



**U.S. Immigration  
and Customs  
Enforcement**

December 22, 2022

American Immigration Lawyers Association  
1331 G Street NW, Suite 300  
Washington, DC 20005

To Whom It May Concern:

Thank you for your November 2, 2022 correspondence to the Department of Homeland Security (DHS) regarding U.S. Immigration and Customs Enforcement (ICE) facility closures and expansion.

ICE manages the administrative custody of one of the most highly transient and diverse populations of any correctional or detention system in the world. ICE is committed to safe, secure, and humane environments for all of those in ICE custody and will ensure appropriate conditions for confinement. ICE will also continue to ensure it has sufficient detention space to hold noncitizens as appropriate and to reserve its limited detention resources for those who pose threats to public safety, risk of flight, or for whom detention is mandated by law. For those who are not subject to mandatory detention, federal regulations provide that ICE may exercise discretion to release detained noncitizens who do not pose a danger to the community or a flight risk. ICE makes such discretionary custody decisions on a case-by-case basis, looking at such factors as a detained noncitizen's criminal and immigration history, as well as humanitarian factors, with no single factor being determinative.

ICE manages bedspace on a national level and maintains a nationwide system of detention facilities for holding noncitizens who pose a public safety threat, risk of flight, or whose detention is mandated by law. Additionally, ICE takes the health, safety, and welfare of those in its custody extremely seriously and has a number of layers of medical screening and care in place to ensure that members of this population receive all necessary services. This is especially important since many noncitizens may not have received recent or reliable medical treatment for existing conditions prior to entering ICE custody; for some noncitizens this may represent their first access to appropriate medical care.

As part of the agency's commitment to streamline and improve the U.S. immigration system by restoring trust, respecting human dignity, and promoting equity, ICE Enforcement and Removal Operations (ERO) continually assesses bedspace needs to safely and securely house detained noncitizens. ICE considers migration trends at the border along with many other factors when contemplating whether to enter into new contracts with detention facilities. Discussions with detention partners are an important part of ICE's critical detention mission and occur on an ongoing basis.

On January 26, 2021, President Biden issued *Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*. This Executive Order applies only to Department of Justice criminal detention facilities and does not apply to DHS. ICE's approach to contracting with private detention contractors and state and local governments provides maximum flexibility in managing the ebb and flow of immigration population and prevents extensive costly capital development and investment. Any cessation of private contracts would require ICE to build its own detention facilities, requiring additional appropriations for construction beyond what is currently authorized. Additionally, ICE does not currently have the requisite federal construction authority and would need to obtain that authority. Furthermore, ICE would need to hire thousands of federal employees to operate these facilities, increase hundreds of headquarters staff, and develop an extensive training academy to train thousands of new government employees. For these reasons, eliminating the use of private detention contractors to manage the ICE detained population is not currently feasible.

Since January 2020, ICE has closed 35 facilities across the country. Due to the influx across the Southwest Border and limited detention capacity, ICE has significantly expanded its Alternatives to Detention (ATD) program. Among the many noncitizens who arrive at the border, there are those who do not warrant ICE's limited detention resources but could benefit from enhanced supervision rather than simple release into the United States with conditions, set through enrollment on the ATD program. The ATD program, which has been in operation for more than a decade, provides this interim level of oversight and serves to increase accountability in these cases.

Regarding access to counsel, specifically at the Baker County Detention Center (BCDC), ERO Miami, Florida, has reviewed the September 9, 2022 allegation of the postponement of the Know Your Rights (KYR) presentation by a group of legal service providers that included the ACLU of Florida, the University of Miami School of Law, and the University of Florida Levin College of Law ("KYR legal service providers"). ERO Miami found this to be an isolated incident with breakdowns in communication on both sides. ERO Miami has since established weekly meetings with BCDC leadership, the Detention Services Manager, the Field Medical Coordinator, and the Contracting Officer Representative to discuss any inconsistencies and immediately implement corrective actions where warranted. BCDC and the KYR legal service providers continue to work on mutually agreeable dates for future KYR presentations.

Additionally, the DHS Office of the Immigration Detention Ombudsman (OIDO) has an embedded case manager assigned to BCDC. As of December 6, 2022, DHS OIDO has not notified ERO Miami of any similar issues regarding the denial of legal visitation or attorney access issues at the facility.

Regarding paid labor while in ICE custody, ICE detained noncitizens are not required to work, but ICE detention standards provide detained noncitizens with opportunities to voluntarily work and earn money while detained, subject to the number of work opportunities available and within the constraints of the safety, security, and good order of the facility. The benefits of the voluntary work program include decreased idleness, improved morale, fewer disciplinary incidents, and expanded opportunities to socialize. Volunteer workers are required to work according to a schedule. The normal workday for a full-time-employed detained noncitizen is a

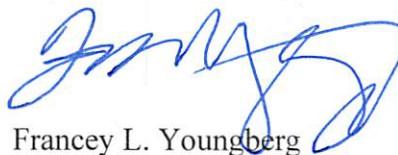
maximum of eight hours. These individuals must not surpass 8 hours of work per day, and 40 hours per week. Further, detained noncitizens must receive monetary compensation for work completed in accordance with the facility's standard policy. The compensation must be at least \$1.00 per day, as mandated by Congress. See 8 U.S.C. § 1555(d); Department of Justice Appropriation Act, 1978, Pub. L. No. 95-86, 91 Stat. 426 (1978) (setting "rate not in excess of \$1 per day").

Regarding family detention, in February 2021, ICE evaluated its family detention posture and transitioned existing Family Residential Centers to Family Staging Centers (FSCs) to help increase throughput. However, FSCs were at a lower-than-projected population and ICE stopped housing families at the Berks County Residential Center (Berks) in February 2021; the Karnes County Residential Center (Karnes) in November 2021; and the South Texas Family Residential Center (South Texas) in December 2021. In September 2021, ERO converted Berks to a single adult female facility. In December 2022, ERO notified Berks that ICE is discontinuing the use of Berks in late January 2023 upon expiration of the current contract. In December 2021, ERO converted South Texas to a single adult female facility and Karnes to a single adult facility.

Lastly, ICE is committed to ensuring noncitizens have ample access to due process and access to legal counsel. All noncitizens encountered by ICE are provided with access to due process throughout the pendency of their immigration proceedings. During their immigration proceedings, noncitizens are afforded numerous procedural protections that ensure they are provided notice and an opportunity to be heard. These protections include, but are not limited to, the rights to be represented by an attorney, to contest any charges of removal, and to present evidence and to examine any evidence against them. While the government does not provide attorneys for administrative proceedings, all those arrested by ICE and placed into removal proceedings are provided with a list of free legal services and aid resources, including pro bono providers.

Thank you again for your correspondence. Please share this response with the cosigners listed in your organization's correspondence. Should you, or they, wish to discuss this matter further, please do not hesitate to contact the ICE Office of Partnership and Engagement at [iceope@ice.dhs.gov](mailto:iceope@ice.dhs.gov).

Sincerely,



Francey L. Youngberg  
Assistant Director  
Office of Partnership and Engagement