

Beyond Repair: ICE's Abusive Detention Inspection and Oversight System

The U.S. immigration detention system has grown under the Biden administration at an alarming rate. Despite promises to review the overall detention apparatus and close out the worst facilities, the administration has renewed contracts for facilities with records of abuse and is now requesting that Congress fund a dramatic expansion in the Department of Homeland Security's (DHS) detention budget.¹ For years, government watchdogs and civil society have tracked and reported on the lack of compliance with basic standards of care for people in DHS Immigration and Customs Enforcement (ICE) facilities. However, ICE's oversight system has failed to prevent persistent abuse and inhumane conditions.²

ICE's continuation of a failed oversight system is knowing and inexcusable. NIJC released a report documenting these same deficiencies nearly a decade ago, and the DHS's Office of Inspector General (OIG) released a report confirming these findings more than five years ago. ICE's inspection process is deliberately designed to rubber stamp facility compliance with already-compromised standards to keep facilities from closing, no matter the human cost. When oversight bodies do make timely recommendations to phase down facilities, ICE often rejects or ignores them. The result is a detention system that exacerbates and creates physical and mental health crises, including preventable deaths.

ICE's failure to engage in meaningful oversight is part of a larger detention and enforcement apparatus that covers up abuse and stifles accountability, allowing for lucrative contracts to continue.³ Before entering office, President Biden promised to end private immigration detention, but that promise was soon broken.⁴ Under the Biden administration, the number of people held in ICE detention has swelled from 14,000 to over 39,000 people locked up awaiting their civil immigration proceedings.⁵ A close look at the paper trail of abuse reveals that ICE detention is beyond repair, and supports the conclusion that the punitive use of detention for people in civil immigration proceedings should end.

This policy brief:

- **Examines ICE's standards and inspections system that permits abuse and impunity to prevail;**
- **Discusses the deadly consequences of ICE rejecting Congress and government watchdog recommendations;**
- **Highlights growing movements to move funds away from ICE detention and close facilities across the country.**

I. ICE standards and inspections set the stage for impunity

DHS has a variety of oversight tools at its disposal to monitor and report on substandard conditions in ICE detention.⁶ Unfortunately, this oversight is mostly guided by ICE's national detention standards, which are insufficient, unevenly applied, and fall short of basic human rights principles.⁷

ICE uses four different sets of detention standards, which it incorporates into its varying contract arrangements with private prison companies and county jails.⁸ Despite the fact that immigration detention is civil and supposed to be non-punitive, ICE's national standards are largely based on carceral correctional standards.⁹ Further, if an ICE jail wants to avoid compliance with ICE's minimal standards, it can simply apply for a "waiver" to avoid getting a negative mark on that particular.¹⁰

Oversight reforms failed to end ICE abuses

In 2015, NIJC issued an in-depth report with Detention Watch Network (DWN) detailing how the ICE inspection process allowed for abuses to persist in immigration detention, with recommendations for improving ICE oversight.¹¹ The recommendations focused on increasing transparency and oversight of the inspections process, improving the quality of ICE inspections, and instituting consequences for failed inspections.¹² Congress has taken important measures to require ICE to implement some of these recommendations, such as mandating ICE publish inspection reports, and creating a detention ombudsman's office. Still, eight years later, the most pressing recommendations have gone unaddressed. Notably, there are no real consequences for ICE facilities that fail inspections, or for ICE when it refuses to comply with oversight recommendations to close out or scale down facilities.

The DHS OIG reported in 2018 and again in 2019 that ICE's inspections and monitoring process persistently failed to hold ICE and local officials responsible when facilities did not meet its performance standards.¹³ The OIG made specific recommendations to improve inspections, follow-up, and monitoring of ICE detention facilities, and overall oversight and compliance of ICE detention facility contractors.¹⁴ Years later, none of these recommendations have led to any tangible

difference in the inhumane conditions people face on a daily basis in ICE detention.

After increasing pressure from Congress, and findings that its inspections were "useless," ICE stopped using the contractor Nakamoto Group, Inc. to carry out inspections, and moved the process away from the purview of ICE Enforcement and Removal Operations (ERO).¹⁵ However, the change over to ICE's Office of Detention and Oversight (ODO), which is under ICE's Office of Professional Responsibility (OPR), has not led to noticeable improvements. The Government Accountability Office (GAO) echoed these long-standing concerns in January 2023, finding that ICE did "not analyze its inspection findings to identify trends in noncompliance," which made it difficult for any improvements to occur.¹⁶

Congress created the Office of the Immigration Detention Ombudsman during the Trump administration in 2020 with the aim of establishing an independent oversight body independent from ICE and CBP.¹⁷ The creation of the ombudsman's office has provided another avenue for people in detention to submit complaints and request support with basic services, such as access to legal counsel. Still, the ombudsman's office lacks authority to make significant changes, identify or remediate systemic concerns, or scale down the detention apparatus overall.

Updates to ICE's standards over the years have, in some cases, made them even weaker. ICE's 2019 updates to its 2000 National Detention Standards, for example, weakened protections against the use of force and solitary confinement and removed basic safeguards for medical and other care.¹⁸ When ICE has updated its standards in a meaningful manner, facilities have been slow to comply with the latest requirements.¹⁹ ICE also bypasses its own requirements by issuing notifications to Congress indicating that compliance would be too costly.²⁰

Because ICE uses these minimal standards as a problematic framework for its inspections process, its oversight ends up relying on performative performance reviews that cover up abuses and allow for contractors to avoid accountability.²¹

ICE's scheme to circumvent congressional requirements to keep facilities open

Since 2009, a provision in appropriations law has prevented ICE from using funds for any immigration detention facility if it fails two consecutive overall performance evaluations.²² ICE circumvents this law, however, by ensuring that its facilities rarely fail an inspection, and taking concerted steps to avoid issuing a failed rating to a facility twice in a row.

The case of Clay County Jail in Indiana illustrates how ICE and its contractors get around this law.²³ After the jail failed a Nakamoto inspection in May 2021, ICE and Clay County officials worked to prevent a consecutive failed review.²⁴ In fact, the ICE facility compliance officer who participated in the inspection encouraged the sheriff to expand its detention capacity for ICE.²⁵ ICE extended more time to Clay County officials to prepare for its second inspection.²⁶ At the December 2021 follow-up inspection, the Nakamoto inspector found that conditions at the jail remained “unacceptable.” However, ICE went on to certify the jail as compliant with detention standards, allowing the contract to continue.²⁷

NIJC sued Clay County and ICE over the contract with the Clay County Jail, arguing that ICE should not have given the facility a passing grade for its December 2021 performance evaluation.²⁸ The

lawsuit includes details of medical neglect, insufficient food, freezing cold conditions, and sexual abuse experienced or witnessed by plaintiffs who were detained in Clay County Jail.²⁹ In March 2023, a federal district court permitted this claim to proceed, and noted allegations that ICE “turned a blind eye” to deficiencies at the jail by relying on ICE’s notoriously flawed inspection process.³⁰ NIJC also has joined the ACLU of New Mexico and Innovation Law Lab in a lawsuit on behalf of people detained in New Mexico’s Torrance County Detention Facility, arguing that ICE issued a passing grade in 2022 as a follow-up to a 2021 failed inspection to avoid ending the contract, despite known ongoing violations of its detention standards.³¹

ICE also comes up with opaque loopholes to claim to get around the two-strikes rule. Lexington County Detention Center in South Carolina received a failing grade from ODO on its February 2023 inspection.³² However, ICE claimed that because its contract with Lexington County did not specify which standards the facility was required to follow, the failed inspection was only “for informational purposes only” — meaning that ICE would not have to end its contract if the facility failed its following inspection.³³

In addition to ICE inspections, immigration detention facilities are subject to reviews and visits by DHS’s Office of Civil Rights and Civil Liberties (CRCL), as well as unannounced visits by the DHS OIG and the GAO. However, these bodies face serious hurdles when it comes to holding ICE accountable for abuses. CRCL, for example, is hindered from a lack of transparency, as they often keep the results of their investigations shielded from public view for far too long.³⁴ NPR published an explosive report in August 2023 on internal CRCL investigations showing “barbaric conditions” in ICE detention that were kept from the public for years.³⁵ Investigators with the Project On Government Oversight (POGO) also obtained important internal CRCL records after years of litigation. The nongovernmental organization noted that by shielding the records from public view, “DHS can conceal problems for years, if not indefinitely.”³⁶

When CRCL does take on investigations and issue recommendations, they often do not lead to material changes. CRCL opened an investigation in November 2021 into abuse at Glades County detention center in Florida, for example.³⁷ CRCL also recommended in August 2021 that the Winn Correctional Center, in Louisiana, “be closed or drawn down.”³⁸ In March 2022, ICE said it was limiting the use of both facilities.³⁹ Nonetheless, ICE continues to detain people in Winn, and “horrific conditions” persist.⁴⁰ ICE also still detains people in Glades, as groups continue to call for the facility to be shut down.⁴¹

Congress has produced in-depth reports on the systemic abuse embedded in ICE detention facilities, illustrating the failures of the inspection process.⁴² Rights groups have thoroughly documented the pervasive discrimination, racism, violence and harm in immigration detention.⁴³ Many of the abuses in ICE facilities clearly constitute human rights violations.⁴⁴ Under ICE’s standards and oversight process, they are commonplace.

II. The deadly consequences of ICE's refusal to adhere to oversight recommendations

DHS can at any time phase out and terminate contracts with private prisons or local government jails.⁴⁵ When faced with clear evidence of systemic abuse and life threatening conditions, ICE often claims that existing oversight mechanisms are sufficient to enact reforms.⁴⁶ However, the oversight structure consistently falls short of enacting necessary life-saving changes.

During the first year of the Biden administration, DHS worked with oversight agencies to review facilities with substandard conditions. Secretary Mayorkas acknowledged concerns regarding the overuse of detention and told Congress in July 2021 that DHS was working with oversight bodies to review the ICE detention architecture.⁴⁷ The administration commissioned a review of around two dozen facilities, and recommended some be scaled down or closed.⁴⁸ The review has not been made public, but according to Reuters, it looked at privately operated facilities such as Stewart Detention Center in Georgia, and Winn Correctional Center and Richwood Correctional Center in Louisiana.⁴⁹ The administration closed out or reduced capacity for some of the worst facilities following this review, but these actions were the “barest minimum” compared to what officials involved in the review had envisioned.⁵⁰ In August 2022, another internal DHS study recommended closing or downsizing nine immigration detention centers.⁵¹ However, ICE only ended contracts with two of the detention centers mentioned in that review.⁵² The memo recommending closures for these facilities was reported by Reuters, but also has not been made public.⁵³

DHS's failure to close out the worst facilities and scale back ICE's sprawling infrastructure can be attributed in large part to ICE intransigence. ICE refuses to comply with recommendations from oversight bodies, such as the DHS OIG, when they issue scathing reports about life-threatening conditions. For example, the OIG issued a report in March 2022 on Torrance County Detention Facility which had already failed one Nakamoto inspection in 2021, recommending that ICE immediately stop detaining people there.⁵⁴ ICE rejected the recommendation, and continued to keep hundreds of people detained in Torrance.⁵⁵ That same month, ICE's contracting officer also issued a report finding that violations of federal standards continued in Torrance.⁵⁶ ICE's Nakamoto inspection team also conducted a follow-up at the end in March 2022, and inexplicably recommended that ICE give the facility a “meets standards” grade.⁵⁷ A third-party Prison Rape Elimination Act (PREA) audit weeks later also produced findings that directly contradicted Nakamoto's March 2022 inspection report.⁵⁸

Later that year, in August 2022, a young man from Brazil named Kesley Vial, died in the Torrance facility.⁵⁹ ICE's review of Kesley's death addressed similar failures identified in the OIG report that contributed to his fatal suicide attempt.⁶⁰

At another ICE detention facility in Port Isabel, Texas, the OIG reported in February 2023 on “unsafe conditions,” and found the facility did “not meet standards for detainee segregation.”⁶¹ Months later, on October 8, 2023, Julio Cesar Chirino Peralta died in ICE custody after being detained at Port Isabel.⁶²

Other recent deaths in detention further lay bare the mortal consequences of the failed oversight system.⁶³ Since 2003, over 200 people have died in ICE's immigration detention system. Under Biden, 12 people have died in ICE custody.⁶⁴

Oversight bodies for ICE detention centers

The U.S. government deploys a variety of oversight tools to monitor and report on ICE compliance with its national detention standards. These include internal inspections carried out by ICE, monitoring and reporting mechanisms within DHS, other government watchdog agencies, and congressional reports. Below is a summary of the different oversight and reporting mechanisms.⁶⁵

Within ICE:

- **ICE Office of Professional Responsibility Office of Detention and Oversight (ODO)**
 - ODO and its contractors carry out pre-announced inspections of facilities to determine compliance with ICE detention.
 - ICE publishes ODO inspections on its website, in accordance with congressional requirements.
 - As of October 1, 2022, the ODO has the congressionally mandated responsibility to conduct ICE detention facility inspections under the purview of OPR.
- **Nakamoto Group, Inc.**
 - Starting in 2007, Nakamoto Group, Inc., held a private contract with ICE to conduct annual inspections under the authority of ICE's Enforcement and Removal Operations
 - The last published inspection was in 2022, indicating that Nakamoto inspections are no longer in use.

Within DHS:

- **Office of the Inspector General (OIG)**
 - The OIGs conducts unannounced inspections of detention centers to determine compliance with detention standards.
 - OIG also has an Office of Audits, which reviews whether programs, including those at immigration detention facilities, meet established goals and objectives and are financially accountable.
OIG's inspections, audits, and evaluations are available on its website, and include recommendations to the agency subject to investigation and that agency's response.
- **Office of Civil Rights and Civil Liberties (CRCL)**
 - CRCL investigates complaints regarding DHS policies or activities, or actions taken by DHS personnel. CRCL also has enforcement authority regarding discrimination on account of disability pursuant to Section 504 of the Rehabilitation Act of 1973.
CRCL does not proactively make public all of the memos produced from its investigations. Obtaining these records requires public records requests and often litigation. When CRCL does publish its memos online, they often are heavily redacted, withholding from the public the most important findings and recommendations.
- **Office of the Immigration Detention Ombudsman (OIDO)**
 - Congress created OIDO in 2020 to independently and impartially review complaints submitted by, or on behalf of, individuals who are or were in immigration detention.
 - The detention ombudsman receives individual complaints about conditions in DHS custody; conducts unannounced visits to detention facilities; assesses compliance with laws, detention standards, contract terms, and policy; and issues recommendations to DHS agencies.

Outside DHS:

- **Government Accountability Office (GAO)**
 - GAO is an independent, nonpartisan agency that examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, fact-based information to help the government save money and work more efficiently.

III. Growing calls to divest from detention

Continuing to fund ICE’s detention system is inhumane and misguided. For fiscal year 2023, U.S. taxpayers paid \$2.8 billion for ICE detention.⁶⁶ Following the end of the Trump-era Title 42 mass expulsion policy in May, the Biden administration adopted a more hardline approach, implementing new “sweeping” enforcement measures, including increasing detention capacity.⁶⁷ In doing so, the administration chose to ignore years of evidence showing that punitive enforcement measures *do not* lead to decreases in migration numbers.⁶⁸ Detention numbers spiked, from 22,000 in May to over 39,000 by the end of October 2023.⁶⁹ In continuing to expand the incarceration of people facing administrative removal proceedings, the administration ignores clear evidence showing that legal representation and community-based support services are a more humane and effective method of ensuring compliance at immigration court hearings.⁷⁰

The White House requested even more funds for ICE from Congress in August 2023, including unrestricted funds that would be used for detention.⁷¹ Congress logically rejected that request, and passed a clean stopgap bill to avoid a government shutdown on September 30, 2023. The White House again requested supplemental funds in October 2023, this time including \$2.5 billion more for ICE detention.⁷² Members of Congress have already reasonably determined that DHS does not need more money for detention, and should continue to reject misguided enforcement-centered supplemental requests.

Communities and organizations across the country have organized to urge their elected representatives to shift away from funding enforcement and militarization programs, and instead invest in communities. The Defund Hate campaign has advocated for Congress to oppose billions of dollars in requests for immigration detention and enforcement, and instead invest in health care, education and other vital programs.⁷³ Groups organizing with DWN’s Communities Not Cages campaign, which advocates for detention facilities to close and people to be released to their homes and communities, have also seen important gains.⁷⁴ DHS has terminated ICE detention contracts and scaled back the use of some of the worst jails in response to community demands, and more states have passed anti-detention state legislation.⁷⁵ The campaigns provide roadmaps and breathe hope into the growing movement to do away with the inhumane immigration detention system.⁷⁶

Visit NIJC’s collection of ICE detention center inspections and contracts:

immigrantjustice.org/transparency/detention

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Endnotes

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