

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON;
AMERICAN HISTORICAL
ASSOCIATION; and
SOCIETY FOR HISTORIANS OF
AMERICAN FOREIGN RELATIONS,

Plaintiffs,

v.

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION;
DAVID S. FERRIERO, in his official
capacity as Archivist of the United States;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; and
MATTHEW T. ALBENCE, in his official
capacity as Acting Director of U.S.
Immigration and Customs Enforcement,

Defendants.

Civil Action No. 20-cv-739-APM

BRIEF OF AMICI IN SUPPORT OF PLAINTIFF

CORPORATE DISCLOSURE STATEMENT

I, Emily J. Creighton, attorney for amici certify that the American Immigration Council and the National Immigrant Justice Center are non-profit organizations that do not have any parent corporations or issue stock and, consequently, there exists no publicly held corporation which owns 10% or more of stock.

DATED: August 7, 2020

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I. INTRODUCTION¹

This case implicates two longstanding and interrelated concerns with U.S. Immigration and Customs Enforcement (ICE): a history of mistreatment of individuals in ICE detention and a profound lack of transparency regarding this mistreatment. The records at risk of destruction in this case go to the heart of harmful and little understood ICE policies in place within ICE detention facilities such as the use of solitary confinement. These records provide a comprehensive assessment of “problems and concerns” related to the operation of ICE detention facilities in the form of detention monitoring assessments. In addition, they address sexual abuse and assault and deaths of individuals in detention - powerful reminders of the potential fate of individuals held in ICE’s civil immigration detention system.

In its December 2019 response to concerns that these records, after designated periods of time, will no longer be available for research; to hold ICE employees accountable; and as evidence of harm to individuals, NARA stated that the records have limited historical importance: “[m]any records that are of significant contemporary interest do not warrant permanent retention in the National Archives” and “records involving decisions of lower-level federal officials about operational matters such as segregated housing of individual detainees ([Segregation Reports) . . . do not meet this threshold.”² Thousands of commenters pointed out the

¹ Amici state that no party’s counsel authored the brief in whole or in part; that no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than the amici curiae, their members, and their counsel contributed money that was intended to fund preparing or submitting the brief. Fed. R. App. P. 29(a)(4)(E).

² Nat’l Archives & Recs. Admin., Consolidated Reply on Schedule DAA-0567-2015-0013, Immigration and Customs Enforcement, Detainee (Dec. 12, 2019), <https://beta.regulations.gov/document/NARA-19-0007-0068>.

flaws in this reasoning,³ which reflects a disregard for the historical interest in ICE’s sprawling immigration detention system and a deep indifference to the ongoing debate about the role of government agencies in the detention of immigrants.

The records slated to be destroyed have already proven to be important sources of information for researchers. Their retention is crucial to future research regarding what many consider a dysfunctional and dangerous detention system. Advocates concerned about the welfare of detained individuals have relied and will continue to rely on these records to assess the state of our detention system and the mistakes of the recent past in an effort not to repeat them. If ICE’s records destruction plan moves ahead as planned, this will not be possible.

II. STATEMENT OF AMICUS

The American Immigration Council (“the Council”) is a tax-exempt, not-for-profit educational and charitable organization. Founded in 1987, the Council works toward a more fair and just immigration system and provides information and data to the public regarding federal immigration agencies’ operations and activities. Through its research and analysis, the Council is a resource for media and policymakers at the national, state, and local levels who seek to understand U.S. immigration law and policy and to develop fact-based policies. The Council also seeks, through court action and other measures, to hold the government accountable for unlawful conduct, restrictive interpretations of the law, withholding of information, and for failing to implement and execute immigration laws in a manner that comports with due process.

³ Nat’l Archives & Recs. Admin., Consolidated Reply on Schedule DAA-0567-2015-0013, Immigration and Customs Enforcement, Detainee (June 14, 2019), <https://beta.regulations.gov/document/NARA-19-0007-0002>.

The National Immigrant Justice Center (“NIJC”), a program of the Heartland Alliance for Human Needs and Human Rights, is a Chicago-based, not-for-profit organization that provides legal representation to low-income immigrants, refugees, and asylum seekers across the country. Together with over 1,500 pro bono attorneys, NIJC represents thousands of individuals annually, including individuals in immigration custody. Through FOIA litigation and initiatives like its Transparency and Human Rights Project, NIJC investigates conditions and systemic problems in immigration detention centers and has authored or co-authored a number of reports regarding inhumane conditions in the immigration detention system.

Both organizations proffer this brief in support of plaintiffs pursuant to LCvR 7 and FRAP 29. Both organizations have an interest in enforcing the laws ensuring public access to agency documents and ensuring transparency and rigorous oversight in the U.S. immigration system.

III. ICE LACKS TRANSPARENCY IN ENFORCEMENT AND DETENTION POLICIES

A. Lack of Transparency Regarding ICE Operations

The debate about destroying records, some of which document abuse and mistreatment in ICE detention facilities, must take place within a broader conversation about ICE’s lack of transparency. For example, ICE routinely violates the Freedom of Information Act (FOIA) in responding to requests for information. ICE responses to FOIA requests often take far longer than the twenty or thirty days permitted under the statute, exemplified by a large current backlog of FOIA requests, and ICE has failed to be open and accurate in its accounting of its own chronic delay. In a 2018 Report, ICE reported a backlog of over 1,000 cases, but mentioned in a footnote that 17,043 FOIA additional cases were not accounted for and would need to be assessed the

following year.⁴ In the most recent U.S. Department of Homeland Security (DHS) FOIA Report, the backlog again totaled a relatively modest 1,493 for fiscal year 2019, but a notation indicated that an additional 59,123 FOIA requests were not recorded during the reporting period.⁵ This nontransparent accounting was recently highlighted in a court order granting class certification to a nationwide class of individuals whose FOIA requests for individual records have been unlawfully delayed by ICE.⁶ The court indicated the critical need for timely responses, citing the importance of individual immigrant records in assessing eligibility to apply for immigration benefits as well as defending against deportation.⁷

In addition to delaying responses for agency records, ICE recently found a new way to avoid scrutiny of its actions: it requested and received a designation as a “security/sensitive agency.”⁸ According to a government memo, the designation ensures that “all relevant personally identifiable information (PII) of all ICE personnel” will be withheld or redacted by the Office of Personnel Management (OPM) when processing FOIA requests.⁹ This includes agency officials’ names, duty stations, and salaries¹⁰ - information key to investigating complaints or allegations of abuse by certain officers. Though ICE claimed personnel have experienced more threats and intimidation in recent years, the memo provides no examples

⁴ DEP’T HOMELAND SEC., 2018 FREEDOM OF INFORMATION ACT REPORT 6, 19 (2019), https://www.dhs.gov/sites/default/files/publications/dhs_fy2018_foia_report_updated.pdf.

⁵ DEP’T HOMELAND SEC., 2019 FREEDOM OF INFORMATION ACT REPORT 14, 27 (2020), https://www.dhs.gov/sites/default/files/publications/dhs_fy2019_foia_report_final_1.pdf.

⁶ *Nightingale v. U.S. Citizenship & Immigr. Servs.*, No. 19-03512, 333 F.R.D. 449, *462 (N.D. Cal. Oct. 15, 2019).

⁷ *Id.* at 453.

⁸ Ken Klippenstein, *ICE Just Became Even Less Transparent*, THE NATION (July 2, 2020), <https://www.thenation.com/article/politics/ice-security-agency/>.

⁹ *Id.*

¹⁰ *Id.*

indicating FOIA releases have resulted in those threats.¹¹ The new security designation places ICE officials on the same level as officials with the Federal Bureau of Investigations (FBI) and Secret Service. Exemptions under FOIA are already liberally applied by ICE to withhold information in responses to requests for information.¹² The new designation is an unnecessary attempt to further shield ICE activities from public oversight.

ICE also has concealed important aspects of its enforcement activities within the United States. A FOIA investigation turned up surveillance by a private company contracted by ICE of protests scheduled across the country in opposition to the Trump administration's family separation policies.¹³ Another FOIA effort discovered additional ICE surveillance activity targeting peaceful protests in New York in the summer of 2018.¹⁴ ICE monitored the protests by tracking activity on Facebook and recorded information on a spreadsheet labeled "Anti-Trump Protests."¹⁵ A large coalition of groups called for an end to these practices as threats to free expression and association, emphasizing that there was no indication ICE's surveillance activity was based upon any suspected violation of a law.¹⁶

B. Lack of Transparency Regarding Mistreatment and Abuse in ICE Detention Facilities

¹¹ *Id.*

¹² DEP'T HOMELAND SEC, 2019 FREEDOM OF INFORMATION ACT REPORT 17 (2020), https://www.dhs.gov/sites/default/files/publications/dhs_fy2019_foia_report_final_1.pdf.

¹³ Ryan Devereaux, *Homeland Security Used a Private Intelligence Firm to Monitor Family Separation Protests*, INTERCEPT (Apr. 29, 2019, 9:25 AM), <https://theintercept.com/2019/04/29/family-separation-protests-surveillance/>.

¹⁴ Letter from Coalition of Organizations to Kevin K. McAleenan, Acting Sec'y, U.S. Dep't Homeland Sec. 5 (May 1, 2019), <https://cdt.org/wp-content/uploads/2019/04/Coalition-Letter-to-DHS-in-opposition-to-surveillance-activity.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

ICE's lack of transparency is no more acute than with respect to its role as a jailer of tens of thousands of immigrants. ICE manages an immigration detention system comprised of hundreds of prisons and jails throughout the country where ICE detains thousands of men, women, and children. Its capacity to detain individuals has exploded over the years, "grow[ing] more than twentyfold since 1979."¹⁷ In 2019, ICE detained over 52,000 people - a historic number of individuals.¹⁸ As ICE expands its immigration detention system, it increasingly targets prisons and jails in rural areas where access to attorneys and other legal resources is difficult.¹⁹

ICE's detention system involves a patchwork of detention facilities, including those that ICE directly owns and runs and those that ICE contracts with and are owned and operated by private companies, states, and counties.²⁰ Groups that advocate for and represent individuals in immigration detention have highlighted ICE's failure to address longstanding, inefficient and dangerous conditions of confinement, often with an emphasis on ICE's lack of transparency.²¹

¹⁷ Emily Kassie, *Detained: How the U.S. Built the World's Largest Immigration Detention System*, GUARDIAN (Sept. 24, 2019, 1:39 EDT), <https://www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump>.

¹⁸ Hamed Aleaziz, *More Than 52,000 People Are Now Being Detained By ICE, An Apparent All-Time High*, BUZZFEED NEWS (May 20, 2019, 6:58 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-detention-record-immigrants-border>.

¹⁹ Yuki Noguchi, *Unequal Outcomes: Most ICE Detainees Held in Rural Areas Where Deportation Risks Soar*, NPR (Aug. 15, 2019, 7:13 AM), <https://www.npr.org/2019/08/15/748764322/unequal-outcomes-most-ice-detainees-held-in-rural-areas-where-deportation-risks>.

²⁰ See OFF. INSPECTOR GEN., DEP'T HOMELAND SEC., *OIG-18-67, ICE'S INSPECTIONS AND MONITORING OF DETENTION FACILITIES DO NOT LEAD TO SUSTAINED COMPLIANCE OR SYSTEMIC IMPROVEMENTS 1* (2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

²¹ ACLU, DET. WATCH NETWORK & NAT'L IMMIGRANT JUST. CTR., *FATAL NEGLECT: HOW ICE IGNORES DEATHS IN DETENTION 12* (2016), https://www.aclu.org/sites/default/files/field_document/fatal_neglect_acludwnnijk.pdf (describing efforts to compel transparency around detention conditions at Eloy Detention Facility).

Among these dangerous conditions, ICE has developed a track record for failing to provide adequate medical care to individuals in its custody, which has resulted in countless preventable deaths to date.²² ICE's oversight of its detention facilities has been criticized by the DHS Office of Inspector General (DHS OIG) as ineffective in identifying and correcting poor detention conditions and ensuring consistent compliance with governing detention standards.²³ Compounding the lack of transparency around its detention practices, ICE fails to provide detained individuals with adequate access to counsel, limiting another avenue for oversight.²⁴

Most recently, ICE has withheld critical information about its response to the COVID-19 pandemic as the virus tears through its facilities, infecting thousands of individuals in ICE detention facilities.²⁵ The predictable widespread outbreak in ICE facilities has sparked habeas petitions on behalf of vulnerable detained individuals across the country.²⁶ In granting requests

²² Human Rights Watch, *US: Deaths in Immigration Detention* (July 7, 2016, 12:00 AM), <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention>; Lisa Riordan Seville, Hannah Rappleye & Andrew W. Lehren, *22 Immigrants Died in ICE Detention Centers During the Past 2 Years*, NBC NEWS (Jan. 6, 2019, 5:10 AM), <https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781>.

²³ OFF. INSPECTOR GEN., DEP'T HOMELAND SEC., *supra* note 20, at 4 (ICE inspections "...do not ensure adequate oversight or systemic improvements in detention conditions, [with] certain deficiencies remain[ing] unaddressed for years.").

²⁴ See NAT'L IMMIGR. L. CTR., *BLAZING A TRAIL: THE FIGHT FOR RIGHT TO COUNSEL IN DETENTION AND BEYOND* 4–6 (2016), <https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf>.

²⁵ ICE, *ICE GUIDANCE ON COVID-19: ICE DETAINEE STATISTICS*, <https://www.ice.gov/coronavirus> (confirming over 4,000 individuals have tested positive for COVID-19 since testing began in February 2020); AMERICAN IMMIGRATION COUNCIL, *FOIA Request for Records Related to U.S. Immigration and Customs Enforcement (ICE) Response to COVID-19* (March 19, 2020), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/requesting_ice_records_about_detained_individuals_at_risk_of_exposure_to_covid-19.pdf.

²⁶ See, e.g., Drew Knight, *Civil Rights Groups Suing ICE Over COVID-19 Safety in Texas Detention Facilities*, KVUE (Apr. 15, 2020, 6:36 PM),

for relief, courts have emphasized ICE’s lack of transparency in sharing critical information about health and safety measures taken to protect detained individuals at risk of infection.²⁷

Among these troubling conditions of confinement, ICE’s placement of individuals in segregation or solitary confinement is particularly inhumane. ICE has volunteered little about its solitary confinement practices, but internal and public oversight efforts, dogged reporting and whistleblowers have shed light on ICE’s approach to solitary confinement. An April 2018 internal investigation by the Department of Homeland Security’s Office for Civil Rights and Civil Liberties (“CRCL”) obtained through FOIA, revealed solitary confinement practices at the Adelanto Detention Facility in violation of agency standards had not been addressed for years despite recommendations by CRCL.²⁸ The documents detail a number of disturbing findings, including the fact that there was no “competent, qualified and effective on-site psychiatric leadership,” and as a result²⁹ Detained individuals with “serious” mental health concerns were

<https://www.kvue.com/article/news/local/texas/ice-sued-over-coronavirus-safety-in-detention-centers/269-58dcf2fb-8d11-49d4-8b31-4d70c07a0a14> (habeas lawsuit filed on behalf of individuals in three South Texas detention facilities); Tanvi Misra, *ACLU Asks for Humanitarian Release of Vulnerable ICE Detainees*, ROLL CALL (Mar. 16, 2020, 6:39 PM), <https://www.rollcall.com/2020/03/16/aclu-asks-for-humanitarian-release-of-vulnerable-ice-detainees/> (habeas lawsuit on behalf of individuals detained in Seattle-area detention facility).

²⁷ See e.g., *Am. Immigration Council v. United States Dep’t of Homeland Sec*, Memo. Op., *15, No. 20-1196, U.S. Dist. LEXIS 117862 (DDC July 6, 2020) (explaining decision to grant a preliminary injunction in a FOIA case seeking records about health and safety measures in ICE detention facilities in response to COVID-19); *Fraihat v. United States Immigration & Customs Enforcement*, Ord. Granting Class Cert. Mot., *22, No. 19-1546, 2020 U.S. Dist. LEXIS 72015 (C.D. Cal. April 20, 2020) (noting that ICE detention facilities did not report on the individuals in ICE detention facilities “most vulnerable to severe illness or death from COVID-19” or “provide information about any independent tracking they conduct with regard to disabled or medically vulnerable individuals before or during the pandemic”).

²⁸ Nick Schwellenbach, *DHS Office for Civil Rights and Civil Liberties Review of Adelanto – Sent to ICE in April 2018*, POGO (Sept. 6, 2019), <https://www.pogo.org/document/2019/09/dhs-office-for-civil-rights-and-civil-liberties-review-of-adelanto-sent-to-ice-in-april-2018/#document/p49/a522736>.

²⁹ *Id.*

“routinely – and inappropriately – housed in administrative segregation,” when they should only be “housed in administrative.”³⁰ The report found that the number of individuals with serious mental health concerns placed in solitary was alarming and that the agency used solitary instead of developing mental health housing, which CRCL has previously recommended.³¹ The report also highlighted the “shockingly high” number of days individuals were detained – in one case, 904 days.³² The report pointed out how the solitary confinement practices violated agency directives and detention standards.³³

In a June 2019 report, The DHS OIG’s office found segregation or solitary confinement practices “violated standards and infringed on detainee rights.”³⁴ Closely examining three detention facilities, the OIG found “serious issues with the administrative and disciplinary segregation of detainees.”³⁵ All three facilities inappropriately used restraints; one facility routinely strip searched individuals when they entered solitary confinement with no justification; and at two of the facilities, individuals were preemptively placed in solitary confinement before a disciplinary panel determined whether a prohibited act had occurred.³⁶

Documents obtained through a FOIA request and released by a whistleblower who worked for more than twenty years for the federal government, paint an even more disturbing picture of casual cruelty in the use of solitary confinement. Reasons for placing individuals in

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (noting that clinical staff did not take responsibility for the solitary confinement of individuals with mental health issues, stating that a decision to confine someone in solitary was a “custody” decision).

³³ *Id.*

³⁴ OFF. INSPECTOR GEN., DEP’T HOMELAND SEC., OIG-19-47, CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT FOUR DETENTION FACILITIES 3 (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

³⁵ *Id.* at 5.

³⁶ *Id.*

solitary confinement included having “[c]ontraband sugar packets, calling a border guard a ‘redneck,’ menstruating on a prison uniform, kissing another detainee, identifying as gay, [and] requesting an ankle brace.”³⁷ In internal agency emails, Gallagher described as “mind-numbing” examples of detained individuals who received 14 days of solitary confinement for failing to follow meal procedures or asking an ICE officer to purchase cigarettes.³⁸

The long-term detrimental effects of solitary confinement are well-known.³⁹ Yet, like other detention practices highlighted here, ICE practices related to solitary confinement are never volunteered by the agency. Without the tenacious efforts of those determined to shed light on ICE’s practices, they would remain hidden from the public.

IV. DOCUMENTS SLATED FOR DESTRUCTION ARE VITAL TO RESEARCH AND AGENCY OVERSIGHT

A. Records and Data Spanning Multiple Years Provide Comprehensive Analysis of Solitary Confinement and Mistreatment in ICE Detention

Researchers, historians, and advocates have relied on ICE records that span multiple years to provide necessary analysis of ICE’s role in enforcement and detention. Without documents such as the ERO Detainee Death Review Files, Detainee Segregation Reports, Detention Monitoring Reports and DRIL Hotline Reports – all records that would be destroyed under the ICE disposition schedule – in many cases, the research would not have been possible.

³⁷ Ian Urbina, *The Capricious Use of Solitary Confinement Against Detained Immigrants*, THE ATLANTIC (Sept. 6, 2019), <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>.

³⁸ *Id.*

³⁹ See, e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85 (1997); HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (Am. Psych. Ass’n rev. ed. 1992) (1975).

A study providing the first “systematic, national-level analysis of administrative records of solitary confinements” – *Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Detention Facilities, 2013-2017* – relied on ICE segregation reports. The article, published in 2020, included documents about solitary confinement “stays” from 2012 to 2017, capturing the period immediately after segregation reporting was mandated by ICE.⁴⁰ Analysis of the data collected from ICE’s internal reporting on solitary confinement found that individuals “with mental illnesses were overrepresented” and for those with mental illness, confinement was “more likely to occur without infraction, and to last longer, compared to cases involving individuals without mental illnesses.”⁴¹ The authors also found that Africa and Caribbean immigrants were “over-represented in comparison to the share of these groups in the overall detained population, and African immigrants [were] more likely to be confined for disciplinary reasons, compared to the average.”⁴² In addition, private ICE detention facilities, compared to public facilities, were more likely to place a person in solitary confinement without any infraction.⁴³

Describing solitary confinement as one of the least transparent ICE detention practices, or a “black box within a black box,” a 2018 study relied on FOIA data regarding the use of solitary confinement in California beginning in 2013.⁴⁴ The authors analyzed nearly 1,200 incidents of

⁴⁰ Konrad Franco, Caitlin Patler & Keramet Reitar, *Punishing Status and the Punishment Status Quo: Solitary Confinement in U.S. Immigration Detention Facilities, 2013-2017* 3 (Apr. 27, 2020) (unpublished manuscript), <https://osf.io/preprints/socarxiv/zdy7f> (describing ICE’s September 2013 directive as a measure to “limit and provide better oversight of solitary confinement placements in immigration detention”) (citation omitted).

⁴¹ *Id.* at 4.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Caitlin Patler, Jeffrey O. Sacha, & Nicholas Branich, *The Black Box Within a Black Box: Solitary Confinement Practices in a Subset of U.S. Immigrant Detention Facilities*, 35 J. POPULATION RSCH. 435 (2018).

solitary confinement at ICE facilities in the L.A. and San Francisco Field Offices between September 2013 and September 2016.⁴⁵ The study remains a vital analysis of solitary confinement in U.S. immigration detention, where the authors found, among other trends, over 57% of those detained individuals in solitary confinement are individuals with mental illness, but made up only 15% of the population of detained individuals.”⁴⁶ The authors also found that ICE frequently used solitary confinement as a “preemptive” measure – over 51% of those placed in solitary confinement “had never broken facility rules.”⁴⁷ Without segregation reports, the authors would not have been able to show the widespread use of solitary confinement in what are supposed to be “non-punitive” civil immigration detention settings.⁴⁸

In comprehensive studies of immigration detention conditions, the Information Line (DRIL) records have proven invaluable. The authors of the first empirical study of immigration detention at the national level analyzed more than 48,800 facility-related grievances received through DRIL from FY 2013 through 2015.⁴⁹ The final analysis found that about two-thirds of grievances in FY 2015 pertained to issues with access to legal representation and basic case knowledge.⁵⁰ The authors note that “DRIL is an important source of information on facility-related grievances given that detainees may be more likely to be aware of its existence than other reporting mechanisms.”⁵¹

⁴⁵ *Id.* at 435.

⁴⁶ *Id.* at 437.

⁴⁷ *Id.*

⁴⁸ *Id.* at 438.

⁴⁹ Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CAL. L. REV. 1 (2018).

⁵⁰ *Id.* at 46.

⁵¹ *Id.* at 21.

Also relying on DRIL records, a 2017 complaint filed with the DHS Office for Civil Rights & Civil Liberties analyzed data “over 33,000 complaints of sexual assault or physical abuse against component agencies in DHS.”⁵² The complaint analyzed DRIL hotline calls between October 2012 and March 2016, finding that the five detention facilities with the most sexual and physical complaints were privately operated.⁵³ Drawing on these and other findings, the complaint called for an “investigation [] and [] the rapid development of protocols to ensure that all such reports of sexual abuse are thoroughly investigated and that relevant records are disclosed to the public.”⁵⁴

Using ICE detention facility inspections and examining the monitoring process over a period 5 years for 105 of the largest immigration detention centers, a 2015 analysis found “significant inconsistencies within and between inspection reports for individual facilities, as well as between ODO and ERO inspections, raising questions about the reliability of either inspections process.”⁵⁵ The report served as a review of detention under the Obama administration, concluding that “public and private contractors who run detention facilities continue to make money without adequate oversight, and troubling conditions of detention persist for the more than 400,000 individuals who pass through ICE custody each year.”⁵⁶

⁵² Letter from Rebecca Merton, Nat’l Indep. Monitor, CIVIC, & Christina Fialho, Co-Founder/ Exec. Dir., CIVIC, to Thomas D. Homan, Dir., Claire Trickler-McNulty, Assistant Dir., Off. Det. Plan. & Pol’y, U.S. Immigr. & Customs Enf’t, John F. Kelly, Sec., John Roth, Inspector Gen., & Veronica Venture, Officer for Civ. Rts. & Civ. Liberties, U.S. Dep’t Homeland Sec. (Apr. 11, 2017), <https://www.freedomforimmigrants.org/sexual-assault>.

⁵³ *Id.* at 11.

⁵⁴ *Id.*

⁵⁵ NIJC, *The Immigration Detention Transparency and Human Rights Project: October 2015 Report* (2015) at 11, <https://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse>.

⁵⁶ *Id.* at 2.

None of these studies detailing ICE detention operations and the impact of ICE detention policies on individuals in ICE's custody would have been possible if multiple years of data and agency records, such as the DRIL hotline, had not been available. These academic articles and policy reports have played a critical role in fully understanding ICE's detention system and continuing to hold the agency accountable for multi-year patterns of mistreatment and neglect.

B. Primary Source Documents Provide Important Details About Detention Conditions

As researchers pointed out in comments to the proposed ICE records disposition schedule, important and innovative research may require data about ICE detention operations that appears insignificant or mundane. A 2014 article built on growing interest around immigration detention and privatization by looking at “micro-economies” within several detention facilities.⁵⁷ The authors analyzed the seemingly unimportant minutiae of daily operations at nine facilities in the greater NYC-metro area to identify “micro-economies” in detention facilities including “the commissary systems, phone and other forms of communication, detainee labor, and detainee excursions outside detention.” The study showed that “detained migrants' needs and daily routines are tailored in ways that produce migrants as both captive consumers and laborers.” These records provided critical details for researchers to build out patterns and develop a better understanding of how “numbers of individuals and entities” are “invested in the incarceration of immigrants.” *Id.*

⁵⁷ Deirdre Conlon and Nancy Hiemstra, *Examining the everyday micro-economies of migrant detention in the United States*, *Geogr. Helv.*, 69, 335–344 (2014), <https://doi.org/10.5194/gh-69-335-2014>.

A 2018 report examined over 200 complaints of abuse at the Otero County Processing Center (OCPC) in New Mexico between 2015 and 2018.⁵⁸ As part of their analysis, the authors examined reports and inspections of the facility written by ICE and its contractor between 2008 and 2016. Their analysis of 10 years of detention records showed that the facility “has been found deficient in 98 components based on evaluations compared to established ICE standards for immigration detention facilities.”

Several reports examining complaints of abuse and deaths in detention relied on facility inspection reports to determine ICE was not addressing, or was failing to report, substandard conditions. For example, a 2016 report examined death review files for eight deaths from 2010 to 2012. The analysis showed that while “ICE conducted reviews that identified violations of medical standards as contributing factors in these deaths, routine ICE detention facility inspections before and after the deaths failed to acknowledge—or at times dismissed—these violations.”⁵⁹

V. CONCLUSION

With NARA’s approval of ICE’s request to destroy records addressing segregation, complaints of abuse, compliance with detention standards, and sexual abuse and deaths in detention, ICE – an immigration enforcement agency with a vast web of detention facilities – once again, will escape scrutiny. If the current records disposition schedule stands, members of the public, advocates and policymakers will not have the opportunity to benefit from careful

⁵⁸ Nathan Craig and Margaret Brown Vega, “*Why Doesn’t Anyone Investigate this Place?*”: *An Investigation into Complaints and Inspections at the Otero County Processing Center in New Mexico* (2018), <https://www.freedomforimmigrants.org/report-on-otero>.

⁵⁹ ACLU, DET. WATCH NETWORK & NAT’L IMMIGRANT JUST. CTR., *FATAL NEGLECT: HOW ICE IGNORES DEATHS IN DETENTION* (2016), https://www.aclu.org/sites/default/files/field_document/fatal_neglect_acludwnnijk.pdf.

historical analysis of ICE practices and, in the future, ICE will not be held accountable for its actions today.

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Respectfully Submitted,

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