



## Immigration Detention Oversight and Accountability Toolkit

### ***A Guide for Members of Congress Visiting ICE Jails***

**May 2019**

The U.S. immigration detention system has grown by nearly 50 percent under the Trump administration.<sup>1</sup> U.S. Immigration and Customs Enforcement (ICE) operates approximately 200 facilities under contracts with private prison companies and county and local jails to hold about 50,000 immigrants each day while their immigration cases proceed.<sup>2</sup> Abuse and neglect are well-documented throughout the system, which is plagued by a lack of transparency.<sup>3</sup> Congressional oversight is long overdue.<sup>4</sup>

**The best way for an elected official to understand what is happening in immigration jails is to visit them.**

This toolkit provides a step-by-step guide for how members of Congress can visit ICE detention facilities in their districts and engage in oversight. Visiting an ICE jail is a critical first step to bring accountability to this harmful system. We recommend members follow their visits with robust information requests and strategic interventions at the local and federal level. This toolkit provides suggestions and recommendations for how to maximize impact prior to, during, and following a congressional visit to an ICE facility.

**NATIONAL  
IMMIGRANT  
JUSTICE CENTER**  
A HEARTLAND ALLIANCE PROGRAM



**DETENTION  
WATCH NETWORK**

## **Why immigration detention matters to constituents**

*The consequential reach of immigration detention goes beyond the detained individual. Immigration detention turns multi-income households into single or no-income households and leaves children to experience the trauma of unexpectedly losing a parent to detention and, potentially, deportation. With more “mixed status families” throughout the United States, every member of Congress should expect to have constituents enduring the trauma associated with losing a loved one to immigration detention and the uncertainty of not knowing when if ever reunification will occur.*

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**Toolkit available online at [www.immigrantjustice.org/DetentionAccountabilityToolkit](http://www.immigrantjustice.org/DetentionAccountabilityToolkit)**

# I. Frequently Asked Questions about Immigration Detention



## ***Who does ICE detain?***

As of May 1, 2019, ICE held 49,696 individuals in immigration detention facilities, including 48,696 people in adult facilities and 1,000 in family detention centers.<sup>5</sup> This marks a more than 40% increase in the system just over the course of the Trump administration<sup>6</sup> and a dramatic growth over the course of decades since the 1980s, when the United States rarely jailed individuals for alleged violations of the civil immigration code.<sup>7</sup>



## ***Why does ICE detain them?***

People in ICE custody all are in either immigration court or appellate proceedings to determine if they can remain lawfully in the United States, or they are pending 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.

People find themselves in ICE custody through two primary channels:

- 1) Individuals apprehended at the airport or border, or who present themselves at a 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 May 2019, 54% of the population in ICE custody was originally apprehended by CBP.<sup>8</sup>
- 2) Many individuals are taken into custody from the interior of the United States, including those who are undocumented or who ICE alleges 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,<sup>9</sup> while they are in the process of complying with mandatory check-ins at local ICE offices,<sup>10</sup> on their way to dropping off their children at schools,<sup>11</sup> at hospitals visiting loved ones, in courthouses,<sup>12</sup> and in their places of business and employment.<sup>13</sup> For people who are detained by ICE following interactions with the criminal justice 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 May 2019, 46% of the detained population was originally apprehended by ICE.<sup>14</sup>



## ***What types of facilities does ICE use to detain people?***

“Immigration detention” refers to a wide variety of facilities governed by different types of contracts. Generally, there are five types of ICE detention facilities:<sup>15</sup>

1. *Service Processing Centers (SPCs)* are owned by ICE and are generally operated by contract detention staff. One example is the El Paso Service Processing Center in El Paso, Texas, which has an average daily population of 832.<sup>16</sup> 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. One example is the South Texas ICE Process Center in Pearsall, Texas, operated by the private prison company GEO, which has an average daily population of 1,739. 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 and county jails and ICE allowing for the detention of individuals for immigration purposes within city or county jails. One example is the Glades County Detention Center in Moore Haven, Florida, where ICE utilizes the local jail to hold an average daily population of 420 men and women. 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. One example is the Immigration Centers of America facility in Farmville, Virginia, where the county contracts with ICE but the private prison company Immigration Centers of America operates the facility, which holds an average daily population of 723 people. DHS OIG reports that at the end of 2017, approximately 28% of the overall immigration detention population was held in 11 DIGSAs.
5. *Marshals Service Intergovernmental Agreement (IGAs)* are facilities operated by the U.S. Marshals Service that ICE also utilizes, usually pursuant to a rider on the Marshal's contract. One example is the Jerome Combs Detention Center in Kankakee, Illinois, where ICE holds an average of 152 people. DHS OIG reports that at the end of 2017, approximately 19% of the overall immigration detention population was held in 100 IGAs.



### ***Who operates ICE detention facilities?***

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.<sup>17</sup>

As of 2017, approximately 70% of people in immigration detention were held in privately operated jails.<sup>18</sup> 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,<sup>19</sup> and serves to dilute accountability for violations that occur within the facility walls.



## ***What standards of care 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 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 differing standards and some are subject to no standards at all.

All three sets of standards were developed primarily in reliance on correctional incarceration standards, an inappropriate touchstone in the context of *civil* immigration detention.<sup>20</sup>

These standards include:

1. 2000 National Detention Standards (NDS)<sup>21</sup>
2. 2008 Performance-Based National Detention Standards (PBNDS)<sup>22</sup>
3. 2011 PBNDS, as amended in 2016<sup>23</sup>

Each set of standards varies greatly regarding 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.<sup>24</sup> Some immigration jails are not contractually governed by any standards at all.<sup>25</sup>

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.<sup>26</sup>



## ***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:<sup>27</sup>

- 1) ICE contracts with a private company called the Nakamoto Group to conduct annual or biennial inspections of facilities which 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) is a unit within ICE's Office of Professional Responsibility, and 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.
- 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).<sup>28</sup>

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.<sup>29</sup> 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."<sup>30</sup> One ICE employee went so far as to refer to Nakamoto inspections as being, "very, very, very difficult to fail."<sup>31</sup>

**Particularly relevant to this toolkit is the DHS OIG's finding that the advance notice provided to facilities of both Nakamoto and ODO inspections, according to ICE's own field staff, "allows facility management to temporarily modify practices to 'pass' an inspection."**<sup>32</sup> Although OIG has recommended that ODO consider making at least some of its inspections unannounced, ICE has resisted full consent to this recommendation, noting that ODO's "pre-inspection documentation review makes conducting unannounced inspections difficult."<sup>33</sup> In recognition of these shortcomings, the DHS OIG began conducting unannounced inspections of detention facilities in early 2016,<sup>34</sup> clearly demonstrating the feasibility of such an approach.

Various contracting mechanisms could be used to hold facilities accountable for deficiencies that put human health and safety at risk, but these mechanisms are rarely used. ICE should, for example, incorporate into each contract a "quality assurance surveillance plan" or QASP, detailing remedial actions required when a contractor fails to comply with ICE detention standards.<sup>35</sup> According to the DHS OIG, the QASP could even recommend financial penalties.<sup>36</sup> However, QASPs are rarely utilized by ICE; only 28 of the 106 contracts reviewed by OIG in a recent audit included the mechanism.<sup>37</sup>

DHS OIG also recently reported that ICE contractors readily circumvent contracting requirements by receiving waivers from ICE for deficient conditions.<sup>38</sup> Waiver requests are granted at an extremely high rate; 96% of the waiver requests reviewed by OIG were granted.<sup>39</sup> OIG has noted that, paired with the lack of any formal waiver guidance and review process, "ICE may be indefinitely allowing contract facilities to circumvent detention standards intended to assure the safety, security, and rights of detainees."<sup>40</sup> One approved waiver request reviewed by OIG, for example, permitted a facility to use a significantly more toxic spray against immigrants in place of pepper spray, in violation of ICE detention standards regarding detainee health and safety.<sup>41</sup>



### ***What are the most urgent rights violations occurring in ICE detention?***

For decades, non-governmental organizations and DHS OIG have documented persistent rights abuses within ICE detention. DHS OIG's unannounced visits to a small number of detention facilities have revealed concerns so significant as to "undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment."<sup>42</sup>

For members of Congress and their staff interested in familiarizing themselves with the most recent and robust reporting on this crisis, the Appendix to NIJC's recent report, "A Better Way," provides a bibliography of these resources.<sup>43</sup>

Among the most egregious rights violations endured by immigrants in detention are:

- *Deaths attributable to medical negligence:* Recent studies by independent medical professionals demonstrate that approximately half of all deaths in ICE custody are attributable to medical negligence, with clear evidence of sub-par and dangerous

medical practices in ICE facilities including: unreasonable delays for basic medical needs, poor practitioner and nursing care, and deficient emergency responses.<sup>44</sup>

- *Rampant sexual abuse:* The Intercept recently reported on more than 1,000 complaints of sexual abuse filed between 2010 and September 2017, revealing an alarming pattern of abuse endemic throughout the system, with few accountability mechanisms in place.<sup>45</sup>
- *Lack of access to counsel:* A recent Los Angeles Times study found that about 30% of detained immigrants are jailed more than 100 miles from the nearest legal aid organization on the government's "pro bono list."<sup>46</sup> Nationally, fewer than one in five immigrants in detention have an attorney, and this severely impacts their ability to remain in the United States lawfully.<sup>47</sup>

## **II. How to Plan a Detention Center Visit**

This section provides guidance for how to prepare for a site visit, including: a) choosing which ICE facility to visit and researching that facility; b) deciding between an unannounced or announced visit; c) connecting with constituents and local stakeholders near the ICE facility; and d) identifying and obtaining consent from detained individuals with whom a member of Congress can speak during the visit.



### **Choosing and Researching a Facility**

Members of Congress may want to visit a facility in their state or district, or a facility in a different state or district where the loved ones of constituents are likely to be held and/or where the national impact of immigration detention is particularly visible.

**ICE publishes some data about detention facilities at <https://www.ice.gov/facility-inspections>.**

The data and inspections documents available at this link are responsive to reporting obligations set forth in the joint explanatory report of the DHS Appropriations bills signed into law in 2018 and again in 2019.<sup>48</sup>

From this data, members of Congress can determine:

#### **1. Which facilities are in my district?**

- Click on the link for "Over-72-Hour ICE Detention Facilities" on the right side of the page. An Excel document will open in the browser.
- Click on "Enable Editing" in the Excel document.
- Sort the list by state in order to find the ICE Area of Responsibility (AOR) that covers your district.

#### **2. Who is detained at a particular jail and which standards govern it?**

- Click on the link for "Dedicated and Non Dedicated Facility List." This will open up an Excel book with two worksheets: one for facilities that only hold people in ICE custody, and another for facilities that hold people in both ICE and non-ICE custody.

- Click on “Enable Editing” in the Excel file.
- Sort by state or search for a facility name to locate demographic information.
- This document includes the following data columns:
  - “AOR,” meaning ICE “Area of Responsibility”
  - “Type,” meaning type of contract (see discussion of different contract types in Section I)
  - Whether the facility holds men and/or women
  - “ADP,” meaning the average daily population of the facility to date for fiscal year 2019
  - Whether the facility holds people for more or less than 72 hours
  - The last set of standards under which the facility was inspected (see discussion of different standards above in Section I)
  - The date of the last inspection
  - The number of medical or mental health personnel at the facility.

### 3. *How has a facility performed in its required inspections?*

Beginning with May 2018 inspections, ICE has posted its cover letters and summaries of inspections as they occur.

***A note about facility contracts:*** ICE does not yet make its detention contracts publicly available, nor does it publish the full inspections documents. NIJC is currently litigating Freedom of Information Act requests to obtain a full set of recent ICE detention contracts and inspections (including portions of inspections reports ICE has not posted online).<sup>49</sup> The contracts and inspections documents obtained by NIJC thus far, dating back to 2009, are available under “Detention Facility Documents” at <https://www.immigrantjustice.org/transparency>.



### **Unannounced Visits are Critical**

NIJC and Detention Watch Network encourage members of Congress to engage in *unannounced* visits to ICE facilities. We make this recommendation fully aware that it suggests a deviation from ordinary protocols surrounding congressional delegations, and creates logistical challenges including a risk that the member will be turned away.

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.”<sup>50</sup> Particularly given the failings of ICE’s own inspections regime, and the discrepancies between what announced and unannounced inspections find,<sup>51</sup> it is imperative that members of Congress gain an accurate and unhampered understanding of what happens inside our nation’s immigration jails.

NIJC and Detention Watch Network recommend that members of Congress who engage in unannounced visits be prepared to speak out publicly if a facility turns them away and continue to return to the facility until they are permitted entry.<sup>52</sup> Regardless of whether the visit is



announced or unannounced, it is critical that members solicit information from ICE and from facilities' operators to complement and inform their on-the-ground findings. Section III provides more guidance on what to do after a visit.

### **Unannounced Inspections at the Adelanto Detention Facility**

Recent inspections of the Adelanto Detention Facility, run by the private prison company GEO Group, show the difference in results when a facility's inspection is announced versus unannounced. In October 2018, DHS OIG released a management alert on the jail, warning DHS that its unannounced inspection had uncovered conditions so grave as to pose "threats to the safety, rights, and health of detainees."<sup>53</sup> Among the alarming observations made by OIG's investigators were nooses made from braided bed sheets, found to be "very widespread" throughout the jail<sup>54</sup> despite a man having died by suicide *using a braided bed sheet* in his Adelanto cell in March of the previous year.<sup>55</sup> The report also documented, broadly, untimely and inadequate medical and dental care, harmful and inappropriate use of solitary confinement, and many other deficiencies. The jail, however, *routinely passes* its announced inspections. In August 2017, only months after the suicide that occurred in March, a GEO Group spokesperson told the *Los Angeles Times* that ICE's most recent annual audit of the facility had found it to be "in compliance with 100% of the mandated ICE standards."<sup>56</sup>



### **Connecting With Local Stakeholders**

NIJC and Detention Watch network recommend that in advance of a visit, the members of Congress and their staff meet with local stakeholders who are familiar with the given facility and the particular concerns of detained individuals. Although many concerns, such as inadequate medical care and poor food quality, are generally consistent throughout ICE's detention system, there are other problems that may be unique to certain facilities such as problems with access to visitation or particular staffing issues.

NIJC, Detention Watch Network, and many other nonprofit organizations are available to assist in identifying relevant stakeholders and facilitate meetings.

Some key stakeholders to consider contacting include:

- Families of detained individuals or people who have previously been detained at the facility
- Visitation groups that are regularly at the facility
- Local civil rights or human rights advocacy groups that are familiar with issues in the facility
- Legal services organizations that provide representation or know-your-rights programming at the facility



## Identifying Individuals in Detention to Speak With

We strongly recommend that members and their staff work with visitation groups, legal service providers, and local nonprofits to identify individuals in the jail who would like to speak with a member of Congress during their visit. As an alternative, members of Congress may ask to speak with individuals in detention who volunteer to do so during the visit; in this case, however, it is important that the member only speak with individuals who opt into the conversation and that neither ICE nor the facility operator be permitted to select particular individuals to speak to the member. It is critical to remember throughout the process that individuals in detention often are justifiably fearful of retaliatory actions by ICE or facility guards if they speak with the press or elected officials about their case.

Visiting members might also consider inviting loved ones of individuals in the jail to join the visit.

If the visit is announced, members and their staff should provide the facility in advance with the name and alien registration number, (known as an “A-number,” the number assigned to all individuals in the immigration system) of each detained individual with whom they intend to meet. If the visit is unannounced, the visiting delegation should bring the list of names and A numbers with them.

**Importantly, members and their staff should bring blank copies of their office’s authorization forms to obtain a signature providing consent to seek and/or share information with ICE about an individual’s case.**

## III. What To Do On the Visit

Members of Congress who announce their visit in advance are encouraged to request access to the physical spaces described below and request the information described below in advance of the visit. For delegations who are engaging in unannounced visits, we recommend arriving at the facility with information requests ready to go and being prepared to ask for follow-up information subsequent to the visit.



### Who to Meet

Members and their staff should request to speak with the following individuals before, during, or subsequent to any jail visit:

- Facility leadership, including the warden or its equivalent
- ICE leadership with control over the facility
- Medical and mental health staff of the facility
- Immigrants held in detention (see Section II)



## Physical Spaces to Visit In the Facility

In order to gain a full understanding of the facility, we recommend that visiting delegations request to see each of the following parts of the facility:

- Segregation / special housing unit
- Medical unit
- Kitchen (particularly if unannounced)
- All recreation spaces, including indoor and/or outdoor
- Law library (and request to review what documents and materials are made available to individuals in detention)
- Family and attorney/client visitation areas, including contact and no-contact areas
- Cells and/or dorm areas where individuals in detention sleep each night and spend their days
- Phones used by individuals in detention for contact with family and attorney/client calls



## Questions to Ask Facility Staff

Visiting delegations should solicit the following information from ICE and facility staff, either in person or in writing before, during or after a visit.

### ***Who is detained at the facility?***

- What is the facility's total capacity? How many individuals in ICE custody are currently detained at this facility, including a breakdown by gender, nationalities, and language spoken.
- How many individuals currently in the facility were apprehended by ICE in the interior of the country versus the number apprehended at the border or airport?
- For those apprehended in the interior by ICE, what are the specific criminal charges and/or convictions against those individuals who came into ICE custody?
- How many people who are members of vulnerable populations are currently detained at the facility, including: pregnant women, individuals who identify as LGBTQ, individuals with serious medical and/or mental health issues, elderly (over 60), youth (under 21), and/or indigenous language speakers?

### ***Governing standards, contract, and monitoring***

- What detention standards currently govern the facility?
- What was the date of the last facility inspection? Request a copy of the most recently conducted inspection results.
- Does the contract contain a "Quality Assurance Surveillance Plan," or QASP? If yes, how many, if any, Contract Discrepancy Reports have been submitted by the Contracting Officer's Representative in the previous year? What corrective action plans

are in place in response to such Discrepancy Reports? Request a copy of the Contract Discrepancy Reports and subsequent remedial action plans.

- How many waivers of contract requirements has the facility requested from ICE in the past year, and how many of that number have been granted? What standards have been waived? Request a copy of the waiver request and approval or denial.

### ***Family separation***

- Are there individuals in the facility who were separated from a family member at the border? If so, what is the age of the individual(s) from whom they were separated, nature of the family relationship, and CBP/ICE's justification for the separation?
- In each case of family separation, what steps have been taken to move the family toward reunification?
- In each case of family separation, how frequently is the adult allowed to speak by phone or video teleconference with their family member?

### ***Medical and mental health care***

- How many medical staff, and what level, are included in the staffing plan for the facility? Which of those positions are currently filled? For any vacancies, how long has the position been vacant?
- Who provides medical services at the facility? Is there a subcontractor for health services? What happens when an individual needs services from an outside specialist?
- Who provides mental health services at the facility? What onsite mental health services are available? What treatment plans are offered to individuals with mental health concerns? How often are they assessed?
- How many people with mental health concerns are held in segregation? How long have they been held in segregation? Have they been considered for alternative placement?

### ***Segregation / solitary confinement***

- For what reason(s) are people most commonly placed in segregation and for how long (average/median)?
- How many people in the facility are currently in segregation? Request the documented reasons for and length of each placement.
- Request to review any facility policies or training manuals for the use of segregation.
- Are facility staff aware of and trained on the September 2013 ICE Segregation Directive?<sup>57</sup>
- Do people who are in segregation have access to visitation, phone usage and the law library? If so, how often and for how long?

### ***Recreation and programming***

- What programs, such as GED or Alcoholics Anonymous classes, religious meetings or pastoral care, are available to individuals in ICE custody? What is the process for accessing any such programs?
- How many hours per day is outside recreation available? How many times per week?
- Is there any recreation that allows for fresh air and sunlight?

### ***Access to legal materials and counsel***

- What process must individuals undertake to gain access to the law library? How many hours per week of access are permitted?
- Are legal materials current? Does the law library contain all materials required by the 2011 Performance-Based National Detention Standards?
- What languages are legal materials available in?
- What computer access is available? Are individuals able to save documents securely? Are they able to print documents?
- How many attorney/client visitation rooms are available?
- Is the pro bono platform (a system that allows individuals to make free calls to approved free legal service providers) in place for clients to reach their attorneys via telephone?
- How can detained individuals communicate in a timely manner with their attorneys?
- Are detained individuals allowed to send and receive faxes with their attorneys? What is the procedure?
- Can detainees photocopy materials, and if so, at what cost?

### ***Complaint and grievance procedures***

- What process is available for an individual in detention to file a complaint or grievance?
- Request the number of complaints and grievances submitted each month for the past year, broken down by type of complaint.
- What is the facility's procedure/response time to respond to complaints and grievances?
- How does staff address complaints and concerns from individuals who do not speak English or Spanish?
- Can people who are detained reach the DHS OIG to report problems inside the facility? A sign with the DHS OIG's number should be posted near all phones. Members of Congress should attempt to call the number themselves during the visit, to see if they are able to get through.

### ***Visitation***

- Does the facility allow contact visits between detained individuals and their families?
- How frequently is family visitation permitted?
- Before and after a person in immigration detention receives a visit, what is the protocol? Are individuals strip searched?
- Are any visitation groups regularly visiting the facility? If not, have any groups requested to do so and been denied? If so, what was the basis for the denial?

### ***Training for facility staff***

- What if any training does the facility provide its staff on working with trauma survivors or vulnerable populations?
- What if any training does the facility provide its staff on working with individuals from different cultures and those who do not speak English?

### ***Prison Rape Elimination Act (PREA) compliance***

- What policies are in place at the facility to ensure compliance with ICE's training and reporting obligations under DHS's PREA regulations issued in 2014?
- What steps are taken following notice of an alleged sexual assault or abuse?
- How are detainees at the facility made aware of their PREA rights? In what languages?



### **Questions to Ask Detained Individuals**

Confidentiality is critical to the ability of the member of Congress and her staff to have open and productive conversations with individuals in detention. Members and their staff should be aware that individuals in detention are under significant stress and in most cases are enduring one of the most challenging periods of their life. They also are frequently afraid that speaking with the press or an elected official or other public personality will result in retaliation by ICE or facility guards. For this reason, it is critical that members and their staff insist that they be permitted to speak with individuals on a one-on-one basis, and without any ICE or facility staff in earshot of the conversation. Members and their staff should be prepared to negotiate in order to access a confidential space.

### ***Beginning the conversation***

Members and their staff should begin their conversations with individuals in detention by explaining who they are and the purpose for their visit, and by assuring the individual that the conversation will be held in confidence unless the individual provides specific consent for the member to share. We also recommend using open-ended questions to elicit concerns and questions from detained individuals.

### ***Orientation and understanding of the legal process***

- Does the individual understand the reasons why they are in detention and what their rights are in detention?
- Does the individual understand the removal process they are facing?
- What kind of access do they have to an ICE deportation officer to ask questions?
- What kind of language access do non-English speakers have to speak with ICE and/or facility staff, including medical staff? This question may be especially important to ask people who do not speak English or Spanish.

### ***Family separation***

- Was the individual separated from a family member at the border, and if so, how old was the family member, nature of the family relationship, nature of the separation, and what justification, if any, did ICE give for the separation?
- How frequently is the individual permitted to communicate with their separated family member?
- What has been the impact of the separation on the individual's physical and mental health?

### ***Medical and mental health care***

- Does the individual know how to request medical assistance? If they have requested medical care, how promptly were they seen?
- What quality of care the individual received?
- What kind of access to care do non-English and non-Spanish speakers have?
- What is the availability of mental health counseling?
- Does the individual have access to necessary medications?
- What prenatal care is provided for pregnant individuals?
- What dental care is provided?

### ***Conditions generally***

- What educational and recreational programs does the individual have access to?
- Describe the cleanliness in the facility and living quarters.
- What kind of religious services are provided? Is the individual able to observe their religious practices?
- What access does the individual have to personal belongings and documents?

- What is the individual's relationship with and treatment by facility staff?
- Does the individual have any safety concerns in detention, including in relation to other individuals?
- What access does the individual have to soap, shampoo, razors, tampons, and other personal hygiene items?
- What type of work programs does the facility use: are they optional or mandatory? Is there any coercion linking privileges to work?

**Food**

- Describe the quality and nutritional value of food served.
- Describe the quantity of food and portion size.
- Does the facility make accommodations for dietary restrictions?

**Abuse**

- What is the individual's general feelings regarding their safety? Have they felt threatened?
- Has the individual been subject to mistreatment, harassment, inappropriate touching or other abuse by ICE or facility officers?
- How do ICE or facility staff respond to allegations of harassment, mistreatment or abuse?

**Grievance process**

- Does the individual have access to and understanding of a grievance process?
- How does ICE and/or facility staff respond to filed grievances?

**Solitary confinement / segregation**

- Has the individual been placed in segregation, isolated housing, or some other form of solitary confinement?
- Is the individual aware of any documentation regarding their placement in segregation? Was the individual provided any process for review of the decision to place them in segregation?
- Did an individual placed in segregation have access to the law library, recreation, religious services, or other programs during that time?



### ***Phone access***

- Does the individual have access to phones?
- How much do phone calls cost?
- Can the individual call attorneys, consulates/embassies, and immigration courts free of cost?
- Can the individual have a private phone call with their attorney?

### ***Interpretation***

- Is the individual able to communicate with facility staff in their native language?
- Do individuals have access to interpreters if needed?

### ***Access to legal services***

- How frequent and for how long are individuals permitted to use the law library? Are the materials sufficient and user friendly?
- Describe the quality of staff-provided assistance at the library.
- Does the individual have access to their legal documents and evidence for their case?
- Has the individual faced any challenges or obstacles to obtaining, and communicating and/or meeting with an attorney?

### ***Family visitation***

- How often are family members permitted to visit?
- What is the nature of the visitation: contact versus no-contact; in-person versus video-teleconferencing?
- What types of searches occur before and after family visits? Are strip searches used?

## **IV. What to do after the visit**

There are many ways in which a member of Congress can leverage their experience visiting a jail to effect positive change for a specific individual they met in detention, to improve conditions at the jail, and/or to support the national movement to end ICE's reliance on immigration detention. The timeline and location for these steps range from minutes after the visit in front of the ICE jail, to months after the visit on the Senate or House floor.

### **Oversight steps following a visit can include:**

- 1. Press conference or Facebook live stream** in front of the facility immediately following the visit, with family members of people detained inside. This action will elevate the

voices of those most impacted by detention and allow the member of Congress to speak out immediately about the most impactful moments of the visit. Advance planning for a public or live-streamed event outside the facility or a nearby location is particularly encouraged for members who are planning an unannounced visit and may need to protest the facility's decision to deny entry.

2. **Public statements** on social media and other platforms within 24 hours of the visit, recording what the visiting delegation observed.
3. **Written statements and/or floor speeches** provide an opportunity for the member of Congress to connect their experience and the stories of individuals they met in the facility with questions about federal immigration policy, in particular the administration's continued unnecessary expansion of the detention system.<sup>58</sup>
4. **Interventions with local facility operators and ICE local and federal officers** allow members to push for remedial actions by ICE and the facility operator to address problems observed during the visit. Interventions might include:
  - Member-level outreach by phone or email to the ICE field office director and/or warden highlighting concerns and demanding redress;
  - Outreach to ICE headquarters doing the same, if local staff is unresponsive; and/or
  - Supporting local service providers' requests for assistance and intervention.

When identifying concerns for ICE or facility operators, it may be helpful for members of Congress and their staff to identify if the concern represents a specific violation of a particular ICE detention standard. After identifying which set of standards is in place at a facility (instructions for doing this are in Section II), members or their staff can access the relevant standard on the ICE website at <https://www.ice.gov/detention-management>. NIJC and Detention Watch Network staff are available to assist with this process.

5. **Support for individuals who the visiting delegation met in detention**, such as:
  - Provide letters of support to ICE for release on bond or parole;
  - Reach out to ICE and/or the facility operator to request specific assistance or amelioration of harms for individuals suffering rights abuses such as inadequate medical or mental health care access; and/or
  - Conduct member- or staff-level outreach to ICE in support of requests the individual and/or her attorney has made for prosecutorial discretion such as a stay of removal.
6. **#DefundHate!** NIJC and Detention Watch Network encourage members of Congress to leverage their detention visitation experience to publicly call on their colleagues in Congress to cut DHS's detention and enforcement funding.

## Endnotes

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- <sup>2</sup> U.S. Immigration and Customs Enforcement (ICE) uploads current lists of all immigration detention facilities in use for more than 72 hours on its website at <https://www.ice.gov/facility-inspections>.
- <sup>3</sup> NIJC has compiled recent reports documenting abuse and corruption in ICE facilities as an Appendix to a recent report, available at [https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report\\_APPENDIX\\_detention-reporting-bibliography\\_April2019.pdf](https://www.immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report_APPENDIX_detention-reporting-bibliography_April2019.pdf) (see *infra* n. 7 for full report). See also Emily Ryo, Ian Peacock, American Immigration Council, *The Landscape of Immigration Detention in the United States*, (December 2018), <https://americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states>; and Heidi Altman, Mary Small, *ICE Lies: Public Deception, Private Profit*, (January 2018), [http://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies\\_DWN\\_NIJC\\_Feb2018.pdf](http://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf).
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- <sup>9</sup> William Lopez, *Truth Out*, “ICE Raids Make Families Afraid to Leave Their Homes,” (January 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,” (February 2018), <https://www.themarshallproject.org/2018/02/01/the-day-ice-knocked-on-my-door>.
- <sup>10</sup> 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>.
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- <sup>12</sup> David M. Perry, *Pacific Standard*, “ICE Keeps Raiding Hospitals,” (January 2018), <https://psmag.com/social-justice/ice-keeps-raiding-hospitals-and-harming-disabled-children>.
- <sup>13</sup> Jonathan Blitzer, *The New Yorker*, “The woman arrested by ICE in a courthouse speaks out,” (Feb. 23, 2017), <https://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>.
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- <sup>15</sup> 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>.
- <sup>16</sup> For Average Daily Population data, see the facility matrix maintained by ICE on its website at <https://www.ice.gov/facility-inspections>.
- <sup>17</sup> See *OIG-19-18*, *supra* n. 15, at p. 4.
- <sup>18</sup> 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>.
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<sup>27</sup> 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>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at p. 4.

<sup>30</sup> *Id.* at p. 7 n.12.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at p. 10.

<sup>33</sup> *Id.* at p. 17.

<sup>34</sup> DHS Office of Inspector General, *DHS OIG to Periodically Inspect CBP and ICE Detention Facilities*, (March 15, 2016), [https://www.oig.dhs.gov/sites/default/files/assets/pr/2016/oigpr-031516b\\_0.pdf](https://www.oig.dhs.gov/sites/default/files/assets/pr/2016/oigpr-031516b_0.pdf).

<sup>35</sup> *See id.*

<sup>36</sup> *See id.*

<sup>37</sup> *See id.*

<sup>38</sup> *See id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> DHS Office of Inspector General, *OIG-18-32: Concerns About ICE Detainee Treatment and Care at Detention Facilities*, (December 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

<sup>43</sup> *See n. 7, supra.*

<sup>44</sup> 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>.

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<sup>49</sup> This litigation is discussed on the NIJC website at <https://www.immigrantjustice.org/pending-nijc-transparency-project-freedom-information-act-requests>.

<sup>50</sup> *See*, *OIG-18-67* at p. 10, *supra* n. 27.

<sup>51</sup> *See*, *OIG-18-32*, *supra* n. 42; and DHS Office of Inspector General, *OIG-18-86: Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, (September 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

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<sup>55</sup> Peter Holley, *Washington Post*, "An undocumented immigrant hanged himself after 3 months in an ICE detention center," March 29, 2017, [https://www.washingtonpost.com/news/post-nation/wp/2017/03/29/an-illegal-immigrant-hanged-himself-after-three-months-in-an-ice-detention-center/?utm\\_term=.2e8f74f371cf](https://www.washingtonpost.com/news/post-nation/wp/2017/03/29/an-illegal-immigrant-hanged-himself-after-three-months-in-an-ice-detention-center/?utm_term=.2e8f74f371cf).

<sup>56</sup> Paloma Esquivel, *Los Angeles Times*, "'We don't feel OK here': Detainee deaths, suicide attempts and hunger strikes plague California immigration facility," (August 2017), <https://www.latimes.com/local/lanow/la-me-ln-adelanto-detention-20170808-story.html>.

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