

Fact Sheet on “Establishing a Humane Immigration Enforcement System Act”

Since its creation in 2003, U.S. Immigration and Customs Enforcement (ICE) has transformed from an agency intended to prevent acts of terrorism to a rogue agency that inflicts terror within our communities. The “Establishing a Humane Immigration Enforcement System Act” introduced by Reps. Mark Pocan (WI-02), Pramila Jayapal (WA-07), and Adriano Espaillat (NY-13) would eliminate ICE and transition its essential functions to other agencies and ensure that these functions comport with our values and are subject to appropriate oversight, accountability, and transparency measures.

Enforcement of immigration laws existed before ICE’s creation and will continue to exist after ICE.

ICE is not doing the work it was built to do. President Trump is using this rogue agency as his mass detention and deportation force, inflicting harm and violating rights in communities across the country. It is time for Congress to take decisive action to subject the agency to robust oversight, accountability, and transparency—just like any other Federal agency.

- ICE was intended to focus on fighting human trafficking, drug smuggling, and stopping terrorists from bringing small pox and suitcase bombs into the country.¹
- Instead, the agency acts as President Trump’s mass deportation force, tearing families apart and indiscriminately detaining everyone it encounters, including many people like asylum seekers and long-time U.S. residents with strong community ties who have viable claims to stay in the United States and pose no risk to national security.²

ICE’s enforcement actions have undermined public trust in the agency. For example, the agency:

- Attempts to force state and local law enforcement to comply with unconstitutional requests to hold people in custody without a warrant;³
- Conducts enforcement actions at sensitive locations, including courthouses, hospitals, churches, and schools in contravention of its own sensitive locations policy;⁴ and
- Targets immigrant rights advocates working within their First Amendment rights to protest ICE abuses.⁵

The \$7.1 billion ICE receives in taxpayer dollars⁶ is not dedicated to its core mission of preventing terrorism.⁷ As a result, ICE Homeland Security Investigations (HSI) agents are calling for ICE to be dismantled.

- Only \$2.2 billion (30 percent) of ICE’s Fiscal Year (FY) 2017 funding is dedicated to domestic and international investigations whereas ICE’s detention and removal programs receive \$4.1 billion (nearly 60 percent).⁸
- ICE routinely re-allocates funding Congress assigned to ICE’s Homeland Security Investigations Division (HSI)—the ICE division dedicated to carrying out ICE’s anti-terrorism work—to ICE’s Enforcement and Removal Operations (ERO), which contains Trump’s mass deportation force. For example, ICE reprogrammed the following amounts from HSI to ERO: \$5 million in FY 2011, \$10 million in FY 2013, and \$34.5 million in FY16.⁹

- ICE’s staffing creates serious challenges for national security. Only a fraction of ICE’s 20,000 employees remain dedicated to ICE’s original mission of tracking terrorism and transnational crime syndicates domestically and internationally.¹⁰
- In June 2018, 19 HSI agents—a majority of special agents in charge of HSI, called on DHS Secretary Nielsen to remove HSI from ICE to improve HSI’s ability to function effectively and to stop the reprogramming of its funding.¹¹ In addition, the agents stated that HSI’s work is compromised by the reluctance among state and local law enforcement to collaborate with HSI given ICE’s civil immigration enforcement focus.

ICE contracts out billions of taxpayer dollars every year to private, for-profit prison companies that have shunned transparency and accountability, and operate at significantly higher expense to taxpayers than more humane, lower-cost alternatives to detention like the Family Case Management Program.

- Large private prison companies make tremendous profits off of the detention and suffering of men, women, and children. For-profit companies are incentivized to limit medical staffing and deny care in order to maximize profits for their shareholders. This results in the suffering, and in some cases even deaths, of detained people.¹²
- Alternatives to detention like the Family Case Management Program cost \$36 per day for a family compared to more than \$900¹³ a day to incarcerate an immigrant parent with two children or the \$208 per day for a single adult.¹⁴

Numerous federal oversight bodies have documented ICE’s blatant disregard for congressional mandates, the agency’s own standards, and federal and international legal protections.

- A 2017 DHS Office of the Inspector General (DHS OIG) report details violations with ICE detention standards, noting that conditions for people in ICE custody “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.”¹⁵
- A 2018 report by DHS OIG found that “neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections” and that “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections.”¹⁶
- A 2018 report by the Government Accountability Office (GAO) has found “a number inconsistencies and errors in ICE’s calculations for its congressional budget justifications... While ICE officials stated that their budget documents undergo multiple reviews to ensure accuracy, ICE was not able to provide documentation of such reviews.” The GAO concluded, “ICE is not positioned to ensure the credibility of its budget requests.”¹⁷

Endnotes

¹ Heather Timmons, *No one really knows what ICE is supposed to be. Politicians love that*, QUARTZ (Jul. 7, 2018) available at: <https://qz.com/1316098/what-is-ice-supposed-to-do-the-strange-history-of-us-immigration-and-customs-enforcement> [hereinafter “Timmons 2018”].

² See, e.g., Dara Lind, *ICE isn’t just detaining “bad hombres.” They’re scooping up anyone in their path.*, VOX (Mar. 3, 2017) available at: <https://www.vox.com/policy-and-politics/2017/3/3/14801474/ice-detain-deport-immigrant>; Derek Hawkins, *A mother and child fled Congo fearing death. ICE has held them separately for months, lawsuit says.*, WASHINGTON POST (Feb. 27, 2018) available at: <https://www.washingtonpost.com/news/morning-mix/wp/2018/02/27/mother-child-fled-congo-fearing-death-ice-has-held-them-separately-for-months-lawsuit-says>; Samantha Schmidt, *ICE detains a Polish doctor and green-card holder who has lived in the U.S. for nearly 40 years*, WASHINGTON POST (Jan. 22, 2018) available at: <https://www.washingtonpost.com/news/morning-mix/wp/2018/01/22/ice-detains-a-polish-doctor-and-green-card-holder-who-has-lived-in-the-u-s-for-nearly-40-years>; Amy B. Wang & Maria Sacchetti, *A chemistry professor got his kids ready for school. Then ICE arrested him on his front lawn.*, WASHINGTON POST (Feb. 5, 2018) available at: <https://www.washingtonpost.com/news/post-nation/wp/2018/02/04/a-chemistry-professor-got-his-kids-ready-for-school-then-ice-arrested-him-on-his-front-lawn>; Vivian Lee, *A Marriage Used to Prevent Deportation. Not Anymore.*, N.Y. TIMES (Apr. 19, 2018) available at: <https://www.nytimes.com/2018/04/19/us/immigration-marriage-green-card.html>; Noah Lanard, *Married Immigrants Seeking Green Cards Are Now Targets for Deportation*, Mother Jones (Apr. 20, 2018) available at: <https://www.motherjones.com/politics/2018/04/married-immigrants-seeking-green-cards-are-now-targets-for-deportation>.

³ See, e.g., Joshua Breisblatt, Alyson Sincavage, Mark Fleming, et al., *Assumption of Risk: Legal Liabilities for Local Governments that Choose to Enforce Federal Immigration Laws*, American Immigration Council, American Immigration Lawyers Association, National Immigrant Justice Center, National Immigration Law Center, Southern Poverty Law Center (Mar. 2018) available at: https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-03/Assumption_of_Risk_March2018_FINAL.pdf; Yvette Cabrera, *Federal judge: Holding inmates longer on immigration detainees is unconstitutional*, ThinkProgress (Feb. 11, 2018) available at: <https://thinkprogress.org/immigration-detainers-unconstitutional-9fde460fdeca>; Dep’t of Justice, “Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs” (Jul. 25, 2018) available at: <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial>.

⁴ John Burnett, *DHS Under Pressure Over Alleged Violation Of Policies On Sensitive Locations*, NPR (Oct. 20, 2017) available at: <https://www.npr.org/2017/10/20/559113178/dhs-under-pressure-over-alleged-violation-of-policies-on-sensitive-locations>.

⁵ See, e.g., Gene Johnson, *Seattle-Area Immigrant Activist Says She Faces Deportation*, THE ASSOCIATED PRESS (Jan. 16, 2018) available at: <https://www.usnews.com/news/best-states/washington/articles/2018-01-16/northwest-immigrant-activist-says-she-faces-deportation>; Liz Robbins, *Activists and ICE Face Off Over Detained Leader*, N.Y. TIMES (Jan. 12, 2018) available at: <https://www.nytimes.com/2018/01/12/nyregion/immigration-activist-deportation.html>; Maria Sacchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration Activists*, WASHINGTON POST (Jan. 19, 2018) available at: https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html; Ian Lovett & Alicia A. Caldwell, *Immigrants Connected to Sanctuary Movement Arrested*, WALL STREET JOURNAL (Jan. 11, 2018) available at: <https://www.wsj.com/articles/immigrants-connected-to-sanctuary-movement-arrested-1515732386>.

⁶ Consolidated Appropriations Act, 2018, H.R. 1625, P.L. No. 115-141, 115th Cong., Summary of the FY 2018 Homeland Security Bill prepared by House Appropriations Committee Chairman Rodney Frelinghuysen (Mar. 21, 2018) available at: https://appropriations.house.gov/uploadedfiles/03.21.18_fy18_omnibus_-_homeland_security_-_summary.pdf [hereinafter “2018 DHS Appropriations Bill Summary”].

⁷ Brian A. Reaves, *Bureau of Justice Statistics Bulletin: Federal Law Enforcement Officers, 2004*, Dep’t of Justice (Jul. 2006) at 2, available at: <https://www.bjs.gov/content/pub/pdf/fleo04.pdf> [“The primary mission of ICE is to prevent acts of terrorism by targeting the people, money, and materials that support terrorist and criminal activities. ICE is the largest investigative arm of DHS, and is responsible for identifying and eliminating vulnerabilities in the nation’s border, economic, transportation and infrastructure security.”]

⁸ 2018 DHS Appropriations Bill Summary, *supra* n. 6.

⁹ Letter from 19 Homeland Security Investigations Special Agents in Charge to Kirstjen Nielsen, Secretary, Dep’t of Homeland Security (Jun. 2018) available at: <https://www.documentcloud.org/documents/4562896-FILE-3286.html> [hereinafter “HSI Letter”].

¹⁰ According to ICE’s website, the agency employs 8,500 HSI agents; however, according to Quartz, the agency employs 6,000 agents (See U.S. Immigration & Customs Enforcement, “Working for ICE,” available at: <https://www.ice.gov/careers>; Timmons 2018, *supra* n. 1).

¹¹ HSI Letter, *supra* n. 9.

¹² ACLU, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (Jun. 2014) available at: <https://www.aclu.org/sites/default/files/assets/060614-aclu-car-reportonline.pdf>.

¹³ Andrew Desiderio, *ICE Scrapped Effective Immigration Program Because It Didn’t ‘Remove’ Enough People*, THE DAILY BEAST (Jun. 23, 2018) available at: <https://www.thedailybeast.com/ice-scrapped-effective-immigration-program-because-it-didnt-remove-enough-people>.

¹⁴ Laurence Benenson, *The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply*, NATIONAL IMMIGRATION FORUM (May 9, 2018) available at: <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply>.

¹⁵ DHS Office of the Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017) available at: <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

¹⁶ DHS Office of the Inspector General, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (Jun. 26, 2018) available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

¹⁷ U.S. Government Accountability Office, *IMMIGRATION DETENTION: Opportunities Exist to Improve Cost Estimates* (Apr. 18, 2018) available at: <https://www.gao.gov/products/GAO-18-343>.