



# Office of Detention Oversight Inspections

*March 23, 2022*

Fiscal Year 2021 Report to Congress



**Homeland  
Security**

*U.S. Immigration and Customs Enforcement*

# Message from the Acting Director

March 23, 2022

I am pleased to present the following report, "Office of Detention Oversight Inspections," which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to requirements in the Fiscal Year 2021 Department of Homeland Security Appropriations Act (P.L. 116-260) and its accompanying Joint Explanatory Statement.

Pursuant to congressional guidelines, this report is provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard  
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy  
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to the ICE Office of Congressional Relations at (202) 732-4200.

Sincerely,



Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement





# Office of Detention Oversight Inspections

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# I. Legislative Language

This report was compiled pursuant to requirements in the Fiscal Year (FY) 2021 Department of Homeland Security (DHS) Appropriations Act (P.L. 116-260) and its accompanying Joint Explanatory Statement.

The FY 2021 DHS Appropriations Act states:

SEC. 215. (a) None of the funds provided under the heading “U.S. Immigration and Customs Enforcement—Operations and Support” may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than “adequate” or the equivalent median score in any subsequent performance evaluation system.

(b) Beginning not later than January 1, 2021, the performance evaluations referenced in subsection (a) shall be conducted by the U.S. Immigration and Customs Enforcement Office of Professional Responsibility.

The Joint Explanatory Statement states:

*Detention Facility Inspections.*—Not later than 60 days after the date of enactment of this Act, ICE is directed to report on its progress in transitioning to routine, semiannual inspections by the Office of Detention Oversight and the process for complying with section 215 of this Act. ICE shall report the results of those inspections on a public facing website within 60 days of each inspection, as required for inspection reports in fiscal year 2020.

The Joint Explanatory Statement also states:

Section 215. The agreement continues and modifies a provision prohibiting the use of funds provided under the heading "U.S. Immigration and Customs Enforcement-Operations and Support" to contract with a facility for detention services if the facility receives less than "adequate" ratings in two consecutive performance evaluations, and requires that such evaluations be conducted by the ICE Office of Professional Responsibility by January 1, 2021.

## II. Background

The Office of Detention Oversight (ODO) within the U.S. Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) is responsible for conducting compliance inspections at ICE detention facilities in which noncitizens are housed for periods in excess of 72 hours and which have an average daily population of 10 or more noncitizens. These inspections assess compliance with the ICE National Detention Standards (NDS) 2000 or 2019, the Performance-Based National Detention Standards (PBNDS) 2008 or 2011, or the Family Residential Standards (FRS) 2020. Following each inspection, ODO issues a Compliance Inspection Final Report citing deficiencies, areas of concern, corrective actions, and/or best practices, posting the final report on ICE's public website within 60 days of each inspection.

ODO focuses inspections on a core set of standards significant to a noncitizen's life, health, and safety, and conducts a thorough, line-by-line assessment of each core standard. ODO may review other standards, in full or in part, that fall outside this core set, based on the conditions within a facility, noncitizen interviews, and/or at the request of ICE leadership.

In response to a 2018 DHS Office of Inspector General (OIG) review of ICE's detention inspection programs, Congress appropriated an FY 2019 budget enhancement of approximately \$6.9 million for ODO to increase annual inspections, with the intent for ODO to complete compliance inspections at each over-72-hour ICE facility twice per year by the end of FY 2021.<sup>1</sup>

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<sup>1</sup> See Joint Explanatory Statement on the DHS Appropriations Act of 2019, "...an increase above the request of \$6,975,000 for staffing at the Office of Detention Oversight within the Office of Professional Responsibility. ICE is directed to increase the number of inspections of over-72-hour detention facilities from once every three years to twice per year not later than the end of fiscal year 2019."

### III. ICE Detention Facility Inspections

#### A. ICE Detention Facility Inspections

ODO worked in FY 2020 to increase staffing and its inspections cadence, such that by the end of FY 2020, ODO had inspected every applicable detention facility with an average daily population of 10 or more noncitizens detained for a period of more than 72 hours, one time within the fiscal year. During FY 2020, ODO completed 120 inspections (up from 48 in FY 2019) and found approximately 2,300 deficiencies in the facilities' adherence to their respective detention standards. In FY 2021, ODO successfully conducted two inspections of each applicable ICE detention facility. By the end of FY 2021, ODO had conducted 211<sup>2</sup> inspections and had found approximately 2,100 deficiencies across the 110 detention facilities that met the criteria for inspection.

#### B. Public Posting of Inspection Results

The ICE Freedom of Information Act (FOIA) Office posts results of ODO's inspections on ICE's public-facing website within 60 calendar days of each inspection, as required by law. ODO inspection reports are located at <https://www.ice.gov/foia/library> under the heading of "Office of Detention Oversight – Detention Facility Compliance Inspections." All FY 2021 Compliance Inspection Final Reports were posted to the public ICE FOIA Library.

#### C. ODO Detention Facility Compliance Inspection Ratings

In FY 2021, ICE Enforcement and Removal Operations (ERO) continued to assign performance evaluations for annual inspections conducted by its contractor inspecting entity. However, ODO also developed its own performance evaluation mechanism to rate ODO-inspected ICE detention facilities' compliance with applicable core ICE national detention standards. This mechanism enables ODO to assign a numerical rating, to determine a facility's overall performance, for each full ODO detention facility inspection.

Starting in FY 2022, ODO will rate each facility following its first full compliance inspection, where all applicable standards for that facility are reviewed during the fiscal year. The facility's second inspection during the fiscal year will be a follow-up inspection focusing on previously identified deficiencies from the first inspection and any standards affecting the life, health, and safety of a noncitizen. As a result, facilities do not receive a rating on the second follow-up inspection. Rather, the next rating that the facility receives will be during its subsequent full inspection the following fiscal year.

ODO's overall rating system is based on a four-point scale and includes the following rating categories:

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<sup>2</sup> Several facilities terminated their contracts to house ICE noncitizens following their first ODO inspection of FY 2021; as such, ODO did not inspect those facilities a second time during the fiscal year.

- **Superior**<sup>3</sup> = 3.60 and above (90 percent)
- **Good**<sup>4</sup> = 3.20 to 3.59 (80 percent)
- **Acceptable/Adequate**<sup>5</sup> = 2.80 to 3.19 (70 percent)
- **Failure**<sup>6</sup> = Below 2.80

ODO will inspect each facility according to standards that the facility is contractually obligated to meet. Following an inspection, ODO publishes the Compliance Inspection Final report, which includes ODO’s rating for the facility. Where ODO issues a rating of “Failure” and ERO and/or the facility operator disagrees with ODO’s rating, the applicable Field Office Director may file an appeal with OPR. In accordance with the FY 2021 DHS Appropriations Act, if the two most recent full inspections received by the contracted facility are rated less than “Acceptable/Adequate,” funds no longer will be authorized to continue the contract and ICE will cease detention services at the facility (P.L. 116-260, 134 Stat. 1182, 1457).

## D. Inspected Detention Standards

ODO’s historical inspection process focuses on standards that directly affect the life, health, and safety of detained noncitizens. Each inspection team comprises a mix of federal team lead Inspections and Compliance Specialists and contract subject-matter experts who specialize in areas including medical care, food service, environmental health and safety, use of force and restraints, special management units, admissions and release, and classification.

In FY 2021, however, ODO began rotating core standards such that all individual standards are inspected at a given facility at least once every 3 years. While the number of core standards inspected each year is subject to change, the following list indicates the approximate number of core standards for each set of ICE detention standards that ODO inspects each year:

- NDS 2000 = 18 standards
- NDS 2019 = 18 standards
- PBNDS 2008 = 19 standards
- PBNDS 2011 (2013 Errata) = 20 standards
- PBNDS 2011 (Revised 2016) = 21 standards

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<sup>3</sup> A “Superior” rating is provided when the facility demonstrates exceptional effort and initiative, which the facility performs in all vital functions in a manner that exceeds ICE’s targets and goals. A history of strong internal controls exists, resulting in zero or very minimal deficiencies. In addition, the facility demonstrates excellent teamwork, communication, and sense of ownership.

<sup>4</sup> A “Good” rating is provided when the facility’s vital function areas are sound. Internal controls are strong and there are limited procedural deficiencies. Overall facility performance reflects professional and technical expertise. Good teamwork, communication, and sense of ownership have allowed for positive initiatives/best practices. The facility meets ICE’s targets and goals and demonstrates growth and/or strengths.

<sup>5</sup> An “Acceptable/Adequate” rating of 2.8 is the “baseline” for the rating system. Although deficiencies exist, they do not detract from the adequate accomplishment of the facility’s operation. Internal controls are in place to ensure that there are no performance breakdowns that would prevent the facility from continuing to accomplish its mission.

<sup>6</sup> The facility receives a “Failure” rating when it is below the “baseline” for the rating system and is not accomplishing its overall mission/operation. Internal controls do not demonstrate substantial, continued ICE standards compliance, and are not sufficient to ensure acceptable/adequate performance. Internal controls are weak, thus allowing for numerous deficiencies in one or more standards.

- FRS 2020 = 20 standards

Based on findings from ODO's pre-inspection review,<sup>7</sup> in addition to the current fiscal year core ICE detention standards, ODO may include one or more noncore standards to the scope of an inspection, thereby increasing the total number of standards inspected in the report. For example, if prior to an inspection ODO identified numerous detainee allegations involving access to counsel at a specific facility, where the visitation standard specifies requirements that facilities need to comply with regarding visits by legal representatives and legal assistants, ODO may choose to add the visitation standard, in part or in whole, to the scope of the inspection, when visitation is categorized as a noncore standard in that fiscal year.

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<sup>7</sup> This review includes allegations/complaints received by the ICE Joint Intake Center and the DHS Office of Civil Rights and Civil Liberties; reports from DHS OIG and the Government Accountability Office; prior years' Final Compliance Inspection Reports; news reports; and/or information from nongovernmental organizations.



## IV. Conclusion

In FY 2021, OPR ODO successfully implemented biannual inspections for all applicable ICE detention facilities. ODO provides inspection reports to ICE ERO within 60 days to inform field office leadership of individual facility operations, to identify systemic issues within a facility, and to enable ERO to allocate its resources accordingly. Furthermore, ODO works with the ICE FOIA office to ensure that final inspection reports post to ICE's public FOIA Library website within 60 days of the inspection. Finally, ODO developed its own rating system to categorize a facility's overall performance.

## Appendix: Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
FOIA	Freedom of Information Act
FRS	Family Residential Detention Standards
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
NDS	National Detention Standards
ODO	Office of Detention Oversight
OIG	Office of Inspector General
OPR	Office of Professional Responsibility
PBNDS	Performance-Based National Detention Standards