

Lives in Peril:

How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse



The Immigration
Detention
Transparency
and Human
Rights Project

NATIONAL
IMMIGRANT
JUSTICE CENTER
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DETENTION
WATCH NETWORK

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About the National Immigrant Justice Center

With offices in Chicago, Indiana, and Washington, D.C., Heartland Alliance's National Immigrant Justice Center (NIJC) is a nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.

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About the Detention Watch Network

The Detention Watch Network works through the collective strength and diversity of its members to expose and challenge injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons.

Visit detentionwatchnetwork.org

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I. Executive Summary

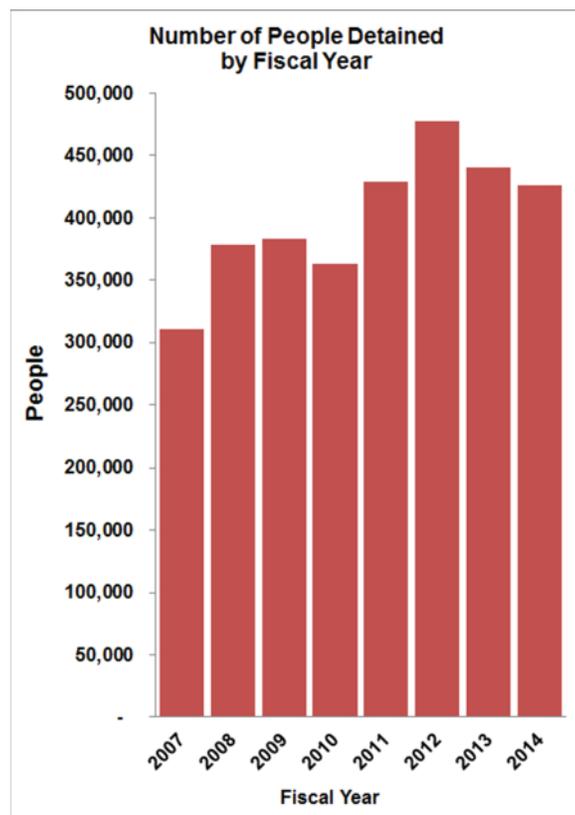
In the aftermath of September 11, 2001, when the immigration detention system began its unprecedented growth, the world slowly began to hear about the troubling conditions of detention that immigrants confronted in government custody while facing removal from the United States. Years later, the Obama administration would inherit a sprawling, broken immigration detention system with little oversight or accountability. In 2015, as the Obama administration winds down, its early promises of immigration detention reform have failed to materialize. The U.S. Immigration and Customs Enforcement (ICE) immigration detention inspections process—a key target of the Obama administration’s reform plan—remains non-transparent and ineffective at identifying pervasive and troubling conditions in detention. Instead, the inspections process remains a “checklist culture,” in which inspectors—employed by ICE directly or via subcontracts—engage in pre-planned, perfunctory reviews of detention facilities that are designed to result in passing ratings and to ensure local counties and private prison corporations continue to receive government funds.

A review of five years of ICE inspections for 105 of the largest immigration detention centers confirms that ICE’s oversight practices under the Obama administration remain fundamentally unchanged and unreformed. Public and private contractors who run detention facilities continue to make money without adequate oversight, and troubling conditions of detention persist for the more than 400,000 individuals who pass through ICE custody each year. In fact, detailed reviews of six facilities known to have troubling human rights records suggest that in some cases, ICE inspections allow facilities to obscure severe conditions problems and their inability to protect the rights and lives of detained immigrants.

Immigration Detention Oversight Under the Obama Administration

The transition from the Bush to the Obama administration was accompanied by a tide of high-profile reports by journalists and advocates chronicling human rights abuses and unexplained deaths of people in ICE custody. In groundbreaking exposés in 2008, both *The Washington Post*¹ and *The New York Times*² examined allegations of negligent medical care and revealed that at least 83 people³ had died in ICE custody between 2003 and 2008. That same year, a report⁴ about the Northwest Detention Center in Tacoma, Washington, described inadequate medical care and food, deplorable daily living conditions, and impediments to legal information—conditions similar to what individuals in ICE custody experienced around the country. In 2009, advocates published ICE detention documents obtained in litigation, and concluded that the inspections process had failed.⁵

This public scrutiny prompted congressional inquiries into the sprawling system whose population had quadrupled within a span of 14 years.⁶ Congress passed a 2009 Department of Homeland Security (DHS) appropriations bill which included a provision that ICE cannot expend



funds to immigration detention facilities that fail two consecutive inspections. On August 6, 2009, the Obama administration also responded by announcing a series of reforms which it said would create a more civil detention system.⁷ Among the reforms was a revamp of ICE's compliance monitoring procedures and the establishment of the Office of Detention Oversight (ODO) to inspect immigration detention facilities and investigate the deaths of individuals in ICE custody.⁸

In addition to changes to the immigration detention system, in 2009 President Obama promised transparency across the federal government. On January 21, 2009, the president directed the heads of all federal agencies to "adopt a presumption in favor of disclosure ... and to usher in a new era of open Government." In a memorandum, he said, "The presumption of disclosure also means that agencies should take affirmative steps to make information public."⁹ Nonetheless, such proactive transparency and commitment to open government failed to materialize in the immigration context. The ICE inspections regime is shrouded in secrecy. Information regarding facilities' compliance with ICE's detention standards has largely been hidden from the public. Since ICE released its first and only semiannual report on compliance with its national detention standards in 2007, information about how ICE oversees detention facilities, and what that oversight uncovered, has largely come from Freedom of Information Act (FOIA) requests and litigation.¹⁰ The inspections released with this report were not made available voluntarily by DHS, but as the result of FOIA requests by the National Immigrant Justice Center (NIJC) and a federal court order following three years of litigation.

NIJC has released all inspections from 2007 to 2012 obtained through the FOIA litigation at immigrantjustice.org/TransparencyandHumanRights.

Overview of Findings

NIJC and Detention Watch Network (DWN) reviewed ICE detention facility inspections dating from 2007 to 2012, most of which were previously unreleased. A close analysis of the inspections, along with additional human rights reports that elucidate conditions in specific facilities, reveals that the Obama administration has done little to improve oversight or gain control over the sprawling immigration detention system and the conditions approximately 34,000 immigrants face in custody every night.

The documents released include:

- Annual facility inspections by the ICE Office of Enforcement and Removal Operations (ERO). Under the 2009 DHS Appropriations Act, these are the inspections that determine whether detention facilities are allowed to maintain their contracts with ICE.
- Facility inspections by the ODO, the office under the ICE Office of Professional Responsibility purportedly created to ensure better monitoring compliance.¹¹
- The deposition of the chief of ICE's Detention Monitoring Unit, which provides an overview of the immigration detention inspections process.¹²

This report contains an evaluation of the ERO and ODO inspections process itself as gleaned from the documents and a focused analysis of six detention facilities known to have detention conditions violations during the study period.

While the most recent inspections covered in this report are from 2012, there is no indication that any of the shortcomings identified have changed. Three years later, advocates and non-governmental organizations (NGOs) continue to raise complaints of systemic human rights¹³ and due process vio-

lations¹⁴ in the immigration detention system. In the first nine months of 2015 alone, ICE reported six deaths in detention.¹⁵

Based on the review of the inspection reports, NIJC and DWN found:

1. ICE's Culture of Secrecy Persists

- Neither information nor documents which would help the public to understand ICE's inspections and oversight processes are readily available.
- There is a lack of independent oversight because both entities which conduct inspections are paid and vetted—either through contracts or as direct employees—by ICE.

2. ICE Inspections Fail to Adequately Assess the Conditions Detained Immigrants Experience

- Both ERO and ODO inform facilities of inspections in advance.¹⁶
- There are significant inconsistencies within and between inspection reports for individual facilities, as well as between ODO and ERO inspections, raising questions about the reliability of either inspections process.
- As of FY 2012, most ICE detention facilities continued to be inspected using outdated standards.
- Inspectors fail to apply 2008 and 2011 Performance-Based National Detention Standards language that was intended to improve oversight of facilities that detain immigrants for ICE under contracts called Intergovernmental Service Agreements (IGSAs).
- ERO and ODO inspection reports are not designed to capture actual conditions of detention for the population at a given facility.

3. Inspections are Designed to Facilitate Passing Ratings for Facilities, Not Identify or Address Violations

- Even where human rights violations and unexplained deaths have been publicly documented, facilities rarely fail ERO inspections.
- Inspection reports may be edited before they are finalized and submitted to ICE's Detention Monitoring Unit by the inspections contractor.
- The checklist ERO inspectors use during their reviews does not include all components of the detention standards.

(For a better understanding of the ICE offices involved in the detention center inspections system, see page 6 of this report.)

Recommendations

NIJC and DWN call on DHS and ICE to:

1. Increase Transparency and Oversight of the Inspections Process

- A. Make ERO and ODO inspections available to the public in a timely manner. To date, ICE has released its inspections to the public only as a result of FOIA requests. FOIA requests are unnecessarily time-consuming and expensive obstacles to accessing information about how the federal government treats thousands of people in its custody and spends billions of taxpayer dollars. Instead, this information should be freely available.
- B. Provide public reporting on suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, and other significant events at detention centers.
- C. Submit quarterly reporting to Congress on inspection and oversight activities of detention facilities, to be made available to the public.

2. Improve the Quality of Inspections

- A. Establish a DHS ombudsman outside of ICE to conduct unannounced inspections of immigration detention facilities at least once per year, with complete findings made available to the public. These third-party inspections should examine compliance with applicable detention standards and determine whether contracts will be renewed in accordance with congressional appropriations requirements.
- B. Prohibit facilities from taking an “à la carte” approach to compliance and make all detention standards provisions mandatory during inspections. ICE must stop permitting some facilities to opt out of detention standards they have been contracted to apply. If a facility cannot abide by detention standards in their entirety then it should not be permitted to enter into or continue a contract with ICE.
- C. Ensure that inspections involve more than checklists. Inspectors must rely on more than assurances by jail administrators of compliance with detention standards and instead seek and document proof of their effective implementation.
- D. Engage detained immigrants during inspections, as well as other stakeholders such as legal service providers and those who regularly conduct visitation, in order to capture the range of concerns at a facility that may not be reported through formal institutional channels. Inspectors should document the content of those interviews.

3. Institute Consequences for Failed Inspections

- A. Place detention facilities on probation and subject them to more intensive inspections after the first finding of substantial non-compliance.
- B. Terminate contracts within 60 days for those facilities with repeat findings of substantial non-compliance, including inadequate or less than the equivalent median score in two consecutive inspections.

Read the full report and download inspections and other cited documents at immigrantjustice.org/TransparencyandHumanRights.

Endnotes

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