



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>

The primary researchers, writers and editors of this report were Silky Shah, Mary Small and Carol Wu of Detention Watch Network.

With contributions from:

Omar Farah, Ian Head and Ghita Schwarz of Center for Constitutional Rights
Jenny-Brooke Condon of Seton Hall University School of Law

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Cover Image: San Diego Contract Detention Facility (Otay Mesa), image courtesy of BBC World Service

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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
		HSCEDM-09-D-00006/HSCEDM-09-J-00036/P00001
NAME OF OFFEROR OR CONTRACTOR GEO GROUP INC THE		
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



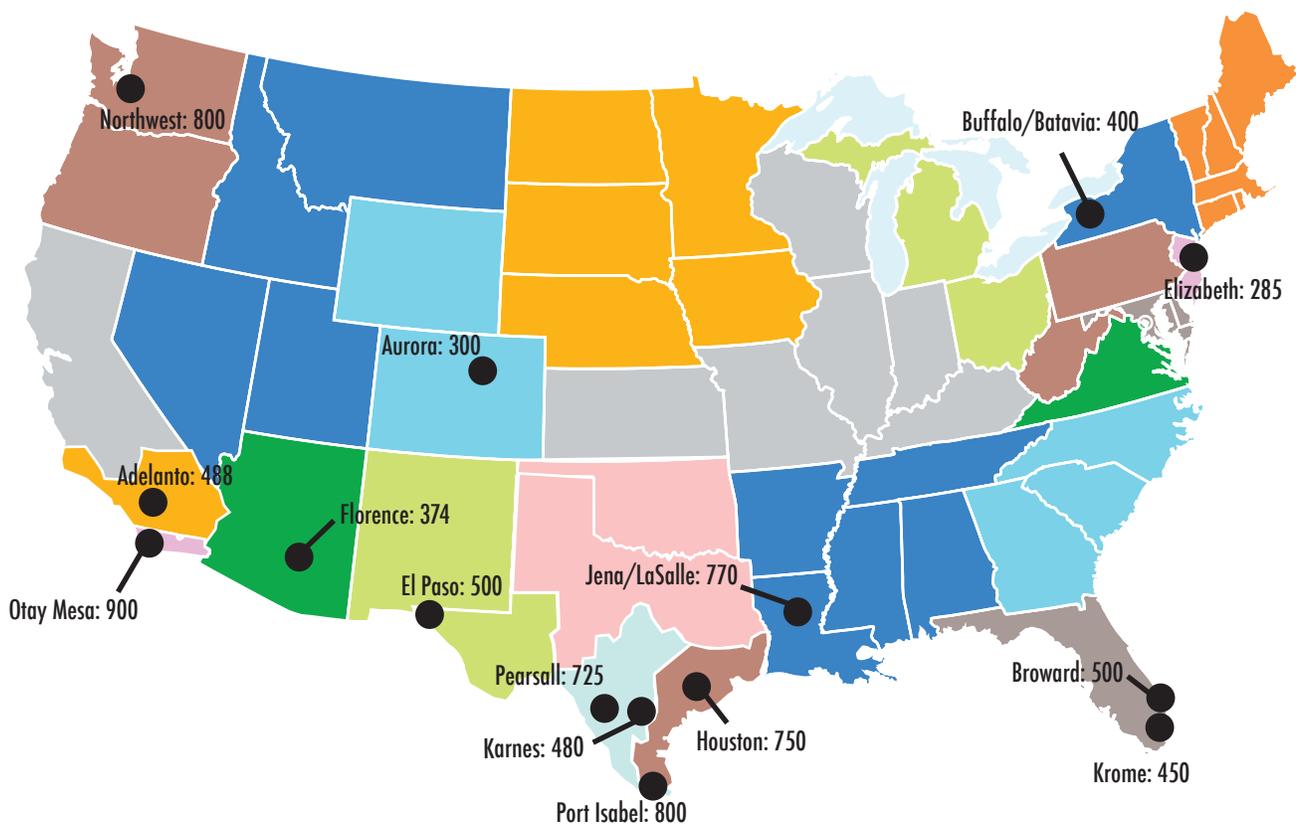
Houston Processing Center, image courtesy of Sin Huellas

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



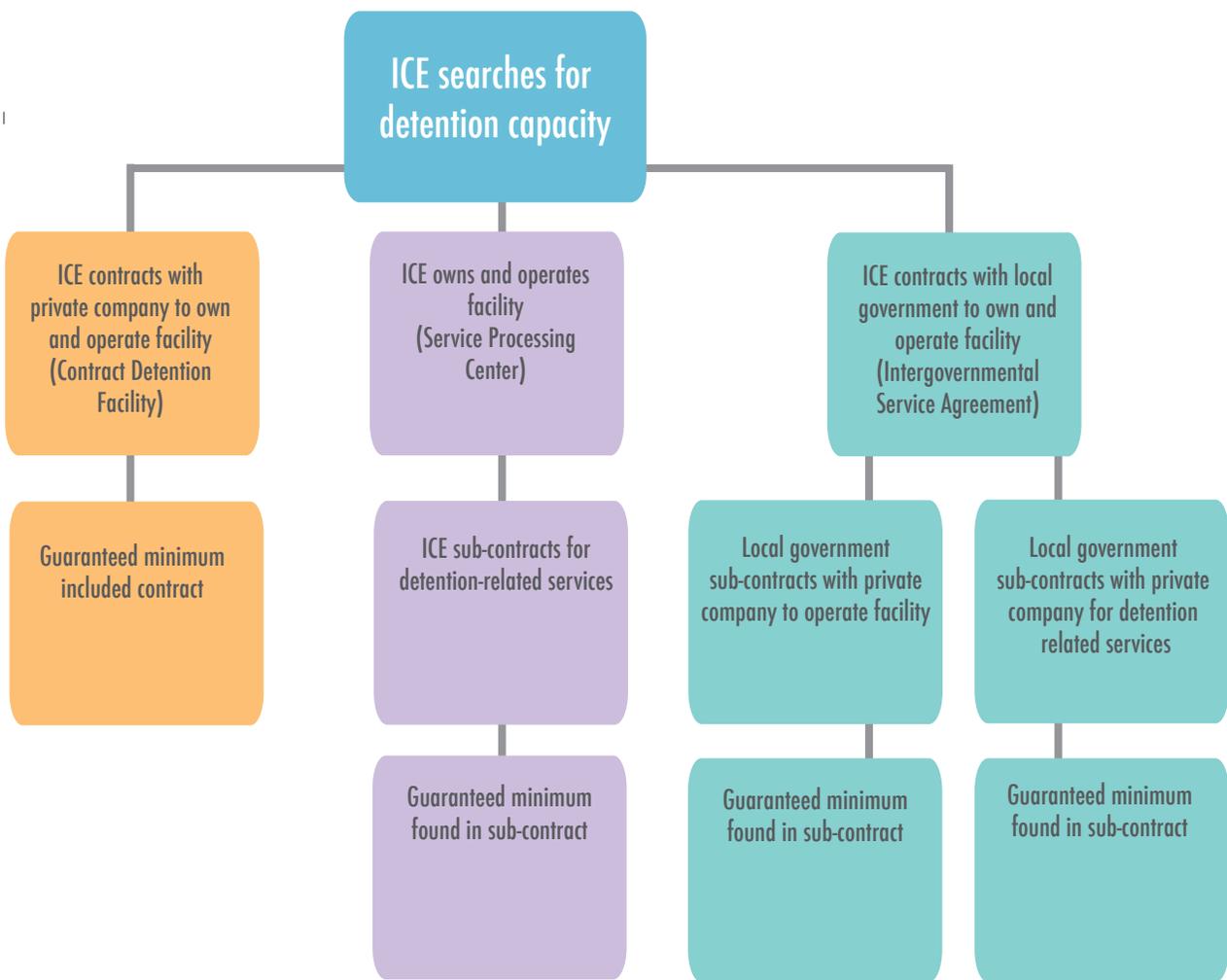
i. The 24 field offices are Atlanta, Baltimore, Boston, Buffalo, Chicago, Dallas, Denver, Detroit, El Paso, Houston, Los Angeles, Miami, New Orleans, New York City, Newark, Philadelphia, Phoenix, Salt Lake City, San Antonio, San Diego, San Francisco, Seattle, St. Paul, and Washington.

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
2. In 2003, the funded bed space was 19,444. See Department of Homeland Security, Office of Inspector General, *Detention and Removal of Illegal Aliens*, pg. 17 (April 2006). Available at https://www.oig.dhs.gov/assets/Mgmt/OIG_06-33_Apr06.pdf
3. Carson, Bethany, and Eleana Diaz. Grassroots Leadership. *Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota*, pg. 3 (April 2015). Available at http://grassrootsleadership.org/sites/default/files/reports/quota_report_final_digital.pdf
4. Department of Homeland Security. "Congressional Budget Justification FY 2016." Available at http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf
5. Center for Constitutional Rights, *Detention Watch Network v. Immigration and Customs Enforcement* (November 2013). Available at <http://ccrjustice.org/bed-quota-foia>
6. Federal Business Opportunities website. Available at <https://www.fbo.gov/?s=main&mode=list&tab=list>
7. *NIJC v. DHS*, No. 12-cv-05358 (2012). Available at http://foiaproject.org/dc_view/?id=396216-iln-1-2012cv05358-complaint
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.
14. Department of Homeland Security, Office of Inspector General, *ICE's Release of Immigration Detainees*, pg. 10 (August 2014). Available at https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-116_Aug14.pdf
15. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.000859-61 (referencing the reporter's conversation with then-Director of ICE, John Sandweg). Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%20859-61.pdf>
16. Morgenthau, Robert, "Immigrants jailed just to hit a number." *NY Daily News* (January 19, 2014).
17. Coyle, Andrew, et al. *Capital Punishment: Prison Privatization & Human Rights*. Atlanta: Clarity Press, 2008.
18. Pens, Dan. "Prison Realty/CCA Verges on Bankruptcy." *Prison Legal News* (July 15, 2000). Available at <https://www.prisonlegalnews.org/news/2000/jul/15/prison-realtycca-verges-on-bankruptcy/>
19. *NIJC v. DHS*, No. 12-cv-05358 (2012), ICE Bates No. ICE 2012FOIA03030.0029996. Today, it has a guaranteed minimum of 750.

20. Government Accountability Office. *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards*, pg. 18 (October 2014).
21. *Id.* at 21.
22. *Id.* at 19.
23. Department of Homeland Security, Office of Inspector General, *ICE's Release of Immigration Detainees*, pg. 12 (August 2014). Available at https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-116_Aug14.pdf
24. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0006819. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%206819.pdf>
25. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0001207. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%201207.pdf>
26. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.0007865. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%207865.pdf>
27. Buffalo Federal Detention Facility Solicitation No. HSCEDM-14-R-00005 for detention, transportation, and food services (August 19, 2014). Available at https://www.fbo.gov/?s=opportunity&mode=form&id=f098075ff499050bd11957deb7cb69d6&tab=core&_cview=1; Akal Security and Akima Global Services Joint Venture announcement on taking over operations at the Buffalo facility on February 1, 2015. Available at <http://detentionofficerjobs.com/>
28. Contract No. HSCEDM-11-D-00003 for a DHS/ICE contractor owned contractor operated detention facility in Denver Metro (September 15, 2011), citing to the original solicitation. Available at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=3edf8804c9ebbb17957bcbf04ce2f321&_cview=0; *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.005256. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%205256.pdf>
29. El Paso Service Processing Center Contract No. HSCEDM-09-D-00004 for detention services (February 25, 2009), citing to the original solicitation. Available at https://www.fbo.gov/?s=opportunity&mode=form&id=7ad34147f6e1934336ce7dececa0cc5b&tab=core&_cview=1; Contract was extended to March 8, 2015. Available at <http://www.doyongovgrp.com/security/security-contracts-vehicles/> and <http://government-contracts.findthebest.com/l/2559287/Doyon-Akal-Jv-li-U-S-Immigration-and-Customs-Enforcement-HSCEDM09D00004>
30. Contract No. HSCEDM-09-D-00007 for detention services in Houston, Texas (April 30, 2009), citing to the original solicitation. Available at https://www.fbo.gov/index?s=opportunity&mode=form&id=4fb212a693f78c357f02d32cf3acb323&tab=core&_cview=1
31. *DWN v. ICE*, No. 14-cv-583 LGS (2013), Bates No. ICE 2014FOIA03585.003826-004010. Available at <http://ccrjustice.org/sites/default/files/attach/2015/06/DWN%20v%20ICE%20FOIA%20-%20ICE%203826-4010.pdf>
32. *NIJC v. DHS*, No. 12-cv-05358 (2012), Bates No. ICE2012FOIA3030Adelanto.000004, 000070
33. Solicitation No. HSCEDM-09-R-00005 for a contract detention facility in the Miami area (January 28, 2009). Available at https://www.fbo.gov/?s=opportunity&mode=form&id=da740c041090f54247b2055e7dfbe71c&tab=core&_cview=0; Contract No. HSCEDM-09-D-00006 for a four-month extension (August 28, 2014). Available at https://www.fbo.gov/index?s=opportunity&mode=form&id=9f2b96fae5bba23fca82dc824e94283d&tab=core&_cview=0; *DWN v. ICE*, No. 14-cv-583 LGS (2013), ICE Bates No. 2596, 2761
34. Krome Service Processing Center Contract No. HSCEDM-13-R-00001 for detention management, transportation and food services (April 11, 2014), citing to the original solicitation. Available at https://www.fbo.gov/?s=opportunity&mode=form&id=406cf61548170f006941dfc6580e0858&tab=core&_cview=1; Akima Global Services LLC announcement of winning the 10-year contract for full detention services at Krome. Available at <http://www.akimaglobal.com/2014/05/13/dhs-awards-akima-global-services-contract-to-support-krome-detention-center/>; Krome's contract used to be with Doyon-Akal JV and the guaranteed minimum was 250. Available at <http://www.ice.gov/doclib/foia/contracts/hscedm-08-d-00003-doyonakaljv.pdf>
35. Contract No. HSCEDM-09-D-00003 for detention services (May 29, 2009), citing to the original solicitation. Available at https://www.fbo.gov/?s=opportunity&mode=form&id=c474c1c4907c2370e509da47a69bdb60&tab=core&_cview=1
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