



BANKING ON DETENTION

2016 Update



DETENTION
WATCH NETWORK



center for
constitutional
rights



About Us



Detention Watch Network (DWN) 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.

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.

Website: <http://ccrjustice.org>

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Introduction



Photo: Steve Pavey

The United States has the largest immigration detention infrastructure in the world, with hundreds of thousands of people passing through detention each year. The large scope of the system is in part due to an arbitrary quota created by Congress in 2009¹ which, in its current version, requires Immigration and Customs Enforcement (ICE) to maintain a minimum of 34,000 detention beds at all times.² This policy, known as the detention bed quota, is unprecedented; no other law enforcement agency operates on a quota system for the number of people to incarcerate. It is also unethical and financially wasteful, costing American taxpayers over \$2 billion a year³ and separating hundreds of thousands of families.

In addition to the national quota, the immense size of the U.S.'s immigration detention system is bolstered by a series of local-level quotas, written into detention facility contracts as "guaranteed minimums." Guaranteed minimums, which appear mostly in ICE contracts with private contractors (though some exist with local governments), guarantee that ICE will pay for a minimum number of people to be detained at any given time. Because the government seeks to avoid paying for detention space that isn't being used,⁴ guaranteed minimums are essentially local "lockup" quotas that influence ICE's decision-making about immigration enforcement, whether or not people will be released, where people will be detained, and ultimately, who will profit or benefit from their detention.

The first national snapshot of local lockup quotas throughout the immigration detention system was exposed in *Banking on Detention: Local Lockup Quotas and the Immigrant Dragnet*, published by Detention Watch Network (DWN) and the Center for Constitutional Rights (CCR) in June 2015.⁵ Since then, additional documents have become available which cast further light on local lockup quotas. First, these quotas are even more widespread than previously reported, covering at least 24 detention facility contracts. Second, while the overwhelming majority are found in ICE contracts with private companies, local lockup quotas *do* exist in a limited number of contracts with public entities. Third, these local lockup quotas exist in two of the three family detention center contracts. This report update aims to expose newly discovered guaranteed minimums, clarify the relationship between local lockup quotas and privatization, and explore in more depth the particular barriers to transparency that impede access to data and obscure the scope of the problem.

Methodology

The additional guaranteed minimums included in this report come from documents obtained through the Freedom of Information Act (FOIA), which allows the public to request access to records from federal agencies.⁶ The documents come from three sources: a subset of contracts recently obtained through FOIA litigation by the National Immigrant Justice Center (NIJC),⁷ a different subset of contracts ICE made available through its FOIA Library,⁸ and a spreadsheet obtained by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University through a FOIA request.⁹ While this report offers an updated tally of the number and location of guaranteed minimums across the country, the list likely remains incomplete because the document sets are incomplete, heavily redacted, and not always up to date. The scattered and incomplete nature of the information is the result of larger transparency failures detailed below.

For this report update, as in the initial report, we conducted a comprehensive review of all available contracts to identify guaranteed minimums. These included contracts for the management of entire detention facilities, as well as contracts for detention-related services such as security services or transportation. In some cases, the number of people included in the guaranteed minimum was visible; in others we were able to calculate the number using other available data; and in the remaining cases there is still uncertainty about how many detained people have been promised to the subcontractor. We have included in our analysis all facilities for which we found a guaranteed minimum, and have noted those for which we are uncertain about the number.

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)
	All other terms and conditions remain the same. Discount Terms: Net 30 POB: Destination Period of Performance: 04/01/2009 to 02/28/2010 Change Item 0001 to read as follows (amount shown is the total amount):	
0001	Guaranteed minimum (500 detainees / day) Base: Funding for April 1, 2009 through June 30, 2009, (b)(4)	
	P00001: Increase funding from (b)(4) by (b)(4)	
	Product/Service Code: S206 Product/Service Description: GUARD SERVICES	

Taken from ICE's Broward Transitional Center contract with The GEO Group.

Local Lockup Quotas

Guaranteed minimums require ICE to pay contractors for a minimum number of detention beds regardless of how many people are detained. This means that contractors receive a set payment for a minimum number of detention beds even if some of the detention beds are empty. Because ICE does not want to appear wasteful or inefficient with the number of beds it must pay for, these contractual provisions create an incentive to detain as many people as possible in facilities with guaranteed minimums. These guaranteed minimums essentially function as a local lockup quota. Through this perverse incentive, guaranteed minimums act as a mechanism through which other entities—mostly private prison companies—influence ICE’s decisions regarding how many people are detained, where they are detained, and how long they are kept in detention.

When *Banking on Detention* was initially published in 2015, available information indicated that local lockup quotas existed exclusively in contracts with private entities that either operated detention facilities or provided detention-related services. New information reveals that there are a small number of guaranteed minimums in public contracts as well. This indicates that guaranteed minimums are a more common contracting mechanism than previously thought. However, while this report update reveals four guaranteed minimums in public contracts, they represent only a small fraction of the total known guaranteed minimums and do not lessen the concern that private companies influence ICE’s practices. Guaranteed minimums or local lockup quotas account for at least 12,821 of the 34,000 beds funded by the detention bed quota. Of these 12,821, 93 percent, or 11,936, exist in facilities that contract with private companies.

In addition to the fifteen guaranteed-minimum facilities exposed in *Banking on Detention*, this report documents an additional nine contracts with guaranteed minimums. These include Berks Family Residential Center, Calhoun County Correctional Center and the Dearborn Police Department (which have a joint contract and thus a shared guaranteed minimum), California City Correctional Facility, Essex County Correctional Facility, Farmville Detention Center, T. Don Hutto Residential Center, Imperial Regional Detention Facility, Mesa Verde Detention Facility, and Monroe County Detention Center. All nine contracts are intergovernmental service agreements (IGSAs); of the nine, five facilities have sub-contracts with private companies.

Additionally, this report confirms the existence of local lockup quotas for families—at the Karnes County Residential Center in Texas and the Berks Family Residential Center in Pennsylvania. The local quota at Berks is an entirely new discovery, and it stands out as one of the four guaranteed minimums found in public contracts where no private subcontractor is implicated. The presence of a local quota at Karnes was noted in the original publication of *Banking on Detention*, but it was unclear whether the local quota remained operative after the facility was converted from an all-male facility to a family detention center in 2014. However, through the review of a newly-available 2015 contract, we can now confirm the continuation of the guaranteed minimum. Thus, at least one private company, The GEO Group, Inc. (GEO), is benefiting from a local lockup quota to detain mothers and children.



93 percent of the total number of guaranteed minimums exist in facilities with private contracts.



Guaranteed Minimums in Both Public & Private Facilities



SERVICE PROCESSING CENTER
(owned and operated by ICE, which subcontracts with private companies for services)



CONTRACT DETENTION FACILITY
(owned and operated by a private prison company)



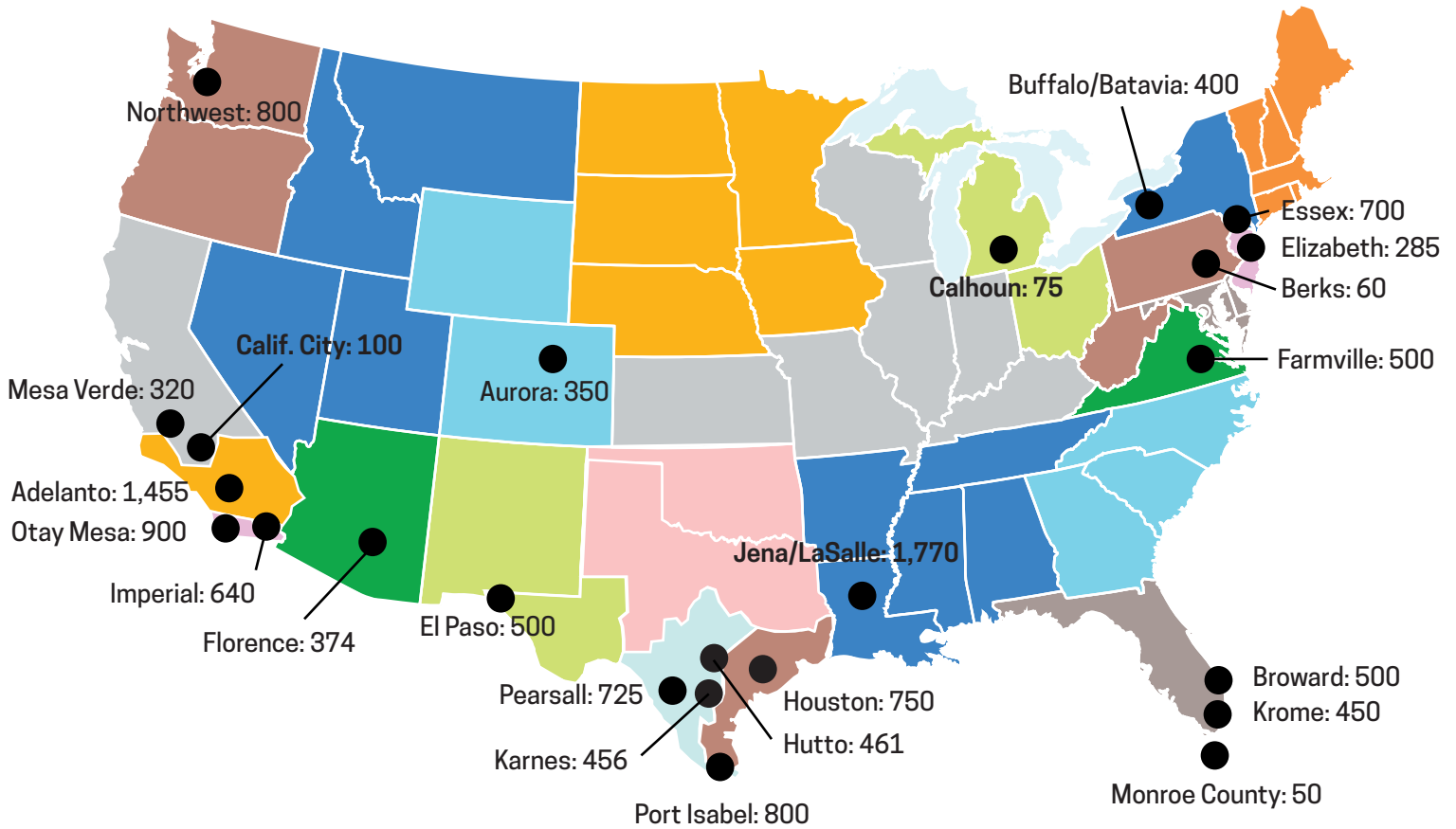
INTERGOVERNMENTAL SERVICES AGREEMENT (IGSA)
(contract is with local government, which may subcontract with private company to operate facility and/or for detention-related services)

FACILITY NAME	PRIVATE COMPANY INVOLVED	GUARANTEED MIN.
Adelanto Detention Facility	GEO	1,455 ¹⁰
Berks Family Residential Center	None	60 ¹¹
Broward Transitional Center ¹²	GEO	<i>500</i> ¹³
Buffalo (Batavia) Service Processing Center	Akal-Akima JV	400 ¹⁴
Calhoun County Correctional Center & Dearborn Police Dept.	None	75 ¹⁵
California City Correctional Facility	CCA	100 ¹⁶
Denver (Aurora) Contract Detention Facility ¹⁷	GEO	350 ¹⁸
El Paso Service Processing Center	Doyon-Akal JV	500 ¹⁹
Elizabeth Contract Detention Facility	CCA	285 ²⁰
Essex County Correctional Facility	None	700 ²¹
Farmville Detention Center	Immigration Centers of America	500 ²²
Florence Service Processing Center	Asset Protection & Security Services LP	374 ²³
Houston Contract Detention Facility	CCA	750 ²⁴
[T. Don] Hutto Residential Center	CCA	461 ²⁵
Imperial Regional Detention Facility	Management and Training Corporation	640 ²⁶
Jena/LaSalle Detention Facility & Alexandria Staging Facility	GEO	1,170 ²⁷
Karnes County Residential Center	GEO	456 ²⁸
Krome North Services Processing Center	Akima Global Services	450 ²⁹
Mesa Verde Detention Facility	GEO	320 ³⁰
Monroe County Detention Center	None	50 ³¹
Northwest Detention Center ³²	GEO	<i>800</i> ³³
Otay Detention Facility (Otay Mesa)	CCA	900 ³⁴
Port Isabel Service Processing Center	Ahtna Technical Services, Inc.	800 ³⁵
South Texas Detention Complex (Pearsall) ³⁶	GEO	725 ³⁷
TOTAL		12,821

* **Bold** indicates either that the guaranteed minimum for the facility has been updated or that the facility was not included in the original report

* *Italicized* indicates that the guaranteed minimum appeared in a contract solicitation obtained from the federal website FedBizOpps.

The updated table lays out the facilities with guaranteed minimums, the private company with which they contract, and the best known guaranteed minimum amount. The GEO Group, Inc. (GEO), Corrections Corporation of America (CCA), Immigration Centers of America (ICA), and Management and Training Corporation (MTC) operate detention facilities, while other private contractors provide detention-related services. As indicated by the table, GEO has more guaranteed minimums than any other private company.



* The map is divided by color into ICE's Enforcement and Removal Operations (ERO) field office jurisdictions.

Absence of Transparency

The findings presented in *Banking on Detention* and this update provide only a partial understanding of the scope and impact of guaranteed minimums. Due to ICE's lack of transparency and the resulting unavailability of data, it is currently unclear what percentage of detention facilities are subject to guaranteed minimums, what the costs of guaranteed minimums are, and the degree to which they influence ICE's practices in controlling the pipeline into and out of detention. By obstructing access to its contracts, ICE leaves the public with an incomplete understanding of how pervasive and harmful guaranteed minimums truly are.

ICE demonstrates a lack of transparency at multiple levels, beginning with its failure to proactively disclose contract information for detention facilities and services. The main avenue to information on guaranteed minimums—and on detention contracts more generally—is through FOIA requests, which can be costly and time-consuming both to the parties filing the requests and to the agency, in this case ICE, which must process and respond to the requests. Another way to access contract information is through FedBizOpps, the federal website that publishes contract solicitations,³⁸ which provides the best available information for facilities whose contracts are redacted or otherwise inaccessible through ICE. To date, nearly all data on guaranteed minimums have been obtained through FOIA requests.³⁹

When individuals or organizations do attempt to access information through FOIA requests, ICE resists transparency by delaying its responses and then redacting most of the critical information from its documents.⁴⁰ In November 2013, DWN and CCR filed a FOIA request for access to information pertaining to the national detention bed quota. ICE did not comply with this request until it was required to do so by court order in July 2014, over seven months later.⁴¹ When ICE finally released documents in response to the FOIA request, figures on government-contracted unit prices, bed-day rates, and staffing plans were redacted. This redacted information, if disclosed, would clarify the cost of detention in each facility and allow the public to better understand the fiscal and human impact of detention quotas, including guaranteed minimums. Instead, ICE claims that such information constitutes “confidential or privileged information” that would cause substantial competitive harm to private contractors if released to the public.⁴²

As of June 2016, the appropriateness of ICE's redactions is still pending in the federal district court for the Southern District of New York. Notably, ICE's legal position depends heavily on support from private contractors themselves, who have submitted sworn declarations attesting to the need for keeping the terms of government contracts secret. In the case of GEO, one of the largest private prison contractors in the country, the support comes from a former ICE official, David Venturella, who is now the Senior Vice President of Business Development at GEO.⁴³ In December 2015, Venturella submitted a declaration on behalf of GEO defending ICE's decision to withhold information from its FOIA document releases.⁴⁴ This relationship between ICE and its private contractors attests to the

“ By obstructing access to its contracts, ICE leaves the public with an incomplete understanding of how pervasive and harmful guaranteed minimums truly are. ”

enormous influence that private prison companies have, not only on detention operations, but on government transparency itself. The more the detention system relies on private corporations, the less transparent it is. This is all the more reason to be concerned about the growing privatization of detention, which now accounts for roughly 62 percent of beds.⁴⁵

ICE's lack of transparency is especially troubling when looking at local quotas. To date, the majority of guaranteed minimums have been found in private contracts, either with privately-operated detention facilities or publicly-operated jails that subcontract to private companies for detention services, such as guard services or facility operations and maintenance support.⁴⁶ Given that ICE is contractually obligated to pay for guaranteed minimums regardless of how many detention beds are filled, ICE has an incentive to detain as many people as possible in privately-operated detention facilities. In addition to the guaranteed minimum, to maximize efficiency, ICE takes advantage of "tiered pricing" where available, which provides a discount to ICE for immigrants detained above the guaranteed minimum amount.⁴⁷ This results in ICE potentially changing its practices to satisfy the guaranteed minimum in each facility, essentially helping private contractors secure profits. As discussed in *Banking on Detention*, communications released by ICE through FOIA litigation indicate that officials make significant efforts to steer immigrants to facilities with guaranteed minimums.⁴⁸

Guaranteed minimums thus subject detention and placement decisions—which have enormous human impact on individuals detained, as well as their families and communities—to cost considerations that benefit private contractors. Without transparency and accountability, we cannot determine the full extent of guaranteed minimums and the degree to which private prison companies influence ICE and benefit from detention policies. However, by failing to disclose contracts and resisting attempts to access information, ICE demonstrates that it is more accountable to private prison companies than to the public, whose tax dollars fund the guaranteed minimums.

T. Don Hutto Residential Center



Photo: Cristina Parker

Conclusion

Immigration detention places people in inhumane and sometimes even fatal conditions. In February 2016, DWN collaborated with the American Civil Liberties Union (ACLU) and the National Immigrant Justice Center (NIJC) to publish *Fatal Neglect: How ICE Ignores Deaths in Detention*, a report exposing medically negligent deaths in ICE custody. Of the eight deaths discussed in the report, five occurred at detention facilities known to have guaranteed minimums.⁴⁹ These deaths, and the corresponding negligence at the facilities where detained people died, have had no impact on the advantages that private companies enjoy from guaranteed minimums. With guaranteed minimums incentivizing ICE to pursue more aggressive enforcement and create barriers to people's release from detention, the end result is an inhumane, quota-based immigration detention system that functions as taxpayer-funded profit insurance for private prison companies.

Since the release of *Banking on Detention*, Representative Ted Deutch (D-FL) and eight additional co-sponsors introduced the *Protecting Taxpayers and Communities from Local Detention Quotas Act*,⁵⁰ which would prevent ICE from participating in any legal agreement that mandated a bed quota at the local level. In addition to the representatives' statements on the quotas being "inhumane," Representative Deutch stated that by eliminating the national bed quota, "Congress could save taxpayers nearly \$15 billion over the next decade."⁵¹ Because ICE spends over \$2 billion each year on detention, the elimination of national and local quotas, with a corresponding decrease in detention, could save significant tax dollars and prevent immeasurable human suffering.⁵²

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 for the constituents of many local governments that contract with ICE have converted the detention of human beings into a market-based activity. Detention capacity and arbitrary quotas must never be a factor in making decisions regarding immigration enforcement.

As immediate next steps, this report reiterates many of the recommendations from *Banking on Detention* and 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 2017 Department of Homeland Security (DHS) Appropriations bill.
- Congress to pass the *Protecting Taxpayers and Communities from Local Detention Quotas Act*, which would prevent ICE from participating in any legal agreement that mandated a bed quota at a local level.

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