

# ICE's Failed Monitoring of Immigration Detention Contracts

A Policy Brief from Heartland Alliance's National Immigrant Justice Center

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The U.S. government still fails to enforce basic standards of care at its privately and publicly contracted detention facilities, according to the National Immigrant Justice Center's (NIJC) review of immigration detention facility inspections from 2013-2016 which were recently publicly released by U.S. Immigration and Customs Enforcement (ICE). ICE inspections data for the past five years indicate that many facilities have pending inspection ratings, in some cases for as long as two years,<sup>1</sup> raising uncertainty about ICE's adherence to a 2009 congressional mandate to close substandard facilities.<sup>2</sup> As a result, inhumane conditions, including egregious violations of medical care standards, prevail across an immigration detention system composed of more than 200 detention facilities that detain approximately 34,000 immigrants daily.

Americans pay approximately \$2 billion annually to maintain the immigration detention system, which relies on privately operated facilities and county and city jails to incarcerate approximately 400,000 immigrants annually.<sup>3</sup> The majority of people unnecessarily locked in immigration detention centers are asylum seekers, including families and children, and long-time residents who pose no risk to the community.<sup>4</sup> Although immigration detention is only intended to ensure individuals appear for immigration court proceedings or comply with removal orders, the government detains individuals in punitive settings at correctional facilities, where inhumane conditions are perpetuated by ICE's broken inspections system.



Michèle Molinari

## Private Prison Scrutiny Provides an Opportunity for Broader Reform

On the heels of the Department of Justice (DOJ) decision to end Bureau of Prison (BOP) contracts with private prison companies, NIJC reiterates its call for ICE to end its own reliance on private prison contractors and to overhaul its monitoring of all of its immigration detention centers.<sup>5</sup> The DOJ decision came in response to a report by the DOJ Office of the Inspector General (DOJ OIG), which found failures in how the BOP monitors its contracts with private prison companies.<sup>6</sup> Many of the DOJ OIG findings parallel the shortcomings that NIJC and other immigrant rights advocates have identified within the ICE detention system. In particular, the DOJ OIG found that BOP inspections fail to adequately capture facility deficiencies, making it difficult to hold facilities accountable to contractual obligations and ensure the well-being of individuals in BOP custody.<sup>7</sup>

Following the DOJ's announcement, the Department of Homeland Security (DHS) — ICE's parent agency — announced that by November 30, 2016, it would review its own use of contracts with private, for-profit prison companies. **As part of its review, DHS must:**

1. **Examine how it can immediately eliminate ICE's dependence on private prisons by reducing the number of immigrants it detains**
2. **Examine ICE's inspection process in the same way the DOJ OIG evaluated the BOP monitoring system, and implement reforms**
3. **Institute consequences for failed inspections**
4. **Increase transparency and oversight of the inspections process**

# ICE Detention Center Inspections: The Basics

## 3 Sets of Detention Standards

Each detention facility is inspected for compliance against one of three sets of ICE detention standards:<sup>8</sup>

**1** The 16-year-old National Detention Standards are used in 166 detention facilities and covered 20% of ICE's fiscal year (FY) 2016 average daily population (ADP)

**2** The 2008 Performance-Based National Detention Standards (PBNDS) are used in 18 facilities and covered 15% of FY16 ADP

**3** The 2011 PBNDS are used in 24 detention facilities and covered 65% of FY16 ADP

## 4 Types of Immigration Detention Inspections

Since 2009, congressional appropriations have included a provision stipulating that ICE cannot continue contracts with immigration detention facilities that fail two consecutive inspections.<sup>9</sup>

- 1. Enforcement and Removal Office (ERO) inspections** are conducted annually by private contractors at facilities that hold 50 or more people. The ERO inspections govern for the purposes of the 2009 congressional mandate.
- 2. Office of Detention Oversight (ODO) inspections** are conducted by teams of ODO employees and private contractors at facilities that hold 50 or more people. During these sporadic inspections, inspectors focus on key standards that have been identified as areas where the facility may not be in compliance as opposed to a comprehensive inspection. ODO inspections do not result in any consequences for the facilities where deficiencies are identified.
- 3. Organizational Review Self-Assessments** are conducted by ICE Field Office staff at facilities that hold individuals for less than 72 hours at a time, or that hold 50 or fewer individuals for more than 72 hours. The results of these inspections are not public.
- 4. DHS Office of Inspector General (DHS OIG) inspections** began at some ICE and Customs and Border Protection (CBP) detention facilities in April 2016.<sup>10</sup> It is unclear how and when the OIG will release the results of these unannounced inspections, or whether the results will be used to inform facility reforms and ICE contracting decisions.

## ICE's Monitoring System Fails to Ensure Immigrants' Safety

Following three years of Freedom of Information Act (FOIA) litigation, in October 2015, NIJC and the Detention Watch Network (DWN) released *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, which analyzed ERO and ODO inspection reports for more than 100 detention facilities.<sup>11</sup> The report identified multiple concerns about the efficacy of ICE's inspections, including:

ICE's convoluted contracting system and patchwork application of **three different sets of detention standards** results in confusion about which standards are applicable during inspections, and uneven protections for detained immigrants.

ERO inspections, which are the basis for continued taxpayer expenditures for detention facility contracts, **do not impose meaningful consequences for facilities that fail** to meet detention standards.

ICE provides **advance notice to facilities** of ERO and ODO inspections, allowing ample time to hide substandard conditions.<sup>12</sup>

Inspectors **only visit for a few days**, hardly sufficient to conduct a thorough inspection of the entire facility and interview staff and individuals who are detained.

ERO inspections and subsequent ratings are **perfunctory checklists rather than realistic assessments** of persistent and troubling detention conditions.

# ICE Contractors Dodge Accountability with Long-Pending Inspections

ICE's culture of secrecy offers little transparency on detention facility operations and oversight. Shortly after the release of *Lives in Peril*, ICE made some new ODO inspections and death reviews publicly available on its FOIA Library website, as well as a detailed list of detention facilities with ERO inspection results from the past five years.<sup>13</sup> The facility list, which ICE has since deleted from the site, revealed that **nearly 60 percent of facilities subject to ERO inspections had pending inspections from calendar year 2015, including eight facilities where inspections had been pending for two consecutive years**, even though ERO inspections occur annually. By delaying the release of ERO inspection results, ICE is failing to hold contractors — both private companies and local governments — accountable to Congress's 2009 DHS appropriations law.

NIJC's review of the ODO death reviews and inspection reports for facilities with pending ERO inspections indicates that egregious deficiencies persist at many facilities, including those highlighted below. However, the ODO reviews and inspections do not influence ICE's decisions about whether to continue detention facility contracts. ICE's lack of transparency and failure to publicly report ERO inspection results, combined with ODO's troubling findings, raise concerns similar to those identified by the DOJ OIG in its review of BOP prisons: **Does ICE have adequate oversight of its taxpayer-funded facilities and the treatment of the people in its custody?**

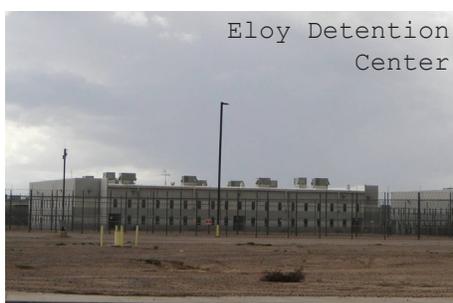
## ELOY DETENTION CENTER, AZ

Since 2003, 14 people have died at Eloy, operated by the Corrections Corporation of America (CCA). ODO death reviews show significant lapses in medical care, including failure to respond promptly to medical emergencies, refer individuals to hospitals or other outside medical care, and address known flaws in facility operations that have led to the deaths of individuals in custody.<sup>14</sup>

**ICE has not publicly released any inspection results for this detention center since 2012, and the facility's ERO rating has been pending for two consecutive years.**

## RIO COSUMNES CORRECTIONAL CENTER, CA

ODO's January 2015 inspection found Rio, run by Sacramento County, compliant with only one out of 16 standards it inspected.<sup>15</sup> During the inspection, ODO found two non-working telephones, lapses in tuberculosis screenings and unsanitary segregation cells. **ERO last inspected the facility in September 2015 and the rating remains pending.**



## CARVER AND RAMSEY COUNTY JAILS, MN

ODO's review found that pre-programmed phone numbers intended to ensure access to foreign embassies, government officials and *pro bono* legal counsel were not working at these county-run facilities.<sup>16</sup>

**ICE last inspected Ramsey County in 2014 and the rating remains pending; ICE records indicate that the facility was not inspected in 2014.**



Helene Vallee

## ADELANTO DETENTION FACILITY, CA

In July 2014, ODO identified six deficiencies with the facility's handling of sexual assault and abuse.<sup>17</sup> Specifically, the facility, which is owned by GEO Group, does not report all allegations to ICE. ODO also identified two repeat deficiencies from its 2012 inspection, including failure to provide detained individuals access to an updated version of Lexis Nexis and safeguarding individual's funds and personal property.<sup>18</sup> **ERO's last inspection occurred in October 2015; the facility's ERO rating has been pending for two consecutive years.**

## IMPERIAL DETENTION CENTER, CA

ODO's inspection identified 230 grievances alleging staff misconduct that had not been reported to the local ICE field office.<sup>19</sup> It is unclear if the facility, owned and operated by the for-profit Management and Training Corporation, investigated the grievances. **ERO's last inspection occurred in January 2015 and is still pending.**

Read the inspection reports at [immigrantjustice.org/transparency](http://immigrantjustice.org/transparency)

# Recommendations

The U.S. government must reform the ICE detention oversight system. NIJC urges the administration to:

1. **Immediately eliminate ICE's dependence on private prisons and reduce unnecessary detention** by releasing asylum seekers, people with criminal convictions who pose no risk to the community, individuals facing prolonged detention, and vulnerable populations, including people with medical or mental health issues and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) individuals.
2. **Examine ICE's inspection process in the same way the DOJ OIG evaluated the BOP monitoring system, and implement reforms**
  - Update standards of care based on a civil detention model rather than a corrections-based model. Require that updated, robust standards govern all ICE detention facilities.
  - Eliminate the use of ERO inspections, which fail to hold facilities accountable, and re-allocate funding for ERO inspections to an independent inspection process, such as the DHS OIG.
  - Ensure the DHS OIG follows best practices, outlined in NIJC and DWN's report, *Lives in Peril*.
  - Require that final inspection reports are completed no more than 60 days following the inspection of a facility.
3. **Institute consequences for failed inspections**
  - Conduct follow-up inspections and impose financial penalties on facilities deficient in meeting detention standards.
  - Abide by Congress' 2009 detention oversight mandate and terminate contracts within 60 days for facilities with repeat findings of substantial non-compliance, including inadequate or less than the equivalent median scores in two consecutive inspections.
4. **Increase transparency and oversight of the inspections process**
  - Make all detention facility inspections available to the public within three months of completion.
  - Ensure that the independent inspections process covers smaller facilities that ERO does not inspect.
  - Encourage local stakeholders, including legal services providers and others who frequently visit detention centers, to share feedback with inspectors regarding facilities under review.
  - Provide public reporting on suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, and other significant measures at detention facilities.
  - Submit quarterly reports to Congress on inspection and oversight activities at detention facilities, to be made available to the public.

## Endnotes

1. See ERO Custody Management Division, "[Authorized DMCP Facilities](#)," obtained via the ICE FOIA Library on Apr. 11, 2016.

2. Dept of Homeland Security (DHS) Appropriations Act, 2010, H.R. 2892, P.L. 111-83, 111th Congress, p. 9.

3. Mario Moreno, "Detention Costs Still Don't Add Up to Good Policy," *National Immigration Forum*, Sep. 2014.

4. Caitlin Yoshiko Kandil, "Jails Serve Inmates and Immigrants," *Los Angeles Times*, Jul. 29, 2016.

5. Sally Q. Yates, Deputy Attorney General, Dept of Justice to Acting Director, Federal Bureau of Prisons, memorandum "Reducing our Use of Private Prisons," Aug. 18, 2016.

6. Dept of Justice Office of the Inspector General, [Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons](#), Aug. 2016.

7. *Id.*

8. "[Authorized DMCP Facilities](#)," obtained via the ICE FOIA Library on Apr. 11, 2016.

9. [DHS Appropriations Act of 2010](#), *supra* n. 1.

10. DHS Office of the Inspector General (DHS OIG), "[DHS OIG to Periodically Inspect CBP and ICE Detention Facilities](#)," Mar. 15, 2016.

11. Detention Watch Network & National Immigrant Justice Center, [Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse](#), Oct. 2015.

12. See [2012 Northwest Detention Center ERO Inspection](#); [2012 Etowah ODO Inspection](#).

13. See the ICE FOIA Library at [www.ice.gov/foia/library](http://www.ice.gov/foia/library) and "[Authorized DMCP Facilities](#)," *supra* n. 11.

14. See American Civil Liberties Union, Detention Watch Network & National Immigrant Justice Center, [Fatal Neglect: How ICE Ignores Deaths in Detention](#), Feb. 2016 and [Human Rights Watch, US: Deaths in Immigration Detention](#), Jul. 2016.

15. [2015 Rio Cosumnes Correctional Center ODO Inspection](#), p. 3.

16. [2014 Carver County ODO Inspection](#), p. 26 and [2014 Ramsey County ODO Inspection](#), p. 29.

17. [2014 Adelanto ODO Inspection](#), p. 20.

18. [2014 Adelanto ODO Inspection](#), pp. 18 and 12.

19. [2015 Imperial Regional Detention Facility ODO Inspection](#), p. 10.