Locator system, with information updated within 48 hours of an individual's entry into detention and within 24 hours of a transfer;
- 12) Prioritization of the use of detention alternatives, including release on parole or bond;^{xviii}
- 13) Briefing for the Appropriations Committees on feasible improvements to ICE's use of models for Alternative to Detention (ATD) programming, including exploration of applying elements of the Family Case Management Program and introduction of Know Your Rights programming for new participants;
- 14) Ensuring individuals in ICE custody or under ICE supervision have the opportunity to report incidents of family separation and verify the status, location and disposition of family members;
- 15) Ensuring that field officers are properly trained on the requirements of ICE's Parental Interests Directive and on mechanisms to reunite family units, and maintain the Directive without rescission or change;
- 16) If ICE proceeds with previously publicly disclosed plans to establish a new detention standards framework, developing specific detention standards through a transparent process involving stakeholder input; and
- 17) Terminating a facility contract if the two most recent inspections evaluations are less than "adequate" or the "equivalent median score in any subsequent performance evaluation system."

As the leaders of DHS and ICE, you bear accountability for the ongoing mismanagement of your detention system and the abuses that result. We urge you to comply fully with the obligations imposed upon you by Congress and to address the ongoing failures that have triggered such scrutiny.

Contact with questions or concerns: Heidi Altman, National Immigrant Justice Center, 312-718-5021, holtzman@heartlandalliance.org.

Sincerely,

American Civil Liberties Union
American Immigration Lawyers Association
American Immigration Council

Center for American Progress
Detention Watch Network
Human Rights Watch
Immigrant Legal Resource Center
National Immigrant Justice Center
National Latina Institute for Reproductive Health
Women's Refugee Commission

CC:

John Kelly, Acting Inspector General
Office of the Inspector General, Department of Homeland Security

The Honorable John Boozman, Chair
Senate Appropriations Committee, Subcommittee on Homeland Security

The Honorable Jon Tester, Ranking Member
Senate Appropriations Committee, Subcommittee on Homeland Security

The Honorable John Carter, Chair
House Appropriations Committee, Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard, Ranking Member
House Appropriations Committee, Subcommittee on Homeland Security

ⁱ See Department of Homeland Security U.S. Immigration and Customs Enforcement, Fiscal Year 2019 Congressional Budget Justification,

<https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>.

ⁱⁱ See, e.g., Detention Watch Network and National Immigrant Justice Center, *Lives in Peril, How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* (2015), <http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0>; National Immigrant Justice Center, *Freedom of Information Act Litigation Reveals Systemic Lack of Accountability in Immigration Detention Contracting* (Aug. 2015), <http://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-03/NIJC%20Transparency%20and%20Human%20Rights%20Project%20August%202015%20Report%20FINAL3.pdf>.

ⁱⁱⁱ See, e.g., Department of Homeland Security Office of the Inspector General, OIG-18-32 *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; Department of Homeland Security Office of the Inspector General, OIG-18-53 *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services* (Feb. 21, 2018),

<https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

^{iv} Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities* (Dec. 1, 2016), <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.

^v See Advisory Committee on Family Residential Centers, *Report of the DHS Advisory Committee on Family Residential Centers* (Sept. 30, 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.

^{vi} See, e.g., Government Accountability Office, GAO-16-231 *Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care* (Feb. 29, 2016), <https://www.gao.gov/products/GAO-16-231>; Government Accountability Office, GAO 15-153 *Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards* (Oct. 10, 2014), https://www.gao.gov/products/GAO-15-153?utm_source=blog&utm_medium=social&utm_campaign=watchblog.

^{vii} See ICE Fiscal Year 2019 Congressional Budget Justification, *supra* note i; see also Human Rights First, *Judge and Jailer: Asylum Seekers Denied Parole in Wake of Trump Executive Order* (Sep. 2017), <https://www.humanrightsfirst.org/resource/judge-and-jailer-asylum-seekers-denied-parole-wake-trump-executive-order>.

^{viii} 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/billsthisweek/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>.

^{ix} In 2017, report language accompanying the omnibus spending bill required ICE to include the most recent set of immigration detention standards (referred to as the Performance Based National Detention Standards of 2011, or PBNDS 2011) in all new or newly modified detention contracts, with a written justification required in the case of deviation. *See id.* This requirement has been repeated in the report accompanying the 2018 spending bill, *see infra*.

^x Since Fiscal Year 2009, Congress has required that ICE terminate contracts for any facility that failed two consecutive inspections. See House Report, Division F, *supra* n. viii.

^{xi} Tara Tidwell Cullen, National Immigrant Justice Center, “ICE released its most comprehensive detention data yet. It’s alarming,” Mar. 13, 2018, <http://www.immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

^{xii} American Civil Liberties Union, Detention Watch Network, National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention* (Feb. 2016), https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Fatal%20%20Neglect_ACLU%2C%20DWN%2C%20NIJC.pdf.

^{xiii} *See supra* n. iii.

^{xiv} See, e.g., Ryan Devereaux, Jose Olivares, and Maryam Saleh, *The Intercept*, “Week of Hell: Dozens of African Detainees Allege Serial Abuse and Hate Crimes at Notorious Private Immigration Jail,” Mar. 24, 2018, https://theintercept.com/2018/03/24/week-of-hell-dozensofafrican-detainees-allege-serial-abuse-and-hate-crimes-at-notorious-private-immigration-jail/?utm_source=Migratory+Notes+Pop-Up+Newsletter&utm_campaign=be4a89f35c-EMAIL CAMPAIGN 2018_03_28&utm_medium=email&utm_term=0_084466b101-be4a89f35c-451156213; Tina Vasquez, *Rewire*, “Texas detention center faces allegations of widespread sexual abuse--again,” Nov. 22, 2017, <https://rewire.news/article/2017/11/22/texas-detention-center-faces-allegations-widespread-sexual-abuse-again/>.

^{xv} These requirements are included in Division F of the report language accompanying the Fiscal Year 2018 spending bill signed into law on March 23, 2018, *supra* n. viii (incorporating and assigning the same weight to language in the House Report 115-239, available at <http://docs.house.gov/billsthisweek/20180319/DIV%20F%20HOMELAND%20SOM%20FY18%20OMNI.OCR.pdf>).

The bill and accompanying report obligate DHS to numerous requirements outside of the detention context as well, not outlined here but no less critical.

^{xvi} A summary of the settlement is available at

<https://www.ice.gov/doclib/legalNotice/IlyonNoticeFinalSettlementEnglish.pdf>.

^{xvii} 8 U.S.C. § 1232(c)(2)(B).

^{xviii} For more details on Alternative to Detention programming, *see* American Immigration Lawyers Association *et al.*, *The Real Alternatives to Detention* (June 27, 2017), <http://www.aila.org/infonet/the-real-alternatives-to-detention>.