

Testimony in support of MD SB 850
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Thank you Mr. Chairman and committee members. My name is Setareh Ghandehari and I am a resident of Montgomery County, MD. I am also the Advocacy Manager at Detention Watch Network, a national organization that has been working at the intersection of immigration and mass incarceration for the last two decades.

Immigration and Customs Enforcement (ICE) detains nearly 40,000¹ people everyday in a sprawling network of over 200 immigration jails across the country.² Private prison companies operate over 70% of ICE's detention system.³ The system has grown rapidly under this administration reaching a historic high of 55,000 beds last summer.⁴ The private prison companies that operate it incentivize profits and politics over human dignity and due process.

Private companies that run detention centers as well as those that contract with the government for other services such as food, transportation and guards have benefitted the most from the expansion of immigration detention. One way in which they ensure their profits is by including guaranteed minimums, or "local lockup quotas" into their contracts.⁵ This means that regardless of how many people are actually detained, the private company is guaranteed payment for a minimum number of beds. For example, the Northwest Detention Center in Tacoma, WA has a guaranteed minimum requiring ICE to pay the GEO Group for 800 beds regardless of how many people are detained there.⁶ Jails with these

¹ U.S. Immigration and Customs Enforcement, Detention Statistics (2020) <https://www.ice.gov/detention-management-tab2>

² Detention Watch Network, *Detention 101* (2020) <https://www.detentionwatchnetwork.org/issues/detention-101>

³ Detention Watch Network, *A Toxic Relationship: Private Prisons and U.S. Immigration Detention 2* (2016) [https://www.detentionwatchnetwork.org/sites/default/files/reports/A Toxic Relationship DWN.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/A%20Toxic%20Relationship%20DWN.pdf)

⁴ Andrea Castillo, *ICE Provides Deplorable Healthcare to Detained Immigrants, Advocates Allege in Massive Lawsuit*, L.A. Times, Aug. 19, 2019 <https://www.latimes.com/california/story/2019-08-19/immigrant-detention-medical-care-lawsuit>

⁵ Detention Watch Network, *supra* note 3

⁶ Detention Watch Network, Center for Constitutional Rights, *Banking on Detention: Local Lockup Quotas & The Immigration Dragnet 8* (2015) <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20CCR%20Banking%20on%20Detention%20Report.pdf>

contractually guaranteed minimums are considered priorities by ICE which feels pressure to fill available beds in the name of cost efficiency.⁷ Additionally, with “tiered pricing,” ICE actually receives a discount for people detained above the guaranteed minimum, again incentivizing higher levels of detention.⁸ Because the priority for private companies is profit, they are incentivized to cut corners like limiting medical staffing and denying care.⁹ Since 2003, over 190 people have died in ICE detention centers, including many who were denied medical care and whose deaths were deemed negligent by ICE’s own review.¹⁰

Even if a guaranteed minimum doesn’t exist in a contract, once a facility is built the local counties and cities often become dependent on the federal funds coming in to detain immigrants. In places like Etowah County in Alabama, ICE was planning to end the contract with the county due to poor conditions, but after Members of Congress intervened due to the loss of jobs, ICE kept the facility open.¹¹

In addition to the perverse profit incentives, we’ve found that local enforcement ramps up when immigration jails are opened, tearing local communities apart as loved ones are jailed and often eventually deported.

⁷ *Id.* at 4-6

⁸ *Id.*

⁹ Detention Watch Network, *supra* note 3

¹⁰ Detention Watch Network, *supra* note 2

¹¹ Lisa Riordan Seville, Hannah Rapple, *When Feds Sought to Shutter Immigration Jail, Politics Intervened*, NBC News, Aug. 22, 2012, <http://investigations.nbcnews.com/news/2012/08/22/13398156-when-feds-sought-to-shutter-immigration-jail-politics-intervened>

A TOXIC RELATIONSHIP: PRIVATE PRISONS AND U.S. IMMIGRATION DETENTION



DETENTION
WATCH NETWORK

ACKNOWLEDGEMENTS

The primary author of this report was Mary Small, with staff contributions by Dawy Rkasnuam and Silky Shah.

About Detention Watch Network

Detention Watch Network (DWN) is a national coalition of organizations and individuals working to expose and challenge the injustices of the United States' immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. Founded in 1997 by immigrant rights groups, DWN brings together advocates to unify strategy and build partnerships on a local and national level to end immigration detention.

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INTRODUCTION

The U.S. immigration detention system is the largest in the world, with Immigration and Customs Enforcement (ICE) under the Department of Homeland Security (DHS) holding hundreds of thousands of people each year in a sprawling network of over 200 detention facilities. However, in addition to being remarkable for its size, the U.S. immigration detention system is an outlier for the degree to which it has been privatized. As of August 2016, 73 percent of immigrants held in ICE custody were in facilities operated by private prison companies,¹ and the remaining facilities often contract with other private companies for services such as food, guards, and even medical care. The relationship between ICE and private contractors has been disastrous for immigrants, as well as for American taxpayers, who pay more than \$2 billion each year to maintain the detention system.² Although a lack of due process, inhumane and sometimes fatally inadequate conditions, and a woeful lack of both oversight and transparency are endemic to the entire system, privatization has exacerbated each of these problems.

The immigration detention system has not been alone in exploring partnerships with private prison companies. In 1996 the Bureau of Prisons under the Department of Justice (DOJ) also began contracting with private prison companies, specifically Corrections Corporation of America (CCA) who are currently attempting a re-brand to CoreCivic, The GEO Group, Inc. (GEO) and Management and Training Corporation (MTC), to run a network of segregated immigrant-only prisons that eventually grew to include 13 facilities in seven states.³ However, in August 2016, the DOJ announced that it would begin phasing out these contracts and ending its reliance on privately-run prisons.⁴ The announcement was

the combined result of a decrease in the number of people incarcerated in federal facilities, a critical report by the DOJ Office of Inspector General,⁵ damning investigative reporting on deaths as the result of medical neglect and other serious deficiencies,⁶ years of careful research and advocacy by non-profit organizations,⁷ and organizing and resistance by the people incarcerated in the facilities.⁸

In the aftermath of this announcement, the spotlight quickly turned on ICE, which contracts with the exact same companies, as well as a few other smaller ones, to run the vast majority of its detention centers. In fact, ICE's entanglement is even more convoluted; while ICE contracts directly with private prison companies for some detention facilities, many are sub-contracted to a private prison company through a local government acting as a contracting middleman. Not surprisingly, whether directly or indirectly contracted, nearly identical complaints have been lodged against these companies' facilities within the immigration detention system, including fatal medical neglect, abusive solitary confinement, and other misconduct and mismanagement. In the wake of the DOJ announcement, it was clear that DHS should promptly follow DOJ's lead in disentangling itself from its private prison contractors. On August 29, 2016, DHS Secretary Jeh Johnson announced that a subcommittee of the Homeland Security Advisory Council (HSAC Subcommittee) had been tasked with reviewing whether DHS should also begin severing ties with private prison companies, with the final report due by November 30, 2016.⁹

In response, Detention Watch Network (DWN), along with many other organizations and people directly affected by the current immigration detention regime, submitted a mountain of

evidence about the problems with a detention system driven by profiteering to the HSAC Subcommittee. This report seeks to synthesize and make public that information. The report details four fundamental problems with the use of privately-run detention centers, as our research indicates that private contractors:

- Seek to maximize profits by cutting costs—and subsequently critical services—at the expense of people’s health, safety, and overall well-being;
- Are not accountable, and often do not bear any consequences when they fail to meet the terms of their contracts;
- Exert undue influence over government officials, and push to maintain and expand the immigration detention system;
- Are not transparent, and in fact, fight hard to obscure the details of their contracts and operations from the American public.

The privatization of immigration detention creates perverse incentives for incarceration. DHS must take steps to end all profiteering in the immigration detention system by reducing reliance on immigration detention and ending direct and indirect contracts with private companies.

Specifically, DHS should:

1. Immediately cease its current expansion of the immigration detention system. ICE must not sign any new contracts, including with private prison companies;
2. Decline to award any contract renewals or rebids for existing facilities to private detention operators;
3. Immediately modify all contracts without end dates to include an end date no later than one year after modification;
4. Not replace phased out contracts with additional county jail contracts, but rather take

immediate and aggressive action to reduce the number of people held in immigration detention. DHS should start by ending family detention; ending the detention of asylum-seekers, providing a bond hearing for all detained individuals, and narrowing its interpretation of mandatory detention.¹⁰

INHUMANE CONDITIONS

Detention Watch Network, in collaboration with the American Immigration Lawyers Association, the CARA Family Detention Pro Bono Project, Community Initiatives for Visiting Immigrants in Confinement (CIVIC), Grassroots Leadership, and the National Immigrant Justice Center submitted declarations and complaints reflecting the experiences of 42 individuals who were or are held in privately run detention facilities to the HSAC Subcommittee.¹¹ The experiences of these 42 individuals are a small sample of the egregious conditions and violations that we hear about regularly, but powerfully illustrate the degree to which private prison contractors fail to ensure the safety and dignity of the immigrants held in their facilities. Key themes from their testimonies include inadequate medical care, mistreatment and abuse in its many forms, poor quality of food and sanitation, language access concerns, and lack of accountability for problems at the facilities.

Of the 42 individuals represented in these declarations, 76 percent expressed complaints regarding medical care. Several of these complaints involved extensive delays in being seen by the medical unit. Another frequent complaint was being told to drink water to treat various medical conditions, including earaches, knee pain, post-surgery fever and vomiting, and a broken finger. Multiple complaints involved basic medical incompetence, such as an individual detained at the CCA-operated Otay Mesa Detention Facility in San Diego, CA who stated



photo: Steve Pavey

that the facility mixed up his medicine with the medication of someone else with a similar name at least six times.¹² Another individual was told to submit a request—which routinely took two days for processing—in order to request a bandage for an open burn wound.¹³ A woman detained at CCA’s South Texas Family Residential Center in Dilley, TX stated that two medical personnel pricked her with a needle seven times in an attempt to provide her with intravenous fluids and laughed each time they were unable to locate a vein, despite her crying out in pain. Though they finally inserted a tube after finding a vein in her other hand, an Emergency Medical Technician later removed the tube and showed her that the needle was bent, and that the medical personnel did not know how to insert the tube.¹⁴ At least one complaint points to the potentially fatal consequences of inadequate medical care, including an individual detained at the GEO-operated Adelanto Detention Facility in Adelanto, CA who reported that facility staff refused to

transfer her to the hospital after she experienced heart-related symptoms that caused her to lose consciousness.¹⁵

The frequency and consistency of medical complaints are particularly alarming in light of evidence that failures to refer individuals to higher level care contributed to multiple recent deaths in detention.¹⁶ Among these are: Evalin-Ali Mandza who died after staff at a GEO facility in Colorado waited nearly an hour to call 911 after he began experiencing chest pain¹⁷ and Manuel Cota-Domingo who died after an eight hour delay in transferring him to the emergency room by staff at CCA’s Eloy facility in Arizona.¹⁸

These findings are further echoed in a new report about detention in the Deep South, which included interviews with immigrants detained at three privately-run detention facilities, including the LaSalle Detention Facility where three people died in the first half of 2016.¹⁹ Interviews from

all three facilities uncovered significant and life-threatening delays or denials of medical and mental health care.²⁰ Providing further clarity about potentially fatal indifference at LaSalle, an interviewee reported that “one detainee tried to hang himself in the dorm. The code was called but no administrators came.”²¹

Thirty-one percent of the individuals represented in the declarations submitted to the HSAC Subcommittee reported mistreatment and abuse in various forms, including verbal abuse, employee theft, retaliation, abusive solitary confinement, and sexual harassment and assault. An individual detained at the GEO-operated Karnes Family Residential Center in Karnes City, TX stated in her declaration that her daughter had been touched inappropriately by an employee at the facility’s day care center twice, and that this had also happened to two other children detained at the facility.²² In another example, an 18-year-old detained at the LaSalle Corrections-operated Irwin County Detention Center in Ocilla, GA stated that she was placed in solitary confinement for three days after reporting that she had been verbally harassed by other detained people on account of her perceived sexual orientation. The experience in solitary confinement was especially traumatizing to her as a survivor of rape and domestic violence.²³ In an example of employee theft, an individual detained at the CCA-operated Otay Mesa Detention Facility stated that officers at the facility had been caught stealing money from envelopes that family members had sent to detained people for their commissary accounts.²⁴

These trends are repeated in other compilations of interviews and testimony. The use of solitary confinement, both due to overcrowding and as inappropriate or disproportionate punishment, is particularly consistent. For example, several

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individuals held at the LaSalle Corrections-operated Irwin Detention Facility in Georgia reported that they were placed in administrative segregation upon arrival for several days until there were spaces available in the housing units, with one person reporting that he was in segregation for 10 days when he first arrived at Irwin.²⁵ A transgender woman detained at Eloy in a housing unit with 250 men reported that the guards and men would watch trans women shower, and they were written up when they tried to put up curtains. She was sexually harassed by a man in the housing unit and when she reported it she was told to deal with it because there was no space to move her to; when she contested this decision, she was sent to solitary confinement for two days and then returned to the same housing unit where she was being harassed. The man who had harassed her then physically and sexually assaulted her in retaliation for reporting the harassment in the first place. After being taken to the hospital, she was placed in solitary confinement for a week and faced bullying by guards and other detained people.²⁶

Food and sanitation were also common concerns and present in 17 percent of the declarations submitted to the HSAC Subcommittee. An individual detained at the GEO-operated Adelanto Detention Facility in Adelanto, CA stated that the facility provides expired food; for example, a pizza served two weeks after the expiration date on the box.²⁷ Another individual

detained at the GEO-operated Karnes Family Residential Center stated that there were sometimes worms in the beans and rice, swarms of flies in the kitchen and no disinfectant to clean the tables.²⁸

Although the declarations submitted to the HSAC Subcommittee point to inhumane conditions, the degree to which cost-cutting is a driver is perhaps best shown by a series of sexual assaults by a CCA guard at the Hutto Detention Facility in Texas between 2009 and 2010, who serially assaulted women during unscheduled stops on the way to the airport. This abusive and criminal activity continued undetected because, in violation of the contract between CCA and ICE, the guard was not required to have another guard in the transport van with him.²⁹

Cost-cutting is also visible in the medical staffing decisions these companies make. Although CCA and GEO have gone to great lengths to hide information about their medical staffing,³⁰ the limited information available does indicate that there are frequent and long-term vacancies for



photo: photo: Alonso Yáñez/La Opinión

A transgender woman detained at Eloy in a male housing unit was sexually harassed by a man in her unit. When she reported it, she was sent to solitary confinement for two days and then returned to the same housing unit. The man who had harassed her then physically and sexually assaulted her in retaliation. After being taken to the hospital, she was placed in solitary confinement for a week and faced bullying by guards and other detained people.

contractually-required positions,³¹ creating a dangerous administrative limbo which allows facilities to pass inspection while also saving money on personnel costs.

These concerns of inadequate medical care, mistreatment, and poor sanitation and food quality are compounded by the absence of meaningful oversight of private detention contractors, explored in more detail in a later section of this report. Ten percent of the individuals represented in the declarations raised concerns about transparency, with three individuals stating that facility staff make cosmetic fixes in preparation for inspections and visits from members of Congress. One individual detained at the GEO-operated Karnes Family Residential Center stated that facility staff were notified in advance of an inspection, so guards gave detained women and children stuffed animals, provided them with more coffee and food, and placed covers on tables to prepare for the inspectors' visit. She stated that after the inspectors left, the guards took all the stuffed animals back from the children.³²

CONTRACTING AND OVERSIGHT

As concerning as the conditions inside privately operated detention facilities described above are, the fact that they continue unimpeded is perhaps even more alarming. ICE's inability or unwillingness to address these serious problems has several causes, including poor contracting practices and a woefully inadequate inspections process.

Recent litigation and research regarding nearly 100 detention facility contracts by the National Immigrant Justice Center has revealed the details of ICE's convoluted contracting system.³³ Among other important findings, researchers uncovered widespread indirect contracting, a lack of clarity about which detention standards govern many facilities, and a shocking number of indefinite contracts.

ICE contracts directly with private prison companies for fewer than 10 detention facilities.³⁴ The majority of privately-run detention facilities are contracted indirectly with either local governments or the U.S. Marshals Service (USMS) acting as a middleman. This contracting model creates additional barriers to both accountability and transparency, but also allowed private companies to avoid open competition for the contracts. Even though the ultimate beneficiary is a private company, ICE is able to circumvent open competition requirements by taking advantage of special processes for agreements between governmental entities. Forty percent of CCA's contracts were obtained through a non-competitive process; 30 percent through this indirect contracting model.³⁵

In addition to often allowing an end-run around competitive bidding, numerous ICE contracts don't indicate which of the three versions of detention standards³⁶ currently in use are in place

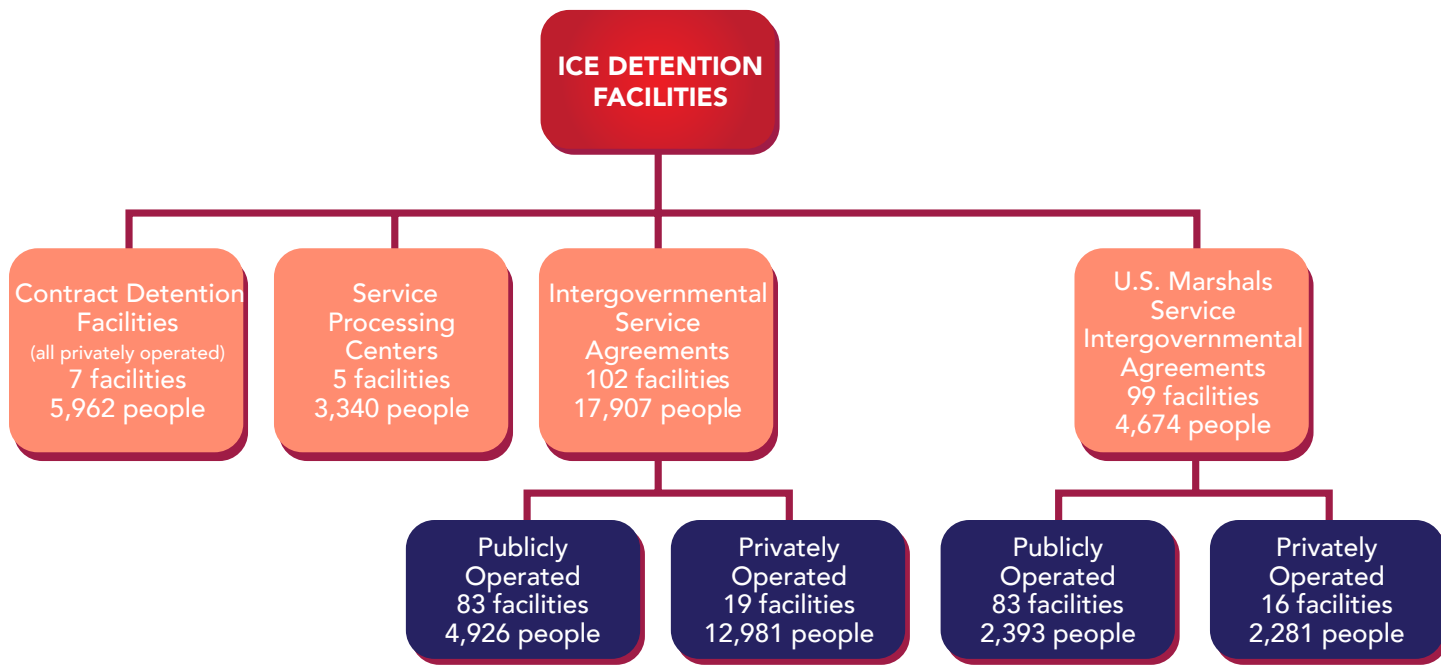
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at the facility.³⁷ The versions include: the National Detention Standards (NDS) from 2000 which are the lowest level and least comprehensive, the Performance Based National Detention Standards from 2008 (PBNDS 2008) or the Performance Based National Detention Standards from 2011 (PBNDS 2011). Although the newer standards contain more robust protections, including sexual assault prevention guidelines and more detailed standards governing solitary confinement and hunger strikes, they are still derived from prison standards, and therefore replicate many of the deplorable conditions and troubling human rights failings endemic to the criminal justice system. Furthermore, they are not codified and are therefore not easily enforceable. Despite these deficiencies, the level of standard included in a contract still conveys important information about ICE's ability and willingness to manage a contractor-run detention system.

Both ICE and the private prison companies frequently point to the fact that all directly contracted private facilities are theoretically compliant with either PBNDS 2008 or PBNDS 2011. However, this doesn't account for the effect of indirect contracting; at least 14 indirectly contracted private facilities are only contracted to meet the bare minimum of detention standards.³⁸

Regardless of which level of standards are included in the contract, the vast majority of

Ice Detention Contracts By Number Of Facilities And Average Daily Population, FY16



*Data obtained from an ICE facilities matrix dated December 8, 2015 and does not include new ICE facilities (Kankakee County Jail, Torrance County Detention Center, Prairieland Detention Center, Nevada Southern Detention Center, and Allen Parish Public Safety Complex) or significant expansion in the number of detention beds at Charleston County Detention Center, Coastal Bend Detention Facility, Denver Contract Detention Facility, Florence Correctional Center, Glades County Detention Center, Immigration Centers of America-Farmville, Johnson County Law Enforcement Center, La Salle County Regional Detention Center, Jena/LaSalle Detention Facility, Pine Prairie Correctional Center, Western Tennessee Detention Facility, Willacy County Regional Detention Center, and Yakima County Jail. Privately-operated facilities are italicized.

contracts do not include robust penalty provisions to help ensure that the standards are met, and a significant number, including those for at least nine privately-run facilities, don't include a contract end date.³⁹ ICE has rarely elected to terminate a contract during its term. Instead, if ICE engages to demand improvements at all, it does so during contract renewals and rebids, essentially giving a free pass to these nine facilities.

Finally, ICE contracts, particularly those with private prison companies, are also plagued by the inclusion of guaranteed minimums. Guaranteed minimums are contractual provisions which obligate ICE to pay for a specified number of beds, regardless of whether or not those beds are being used at any given time. Often, ICE then receives a "discount" for any people detained above the guaranteed minimum number, incentivizing even higher levels of detention disguised as a more efficient use of government

resources. Ninety-three percent of known guaranteed minimums benefit a private prison company.⁴⁰ At least 20 contracts with private companies contain a guaranteed minimum,⁴¹ affecting at least 11,936 people.

The inclusion of guaranteed minimums, which essentially act as taxpayer funded profit insurance for detention contractors, is no accident. In 2005, CCA noted in its Security and Exchange Commission filing that its inability to control occupancy rates at its facilities was a risk for its revenue and profitability.⁴² Guaranteed minimums are the contractual solution to this problem. While guaranteed minimums may not technically control occupancy rates, they financially incentivize stable or increased detention numbers, and provide guaranteed minimum revenue for the company, protecting it against any shifts in immigration policy or movement toward decarceration.

In addition to poor contracting practices, extensive research into ICE's inspections process has also shown that ICE does not provide effective oversight over its contractors. Instead, ICE's inspections process allows the numerous failings of the detention system to fall through the cracks, while avoiding consequences, independent oversight, and transparency. Failing the most basic of requirements for an adequate oversight process, ICE's inspections are not independent. Rather than having an independent agency conduct inspections of its detention facilities, ICE's inspections are done internally or by contractors hired and paid by ICE, raising concerns about impartiality.⁴³ Those concerns are further heightened by the fact that inspection reports may be edited before they are finalized and submitted to ICE's Detention Monitoring Unit by the inspections contractor.⁴⁴ These edits are not tracked, and ICE officials report not knowing the frequency or types of edits that occur between an initial inspection and when the inspections contractor submits the inspection report.

However, beyond independence, ICE's inspections are of poor quality and seem designed to allow facilities to pass. By announcing its inspections in advance, ICE gives facilities the opportunity to make cursory changes to conceal serious problems.⁴⁵ Moreover, inspectors check for the existence of policies and often take facility staff at their word without evaluating the implementation of critical functions such as medical care and grievance procedures, or even checking easily verified safety infrastructure such as fire alarms. As most inspections don't include interviews with detained people, their perspective is not incorporated into the inspections findings either.⁴⁶ Taken together, these create a checklist culture in which inspectors are ticking items off a long list rather than fully and comprehensively examining

the lived reality of people detained at the facility. The effects of the checklist culture are perhaps best demonstrated by the repeat finding that indoor rooms with windows count as providing outdoor recreation because air from the outside can enter the room.

Moreover, indirect contracting—in which a local government or the USMS hold a contract with ICE and then turn around to sub-contract with a private prison company—has allowed private companies to exploit an inspections loophole. Within the detention standards, many individual requirements are italicized, meaning that facilities contracted through intergovernmental service agreements (again, those where a local government or the USMS hold the contract with ICE) do not have to meet the requirement, but rather the spirit of the requirement. When a private prison company is sub-contracted to run one of these facilities, they retain the ability to meet the spirit of the requirement as opposed to the requirement itself. This loophole is further stretched by a lack of awareness or attention to detail on the part of the inspectors. In numerous instances, rather than indicating how a facility met the intent of an italicized standard, the inspector simply wrote "N/A."

Given these findings, it is not surprising that ICE's inspections fail to uncover serious problems at detention facilities. At least seven facilities implicated in medically negligent deaths received passing ratings from ICE inspections, both before and after the deaths occurred, even when the death investigation found facilities failed to meet medical care standards and explicitly identified the deaths as preventable.⁴⁷ Even when severe deficiencies are discovered and named in an inspection or death review, ICE has not terminated contracts or used available penalties, but rather

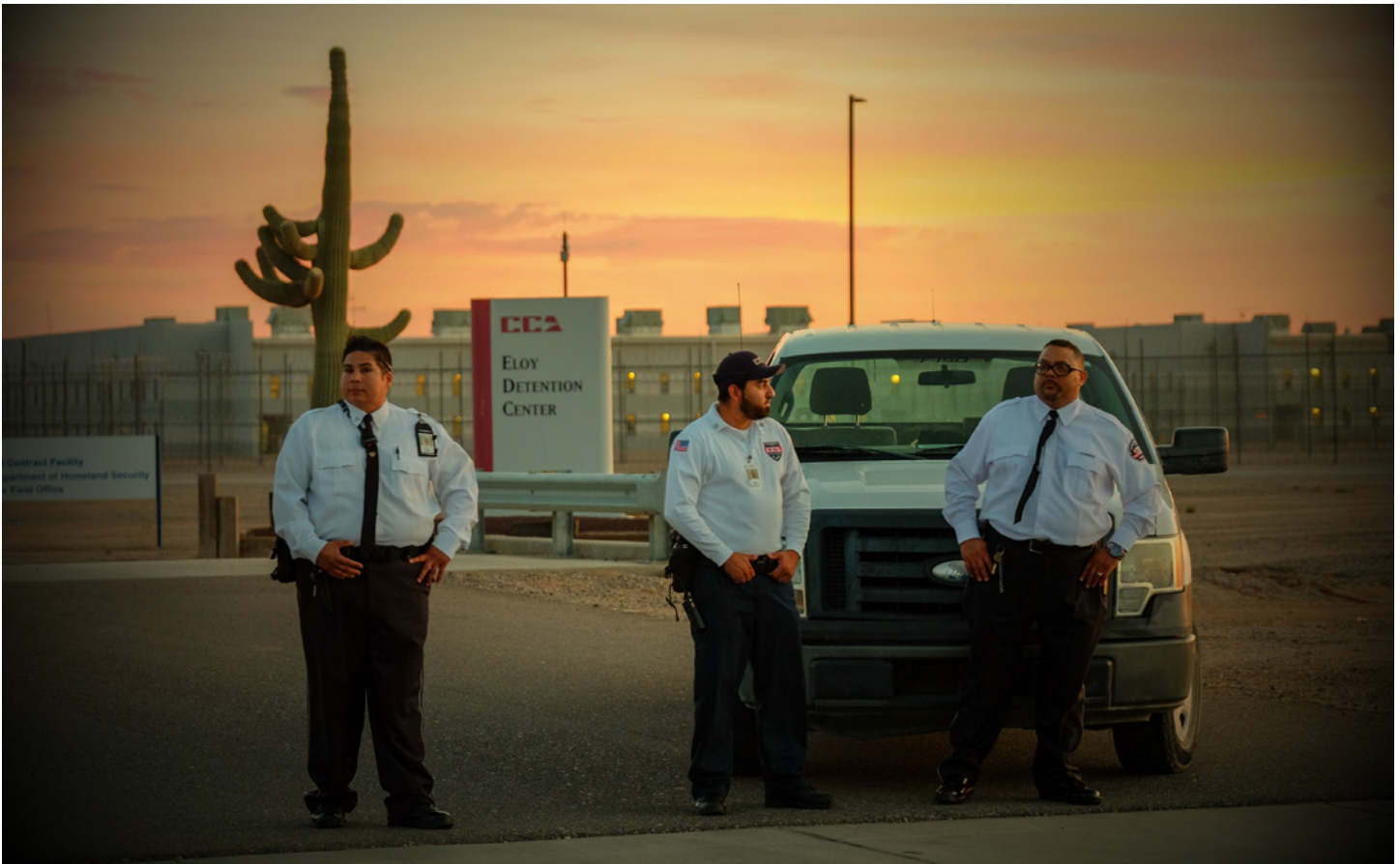


photo: Steve Pavey

continued to send immigrants to be held in unsafe conditions. Former ICE senior officials have also expressed concern about the relationship between the companies and ICE, and the quality of privately-run facilities.⁴⁸

Evidence of ICE's unwillingness to cut ties, even in the face of well documented and egregious failings at a facility, are clearly demonstrated in the case of Eloy. Eloy is, by far, the deadliest detention facility in the system, with 14 documented deaths since 2003, including numerous suicides.⁴⁹ As early as 2012, and potentially earlier, inspectors flagged concerns about suicide prevention at Eloy.⁵⁰ Then in 2013, Elsa Guadalupe-Gonzalez committed suicide at Eloy; two days later, Jorge Garcia Mejia also committed suicide in a different housing unit. Death reviews conducted after the two suicides found that confusion about who should call 911 lead to delays in the placing the call after both suicides, and that Eloy didn't have

a suicide prevention plan, among other serious shortcomings.⁵¹ In 2015, José de Jesús Deniz Sahagun also committed suicide at the facility. Horrifyingly, but unsurprisingly, the subsequent death review found that Eloy still did not have a suicide prevention plan at the time of his death.⁵² It's difficult to imagine what additional information would be required to trigger a contract termination, and yet, at the time of writing, over a thousand immigrants continue to be held at this dangerous facility.

INFLUENCE PEDDLING AND A REVOLVING DOOR

While conditions, oversight, and contracting deficiencies are not limited to privately-run detention facilities, the private sector does have its own methods of exerting influence over decision-makers. These include campaign contributions, massive lobbying expenditures, and revolving door politics. In 2008 CCA and GEO received

\$307 million combined in revenue for running immigration detention facilities. By 2015 it had more than doubled to \$765 million.⁵³

Although the final numbers for the 2016 election cycle are not yet available, by the end of June, GEO had contributed \$464,000 and CCA had contributed \$210,000 to the 2016 congressional and presidential races.⁵⁴ During each of the 2006, 2008, 2010, 2012, and 2014 cycles, CCA and GEO contributed at least \$500,000 to federal elections combined,⁵⁵ and in some cases, much more. During the 2014 cycle, CCA contributed to 23 senators and 25 representatives, and GEO Group contributed to 10 senators and 28 representatives.⁵⁶

Digging into specific contributions provides more insight into the influence these companies exert. This is perhaps most clear as it relates to the detention bed quota, which has been included in DHS's budget since 2009 and requires that ICE maintain an average of 34,000 detention beds.⁵⁷ This provision has been a key driver of increased immigration detention over the last eight years and, as an increasing percentage of immigration detention has been privatized (from 25 percent in 2005⁵⁸ to 49 percent in 2009⁵⁹ to 73 percent in 2016⁶⁰), a key driver of private prison profits as well. Engagement by private prison companies specifically on the detention bed quota indicates that they are not just influencing which entities get detention facility contracts, but are actively shaping policy decisions about the scope of the detention system overall.

For GEO, the detention bed quota seems to drive at least some campaign contributions. In the 2014 election cycle, GEO was Representative Cuellar's (D-TX) biggest contributor giving \$15,550.⁶¹ As of mid-September 2016, GEO was again slated to be

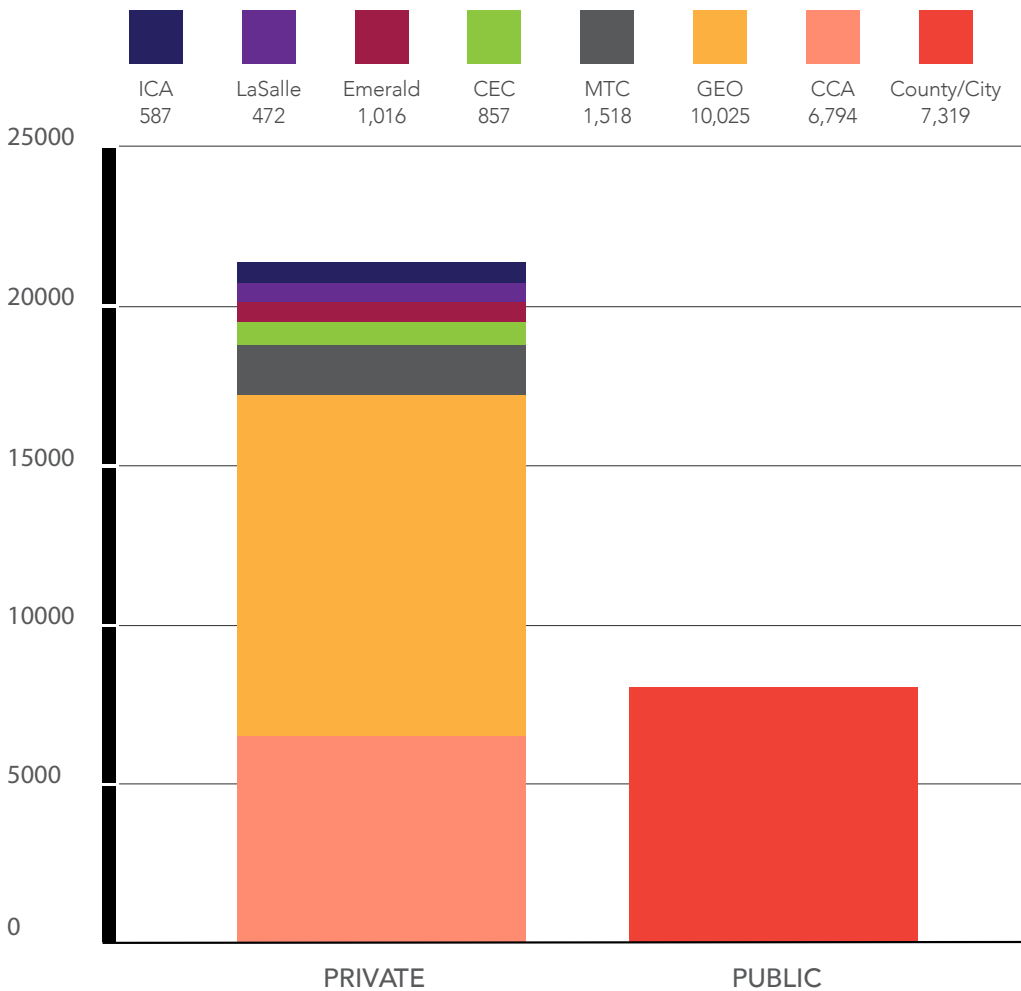
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Rep. Cuellar's largest donor, having already contributed \$15,090.⁶² This is significant because Rep. Cuellar is on the Homeland Security Appropriations Subcommittee, which continues to insert the immigration detention quota in the budget and shapes the way in which it is interpreted. CCA has also sought to maintain the detention bed quota. Between 2006 and 2015, CCA spent \$8.7 million and GEO spent \$1.3 million in quarters where they directly lobbied the DHS Appropriations Subcommittee.⁶³

CCA and GEO have both invested in federal lobbying beyond their specific focus on supporting the detention bed quota. In addition to lobbying on appropriations, in 2015, CCA lobbied against the Justice Is Not For Sale Act, which would have banned private prisons at the federal, state, and local levels, and the Private Prison Information Act which would have removed the exemption that allows private prison companies to avoid disclosing the details of its contracts or information about what goes on inside its facilities.⁶⁴

In 2015 alone, the two companies hired 20 lobbyists in DC at \$1.6 million⁶⁵. In October 2016, GEO dramatically expanded its lobbying capacity, hiring three new firms, including David Stewart and Ryan Robichaux of Bradley Arant Boult Cummings,⁶⁶ both of whom are former staff of Senator Jeff Sessions and will be focused on federal contracts with private prisons. Seventy percent of CCA and GEO lobbyists have previously worked on the Hill.⁶⁷

FY16 Immigration Detention ADP, Private vs. Public Operators



**This data was obtained from an ICE facilities matrix dated December 8, 2015 and does not include new ICE facilities (Kankakee County Jail, Torrance County Detention Center, Prairieland Detention Center, Nevada Southern Detention Center, and Allen Parish Public Safety Complex) or significant expansion in the number of detention beds at Charleston County Detention Center, Coastal Bend Detention Facility, Denver Contract Detention Facility, Florence Correctional Center, Glades County Detention Center, Immigration Centers of America-Farmville, Johnson County Law Enforcement Center, La Salle County Regional Detention Center, Jena/LaSalle Detention Facility, Pine Prairie Correctional Center, Western Tennessee Detention Facility, Willacy County Regional Detention Center, and Yakima County Jail. Privately-operated facilities are italicized.*

The revolving door also exists between the federal agencies issuing contracts and private prison companies. David Venturella, former Assistant Director of ICE, is now the Executive Vice President for Corporate Development at GEO, and Julie Myers Wood, a former DHS Assistant Secretary for ICE, is now on GEO's board.⁶⁸ Mary Loiselle, formerly of ICE, is the Program Director for GEO's new alternative to detention program for immigrant families.⁶⁹ Both CCA and GEO have had numerous additional people in senior leadership positions who were formerly high level government officials, including multiple Directors of the Bureau of Prisons, General Counsel for DHS, Director of the U.S. Marshals Service, and more.⁷⁰

Beyond these pay to play schemes, ICE's ability and willingness to hold its contractors to even the most minimal of standards is completely undermined by the depth of its reliance on them. Especially coupled with the requirements of the detention bed quota, any leverage ICE has is significantly weakened. With 73 percent of detention facilities operated by private prison companies, and the remaining facilities subcontracting out for services like food, guards, and medical care, any threat of significant financial penalties or large scale termination is undermined by the companies' awareness of how much ICE—at least given its current way of operating—needs them.

TRANSPARENCY

The entire detention system is plagued by a lack of transparency. ICE does not proactively disclose most of its facility inspections, contracts, death reviews, or even basic statistics to the public. Nor is vital information about suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, or other significant information readily available. In fact, to date these documents have only been available through slow-moving and resource intensive Freedom of Information Act (FOIA) requests and litigation.⁷¹

Within a broader culture of secrecy, private prison contractors have been particularly effective at avoiding scrutiny. As detailed above, ICE relies heavily on indirect contracting, which allows private companies to operate detention facilities while on the surface ICE contracts with a public entity—either a local government or USMS.⁷²

Private companies have typically been able to take advantage of a FOIA loophole, Exemption 4, meant to protect commercial trade secrets to persuade the government to hide many of the terms of their contracts, leaving the public in the dark about the costs and staffing plans for these facilities.

ICE's fundamental opposition to transparency, spurred on by its top contractors, is perhaps best illustrated by DWN and the Center for Constitutional Rights' (CCR) current FOIA litigation⁷³ in which the government essentially acted as free counsel for its private detention contractors. After refusing to respond to a FOIA request until ordered to do so by a judge, ICE began producing documents, but heavily redacted all detention facility contracts, claiming that they could withhold pricing information and staffing plans under FOIA Exemption 4.

Private contractors are openly proclaiming what we've long known: that they are actively seeking to shape government detention policy and the scope of government secrecy, protecting their own interests and profits at the expense of immigrant communities and the American public.

When DWN and CCR filed a motion challenging these redactions, ICE justified them based on the contractors' position that release of the information could cause them "substantial competitive harm." Notably, ICE's legal position depended heavily on the opinions and arguments of private contractors themselves, four of the largest of whom submitted sworn declarations attesting to the need for secrecy and the perils of public awareness of terms in government contracts. In GEO's case, David Venturella, a former ICE official who is now the Senior Vice President of Business Development at GEO, submitted a declaration claiming that public view of the lucrative contract terms between GEO and the government would harm the "detention market," as if protecting private prison profits was the role of the courts. Relying on these declarations, ICE adopted the position of its private contractors as its own throughout the litigation.

In July 2015, the Federal Court in *DWN v. ICE* ruled that the details of government contracts with private detention companies, specifically the per diem payments and staffing plans associated with each contract, are not exempt from public release under FOIA. ICE chose not to appeal and the issue, which ICE should never have defended in the first place, was on the cusp of resolution, with ICE preparing to disclose the improperly-redacted information.

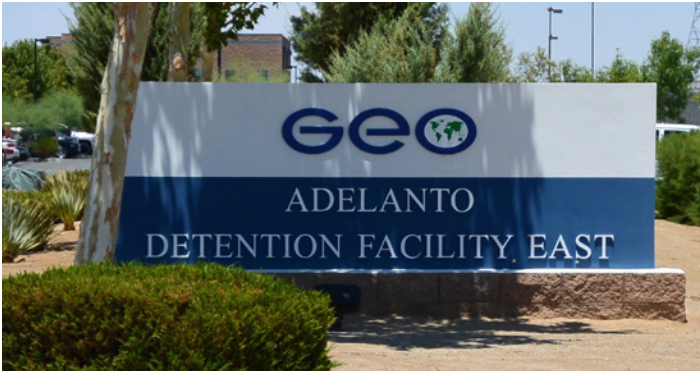


photo: Community Initiatives for Visiting Immigrants in Confinement (CIVIC)

Instead, GEO and CCA filed a motion to intervene in the case, which was granted in September 2016, and are appealing the lower court's ruling to the Second Circuit Court of Appeals. This has now created a rather remarkable situation. Private contractors are challenging the district court's interpretation of the federal government's obligations under FOIA, even though the federal government is not. In doing so, the private contractors are openly proclaiming what we've long known: that they are actively seeking to shape government detention policy and the scope of government secrecy, protecting their own interests and profits at the expense of immigrant communities and the American public.

CONCLUSION

The problems within the immigration detention system, and the degree to which they are exacerbated by ICE's entanglement with private prison companies is clear. Throughout the system, we see evidence that these companies seek to maximize their profits by cutting costs at the expense of people's health, safety and well-being; are not accountable and don't experience consequences for even severe deficiencies; exert undue influence over government officials and immigration policy; and fight tooth and nail to avoid even minimal transparency. These are not problems that can be addressed through reform,

but only through completely ending the U.S. government's relationship with and reliance on private prison companies.

The privatization of immigration detention creates perverse incentives for incarceration. The Department of Homeland Security (DHS) should take steps to end all profiteering in the immigration detention system by reducing reliance on immigration detention and ending direct and indirect contracts with private companies.

Specifically, DHS should:

1. Immediately cease its current expansion of the immigration detention system. ICE must not sign any new contracts, including with private prison companies;
2. Decline to award any contract renewals or rebids for existing facilities to private detention operators;
3. Immediately modify all contracts without end dates to include an end date no later than one year after modification;
4. Not replace phased out contracts with additional county jail contracts, but rather take immediate and aggressive action to reduce the number of people held in immigration detention. DHS should start by ending family detention; ending the detention of asylum-seekers, providing a bond hearing for all detained individuals, and narrowing its interpretation of mandatory detention.⁷⁴

Terminating these contracts will not fix all the problems within the United States' massive immigration detention system, but it is an important first step. It is simply unacceptable to put profit over people, especially when it comes to the deprivation of liberty.

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BANKING ON DETENTION:

local lockup quotas & the immigrant dragnet



DETENTION
WATCH NETWORK



center for
constitutional
rights



About Us

Detention Watch Network (DWN) is a national coalition of organizations and individuals working to expose and challenge the injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. Founded in 1997 in response to the explosive growth of the immigration detention and deportation system in the United States, DWN is today the only national network that focuses exclusively on immigration detention and deportation issues and is known as a critical national advocate for just policies that promote an eventual end to immigration detention. As a member-led network, DWN unites diverse constituencies to advance the civil and human rights of those impacted by the immigration detention and deportation system through collective advocacy, public education, communications, and field-and-network-building.

Website: <http://detentionwatchnetwork.org>

The Center for Constitutional Rights (CCR) is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR employs litigation, education, and advocacy to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for social justice.

Website: <http://ccrjustice.org>

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Introduction

The United States government manages the largest immigration detention system in the world. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS), oversees the detention of hundreds of thousands of individuals charged with civil immigration violations each year in a sprawling network of over 200 immigration jails across the U.S. In 2009, Congress began including a requirement to fund a minimum number of beds (currently 34,000) dedicated to detention at any given time in its annual appropriations bill. Since the policy, often referred to as the national detention bed quota, went into effect, the number of people detained each year has increased from 383,524 in FY (fiscal year) 2009 to a record breaking 477,000 in FY 2012.¹

CONTINUATION SHEET		REFERENCE NO. OF DOCUMENT BEING CONTINUED
NAME OF OFFEROR OR CONTRACTOR GEO GROUP INC THE		HSCEDM-09-D-00006/HSCEDM-09-J-00036/P00001
ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)
0001	<p>All other terms and conditions remain the same. Discount Terms: Net 30 FOB: Destination Period of Performance: 04/01/2009 to 02/28/2010</p> <p>Change Item 0001 to read as follows (amount shown is the total amount):</p> <p>Guaranteed minimum (500 detainees / day) Base: Funding for April 1, 2009 through June 30, 2009, (b)(4)</p> <p>P00001: Increase funding from (b)(4) by (b)(4)</p> <p>Product/Service Code: S206 Product/Service Description: GUARD SERVICES</p>	

Figure 1: Taken from ICE's Broward Transitional Center contract with the GEO Group.

In the last decade the detention system has grown by 75 percent,² an expansion that depends heavily on ICE's increasing use of private contractors to operate and provide services at immigration jails across the country. Sixty-two percent of immigration detention beds are operated by private prison companies,³ such as Corrections Corporation of America (CCA) and the Geo Group (GEO). Many government-owned facilities also rely on privately contracted detention-related services such as food, security, and transportation. This interdependent relationship with private industry has produced a set of government-sanctioned detention quotas that ensure profits for the companies involved while incentivizing the incarceration of immigrants. Accordingly, a large portion of the over \$2 billion in the FY 2016 budget⁴ for detention operations will ultimately go to for-profit contractors.

ICE's contracts with private detention companies have exacerbated the effects of the federal detention bed quota by imposing local "lockup" quotas, contractual provisions that obligate ICE to pay for a minimum number of immigration detention beds at specific facilities, referred to in contracts as "guaranteed minimums." Because guaranteed minimums require payment to private contractors whether beds are filled or not, ICE faces considerable pressure to fill them. Local lockup quotas that serve to protect the bottom line of private companies thus incentivize the imprisonment of immigrants.

This report aims to expose the use of guaranteed minimums at the local level and its potential influence over ICE's detention practices. Although this report offers the most comprehensive information to date on the use of guaranteed minimums, the information presented herein provides only a partial picture of the use of these local lockup quotas across the U.S. due to ICE's reticence regarding the details of their detention facility contracts. The report draws on data obtained from a current Freedom of Information Act (FOIA) request filed by Detention Watch Network and the Center for Constitutional Rights⁵ in November 2013. Information has also been gathered from solicitations listed and archived at the Federal Business Opportunities website, where the government posts requests for business proposals.⁶ Additionally, where possible, contracts from the National Immigrant Justice Center's ICE FOIA request⁷ were also reviewed and utilized.

National Detention Bed Quota

The Intelligence Reform and Terrorism Prevention Act of 2004 required ICE to increase, in each fiscal year from 2006 to 2010, the number of immigration detention beds available by 8,000 above the preceding fiscal year's number.⁸ Beyond a requirement to create additional capacity, ICE was also under pressure to use it. In February 2006, then Assistant Secretary of ICE Julie Myers Wood met with then Chairman of the House Subcommittee on Homeland Security Harold Rogers (R-KY) and Representatives Louis Gohmert (R-TX), John Culberson (R-TX), and Judge John Carter (R-TX).⁹ In that meeting, Representatives Culberson and Carter highlighted that “[d]etention facilities in Laredo are only one-third full,” and that there are “[h]undreds of empty beds.” Chairman Rogers noted that as one of his “key issues,” he wanted “‘no’ empty beds.”¹⁰

The use of arbitrary numerical goals escalated in 2009 when Congress began formally including the national bed quota in annual appropriations bills. Since then, the detention bed quota has been written into the DHS Appropriations Act, which states, “... funding made available under this heading shall maintain a level of not less than 34,000 detention beds.”¹¹

In addition to requiring that ICE maintain the physical capacity to detain at least 34,000 people at any time, many members of Congress have urged ICE to interpret this language to require that all detention beds be in use

at all times—that is, that a minimum of 34,000 beds not only be funded, but also filled, every day. Over time, congressional frustration over empty beds has grown. In April 2015, after a heated exchange with ICE Director Sarah Saldaña, Representative John Culberson (R-TX) suggested that the current quota language be altered to replace the word “maintain” with “fill.”¹² Congressional staff have also repeatedly, if incorrectly,¹³ told ICE that keeping an average of at least 34,000 detained per day is a statutory requirement.¹⁴

These criticisms make clear that ICE faces substantial pressure to funnel immigrants into detention in order to keep beds filled, despite the arbitrariness of quotas at both the national and local levels. Former ICE Director John Sandweg expressed this frustration in a September 2013 interview with *Bloomberg*, saying that “[h]aving a mandate out there that says you have to detain a certain number – regardless of how many folks are a public safety threat or threaten the integrity of the system – doesn’t seem to make a lot of sense. You need the numbers to drive the detention needs, not set an arbitrary number that then drives your operation.”¹⁵ No other law enforcement agency is subject to a national quota system for incarceration. Prominent law enforcement officials have decried the national quota as “unprecedented” with a “corrupting influence on the entire process” of enforcement and removal.¹⁶



Northwest Detention Center, image courtesy of Seattle Globalist



No other law enforcement agency is subject to a national quota system for incarceration.



Local Lockup Quotas

While members of Congress continue to stress the importance of “filling” the mandated 34,000 immigration detention beds, local lockup quotas for immigrants in the form of guaranteed minimums also place pressure on ICE to fill beds. Guaranteed minimums are contractual provisions that obligate ICE to pay for a minimum number of immigration detention beds at specific facilities. Because guaranteed minimums require payment to private contractors whether beds are filled or not, they function as local lockup quotas, incentivizing ICE to fill detention beds because of the contract stipulation. Present exclusively in contracts with private companies, the growth of local lockup quotas is inextricably linked to the rise of corporate interests in immigration detention.

A. Guaranteeing Profit for Private Companies

Guaranteed minimums predate the national quota’s inception and have existed at least since 2003. Their use can be understood in the context of the private prison industry’s past instability and its successful pursuit of guaranteed profit.

In 1984, CCA built the first private prison in the U.S., the Houston Processing Center, an immigration detention center in Houston, TX. Although the private prison system has grown considerably since then, in the late 1990s, the industry lost steam as CCA almost went bankrupt and the stock of Wackenhut Corrections Corporation (now GEO) fell significantly.¹⁷ After being bailed out by the now-defunct hedge fund Lehman Brothers, the private prison industry saw the government’s post-9/11 interest in expanding immigration detention as a potential cash cow and began vying for more federal contracts to incarcerate immigrants.¹⁸



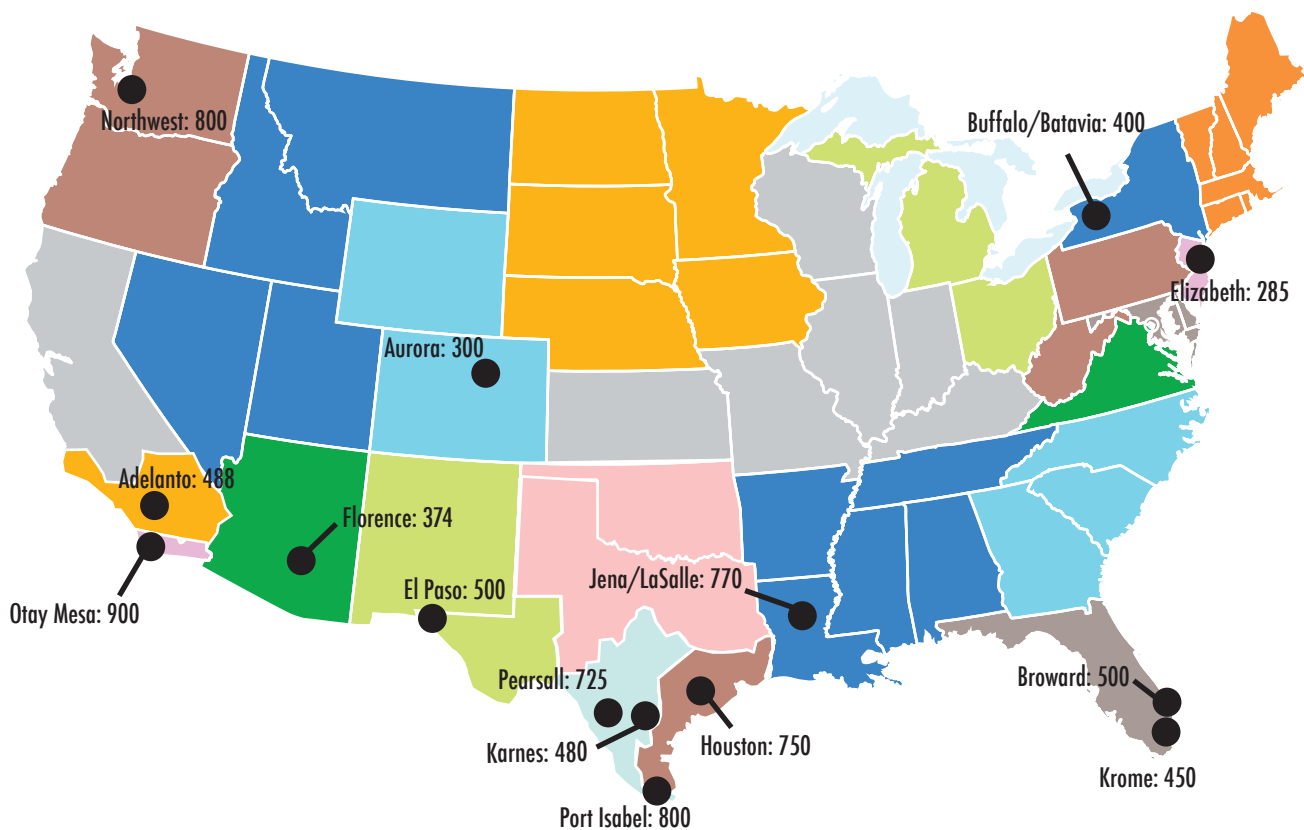
Houston Processing Center, image courtesy of Sin Huellas

Revitalized after the period of crisis, the private prison industry moved to secure its future by pursuing the incorporation of guaranteed minimums into contracts. CCA’s 2003 contract for the Houston Processing Center was one of the first to include a guaranteed minimum, this one for 375 persons.¹⁹ Since then, an increasing number of contracts between ICE and private contractors for detention or detention-related services have included guaranteed minimums. These guarantees act as taxpayer-funded insurance for private companies against any changes in immigration enforcement policy or prioritization, because the companies are paid regardless of how many individuals ICE detains. Guaranteed minimums have now spread to every type of immigration detention facility.

B. Guaranteed Minimums in Both Public & Private Facilities

Field Office	Guaranteed Minimums (based on ICE 1/28/2013 spreadsheet)	Guaranteed Minimums (based on accessible contracts and solicitations)
Buffalo	400	400
Denver	350	300
El Paso	500	500
Houston	750	750
Los Angeles	488	488
Miami	750	950
Newark	285	285
New Orleans	0	770
Phoenix	374	374
San Antonio	2,791	2,005
San Diego	872	900
Seattle	1,181	800
TOTAL:	8,741	8,522

ICE's Enforcement and Removal Office (ERO), which oversees detention operations, is divided into 24 field officesⁱ nationwide. Of those, 12 have guaranteed minimums.ⁱⁱ



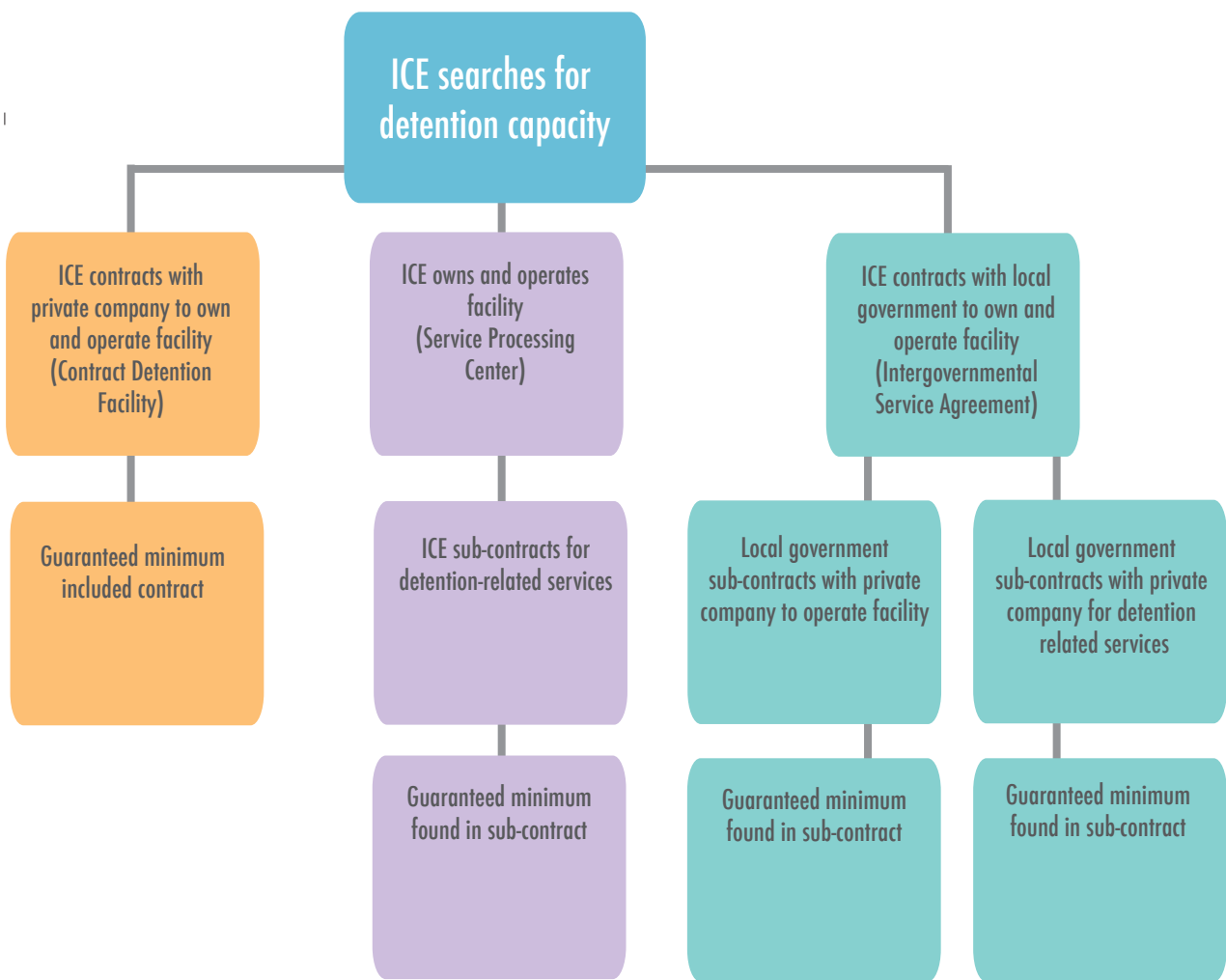
i. The 24 field offices are Atlanta, Baltimore, Boston, Buffalo, Chicago, Dallas, Denver, Detroit, El Paso, Houston, Los Angeles, Miami, New Orleans, New York City, Newark, Philadelphia, Phoenix, Salt Lake City, San Antonio, San Diego, San Francisco, Seattle, St. Paul, and Washington.

ii. *DWN v. ICE*, No. 14-cv-583 LGS (2013), "2013 ADP Targets," produced by ICE on December 15, 2014. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%202013%20ADP%20Targets%2028526.pdf>; *New Orleans Field Office has a guaranteed minimum*. See also *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.001228-001789. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201228-1789.pdf>

ICE categorizes its detention facilities into three primary categories: Service Processing Centers, which are owned and administered by ICE; Contract Detention Facilities, in which ICE contracts directly with a private company; and Intergovernmental Service Agreements (IGSAs), through which ICE rents out space in local or state facilities. In reality, however, the arrangements are more complicated, and these categories can obscure the involvement of private companies even at public facilities. Service Processing Centers, those facilities owned and operated by ICE, do sometimes contract out for detention-related services such as security, transportation, and food. Similarly, many local governments sign the IGSA with ICE and then sub-contract with private companies to operate the detention center or to provide detention-related services.

Although guaranteed minimums are found formally only in contracts with private companies, sub-contracting within IGSAs and SPCs means that private companies can be involved and minimums can occur in all three types of contract categories including public facilities, as outlined in the chart below. When the contractor operates the entire facility, whether contracted or sub-contracted, they receive the per-bed payment as if the guaranteed population was detained. This functions in the same way for private contractors providing other services. For example, in a food service contract with a guaranteed minimum, the contractor will be paid as if they provided food for the guaranteed population, even if the number of people actually detained was lower.

Guaranteed Minimums in Detention Contracts



C. Guaranteed Minimums as Local Lockup Quotas

Contracts with guaranteed minimums are understood at the field office level as general priorities within their relevant geographic area, and create incentives for heightened enforcement in order to fill beds. This pressure to fill beds and fulfill the mandate is felt acutely at local field offices where facilities with guaranteed minimums are prioritized and privately-contracted beds and services are perceived as being more “cost efficient.”

Crucial to the cost-efficiency calculus is the use of “tiered pricing,” in which ICE receives a discount on each person detained above the guaranteed minimum. Tiered pricing creates direct financial incentives for ICE not only to meet the guaranteed minimum, but also to fill guaranteed-minimum facilities to capacity in order to take advantage of discounts for additional immigrants.

When ICE fails to make the most of its financial arrangements with private companies, it risks critique. In October 2014, for example, the U.S. Government Accountability Office (GAO) produced a report on immigration detention criticizing ICE for underutilizing cost-efficient bed space.²⁰ Per the contracts, ICE paid certain facilities their guaranteed minimums even when the beds went unoccupied. The GAO further censured ICE for failing to capitalize on the tiered pricing model and recommended that ICE develop “an oversight mechanism to ensure that field offices comply with guidance to place detainees, whenever possible, in facilities with guaranteed minimums and tiered pricing [to] provide ICE with better assurance that it is cost-effectively managing detainee placement.”²¹

ICE officials pass this message from headquarters to the field office level. According to the same GAO report, if “ICE ERO headquarters officials...notice that a particular area of responsibility [field office] has open space in facilities with guaranteed minimums, they can call the field office director to find out why the guaranteed minimum is not being met.”²²

Indeed, during the 2013 budget sequestration in which ICE released 2,226 immigrants²³ from detention due to budget cuts, ERO Assistant Director for Operations Support, William C. Randolph, and then Acting Assistant Director for Field Operations, Philip T. Miller, advised local offices in an email that “[t]he first priorities for funding are the 11ⁱⁱⁱ [field offices] that have detention facilities with guaranteed minimum beds.”²⁴ In another email, Miller emphasized again that field offices should “[e]nsure that all mandatory minimum detention bed guarantees are being met and that any net cost benefits of tiered pricing or low cost beds are being realized.”²⁵

Repeating this directive from headquarters, Washington Field Office Director Mary Evans wrote, “Ensure that all mandatory minimum detention bed guarantees are being met and that any net cost benefits of tiered pricing or low costs beds are being realized. For our purposes that means that Farmville [Detention Center] should stay at a population of 505 or above.”²⁶

Because GEO Group has been the most successful company in getting guaranteed minimums incorporated into their contracts, their facilities are often prioritized in order to fill local quotas. Denver’s then Field Office Director John P. Longshore wrote an email in 2013 saying, “we must ensure we are maximizing GEO beds for cost savings—I believe that our usage has improved again. We will be getting emails and calls from HQ [ICE headquarters] if they note we are not making good use of those cheaper beds. They already call me enough on stuff.”⁴⁶ Longshore also mentions an interest in raising “GEO usage” to “the full contract amount of 525.”⁴⁷

ⁱⁱⁱ 11 field offices are listed in a January 2013 ICE spreadsheet, but DWN and CCR’s FOIA request revealed that the New Orleans Field Office also has a guaranteed minimum at the Jena/LaSalle Detention Facility. See footnote ii.

A marked preference for GEO beds is also seen in the Miami field office where then Deputy Assistant Director of Field Operations Jack Bennett wrote to the local field office that, “[g]iven the fact that the beds beyond your minimum at Broward are \$6.24 each, please fill them up to your max. Field ops will make the necessary adjustments to your ADP [average daily population].”⁴⁸ Internal communications also indicate that GEO has placed pressure on ICE field offices to increase bed usage. An employee at the Northwest Detention Center wrote in an email that, “our AFOD [Assistant Field Office Director] over the [sic] NWDC has reported that the Warden/Administrator of the NWDC has stated that ‘he wouldn’t be surprised, if we go down to 500 detainees, that GEO might not give ICE 60 days notice’, [sic] meaning to cancel the contract.”⁴⁹

The financial incentives and bureaucratic pressures associated with the local lockup quotas are particularly worrying when combined with easily manipulated enforcement, detention and release practices. Through mechanisms like these, financial considerations and private profit can affect government decisions to deprive immigrants of liberty at a concrete, local level.

Ultimately, ICE has significant control over the pipeline of immigrants entering and leaving detention. ICE controls the pace and aggressiveness of its enforcement operations, and the field offices that determine when and how to conduct enforcement operations are the recipients of direct pressure to fill beds. Within this system, a single guaranteed minimum risks influencing decisions in an entire field office jurisdiction.⁵¹

In addition to controlling the number of people coming into detention, ICE controls the release of individuals from detention through the manipulation of bond and parole decisions. A recent example of ICE’s power to keep people detained was their virtual “no bond” or “high bond” policy relating to asylum-seeking Central American families, in which mothers and children who had passed an initial eligibility screening for the asylum process—after which they would previously have been released—were instead detained for long periods of time.⁵² Although this change in practice was driven by a desire to deter future asylum-seekers from migrating to the U.S., it demonstrates how vulnerable bond and parole decisions are to manipulation in order to ensure guaranteed bed minimums are met.

Guaranteed Minimums by Private Contractor

Private Contractor ⁵⁰	Services	Total Guaranteed Minimums
Asset Protection & Security Services LP	Patrol and security guard services	374
Doyon Government Group (www.doyongovgrp.com)	Security Services	500
Ahtna Technical Services, Inc. (www.atsiak.com)	Facility operations and maintenance support, guard services	800 ^{iv}
Akima Global Services LLC (www.akimaglobal.com)	Detention Management	850
Akal Security (www.akalsecurity.com)	Security Officer Services	900
Corrections Corporation of America (www.cca.com)	Owns and manages private prisons	1,935
The Geo Group, Inc. (www.geogroup.com)	Owns and manages private prisons	4,063

^{iv} 800 is the guaranteed minimum written into the most recent solicitation for Port Isabel Detention Center (PIDC). See endnote 39. And 500 is the guaranteed minimum written into Ahtna’s prior contract for PIDC. See endnote 38.

Guaranteed Minimums by Facility

● Service Processing Center

● Contract Detention Facility

● Intergovernmental Service Agreement (IGSA)

Field Office	Facility Name	Private Company Involved	Guaranteed Minimum*
Buffalo	Buffalo (Batavia) Service Processing Center	Akal-Akima JV ²⁷	400
Denver	Denver (Aurora) Contract Detention Facility	The GEO Group, Inc. ²⁸	300
El Paso	El Paso Service Processing Center	Doyon-Akal JV ²⁹	500
Houston	Houston Processing Center	Corrections Corporation of America ³⁰	750
Los Angeles	Adelanto Detention Facility	The GEO Group, Inc. ³¹	488 ³²
Miami	Broward Transitional Center	The GEO Group, Inc. ³³	500
Miami	Krome North Services Processing Center	Akima Global Services LLC ³⁴	450
New Orleans	Jena/LaSalle Detention Facility	The GEO Group, Inc. ⁴⁴	770 ⁴⁵
Newark	Elizabeth Detention Center	Corrections Corporation of America	285 ⁶⁶
Phoenix	Florence Service Processing Center	Asset Protection & Security Services LP ³⁵	374
San Antonio	South Texas Detention Complex (Pearsall)	The GEO Group, Inc. ³⁶	725 ³⁷
San Antonio	Port Isabel (PIDC)	Ahtna Technical Services, Inc ³⁸	800 ³⁹
San Antonio	Karnes County Correction Center ^v	The GEO Group, Inc.	480 ⁴⁰
San Diego	San Diego Contract Detention Facility (Otay Mesa) ⁴¹	Corrections Corporation of America	900 ⁴²
Seattle	Northwest Detention Center	The GEO Group, Inc.	800 ⁴³

* Italicized numbers are from solicitations

^v Karnes was converted into a family detention facility on August 1, 2014. It is still operated by the GEO Group, but it is unclear whether there is a guaranteed minimum. We currently have no direct evidence of a family quota.

Stealth Contracting

The outsourcing of detention promotes a lack of transparency regarding contracts and relationships between localities and the federal government. While ICE publishes select IGSA contracts on its website, agreements for detention space and detention-related services with private contractors are considerably more obscure—whether ICE contracts with the company directly, or the company is sub-contracted by a local government.

In response to FOIA requests, ICE redacts crucial details, including pricing information, of contracts or sub-contracts with private companies by claiming the information is exempt from disclosure because it may constitute “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”⁵³ The Freedom of Information Act further permits ICE to engage in a lengthy process to seek permission from the companies themselves to release such information to the public.⁵⁴ Thus, even when ICE has released detention facility contracts, information regarding guaranteed minimums is almost always redacted.

The absence of transparency about what exactly is promised and gained in detention facility contracts is further obscured by the way in which these contracts are quietly renewed, often on an annual schedule, sometimes with higher negotiated guaranteed minimums. For example, the Houston Processing Center’s guaranteed minimum increased from 375⁵⁵ to 750⁵⁶ between 2003 and 2008, and at Port Isabel Detention Center, the guaranteed minimum increased from 500⁵⁷ to 800⁵⁸ between 2008 and 2014. Krome Detention Center’s guaranteed minimum also saw an increase from 250 to 450 between 2008 and 2014.⁵⁹ For each of these, there is no publicly available information as to why such dramatic increases were necessary.

Local Dependence on Detention Dollars

Guaranteed minimums are far from the only source of pressure at the local level. When ICE has been forced by budget cuts to detain fewer immigrants, state and county jails have exerted political pressure to combat the decreases and push for a return to capacity.

Like private contractors, local and state government actors also exert pressure to fill local beds in order to access federal funds. In anticipation of budget cuts due to the sequestration of funding in early 2013, ICE attempted to lower the number of individuals held in immigration detention facilities. ERO headquarters warned the field offices to expect questions or pushback from local “contract partners.” The New York field office anticipated hearing from concerned wardens,⁶⁰ while the Atlanta Assistant Field Office Director wrote in an email that “[i]f the management of NGDC [North Georgia Detention Center], ACDC [Atlanta Contract Detention Center], or ICDC [Irwin Contract Detention Center] wish to voice their population concerns (or any other concerns), you are welcome to refer them to me.”⁶¹

Representatives from Chicago and Sacramento jails sent emails to their respective field offices in 2013 inquiring as to when detention numbers would increase again.⁶² And an individual from the Frederick County Jail in Maryland requested that the period of performance on its contract be extended “as far as the remaining funding will go[.]”⁶³ A captain from Boone County Jail in Illinois wrote in a February 2013 email that, “[t]he jailer and I were just curious if you knew anymore [sic] than we did about this situation and if we should look at trying to refill these beds with state inmates or if there is any hope that our numbers will increase.”

Beyond the pressure to fill beds, some extremely sub-par facilities have also stayed open to retain jobs in counties that are dependent on federal contracts to pad low and often dwindling budgets. Etowah County Detention Center, which has been singled out as one of the worst detention centers in the country for its abysmal conditions⁶⁴ was slated to close in 2010.



Etowah County Detention Center in Gadsden, Alabama

Representative Robert Aderholt (R-AL) and other members of Congress from Alabama immediately acted to countermand ICE's plan to close the facility because of the potential loss of jobs in the county. Senator Richard Shelby (R-AL), who sits on the DHS Appropriations Committee, threatened ICE's funding if it moved forward with terminating Etowah's contract, after which ICE rescinded its decision and cancelled plans to close the facility.⁶⁵ Despite ICE's efforts to end the contract due to the facility's remote location and lack of immigrants' access to counsel, Etowah continues to detain immigrants today.

Recommendations

There is a growing consensus that the mass detention of immigrants is unnecessary and inhumane. The U.S. government should move towards ending the use of immigration detention altogether. Unfortunately, corporate interests and the absence of job growth have converted the detention of human beings into a market-based activity. However, detention capacity and infrastructure must not be a determining factor in immigration enforcement and deportation policy. As immediate next steps, this report calls on:

- ICE to remove guaranteed minimums, tiered pricing or any other provisions that could function as a local lockup quota, from all detention contracts.
- ICE to make all information pertaining to detention contracts and the bidding process publicly accessible and transparent.
- ICE to stop contracting with private companies that lobby to pervert public policy via guaranteed minimums and other contractual giveaways.
- ICE to bar (1) the transfer of individuals between detention facilities; (2) the manipulation of bond or parole determinations; and (3) the initiation of enforcement actions based in whole or in part on empty detention beds, unmet guaranteed minimums, or tiered pricing.
- Congress to remove the national detention bed quota from the FY 2016 DHS Appropriations bill.

Conclusion

By requiring ICE to fill a certain number of detention beds on a daily basis at specific facilities, the U.S. government is allowing private interests a hand in setting policy on immigration enforcement and detention, while at the same time padding their bottom line. As long as the guaranteed minimums are in place, especially if they are reinforced by a national detention bed quota, the profits and the business model of these facilities are protected from the potential effects of immigration reform legislation, any expansion of prosecutorial discretion, or other administrative actions.

Even more disconcerting is the way in which local lockup quotas and the national immigration detention quota may influence ICE's decision-making. More research is needed to determine the extent to which these quotas have prompted ICE to more vigorously collaborate with local law enforcement solely for the purpose of finding additional people to detain, as well as how decisions about transfers between facilities are made and whether or not meaningful access to bond and parole are affected at facilities with guaranteed minimums.

The private sector should not be rewarded for placing a price tag on the deprivation of liberty, and the government should be held accountable for being a willful participant in this corrupted system. The practice of immigration detention, once rarely used, has become a rigid part of the United States' immigration and budget policy. Before any real immigration reform can be realized, the national and local lockup quotas have to be addressed. As a first step towards the ultimate closure of all detention facilities, ICE should end the use of guaranteed minimums and tiered pricing, and Congress should eliminate the national detention bed quota.

APPENDIX: Contracts' Periods of Performance

Facility Name	Private Contractor	Periods of Performance*	Guaranteed Minimum
Buffalo (Batavia) Service Processing Center	Akal-Akima JV	<i>2/1/2015-1/31/2016, option to extend annually until 2025</i>	400
Denver Contract Detention Facility	The GEO Group, Inc.	<i>9/1/2011-8/31/2013, option to extend every 2 years until 2021</i>	300
El Paso Service Processing Center	Doyon-Akal JV	<i>9/1/2008-6/30/2009, option to extend annually until 2013</i>	500
Houston Contract Detention Facility	Corrections Corporation of America	<i>4/1/2009-2/28/2010, option to extend annually until 2014</i>	750
Adelanto Detention Facility	The GEO Group, Inc.	<i>6/1/2011-5/31/2016</i>	488
Broward Transitional Center	The GEO Group, Inc.	<i>4/1/2009-2/28/2010, option to extend annually until 2014</i>	500
Krome North Services Processing Center	Akima Global Services LLC	<i>2014-2015, option to extend annually for the next 10 years</i>	450
Florence Services Processing Center	Asset Protection & Security Services LP	<i>2009-2010, option to extend annually for the next 4 years</i>	374
South Texas Detention Complex (Pearsall)	The GEO Group, Inc.	<i>12/1/2012-11/30/2013, option to extend annually until 2016</i>	725
Port Isabel (PIDC)	Ahtna Technical Services, Inc.	<i>11/1/2014-8/31/2015, option to extend annually until 2022</i>	800
Karnes County Correctional Center	The GEO Group, Inc.	<i>12/07/2010-12/6/2015</i>	480
San Diego Contract Detention Facility (Otay Mesa)	Corrections Corporation of America	<i>7/1/2005-6/30/2008, with option to extend every 3 years</i>	900
Northwest Detention Center	The GEO Group, Inc.	<i>4/1/2015-3/31/2016, option to extend</i>	800
Jena/LaSalle Detention Facility	The GEO Group, Inc.	<i>10/01/2008-9/30/2009, option to extend every year until 2014</i>	770

* **Italicized information was taken from solicitations**

ENDNOTES

1. Transactional Records Access Clearinghouse, "Growth in Number Detained," Syracuse University, Feb. 11, 2010. Available at <http://trac.syr.edu/immigration/reports/224/include/1.html>; Department of Homeland Security Annual Report, *Immigration Enforcement Actions: 2012* (December 2013). Available at https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf
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8. Public Law 108-458, Sec. 5204(a) (Dec. 17, 2004).
9. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. DHS-001-0002416-17. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20DHS%202416-17.pdf>
10. During his tenure as the head of a committee with power over DHS's budget, Chairman Rogers was found to have funneled large amounts of money to benefit businesses within his home state of Kentucky. In return, Rogers was lavished with expensive vacations and political donations. Rogers is now Chairman of the House Appropriations Committee. See Lipton, Eric. "In Kentucky Hills, a Homeland Security Bonanza." *The New York Times* (May 14, 2006); see also U.S. congressman Hal Rogers website. Available at <http://halrogers.house.gov/>
11. The quota was first introduced in 2009 by then Senator and Chairman of Appropriations Subcommittee on Homeland Security Robert Byrd (D-WV). See National Immigrant Justice Center, *Detention bed quota timeline* (March 20, 2014). Available at <http://www.immigrantjustice.org/eliminate-detention-bed-quota#.VVurufViko>; see also Department of Homeland Security Appropriations Act of 2015 (March 4, 2015). Government Printing Office. Available at <https://www.congress.gov/114/plaws/publ4/PLAW-114publ4.pdf>
12. Budget Hearing on Immigration and Customs Enforcement (April 15, 2015). Available at <http://appropriations.house.gov/calendar/eventsingle.aspx?EventID=394119>
13. The appropriations bill language speaks only to the funding of 34,000 beds. Further, under Article II of the Constitution, the executive branch is given "significant prosecutorial discretion not to take enforcement action against violators of a federal law." See *In re Aiken Cnty.*, 725 F.3d 255, 262-63 (D.C. Cir. 2013). For this reason, Congress "may not mandate that the President prosecute a certain type of offense or offender," and therefore cannot require that the executive branch hold a certain number of people in immigration detention.
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22. *Id.* at 19.
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36. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.001987-002228. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201987-2228.pdf>

37. South Texas Detention Center Contract No. ACD-4-C-0001 for guard services with The GEO Group (June 19, 2008). Available at <http://www.ice.gov/doclib/foia/contracts/geogroupscedm09f00001.pdf>
38. Port Isabel Detention Center Contract No. HSCEDM-08-D-00002 for operation of the detention processing facility (February 28, 2008). Available at <http://www.ice.gov/doclib/foia/contracts/hscedm-08-d-00002-ahntatechnicalservicesinc.pdf>; PIDC special notice for an interim contract award not to exceed 12 months. Available at https://www.fbo.gov/index?s=opportunity&mode=form&id=e40f1ea201d3434f08504907f6230856&tab=core&_cview=0
39. Solicitation No. HSCEDM-14-R-00003 for detention guard, food and local transportation services (January 24, 2014). Available at https://www.fbo.gov/?s=opportunity&mode=form&id=2c0a16fd90949fb227cbb065b86638f&tab=core&_cview=1
40. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.003226-003459 (guaranteed minimum listed on 003332, 003225). Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%203226-3459.pdf>
41. San Diego Otay Mesa Contract No. ODT-5-C-0003 for comprehensive secure detention services (July 1, 2005). Available at <http://www.justice.gov/archive/ofdt/otay-mesa-contract.pdf>; CCA is building a new facility with greater detention capacity to replace San Diego. Available at <https://www.cca.com/insidecca/a-new-facility-is-underway>; Another facility in the area, El Centro SPC (closed down in 2014), was managed by Asset Protection & Security Services LLP and had a guaranteed minimum of 225 beds. Contract No. HSCEDM-09-D-00001 for detention services (May 22, 2009), citing to the original solicitation. Available at https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=bab95d17227113f8db7e219f9df5fc06&_cview=0
42. 900 from ICE and 300 from USMS. See endnote 41.
43. Solicitation No. HSCEDM-15-R-00001 for a contractor owned and contractor operated detention facility (November 20, 2014). Available at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=5070ee30860d8093cb1f7abe0aa9f741&_cview=0; The guaranteed minimum was increased from 750. See Henterly, Lael. *The Seattle Globalist*. "Fewer Immigrants filling Tacoma detention center, as doubts grow about new contract." (April 2, 2015). Available at <http://seattleglobalist.com/2015/04/02/tacoma-detention-center-immigrant-ice-contract/35475>; In 2009, the guaranteed minimum was 1181. See Krell, Alexis. *The News Tribune*. "GEO expected to get new contract to run Tacoma immigrant detention center." (March 30, 2015). Available at http://www.thenewstribune.com/2015/03/30/3717088_geo-expected-to-get-new-contract.html?rh=1
44. The Geo Group operates this facility. Available at <http://www.geogroup.com/Maps/LocationDetails/7>
45. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.001228-001789 (minimum stated on ICE Bates No. 001318, 001454, 001578, 001587). Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201228-1789.pdf>
46. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0006631-32. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%206631-32.pdf>
47. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0008673. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%208672.pdf>
48. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.006765. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%206765.pdf>
49. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.007807. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%207807-09.pdf>
50. In a 2013 email exchange, an ICE official provided a list of private companies that ICE contracted with to *Bloomberg* reporter Kathleen Miller. The private contractors included: GEO, CCA, AHTNA, M&TC, Doyon-AKAL, CEC, LCS, ICA, Emerald, Paladin, and MVM. See *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.001045-50. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201045-1050.pdf>
51. As a potential consequence, immigration enforcement in regions with guaranteed minimums may be affected by the requirement to fill a local bed quota. For example, the San Diego Field Office has two detention facilities, but only the Otay Mesa Detention Center has a guaranteed minimum. Enforcement actions anywhere in the jurisdiction of that Field Office could be wholly, or in part, motivated by the need to meet Otay Mesa's guaranteed minimum.
52. This case is currently being litigated and addresses the use of a deterrence justification at an initial screening in order to keep Central American asylum-seeking families detained. *RILR v. Johnson*, No. 15-cv-11 JEB (2015). Available at https://www.aclu.org/sites/default/files/field_document/order_0.pdf

53. 5 U.S.C. §552(b)(4).

54. 6 C.F.R. §5.8.

55. *NIJC v. DHS*, No. 12-cv-05358 (2012), Bates No. ICE 2014FOIA03585.00029996.

56. Solicitation No. HSCEDM-09-R-00002 (December 9, 2008) for detention services. Available at https://www.fbo.gov/index?s=opportunity&mode=form&id=4fb212a693f78c357f02d32cf3acb323&tab=core&_cview=1

57. Contract No. HSCEDM-08-D-00002. Available at <http://www.ice.gov/doclib/foia/contracts/hscedm-08-d-00002-ahtnatechnicalservicesinc.pdf>

58. Solicitation No. HSCEDM-14-R-00003 (January 24, 2014) for detention guard, food and local transportation services. Available at https://www.fbo.gov/?s=opportunity&mode=form&id=2c0a16fd90949bfb227cbb065b86638f&tab=core&_cview=1

59. Contract No. HSCEDM-08-J-00087. Available at <http://www.ice.gov/doclib/foia/contracts/hscedm-08-d-00003-doyonakaljv.pdf>

60. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0000228. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%20228.pdf>

61. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0000086. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%20086.pdf>

62. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates Nos. ICE 2014FOIA03585.0001211, 6595. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201211.pdf>; <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%206594-95.pdf>

63. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0011542. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%2011542.pdf>

64. Expose & Close. Detention Watch Network. *Etowah County Jail Alabama*. Available at <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose-etowahnov12.pdf>

65. Seville, Lisa Riordan and Hannah Rapple. "When feds sought to shutter immigration jail, politics intervened." *NBC News* (August 22, 2012) Available at: http://investigations.nbcnews.com/_news/2012/08/22/13398156-when-feds-sought-to-shutter-immigration-jail-politics-intervened

66. *NIJC v. DHS*, No. 12-cv-05358 (2012), Bates No. ICE 2012FOIA03030.0029953