



DETENTION
WATCH NETWORK



center for
constitutional
rights

New Information from ICE ERO's July Facility List

ICE ERO's Facility List from July 10, 2017¹ was recently obtained by Detention Watch Network and the Center for Constitutional Rights as part of a Freedom of Information Act (FOIA) lawsuit,² and is an updated version of a similar spreadsheet from 2015.³

The spreadsheet contains a snapshot of the immigration detention system, including all the facilities in use on July 10th, their capacity, population count, average daily population over the course of several years, facility operator, some limited details about the contract that governs that facility and recent inspection results.⁴ The fact that this update, which should be routinely provided to the public, is only available through litigation is further evidence of ongoing and systemic problems with transparency by ICE concerning immigration detention.

Detention Statistics

- 201 detention facilities
- 35,929 people detained on average in FY17 through July 10 (not including family detention or women detained at Hutto)
- 26,249 or 73% of people held in privatized facilities⁵

Additionally, information contained within this spreadsheet:

1. Suggests that ICE is unconcerned with Congressional oversight

- a. In the FY17 Omnibus Appropriations bill, Congress inserted language requiring that any new detention contracts needed to comply with the most recent version of the detention standards (Performance-based National Detention Standards of 2011), or that ICE needed to submit a report explaining why they were unable to do so.⁶ This spreadsheet shows three new IGSA detention contracts that were not included in the May 2017 list (Beaver

¹ Spreadsheet of information about detention facilities from Immigration and Custom Enforcement's (ICE) Enforcement and Removal Operations (ERO) division, available at:

<https://www.detentionwatchnetwork.org/sites/default/files/Confidential%20ICE%20ERO%20Facility%20List%202007-10-2017-1-1.xlsx>

² *Detention Watch Network (DWN) and Center for Constitutional Rights (CCR) v. Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS)*, all case documents available at <https://ccrjustice.org/home/what-we-do/our-cases/detention-watch-network-dwn-v-immigration-customs-and-enforcement-ice-and>

³ Available at <https://www.immigrantjustice.org/ice-detention-facility-list-december-2015>

⁴ Note that this spreadsheet does *not* include the four facilities governed by the family residential standards: Dilley, Karnes, and Hutto in TX and Berks in PA.

⁵ Note that this percentage would be higher if the four missing facilities were included since Hutto, Karnes and Dilley are all privately run (Berks is publicly run, but much smaller than the other three).

⁶ See page 70, Division F of the DHS Appropriations Act of 2017 here:

<http://docs.house.gov/billsthisweek/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>

County, PA; Tom Green County, TX and Taylor County, TX).⁷ All are contracted at the lowest level of detention standards from 2000. It appears that ICE did not submit the required report to Congress.

- b. In FY09, Congress added report language to the DHS Appropriations bill requiring that ICE terminate contracts for any facility that failed two consecutive inspections.⁸ For the last three years, organizations have raised concerns that ICE was holding final inspection results pending for long periods of time—both undermining the integrity of the inspections regime, and preventing the failed inspections from triggering the Congressionally-mandated consequence. This spreadsheet shows that ICE has continued to exploit this loophole.

2. Casts doubt on ICE's claims that its cost per detention bed are increasing

- a. ICE's funding for immigration detention is based on a simple calculation: the average cost per detention bed multiplied by the average number of people per day to be detained. In FY18, ICE is attempting to increase its overall funding by not only arguing for an expansion in the number of detention beds, but also by saying that the average cost per detention bed is increasing.⁹
- b. Given that ICE has announced plans to significantly *decrease* detention standards in the majority of detention facilities,¹⁰ this is confusing. Furthermore, this spreadsheet shows a large number of inter-governmental service agreement (IGSA) detention contracts¹¹ that have been created or reactivated this calendar year (Column B, green highlight). On average, they have significantly *lower* per diem payments than average, including some as low as \$30 per day, significantly below the average rate of \$114.22.¹²

3. Points to a worrying increase in the combination of 287(g) agreements¹³ and IGSA detention contracts

- a. While both of these programs have existed for a long time, this spreadsheet shows a significant increase in the number of localities participating in both. In total, 32 detention facilities are in localities that also have signed a 287(g) agreement with ICE (Column E, red highlight), and four detention facilities are in localities with currently pending applications (Column E, orange highlight). Of the 54 IGSA that are new or reactivated this calendar year, 13 have a 287(g) agreement, and two more have a pending application.

⁷ Before receiving this spreadsheet, the most up-to-date list of detention facilities was from May 2017, though that list does not include most other accompanying information.

⁸ See page 36, Division F of the DHS Appropriations Act of 2017 here:

<http://docs.house.gov/billsthisweek/20170501/DIVISION%20F-%20HOMELAND%20SOM%20OCR%20FY17.pdf>

⁹ This was communicated to the author by multiple Congressional appropriations staffers, and then further confirmed by Phil Miller, head of Enforcement and Removal Operations, during an on the record conference, see at the 53 minute mark:

<https://vimeo.com/237433196>. Note that while Mr. Miller indicates that healthcare is a significant part of the cost increase, his agency's own Congressional Budget Justification for FY2018 predicts steady costs for healthcare from FY17 to FY18, see page 160: https://www.dhs.gov/sites/default/files/publications/DHS_FY18_CJ_VOL_II.PDF

¹⁰ Congressional Budget Justification for FY2018, see page 171 for details on setting a new, lowered set of "minimum requirements" for facilities slated to hold people for less than a week, and an also-lowered set of lowered "targeted requirements" for non-dedicated (hold other people in addition to those detained by ICE) long-term facilities:

¹¹ IGSA are detention contracts between ICE and a local government, some of which may then be sub-contracted to a private prison company. You can see a full list of them via Column H in the spreadsheet.

¹² Congressional Budget Justification for FY2018, see page 161: https://www.dhs.gov/sites/default/files/publications/DHS_FY18_CJ_VOL_II.PDF

¹³ The 287(g) program deputizes local law enforcement officers to act as immigration enforcement agents. See the American Immigration Council backgrounder here: <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>

- b. We are particularly concerned about localities participating in both programs because of the perverse financial incentives presented by their combination. Since 287(g) agreements give local law enforcement control over who enters the immigration enforcement pipeline, and since that same law enforcement entity stands to make money per person per day through the detention contract, the combination of these two programs essentially incentivizes large scale racial profiling, in order to make the detention contract as profitable as possible.¹⁴

4. Affirms continued concerns about ICE contracting practices.

- a. Two of the listed detention facilities do not have a contract initiation date (Column X). It is unclear if this is the result of poor record-keeping, or of something non-standard about the agreement between ICE and these two facilities.
- b. More alarming because it is clearly a systemic problem, a whopping 159 detention facilities do not have contract expiration dates (Column Y). Since the process of renewing a contract often offers the best window for addressing chronic problems at a facility, the fact that 79% of the facilities never go through this process raises questions about the degree to which ICE is actually controlling, or even seeking to control, its contractors.
- c. These are just two examples of a broader problem with sloppy contracting noted by Congress in the FY17 Omnibus, criticizing ICE for not having a “standard template for contracts not a consistent method...to validate invoices” despite having over 400 active contracts.¹⁵

Each of these trends is more worrying in light of signs that the limited oversight and accountability that does exist for ICE is being systematically gutted. Earlier this year, ICE disbanded its own Office of Detention Policy and Planning, which oversaw the implementation of many Obama-era reforms.¹⁶ The Senate DHS funding bill¹⁷ released last week proposes cutting funding for the DHS Office of Inspector General by 27%, despite increased funding for the rest of DHS. This comes just days after IG Roth testified to Congress¹⁸ about the danger of decreased oversight in the face of increased risk, especially from “growth in high-risk areas.”

¹⁴ Cody Stark, Sheriff McRae responds to ACLU regarding ICE training: Critics of 287(g) program worry it will hurt relations between law enforcement and immigrants, The Huntsville Item, April 16, 2017, available at: http://www.itemonline.com/news/local_news/sheriff-mcrae-responds-to-aclu-regarding-ice-training/article_cbf72b79-d75d-5b90-8e99-061c5f305b77.html; Sean Collins Walsh, How two ICE programs let sheriffs cash in on immigration crackdown, Austin Statesman, July 15, 2017, available at: <http://www.mystatesman.com/news/national-govt--politics/how-two-ice-programs-let-sheriffs-cash-immigration-crackdown/9nhjHsUOZpzf8LKditPKbL/>

¹⁵ See page 21 of Division F of the DHS Appropriations Act of 2017 here: <http://docs.house.gov/billsthisweek/20170501/DIVISION%20F%20HOMELAND%20SOM%20OCR%20FY17.pdf>

¹⁶ Caitlin Dickerson, Trump Plan Would Curtail Protections for Detained Immigrants, April 13, 2017, available at: <https://www.nytimes.com/2017/04/13/us/detained-immigrants-may-face-harsher-conditions-under-trump.html>

¹⁷ Senate FY2018 Homeland Security Appropriations Chairman’s Mark, available at: <https://www.appropriations.senate.gov/download/fy2018-homeland-security-chairmans-mark>

¹⁸ Testimony of Inspector General John Roth Before the Committee on Oversight and Government Reform U.S. House of Representatives, “Recommendations and Reforms from the Inspectors General,” November 15, 2017, available at: <https://www.oig.dhs.gov/sites/default/files/assets/TM/2017/oigtm-jr-111517.pdf>