

House Homeland Security Subcommittee on Oversight, Management and Accountability Holds Hearing on ICE Detention Facilities Oversight

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House Homeland Security Subcommittee On Oversight, Management And Accountability Holds Hearing On **Ice Detention Facilities** Oversight

September 26, 2019 02:00 P.M.

SPEAKERS:

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REP. NANETTE BARRAGAN (D-CALIF.)

REP. BENNIE THOMPSON (D-MISS.), EX-OFFICIO

REP. DANIEL CRENSHAW (R-TEXAS), RANKING MEMBER

REP. CLAY HIGGINS (R-LA.)

REP. VAN TAYLOR (R-TEXAS)

REP. MIKE D. ROGERS (R-ALA.), EX-OFFICIO

[*]TORRES SMALL: The Subcommittee on Oversight, Management and Accountability will come to order.

The subcommittee is meeting today to receive testimony on oversight of **ICE detention facilities**, is DHS doing enough?

Good afternoon, we are here to discuss the oversight of immigration and customs enforcement **detention facilities** and whether DHS is doing enough to ensure that **ICE**'s own **detention** standards are being met.

Before we start, I'd like to take a moment to acknowledge some of the challenges the subcommittee had in arranging today's hearing.

We're holding two panels this afternoon because **ICE** declined to sit on the same panel with Nakamoto, the contractor it chose to conduct inspections on its behalf since 2011.

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The department's lack of cooperation makes it more challenging for Congress to do its job. As it recently stated in a meeting with DHS leaders, it's important to the subcommittee to bring everyone's voices together. That's how we can best identify challenges and find ways to solve them.

This issue is particularly important to me as two of ICE's facilities, the Otero ICE Processing Center and the Cibola County Correctional Center detain towards upwards of 1,300 migrants from in my home district.

I visited these facilities and I have concerns about some of the conditions of confinement. I'm not alone in having these concerns.

DHS's own office of inspector general last year found that these processes, ICE's processes for oversight and confinement were insufficient to sustain compliance with ICE's own standards.

It might be that inspectors are set up to fail. For example, ICE's contractor which conducts about 100 inspections annually is responsible for evaluating compliance with up to 42 new standards, composed of over 600 elements over the course of just a few days.

As a result, these inspectors end up missing some clear violations of detention standards like a phone not working properly.

The OIG also observed inspectors misreporting that detainees knew how to obtain assistance from ICE officers, when those detainees had indicated the exact opposite.

Of additional concern is the fact that even when these deficiencies are identified, ICE's processes have not ensured that they are corrected. For example, ICE has detention service monitors on site at several detention facilities to monitor compliance with detention standards.

However, these monitors told the OIG that when they identified violations, they have no means of enforcing corrective action. Instead of pressuring facilities to correct deficiencies or issuing financial penalties for non-compliance in some cases ICE grants waivers so the facilities don't have to abide by these standards.

For example, as the OIG reported from October 2015 to June 2018, ICE only issued two financial penalties and granted 65 waivers, 63 of which of those waivers had no end date.

One of these waivers at Otero in my district permitted low custody individuals with no criminal history to co-mingle with individuals with more serious criminal records.

The standard that typically keeps these detainees separated is an important one that directly impacts the safety of people in detention.

Finally, I have concerns that inspections by ICE's contractor announced far in advance, giving facilities ample opportunities to clean things up just in time for inspection.

I understand that the OIG made several recommendations to ICE to correct these issues and I look forward to hearing what steps ICE has taken and whether they are leading to more sustained compliance with standards.

I also look forward to hearing about the oversight work that the OIG conducts at ICE facilities. The OIG's oversight work in this space has been critical in shining a light on the conditions of confinement.

Recent reports have identified serious violations of ICE's standards including food and service issues endangering health of detainees and inappropriate segregation practices infringing on detainee safety.

However, the scope of the OIG's inspections is limited by its lack of subject matter experts, like medical doctors to evaluate the quality of medical care.

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I'm encouraged by the fact that the OIG is developing a plan to contract with such experts who can engage in this oversight work and I hope to hear that this plan is being put into action.

I want to thank the witnesses who are here today, and I look forward to your testimony.

The chair now recognizes ranking member of the subcommittee the gentleman from Texas, Mr. Crenshaw, for an opening statement.

CRENSHAW: Thank you Chairwoman Torres Small and thank you to all of our witnesses on both panels for being here today.

I'm pleased we are holding this hearing regarding the oversight of ICE detention facilities. It is extremely important.

I'm also pleased we were able to work together to resolve some of the problems coordinating witnesses and panels to have the key stakeholders necessary for the productive hearing this issue deserves.

It should be noted that it is long standing practice not to have the agency and the contractor for that agency on the same panel, which is why we ended up having two different panels.

I'm also hopeful that the Office of Civil Rights and Civil Liberties will still provide their testimony prepared for this hearing even though they disinvited earlier this week.

I hope that in the future, that the agency over which we are conducting oversight, in this case ICE, would be the first to be invited to testify.

This is an important issue to examine. I share the majority's concern regarding the necessity of enforcing the standards for safety and security of ICE detainees.

The health and wellbeing of those detained in the United States is not a partisan issue. I've been very public in my praise for the Department of Homeland Security and the individuals who work each day to keep our country safe.

The men and women of U.S. Immigration and Customs Enforcement have some of the toughest jobs in the department. ICE is tasked with enforcing U.S. immigration law and removing individuals who pose a threat to national security, public safety or seek to exploit our immigration system.

The job is made even more difficult when they are publicly and unfairly vilified by public figures. The false narrative spread about ICE are utterly reprehensible.

Individuals primarily targeted for removal by ICE include convicted criminals, gang members, repeat immigration violators and those ordered to be removed by an immigration judge.

As the flow of immigrants increases, the job of ICE becomes even more difficult. They must devote their resources to rooting out those that pose the biggest threat. However, those resources are stretched thin.

The safe and secure detention of individuals prior to removal from the country is one of the most important duties that ICE devotes resources to. Although detention is primarily done through contractors, as the agency responsible for these individuals, ICE must ensure that proper care is provided.

ICE must use its oversight authorities as well as its contracting authorities to ensure its detention standards are met. ICE does its own inspections every three years and hires private contractors to do inspections annually.

Additionally, ICE has individuals in a number of facilities who are tasked with onsite review of the daily operations. All this seems like the recipe for conducting vigorous oversight, unfortunately however it seems, as is frequently the case with government agencies, there is a lack of communication and coordination among the divisions within ICE.

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It is my understanding that ICE has agreed with the recommendations of the Inspector General's office and is working to address these issues.

I look forward to hearing from our witnesses today and how we can ensure ICE's detention standards are met in the future.

I yield back the balance of my time.

TORRES SMALL: The members of the committee are reminded that under the committee rules, the opening statements may be submitted for the record.

I welcome our first panel of witnesses and thank them for joining today.

Our first witness is Miss Jenni Nakamoto, President and sole owner of Nakamoto Group, Incorporated.

Miss Nakamoto has provided professional and administrative support to the federal government and private industry since 1990. Her company contracts with ICE to conduct inspections of ICE's detention facilities.

Our second witness, Miss Katherine Hawkins, is the senior legal advisor for the Constitution Project at the Project for Government Oversight. Her work focuses on national security, immigration and human rights.

Prior to her work at POGO she served as a national security fellow for Open the Government.

Without objection the witnesses' full statements will be inserted in the record. I now ask each witness to summarize her statements for five minutes beginning with Miss Nakamoto.

NAKAMOTO: Thank you for the invitation to appear before this committee. I want to first apologize for what appeared to be our resistance to come to this hearing to discuss the details of our work with ICE.

Our contract has a clause within the contract federal regulations that forbids disclosure of these details and we were hesitant to get involved at the risk of our contract.

The Nakamoto Group is a woman-owned minority-owned, small disadvantaged business headquartered in Frederick County, Maryland.

My great grandparents immigrated to the United States from Japan. My maternal grandparents were both born in California, making them United States citizens.

After Pearl Harbor, the presidential order was issued to incarcerate all Japanese, regardless of their citizenship status.

My maternal family were living in California and had to relinquish all their property, including any businesses that they had.

They were given one trash bag to fill of personal items to take with them and had to leave everything else behind.

Our family was spread out to various internment camps across the country. My maternal grandparents were incarcerated in a Japanese internment camp in Arizona. They were there long enough to meet, fall in love, get married, have a baby, my mother, and become pregnant again with my aunt.

Since they had to start over, they were offered employment at a food processing factory before they were released and they chose to move to a small town called Seabrook in southern New Jersey where ultimately, I was born.

My father was born and raised in Hilo, Hawaii. My grandfather returned to Japan soon after he was born. My father was from a large broken home and he was raised by several of his older brothers.

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My father served for more than 20 years in the United States Army. He served two tours during Viet Nam and served on what was one of the first all Japanese American Green Beret units.

Upon his retirement from Fort Ritchie, Maryland we relocated to Frederick where I grew up. Because my parents did not have a lot of money, I worked during high school and have been working since I was fifteen years old.

Shortly after high school I was able to obtain a secretarial job with the government at the Department of Health and Human Services.

I worked there for over six years before leaving to work three other successful minority owned government contracting firms. I learned about government contracting during those seven years and I decided to take a chance and start my own company.

I started this company in 2003. It was the same year that I lost my late husband to police suicide. I still volunteer for his fraternal order of police and have volunteered for them for over 20 years, serving as their executive assistant to the executive board.

The Nakamoto Group was certified in the Small Business Administration's 8(a) program in 2004. We successfully graduated certification in 2013.

The first contract awarded to my company was in 2004 to maintain a hotline entitled Insure Kids Now, which is a hotline that provides either free or low-cost health care to kids through states children's health insurance program within the United States and its territories.

We still maintain that contract after 15 years and it now includes another hotline entitled 311 Baby which helps expectant and new mothers providing information via phone and text.

For the last 15 years, we have obtained logistics contracts with the Food and Drug Administration and the Department of Health and Human Services.

From 2006 to 2007, we had a contract with the Food and Drug Administration to help them hire Hispanics to increase diversity within their workforce. We continue to provide logistic support for FDA (INAUDIBLE) advisory committees.

Our most current and long-standing logistics contracts has been with the Office of Rural Health Policy Rental Logistics for the National Advisory Committee on Rural Health and Human Services.

We also provide logistics for several other policy meetings regarding telehealth in rural America from 2010 to 2013.

In 2005 we obtained a contract with the now dissolved Office of the Federal Detention Trustee which was a department under the Department of Justice. We won a place within a blanket purchase agreement to provide detention expert support services to the Office of the Federal Detention Trustee.

Using performance-based detention standards, we sent teams to provide expert specialized service and consultation by conducting facility reviews of non-federal contract jails and detention facilities which housed U.S. Marshall Service and Immigration and Customs Enforcement detainees.

In 2007 we were asked to attend a meeting at ICE headquarters where we were asked to perform onsite monitoring services and provide monthly technical assistance that included full time monitors for 40 of the largest ICE detention facilities and monthly, quarterly and bi-annual reviews of other small ICE detention facilities.

The goal was to ensure that the facilities were in compliance with the standards.

ICE piggybacked on that existing contract we had at the time at the Department of Justice and we did this type of work for them from 2007 to 2010.

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TORRES SMALL: Miss Nakamoto your time is up. If you want to include a few seconds of concluding remarks.

NAKAMOTO: Ah--

TORRES SMALL: Or we can just--the rest can be entered into the record.

NAKAMOTO: Okay.

TORRES SMALL: Miss Hawkins?

HAWKINS: Chairwoman Torres Small, Ranking Member Crenshaw and members of the subcommittee, thank you for the opportunity to testify today.

I'm a senior legal analyst for the Constitution Project of the Project on Government Oversight. POGO is a non-partisan watchdog that investigates government abuses of power.

As part of that work, colleagues and I have done a series of investigations into conditions in ICE detention.

We found evidence of inadequate medical care, inadequate mental health care and overuse of solitary confinement.

These are chronic problems, but they've grown worse as ICE has detained more and more people. ICE detention centers are subject to various forms of oversight by DHS.

They are annual inspections by the Nakamoto Group, onsite monitors, inspections by different offices within ICE and inspections by the DH Inspector General and the Office of Civil Rights and Civil Liberties.

This sounds like a lot of inspections, but the system is failing to ensure compliance with ICE's own detention standards.

The Nakamoto Groups inspections occur most often, and they are the only ones that can trigger loss of a detention facilities contract, but they often fail to uncover serious violations.

Other inspections are more thorough, but they often remain hidden from congress and the public and ICE fails to make changes they recommend.

As a result, inhumane and unsafe conditions can persist for years. In some cases, the violations rise to the level of deliberate indifference to detainee's medical needs which is unconstitutional.

To illustrate the problems, I'll describe our findings on three of ICE's largest detention facilities.

In September 2018, the DHS Inspector General reported on an unannounced inspection of the Adelanto Detention Center in California.

They found sheets braided into nooses in 15 detainee's cells, inadequate medical care and overuse of solitary confinement.

The next month the Nakamoto Group conducted its own previously announced inspection of Adelanto. Nakamoto not only found that Adelanto was in compliance with 40 of 40 ICE detention standards but accused the Inspector General of writing an erroneous and inflammatory report.

They dismissed the nooses as a housekeeping violation, not a suicide risk, disregarding the fact that a Adelanto detainee used a bedsheet to hang himself in March of 2017.

We recently uncovered a third investigation of Adelanto by the Office of Civil Rights and Civil Liberties, CRCL.

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CRCL visited Adelanto in December 2015 and November 2017. In 2015 CRCL had warned ICE that Adelanto's medical leadership was not competent. In 2017 they found no evidence that corrections were made to address this issue.

This led to, in their words, inadequate detainee medical care that resulted in medical injuries including bone deformities and detainee deaths.

CRCL also found that mentally ill detainees were placed in solitary confinement instead of being treated, sometimes for shocking lengths of time.

Overuse of solitary is a problem through out the ICE system. Sometimes it has fatal consequences as it did for two men who committed suicide at the Stewart Detention Center in Georgia in May 2017 and July 2018.

Both Giancarlo Jimenez Joseph (SP) and Ephraim Delarosa (SP) suffered from schizophrenia. Instead of receiving psychiatric treatment, both were placed in solitary confinement for weeks as their symptoms grew more and more alarming. Both hanged themselves in their isolation cells.

Despite the two deaths, Nakamoto Group inspectors found that Stewart was in compliance with all 39 applicable ICE detention standards in both 2017 and 2018.

Inadequate medical care led to another death at the ICE detention center in Aurora Colorado.

Connere Samimi (PH) went into methadone withdrawal when he arrived there. For two weeks his symptoms grew worse and worse but medical staff (INAUDIBLE) faking or exaggerating them. Even when he became too weak to sit up.

There are many other credible reports of medical neglect at Aurora, including one case where a detainee's untreated bedsores became so severely infected that his leg had to be amputated.

Despite all this evidence, Nakamoto Group inspectors found that Aurora was in compliance with 41 of 41 applicable detention standards in both 2017 and 2018.

Let me close with some steps that congress can take to improve oversight of ICE detention.

Number one, congress should require DHS to impose financial consequences for documented violations of detention standards, no matter which type of inspection uncovers them.

Number two, in 2017 DHS suspended a policy that limited detention of individuals known to be suffering from serious physical or mental illness who are disabled, elderly, pregnant or nursing or whose detention is not in the public interest. Congress should require DHS to reinstate it.

Number three, congress should place binding restrictions on DHS's ability to transfer funds in order to expand detention.

Number four, congress should strengthen the authority and transparency of the Office of Civil Rights and Civil Liberties.

Thank you very much. I will be happy to take any questions.

TORRES SMALL: I thank all the witnesses for their testimony. I remind each member he or she will have five minutes to question the panel and I now recognize myself for questions.

Miss Nakamoto, thank you for being here today and I recognize your concern about the contracts, but your ICE contract does not prohibit you from testifying at this congressional hearing, correct?

NAKAMOTO: Ah, correct--it's just--but this is public.

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TORRES SMALL: Thank you. And so, as I noted in my opening statement, you're responsible for--Nakamoto inspectors are responsible for reviewing 42 standards that include over 600 elements in just a few days.

The OIG is not the only or even the first entity to raise concerns about that process. In fact, more than three years ago, the Homeland Security Advisory Council recommended that ICE move away from a broad check list for inspections.

Miss Nakamoto does ICE's current statement of work allow your company to conduct thorough inspections?

NAKAMOTO: They do. All of my staff have to not only go through the checklist, but they have to know the standards. They have to know the actual information within the standards within the components within those standards.

TORRES SMALL: 600 elements in three days. You have enough time to get that done?

NAKAMOTO: Yes.

TORRES SMALL: You have enough inspectors?

NAKAMOTO: Yes.

TORRES SMALL: And you don't need a narrower scope to make sure you're verifying all of those items?

NAKAMOTO: No. The three days on site are to perform interviews with detainees, staff and to see the facility itself. The rest of our report writing, we're pulling all of it together, happens after we leave.

TORRES SMALL: How then do you explain the reports in the OIG report that for example a phone that wasn't working and they just neglected to check and see if the phone directed them to--gave them the ability to make a complaint?

NAKAMOTO: I don't--I don't know all of the--I don't have the OIG report memorized but I know that my staff checked into it.

TORRES SMALL: What about a file documentation being reported as complete without actually checking the file?

NAKAMOTO: My staff check the files according to the standards.

TORRES SMALL: You're disputing the OIG report on that?

NAKAMOTO: I'm not disputing it; I'm telling you that my staff know what they have to look at within the standards.

TORRES SMALL: What about CDL licenses being reported as existing without confirming the documentation?

NAKAMOTO: I don't agree with that. My staff always check for the credentials that are required within the standards are always checked by the staff.

TORRES SMALL: The OIG was incorrect in making that observation?

NAKAMOTO: I believe, I guess if they said we didn't, then--

TORRES SMALL: What about only in interviewing detainees who speak English, or using a guard to interpret in Spanish, someone who is in charge of guarding the facility.

NAKAMOTO: I think there is different ways to find out information of what is going on at the facility. And some of the interview process is informal, some of it is formalized.

We've in fact since the OIG report came out, we have since formalized the interview process as they suggested.

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TORRES SMALL: Have you formalized the process for making sure that you have enough Spanish speaking inspectors?

NAKAMOTO: Yes, we have a language line that we also are able to use at any facility.

TORRES SMALL: In terms of Spanish speaking inspectors and certifying that they do actually speak Spanish, do you have a system for that?

NAKAMOTO: I don't understand what you're asking me.

TORRES SMALL: Okay so you don't have a system for establishing if someone, if an inspector actually does speak Spanish, if they are claiming to.

NAKAMOTO: We have about a quarter of our staff that speak Spanish.

TORRES SMALL: It says they speak Spanish? How do you confirm it?

NAKAMOTO: They ask the detainees questions in Spanish.

TORRES SMALL: But you don't--do you speak Spanish?

NAKAMOTO: I do not.

TORRES SMALL: Can you then determine they are using correct language?

NAKAMOTO: (INAUDIBLE)

TORRES SMALL: Okay, just quickly to move on ICE has concurred with OIG's recommendations for finding a--redefining a scope of work. Why hasn't Nakamoto?

NAKAMOTO: Why hasn't Nakamoto?

TORRES SMALL: Concurred with those recommendations to revise the statement of work.

NAKAMOTO: To revise the statement of work?

TORRES SMALL: So that you have more time or more targeted in your evaluating those elements.

NAKAMOTO: I mean we've been doing this for a long time. We do this for other agencies, the same amount of time is on site. There's--I don't--we've never said that we needed more time.

TORRES SMALL: Thank you. I'll recognize my colleague, Mr. Crenshaw, from Texas.

CRENSHAW: Thank you chairwoman. I'm going to follow with that exact line of questioning, the more time issue because it seems from our perspective that Nakamoto inspectors said to I believe the Inspector General that there is more time required.

Is that not what you've heard?

NAKAMOTO: That there is more time--

CRENSHAW: More time for inspection. More time for inspection in order to meet the criteria for all of those bullet points that you have to hit.

NAKAMOTO: I--I mean my staff have not complained about the time that they have. They have to--they have the three days on site and that's how long it's--

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CRENSHAW: They haven't complained to you specifically about it? It's--it's from other reports they have--they have said that. So, it's at least something to think about or at least get feedback from your own staff I believe because there does seem to be quite a few requirements that perhaps there's not enough time to look into.

And if that is the case then restructuring the requirements is certainly in line. Four days instead of three days is not exactly a huge stretch of the imagination. Something that we can easily do.

So aside from the time difference, do your employees, do your inspectors come to you with any other issues regarding the inspection process. Is it not clear enough?

Okay we've already established you think they have enough time but what else?

NAKAMOTO: We work very closely with ICE. My team works very closely with ICE. If there's any issues that come up, then we have a good relationship with letting ICE know what the issues are.

CRENSHAW: What about the OIG report, generally speaking do you think that report is valid?

You don't have to go into specifics, like you said you don't have it in front of your but generally speaking what--what issues do you agree with or disagree with in that report?

NAKAMOTO: I think that what they see at the time that they're there or what they looked at could be different than what we're looking at.

We're looking at things from a different perspective because our team, kind of knows what to look for when they go on site, so they base off of whatever they're seeing. Based off of their past experience, our team has you know over 35 years' experience in detention management, so they know kind of what they're looking at when they walk into a room.

CRENSHAW: Miss Hawkins, you said some things that were very shocking.

For instance, the nooses. You said that you--that you found nooses which the Nakamoto Group did not find. Do want to expand on that? Are you implying--how many nooses are we talking about, what's the implication there?

HAWKINS: Sure, so um just as a point of clarification, that was--I was (INAUDIBLE) the OIG reports findings.

CRENSHAW: Do you know how many nooses we're talking about, what the implications are?

HAWKINS: 15 of 20 and I do think that--

CRENSHAW: Okay and you proceeded to connect that to suicide, so the implication is that there's like a--that there's almost a factory line of nooses being created for suicides which is probably not the case, but that was the implication in your statement.

HAWKINS: So, my statement was brief but if you look at the report my organization did on this dispute--

CRENSHAW: Would it may be logical to think that the sheets were being braided for the reasons that Nakamoto Group claimed they were which was for privacy within the cells. Is that possible?

HAWKINS: Yeah, I think--

CRENSHAW: Would it be important to maybe clarify that when we say something like there's a bunch of nooses found in a facility?

HAWKINS: Yes.

CRENSHAW: I mean it's a pretty important clarification, right?

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HAWKINS: Yes, if I could respond please. My organization said that, and the Inspector General said that they were primarily used for privacy but--

CRENSHAW: Just an important clarification because you know this stuff gets really out of hand. You also mentioned some suicides in other facilities which are absolutely terrible. Were you connecting--were there deficiencies that were noted later which were not caught by the inspectors that were directly connected to those incidents?

HAWKINS: Yeah, I think chronic understaffing in medical care and mental health care.

CRENSHAW: According to ICE standards or according to your standards?

HAWKINS: According to ICE standards.

CRENSHAW: Okay, so, can you go into more detail on exactly what we're talking about here?

HAWKINS: I'd refer you to the detaining death review for the Jimenez-Joseph case, which became public recently. The--I don't know if the detaining death review for the other detainee who committed suicide at Stewart is publicly available. I definitely encourage the committee to request a copy of that to get details on that.

CRENSHAW: Okay, thank you.

TORRES SMALL: The Chair recognizes for five minutes the gentlewoman from New Jersey, Ms. Watson Coleman.

WATSON COLEMAN: Thank you, Chair. Thank you very much for being here. Thank you for your testimony. Ms. Nakamoto, how many employees do you have that are inspectors?

NAKAMOTO: (OFF-MIC)

WATSON COLEMAN: Could you--could you put your microphone on please?

NAKAMOTO: I'm sorry, sorry, sorry, sorry. We have 45 part-time employees and 12 full-time employees.

WATSON COLEMAN: And how many facilities do you have a contractual relationship with ICE to do whatever it is that I'm going to ask you that you do? How many facilities?

NAKAMOTO: So--so our contract is with ICE.

WATSON COLEMAN: For how many facilities?

NAKAMOTO: As many as they ask us to inspect.

WATSON COLEMAN: Do you have any limit in your contract that says you are being contracted to do 50 of the 200 facilities or whatever?

NAKAMOTO: The way they do it is in intervals, and we inspect at least about 120 a year.

WATSON COLEMAN: Facilities?

NAKAMOTO: Facilities.

WATSON COLEMAN: With 45 part-time inspectors and 12 full-time?

NAKAMOTO: Mm-hmm.

WATSON COLEMAN: Okay, and what are the credentials that these inspectors and any experience that they're supposed to have?

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NAKAMOTO: They have to have--there's within our statement of work, it--it--it declares what the credentials have to be.

WATSON COLEMAN: But I'm asking you what do they have to be.

NAKAMOTO: They have to have 10 years' experience in a correctional setting. They have to be warden--we have wardens. We have superintendents of corrections. We have--

WATSON COLEMAN: --And do they actually do the inspections or do they oversee other inspections that are done?

NAKAMOTO: No, they actually do the inspections.

WATSON COLEMAN: And so, what is this three-day limitation? Is this something that the contract calls for? Is this something that you all decided was a best practice? Is this--

NAKAMOTO: It's--it's within the contract. We have a similar contract with the Department of Justice, and it's the same thing.

WATSON COLEMAN: When does your contract run out with ISIS?

NAKAMOTO: It just--

WATSON COLEMAN: --With ICE, I'm sorry.

NAKAMOTO: I believe March.

WATSON COLEMAN: March. What is the value of your contract?

NAKAMOTO: I don't have that in front of me.

WATSON COLEMAN: What do you estimate it to be about? Who do you have with you on staff?

NAKAMOTO: I'm sorry?

WATSON COLEMAN: Who's with you from your staff?

NAKAMOTO: My Vice President and my Chief Financial Officer.

WATSON COLEMAN: Then, your Chief Financial Officer ought to be able to whisper in your ear what the--what the value of your contract is.

NAKAMOTO: \$3 million.

WATSON COLEMAN: That's a lot of money, okay. Ms. Hawkins, the--some of the--first of all, you are only testifying about the OIG report. Nothing that you or--you or your organization have seen for yourself, right?

HAWKINS: One of my colleagues has gone to Adelanto, but my reporting relies mainly on governed documents and a whole lot of phone interviews.

WATSON COLEMAN: So in the facilities that you mentioned there was inadequate mental health services, inadequate other healthcare services, inadequate food, and--and other--inadequate something else. I don't remember what something else was. Are any of those the facilities that the Nakamoto Group has a contract to inspect?

HAWKINS: Yes. There's some of ICE's largest facilities, so I think they're inspected on an annual basis, and--

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WATSON COLEMAN: --Okay. Ms. Nakamoto, in 2009, ICE detention facilities, they frequently failed inspections, and beginning in 2009, appropriations law precluded DHS from continuing contracts for facilities. In the two most recent overall performance ratings evaluations received are less than adequate. In the last five years, are you aware of any of the over 75--72-hour facilities that has received an overall final rating of less than two adequate--less than adequate? Did your inspections--

NAKAMOTO: --Are you asking me if we have any--

WATSON COLEMAN: --I'm asking you if you have knowledge of any of these facilities--of any facilities that you all are responsible for inspecting that has received an overall final rating of less than adequate?

NAKAMOTO: Yes.

WATSON COLEMAN: How many?

NAKAMOTO: Six this year alone.

WATSON COLEMAN: And what did you do with that--with those findings?

NAKAMOTO: We put them in the report and submit it to ICE.

WATSON COLEMAN: And what has happened in those facilities?

NAKAMOTO: Well, one that I know off of the top of my head had a follow-on that we went back after they established a corrective action plan, and our team goes back in after so many days. And we have to go in and inspect it again.

WATSON COLEMAN: Let me ask you a question real quick. Do you know--

TORRES SMALL: I apologize. I'm--

WATSON COLEMAN: I have 16 seconds--19 seconds.

TORRES SMALL: You're 20 over.

WATSON COLEMAN: Over, oh.

TORRES SMALL: I'm sorry. Thank you so much, Ms. Watson Coleman.

WATSON COLEMAN: Thank you. I yield back.

TORRES SMALL: The Chair recognizes--sorry. The Chair recognizes for five minutes the gentlewoman from Nevada, Ms. Titus.

TITUS: Thank you. I'll yield some time to Ms. Watson Coleman, so she can finish her question.

WATSON COLEMAN: Thank you to my colleague. I just wanted to know any of these facilities were facilities that had two--two ratings--two sequential ratings of less than adequate, and--and if so, is--are they not supposed to lose their ability to serve in this capacity and to your knowledge have any of them. That's my question. Thank you.

NAKAMOTO: I don't know. I could get that information and submit it for the record.

WATSON COLEMAN: Thank you.

NAKAMOTO: I don't have that information in front of me.

WATSON COLEMAN: Thank you, thank you.

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TITUS: Reclaiming my time. Thank you. Ms. Hawkins, last month, your organization POGO released a report on the increased use of solitary confinement or segregation it's called by ICE. According to the report, the Henderson detention center, which is in southern Nevada, was among the top 15. They used segregation 121 unique times, 121 unique placements, and 16 of those placements lasted more than 75 days. I wonder if you could explain what ICE detention standards dictate regarding the use of segregation and if you're aware of any waivers that were granted by ICE for compliance with the standards?

HAWKINS: Thank you for your question. I can probably speak more generally to ICE's waiver process and segregation standards than specifically regard to the Hendersonville facility.

TITUS: Okay.

HAWKINS: In general, the--in 2013, ICE directed that facilities reform their practice on segregation, improve reporting on when vulnerable detainees are placed in segregation or anyone is placed for a long period and try to use it only as a last resort. They also recommended that facilities try to--when a detainee is held in administrative segregation, protective custody or for health reasons or other reasons that are not punishment for a disciplinary infraction, that they should receive the same privileges that detainees in the general population receive, which would mean they don't spend 23 hours locked in their cell.

We've found speaking to former ICE officials and inspectors and others that that--that exception has--that has not been implemented. Most facilities say that it's just not practical for them to give people privileges in administrative segregation, and you know, most ICE facilities are jails, and county jails, you know, they just continue to have segregation means solitary. And so, that provision isn't being adequately implemented.

TITUS: So, is that when they grant a waiver? Are there any standards for granting waivers?

HAWKINS: I don't know if--I think I would need to examine the more detailed inspections on the use of solitary. I don't know if they're in--I know that on DHS website there's now a list of waivers, and I don't know if it's one of those or if it's just a general practice, where it's found to be technically compliant with the standard because the detention standards do tend to have some flexibility in their language.

TITUS: Is this something, Ms. Nakamoto, that you--you check when your inspectors go out and look into the use of solitary confinement?

NAKAMOTO: We do. There are standards. Within ICE standards, there are standards that are for segregation, and our staff go through and ensure that the standards are within compliance at the facilities.

TITUS: Do you find those numbers kind of high? 121 placements, and 16 of them lasting more than 75 days over just a year and a half?

NAKAMOTO: Well, segregation and solitary confinement are not the same.

TITUS: Okay. Well, how about explaining to me what the difference is?

NAKAMOTO: Well, segregation is--there's--there's different variances of--of segregation. It could be for disciplinary. It could be for administrative. There's different types, and then within those types, there's different components within the standards.

TITUS: It didn't seem to me you know very much about this business. I--my time is up.

TORRES SMALL: And we'll do another round. I appreciate it if folks would stay if they have other questions. I--I want to follow up on announced versus unannounced visits. Ms. Nakamoto, when you conduct an inspection for ICE, how much notice does a facility get?

NAKAMOTO: I believe 60 days. 30 days.

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TORRES SMALL: Okay. Ms. Hawkins, when conducting an inspection of a detention facility, is it better to announce the visit ahead of time or to conduct the inspection unannounced?

HAWKINS: Other things being equal, it's better to conduct an unannounced inspection. There's--as you mentioned in your opening statement, there's a tendency to clean things up before the inspectors arrive. One caveat to that, I know that the--the Office of the Inspector General conducts unannounced inspections that have been very valuable in bringing poor conditions to light.

The Office of Civil Rights and Civil Liberties does tend to announce their--their inspections further in advance, but they do so in part because they bring independent experts along, and so, part of why they announce the inspection is to request that medical files be pulled for the medical inspector to interview to make sure that they're able to speak with the clinical staff.

And they are doing a really in-depth look. They--they do many fewer inspections than Nakamoto Group does, and so, there can be a place for inspections announced in advance, but if it's going to be a quick check to, you know, check the food, check the cleanliness of the cells, things of that nature, it's much better to be unannounced.

TORRES SMALL: Thank you, Ms. Hawkins. Committee staff recently visited a few ICE detention facilities in Mississippi and Louisiana. Staff heard from detainees that prior to their arrival walls were painted, new curtains were put up, and even flowerbeds were placed outside. Do you think it's wise to give facilities advance notice when conducting these inspections, Ms. Nakamoto?

NAKAMOTO: Well currently, we have a--another contract with the US Marshall Service where we don't announce.

TORRES SMALL: And do you think that's better?

NAKAMOTO: We just do what the--that contract does unannounced visits, and this--or unannounced inspections, and this contract does announced inspections. It's ICEs--we kind of do what it says in our contract. So, they--they announce--it's their--

TORRES SMALL: So given your experience inspecting facilities, do you find that you've more regularly determine the true conditions of a facility if you are unannounced?

NAKAMOTO: I think so.

TORRES SMALL: Thank you, thank you. I'll yield the rest of my time and recognize the gentleman from Texas for five minutes, Mr. Crenshaw.

CRENSHAW: Thank you, Madam Chairwoman. Ms. Nakamoto, have you ever recommended that a facility no longer be utilized by ICE or made specific recommendations about what must be improved at a facility? Just trying to get a sense of the process there.

NAKAMOTO: Okay, so what we do is we provide a recommendation based on whether or not the facility met the standards, the components within the standards, met the standards. To answer Ms. Titus' question, I believe, none of the failed two consecutive inspections--none--we've never had that, but we have had where all of the detainees were removed after a failed inspection. We--so, we recommend on every of our--all of our reports what the final recommendation is based on however many components they met or did not meet.

CRENSHAW: Okay, but what were some of the more serious examples that you--you would cite? It's good for everybody to understand the--

NAKAMOTO: --Like life safety issues, medical issues. Their food--food. Those are the major things. If there's a life safety issue, then it would--

CRENSHAW: --What would--what would be an example of a life safety issue?

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NAKAMOTO: Well, I don't know the standards by heart.

CRENSHAW: Okay.

NAKAMOTO: But if there's--there's certain rules within the life safety issue that--or the life safety standards--like for example, fire drills. They're supposed to do fire drills a certain way, a certain time, a certain amount of times throughout the year. So, I mean, that's just like an example of one--

CRENSHAW: --Okay--

NAKAMOTO: --Things that they have--their safety inspector has to go through.

CRENSHAW: The reason I ask for examples is because it's important to realize if we're saying--when you say the words life safety, that could mean something very extreme. When you say fire drills, it's a little less extreme. So, I just really trying--that's why I'm trying to get at some examples here, and if you don't have any, we--we don't have any.

Going back to the scope, I mean, one of the main problems it seems and one of the reasons there was a report in the first place is because the Office of Detention Oversight finds additional deficiencies in the same facilities that the Nakamoto Group did not. You have a much broader scope than they do. Can you speak to that? Is that the right way to do things? Should--should the scopes be similar? Is it better than they're different in order to--because there's overlap? What--what's your general take on the scope of inspection for Nakamoto Group, as per the contract?

NAKAMOTO: Well, comparing our inspection compared to their inspection, it's my understanding that their inspection is more targeted based off of something that--if our report says that it doesn't--they don't meet the standards within this many standards or whatever, then they send their team in. But their--the difference is is that they're sending in more people to inspect for less standards and less components because it's a more targeted--targeted inspection of--

CRENSHAW: I see, and--and does that make your job more difficult when you have a much broader scope?

NAKAMOTO: I don't think it makes our job difficult. We have access to those reports. If there has been an--an ODO inspection at the facility we're going to, we get--we get the report. So, we can see whatever findings they found to make sure that they've--

CRENSHAW: Yeah, I--I guess the question is about thoroughness. You know, if your--if your scope is so much more broad than--than ODO's, is--is there a lack of depth within the inspection that--that is subsequent to that scope?

NAKAMOTO: We think the scope--for our scope of work, it--it talks to the whole amount of standards, all of the ICE detention standards. They created all of these standards, and they all must be reviewed annually. The targeted inspections are just that, targeted. So, they're only looking at a certain--

CRENSHAW: --I see. You're saying that you're comparing apples and oranges to an extent.

NAKAMOTO: Yes.

CRENSHAW: Okay. Thank you. Thank you, Madam Chair. I yield the rest of my time.

TORRES SMALL: Thank you. The Chair now recognizes for five minutes the gentlewoman from New Jersey, Ms. Watson Coleman.

WATSON COLEMAN: Thank you. Ms. Nakamoto, your inspections are annual, which means that these facilities know that you're coming just once a year, right, and you're there for three days?

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NAKAMOTO: Yes.

WATSON COLEMAN: And do you go like clockwork? Is it a year--a year from the time you went before? They can sort of anticipate when you're coming, even if you don't call them and tell them.

NAKAMOTO: Well, we receive our schedule from ICE.

WATSON COLEMAN: Okay, okay. Tell me--can you tell me really quickly--can you list together federal agencies you have a similar contract with, some which you do inspections without notifying people in advance? What other agencies do you--you have contracts with?

NAKAMOTO: US Marshall Service.

WATSON COLEMAN: And that's it?

NAKAMOTO: Yes.

WATSON COLEMAN: That's the only other one.

NAKAMOTO: Yes.

WATSON COLEMAN: Okay. In December of 2018, a letter to members of the Senate, you quite aggressively disputed some of OIG's reporting. In fact, the letter pulls quotes of your inspection of the Adelanto facility directly response to some of the OIG findings. For example, you alleged that the OIG findings in the Adelanto facility regarding hanging nooses, or whatever you want to call them, and inadequate dental care was inaccurate and an embarrassment to their office and ICE. Is it part of your contract with ICE to refute findings that the OIG or other groups find in their inspections of facilities? That's a yes or a no.

NAKAMOTO: No.

WATSON COLEMAN: You also said in your letter that reports can include only that which was verified while we were on-site, notwithstanding any changes that may have occurred before or after the inspections. If your inspectors were at Adelanto in October 2018, how could you then dispute that was--that which was observed by the OIG five months earlier? For example, you claimed the OIG was wrong in noting that a detainee in a wheelchair had not left his wheelchair since his recent arrival and had not accessed any of the hygiene products in the bag given to him, but your inspectors were not present for that inspection. So, how could you possibly claim that the OIG's findings were--were not true?

NAKAMOTO: Because my staff went back and looked at the actual records.

WATSON COLEMAN: Did you see the man sitting in the wheelchair, or had he been moved?

NAKAMOTO: They asked--

WATSON COLEMAN: --Five months later, ma'am. Five months later. Finally, your letter says that DHS ICE detention program has dedicated significant resources, they certainly have, to ensure the proper care of ICE detainees and compliance with the standards. Do you think that it is appropriate for your company to make that kind of statement that suggests ICE is doing everything properly, even though I know that you're particularly a beneficiary of their resources? Do you believe that that's a reasonable position for you to take? It's kind of a yes or no. Can I take your silence as a yes or a no?

Ms. Hawkins, are you familiar with the Nakamoto letter?

HAWKINS: Yes, I--

WATSON COLEMAN: --Did you all have a position on it, whether or not it raised concerns about their objectivity?

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HAWKINS: I--it did strike me as--as strange to see a criticism of a previous inspection in the Nakamoto inspection. I looked into this a bit when I wrote an article on--on the ICE inspections, which was published earlier this year, and one of the criticisms that Nakamoto made of the OIG inspections were that OIG didn't have people with experience in detention or corrections. And when I asked around, people said, well, that's true.

It is possible that OIG got certain details wrong or misunderstood things, but then--so, that's why it was so striking to see the reports from the Office of Civil Rights and Civil Liberties, which were from before both the OIG report and the subsequent Nakamoto report, and if anything, they were more critical than the OIG was.

TORRES SMALL: Thank you both for your testimony. I'm now going to welcome our second panel of witnesses and thank--thank you for joining us today. Our first witness is Ms. Diana Shaw, Assistant Inspector General for Special Reviews and Evaluations at the DHS Office of the Inspector General. Prior to serving in this role, Ms. Shaw served (OFF-MIC) I'm sorry, I apologize. We'll wait until you're seated.

All right, thank you so much. I apologize for the early jumpstart here. I--I now welcome our second panel of witnesses, and I thank you for joining today. Our first witness is Ms. Diana Shaw, Assistant Inspector General for Special Reviews and Evaluations at the DHS Office of Inspector General. Prior to serving in this role, Ms. Shaw served in several leadership positions within the OIG, including AIG for Legal Affairs, Acting Council to the IG, Director of the Special Reviews Group, and Acting AIG for External Affairs.

Our second witness, Mr. Tae Johnson, is the Assistant Director for Custody and Management, Enforcement and Removal Operations at ICE. Mr. Johnson began his career with former Immigration and Naturalization Service in 1992. Since transferring to ICE headquarters in 2007, he has served in a number of leadership roles, including as Chief of Staff for the Office of Detention Policy.

Without objection, the witnesses' full statements will be inserted into the record. I now ask each witness to summarize his or her statements for five minutes, beginning with Mrs. Shaw--Ms. Shaw.

SHAW: Chairman Torres Small, Ranking Member Crenshaw, and members of the subcommittee, thank you for inviting me to discuss OIG's recent work regarding oversight of ICE detention facilities. ICE is responsible for overseeing the administrative detention of tens of thousands of removable (PH) aliens. As of this summer, ICE had approximately 54,000 beds occupied across approximately 200 detention facilities nationwide.

These facilities are governed by standards that aim to establish consistent conditions of confinement in the ICE detention system. In an effort to ensure compliance with these standards, ICE has developed a multi-layered approach to detention oversight, which includes a combination of on-site monitoring and inspections performed by ICE personnel and contracted service providers. These oversight activities have resulted in the identification and correction of numerous instances of noncompliance with detention standards.

However, the volume of new and repeat deficiencies identified through the OIG's independent inspections raises questions about the overall effectiveness of ICE's multi-layered oversight approach. Since fiscal year 2016, the OIG has been conducting unannounced inspections of ICE detention facilities. These unannounced inspections have identified a range of deficiencies, including unreported security incidents, dangerous mishandling of food, dilapidated physical conditions, and unaddressed security risks.

For instance, the OIG staff found that staff at the Essex County Correctional Facility in New Jersey had failed to report to ICE a loaded handgun discovered by a detainee in a facility bathroom. At the Adelanto processing center in California, a facility at which at least seven suicide attempts by hanging were made in less than a year, OIG inspectors observed braided bedsheets, referred to as nooses by center staff and detainees, in 15 of the 20 cells we visited.

Serious issues like these raise questions about the effectiveness of ICE's multi-layered approach and prompted the OIG to review the entities involved in providing oversight at each layer. At one layer is the Nakamoto Group, a private company with which ICE contracts to annually inspect facilities holding ICE detainees. At the time of our

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review, Nakamoto was inspecting about 100 facilities per year to evaluate compliance with 39 to 42 detention standards.

ICE's Office of Detention Oversight or ODO provides another layer of oversight. At the time of our review, ODO was inspecting approximately 30 facilities per year to determine compliance with 15 to 16 core standards. Finally, ICE stations detention service manager or DSMs on site at select facilities to continuously monitor compliance with standards. The OIG's work has revealed shortcomings within each layer of this system.

For instance, the inspection scope outlined in ICE's contract with Nakamoto is much too broad to ensure thorough inspections. As a result, Nakamoto's inspections do not always fully examine actual conditions at the facilities or identify all compliance deficiencies. In contrast, ODO inspections are narrower in scope and use effective methods to thoroughly inspect facilities. However, ODO's inspections are relatively infrequent, making it difficult for ODO to ensure that facilities are addressing all deficiencies.

Finally while the DSMs providing on-site monitoring at facilities frequently identified deficiencies and proposed corrective actions, they have no authority to compel implementation of those actions. As a result, it falls to ICE field offices, some of which may be resistant to working with the DSMs, to implement necessary changes. The challenges the OIG has identified at each layer of ICE's oversight system render the overall approach less effective than it otherwise could be.

Meanwhile, ICE continues to spend millions of dollars on detention oversight without achieving comprehensive, consistent compliance. ICE can and should be doing more. For instance, ICE does not fully utilize tools available to it to drive compliance among its contractors. Our recent review of ICE's management of detention contracts found that ICE is failing to use quality assurance tools and impose consequences for contract noncompliance. Moreover, we found that instead of holding facilities accountable through available financial penalties, ICE frequently issued waivers to deficient facilities, exempting them from having to comply with detention standards.

Until ICE fully implements appropriate corrective action, ICE's multi-layered approach to oversight will not be as effective as it needs to be. Ms. Chairwoman, this concludes my testimony, and I'm happy to answer any questions you or the subcommittee may have.

TORRES SMALL: Thank you. I now recognize Mr. Johnson to summarize his statement for five minutes.

JOHNSON: Chairwoman Torres Small, Ranking Member Crenshaw, and distinguished members of the subcommittee, thank you for the opportunity to testify today regarding ICE's oversight of its detention facilities. ICE's Enforcement and Removable Operations manages and oversees the nation's immigration detention system, excuse me, one of the most highly transient and diverse populations of any detention or correctional system in the world.

Detainees placed in ICE custody represent virtually every nation on earth, have various security classification and threat levels, and often arrive in ERO custody with complex medical and--complex detention and medical needs. ERO takes the health, safety, and general welfare of its detained population extremely seriously and is committed to continually evaluating and improving the care of detainee--the care detainees receive.

Through a robust inspection's program, the agency ensures detention facilities used to house ICE detainees do so in accordance with ICE national detention standards, which are often much more rigorous than those that apply to other detained populations. These standards were promulgated in cooperation with ICE stakeholders, the American Correctional Association, and representatives of non-governmental organizations to ensure that all individuals in ICE custody are treated with dignity and respect and provided the best possible care.

ICE uses three sets of detention standards for its adult detained population: The National Detention Standards, NDS 2000; Performance-Based National Detention Standards, PBNDS 2008 as well as the PBNDS 2011. All ICE detention standards specify the living conditions appropriate for detainees and help to ensure a safe and secure

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environment and cover such areas such as medical care, food service, environmental health and safety, segregation, the use--access to legal and religious services, as well as visitation.

ICE's requirements exceed industry standards, which is evident from the large number of local jails who are unwilling to meet ICE's more rigorous requirements and have instead elected to detain other populations. PBNDS 2011 was recently revised in 2016 to include important update--updated standards on disability identification, assessment and accommodation, as well as medical care for women.

To ensure ICE's detention facilities meet the requisite standards, ICE provides oversight through a multi-layered inspection--inspections and monitoring program. ICE conducts annual and biannual inspections of all facilities over a certain population and utilizes a self-inspection process for facilities with small populations or those that house detainees for under 72 hours. Additionally, the ICE Office of Detention Oversight, the DHS CRCL, and the DHS OIG all conduct reviews and inspections and have open access to ICE detention facilities.

ICE has also enlisted the services of the Nakamoto Group to inspect facilities around the country. This includes annual inspections, pre-occupancy inspections, special reviews as ordered by ICE, using the applicable detention standards. Contract inspectors typically spend three days auditing each facility and--and in addition to an environmental health and safety subject matter expert. They also employ the services of a health professional and a detainee rights subject matter expert.

When--when deficiencies are found during any type of inspection, ERO works with field offices and facilities to ensure timely and corrective actions are implemented. ICE greatly appreciates the work conducted by the OIG regarding the inspection process and carefully evaluates its recommendations. In a June 26, 2018, report entitled, ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements, OIG made five recommendations with which ICE concurred and which have been used to implement improvements to our inspections process.

In response to OIG's findings, ICE is reevaluating the existing inspection scope and methodology in the statement of work for its inspections contract to ensure inspection procedures are adequately and appropriately to fully evaluate detention conditions. ICE has also created a quality assurance team, consisting of seasoned federal employees to perform quality assurance reviews of ICE's contract inspections during each annual inspection.

ICE is also developing follow-up inspections processes for select facilities where egregious or numerous deficiencies identified, updating and enhancing current procedures to ensure verification of all corrective actions, including better tracking of all corrective actions by facility and responsible field office, as well as developing protocols for ERO offices to require facilities to implement formal corrective action plans resulting from deficiencies identified from its on-site monitors.

ICE understands the immigration--

TORRES SMALL: --Mr. Johnson, your time is expired if you want to conclude with a sentence.

JOHNSON: Sure. It's--thank you for the opportunity to testify today regarding this important matter, and I look forward to answering any questions you guys may have. Thanks.

TORRES SMALL: I thank all of the witnesses for their testimony, and I'll remind each member that he or she will have five minutes to question the panel. I'll now recognize myself for questions. We've been talking a lot about the 600 elements in the scope of work, and this differs--this process for Nakamoto differs from the Office of Detention Oversight or ODO, which has a much narrower scope of inspection and allows them to more deeply assess the health and safety of detainees.

OIG's recommendations for ICE is to revise the inspection scope and methodology for contracted inspectors within ICE's statement of work. Ms. Shaw, do you believe that ICE's current statement of work keeps its contractors from fully complying with its oversight responsibilities?

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SHAW: So based on our observations related to that report, we found that it was an incredibly challenging goal that had been set for the inspectors. To try to review the full scope of the 39 to 42 applicable standards in a three-day period with a four-to-five-person team is a tall order. Based on, you know, our experienced and highly-trained staff, I think they felt that they too would have struggled to try to meet those goals. So, the statement of work--the breadth of the statement of work makes it very difficult to--to get any sort of a deep dive into some of these issues.

TORRES SMALL: Should ICE revise its statement of work to ensure quality inspections to assess compliance with detention standards? You don't have to go for--you can just say yes if that's--

SHAW: --Yes, that's our recommendation.

TORRES SMALL: Great. Have you seen any plans to amend the new statement of work that satisfies your recommendations?

SHAW: That recommendation continues to be open and--and treated resolved, meaning that we are continuing to work with ICE on their corrective action. We've seen iterations, possible ways that they might revise the scope, but nothing definitive has been decided at this point. And based on our most recent update, because they are putting out requests for proposals on that contract, I think that will potentially slow down the process slight.

But we would continue to suggest that regardless of who their contractor is they need to revise that--that statement of work to ensure that they're getting detailed findings.

TORRES SMALL: Now when you say it would slow down the process, you mean the RFP would go out without changing the scope of work, and there might be a new contract without changing the scope of work?

SHAW: So, I'm--I'm speaking based on our understanding from what we've been hearing from ICE, but the--the latest update that we've received was that they were putting out a request for proposal. And so, they--they had not provided a new update on the status of their revisions to the statement of work.

TORRES SMALL: Does that concern you?

SHAW: I think just based on the little bit that I know about how contracts are done, I think it is important to have a clearly defined statement of work, at least in mind, when you're going through that process, but I defer to ICE.

TORRES SMALL: Thank you, thank you. Mr. Johnson, what is the status of the plans identified by Ms. Shaw?

JOHNSON: As Ms. Shaw stated, we are in the middle of a recompetes, and the plan to increase the--or make the needed improvements in our statement of work have been sort of drafted in the current competition--or in the new competition that's coming, and we expect to do (INAUDIBLE) within the next three months.

TORRES SMALL: So, you--will you commit to finishing revising the scope of work before finishing the RFP process?

JOHNSON: Yes. The new requirements will be included in the new contract going forward, correct.

TORRES SMALL: Ms. Shaw, are you planning any follow-up work to evaluate whether Nakamoto inspections have been improved?

SHAW: We currently don't have planned work in--in that area, but it is the case that as part of our recommendation follow-up process we are consistently obtaining updates from ICE based on how well they're implementing their correction action plans. So, we would expect to get some updates through that process. We will continue our unannounced inspections program next year and visit facilities, many of which will have been reviewed by Nakamoto, and that will give us another opportunity.

And as part of our pre-inspection scoping work, we do look at what Nakamoto has found to evaluate whether we're seeing corrections when we're on-site or not.

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TORRES SMALL: Thank you, and in the short time I have left, I just want to bring up the issue of penalties versus waivers. So in two and a half years, ICE has issued only two financial penalties but offered 65 waivers, including allowing the use of spray that is 10 times more toxic than pepper spray, strip searches in nine different facilities that don't compare to ICE standards, and in my own district permitting the comingling of detainees with varying criminal histories, including, which as you mentioned, threat levels.

Mr. Johnson, what's the point of standards if--if ICE simply uses waivers to sanction noncompliance?

JOHNSON: So, I think first it's important to note that the only provisions that ICE has ever issued waivers on are things that are certainly not a health (INAUDIBLE)--

TORRES SMALL: --Mixed threat--threat levels doesn't affect health and safety?

JOHNSON: So, classification is really important for housing and for recreation.

TORRES SMALL: I apologize. I'm out of time. Thank you. I now recognize the Ranking Member of the subcommittee, the gentleman from Texas, Mr. Crenshaw for five minutes of questions.

CRENSHAW: Thank you, Madam Chairwoman. You want to just continue your answer, Mr. Johnson?

JOHNSON: Sure, thank you, sir. So historically, classification is--is generally sort of held for housing as well as recreation. Those are the areas where detainees or inmates generally are most vulnerable. In--in your specific instance, the only waiver of sort of a classification requirement had to do with whether an individual who was going from their housing unit or to the medical area needed to be escorted by an officer during--as the standards require.

So, that's an area that we've sort of waived in the past because, you know, it sort of cuts against the whole idea of civil detention to escort level 3's, and it should be really based on the threat that the particular detainee sort of poses, as opposed to just the fact that he may have had a marital dispute with his wife, and that's why the individual is classified as a level 3. So, I really think you have to just look at the specific circumstances of the waiver before you can just sort of conclude that--that--that ICE's waiver has somehow made an individual unsafe or--or vulnerable because we would never grant a (INAUDIBLE)--

CRENSHAW: Okay, so--so in that example, it's not necessarily the case that a violent criminal was put in the cell with a non-violent?

JOHNSON: That is correct. Classification, housing is what always (INAUDIBLE)--

CRENSHAW: --Is there additional explanation or circumstances to--to the other waivers that the Chairman talked about?

JOHNSON: Sure, there's a number of waivers. I mean, a lot of the waivers that we've granted are for things that, you know, are sort of written in our standards 20 years ago that are no longer sound detention practices. The most popular waiver that we grant has to do with the barbershop provision, which requires that the barbershop begin a dedicated area of the facility, that the barbershop have a--

CRENSHAW: --I know about those. I meant--I meant specifically what--what the Chairwoman interluded to. Is there additional explanation that would explain those particular waivers? I think she mentioned pepper spray and--

JOHNSON: --Yeah. I'm--I'm not familiar with the pepper spray waiver. I'm happy to take a close look at (INAUDIBLE)--

CRENSHAW: --All right, let's move on to--to the discussion of scope. So, the IG report talks about there's too much scope for the contractors. There's--there's very narrow scope for the ODO. Is the recommendation particularly to do everything like the ODO, to--to narrow the scope, or is it there some middle ground that was recommended by the IG?

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SHAW: So, our recommendation specific to ODO was higher frequency of inspections.

CRENSHAW: Higher frequency but maintain the scope that they use?

SHAW: Correct.

CRENSHAW: And do you recommend that the same scope be used for Nakamoto as well?

SHAW: We did not. We left it to ICE to revise the statement of work according to what they felt would allow them to achieve compliance in their standards.

CRENSHAW: Okay, and Mr. Johnson, so what--what is--what is ICE's position on that?

SHAW: Yeah, I mean I think our position is that we--we have 39 or 42 standards, depending on which version of the standards are applicable. We have a--

CRENSHAW: --What differentiates between those standards?

SHAW: So--so, the more robust standards, the PBNDS 2011, which are generally applicable at our dedicated facilities or facilities that house only or, for the most part, are close to nearly all ICE detainees. Our more robust standards are sort of tailored to those facilities. We have our lower version of the standards, which are the National Detention Standards, which are generally for our local jails, where we have shared populations and in many instances a relatively small ICE population compared to the overall large inmate population.

CRENSHAW: Is--is there--is there any benefit to sort of comingling the contractors with ODO to ensure I guess more consistency in--in inspections?

JOHNSON: From--from my perspective, no. I mean, I think we're--from ICE's--you know, we're getting exactly what we expect out of our inspections. We have to inspect against all other requirements. We have developed that checklist to sort of identify what we believe are the most critical elements--

CRENSHAW: --You--you like keeping those separate--

JOHNSON: --of each, correct.

CRENSHAW: And you know, just getting to the root causes of this, how--given the vast amount of detainees in custody that peaked this summer to 54,000, to what extent has that put increased pressure on--on your operations in these facilities?

JOHNSON: We have to activate a lot of new facilities. Many facilities had never held ICE detainees previously, so for those, it was a huge learning curve for them to sort of figure out and learn what the inspections required. So I mean, I'm sure for some of those folks it was a little challenging at times. So, it did impact the operations.

CRENSHAW: Thank you.

WATSON COLEMAN: Thank you. Thank you, Mr. Johnson and Ms. Shaw, for your testimony. Mr. Johnson, how many employees do you have that oversee or work with these facilities that have detainees?

JOHNSON: I have about 200 or so direct reports, and the folks that actually focus on detention, I'd say about half of those, about 100, 120.

WATSON COLEMAN: 100 to what? I'm sorry.

JOHNSON: I said 100 to 120.

WATSON COLEMAN: And they do what? You were distinguishing them as--

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JOHNSON: --Detention operations.

WATSON COLEMAN: Okay.

JOHNSON: So, they--

WATSON COLEMAN: --How many facilities are you responsible for ensuring that the standards of care are appropriate?

JOHNSON: So today, we use about 250 facilities.

WATSON COLEMAN: So, your 120 inspectors--inspection people, how do they determine which facilities? They do the smaller facilities and Nakamoto does the larger facilities?

JOHNSON: So--so, Nakamoto inspects all the facilities that we use that house people for over 72 hours. I have detention--on-site detention service managers at our largest facilities, and they--they cover about 50 facilities and--and reach about 70% of our population.

WATSON COLEMAN: And I'm sorry, did--did you tell me there are 250 facilities altogether?

JOHNSON: That is correct.

WATSON COLEMAN: And of those, have you had occasion to close any for deficiency in service, unsafe conditions?

JOHNSON: We have closed several facilities.

WATSON COLEMAN: How many is several?

JOHNSON: Over the last 10 years, I'd say--

WATSON COLEMAN: --Tell me about the last three years.

JOHNSON: Three years, I don't recall off-hand how many we've shut down.

WATSON COLEMAN: So, Nakamoto's group provides a report of their findings, right?

JOHNSON: Right.

WATSON COLEMAN: Those are recommendations to--to your department?

JOHNSON: That is correct.

WATSON COLEMAN: Okay. Do you in--under any circumstances ignore their findings and recommendations?

JOHNSON: Generally no.

WATSON COLEMAN: Generally no or never no?

JOHNSON: Normally no. I mean, I--

WATSON COLEMAN: --You have then?

JOHNSON: I mean, I recall one instance where we disagreed with a particular recommendation, and we went back to them and had a discussion and explained our position in--

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WATSON COLEMAN: So, there--there is a--there is a mention in my briefing here that there was an--an--an instance where ICE recommendations that they came from Nakamoto to you all (INAUDIBLE) for an extended period of time, over 100 days. Is that--does that come to your recollection?

JOHNSON: So, I'm--vaguely, I do remember a statement that seemed to suggest that there was an inspection that was sort of sitting in a draft status for an extended period of time.

WATSON COLEMAN: What is the amount of time that these recommendations stand waiting for a response from you all? Do you have a requirement in terms of response time?

JOHNSON: There is no requirement. I mean, I think folks generally try to get those reports finalized sooner rather than later, but there could've been a technical issue with--with the--

WATSON COLEMAN: --So, what is the follow-up on telling a facility that it has x number of violations and that they have to clean them up? What is the process for follow-up?

JOHNSON: So once the report is finalized, a uniform corrective action plan is generated. That is sent to the field office and the facility. For--for any serious life safety issue, they're required to come up with a corrective action plan in--in short order. I think it's a week, maybe two weeks--for any sort of regular sort of--

WATSON COLEMAN: But no, my question is when you have these deficiencies brought to your--your attention and you tell the facility you have x number of days or whatever to correct it, what is your follow-up to ensure that what you tell them to do they do?

JOHNSON: So at our DSM staff facilities where we actually have on-site staff, we have a presence there, and we can ensure that the things they said they were going to do were, in fact, done.

WATSON COLEMAN: How many facilities have on-site staff?

JOHNSON: About 50--50 (INAUDIBLE)

WATSON COLEMAN: Now, are they like full-time in that one facility?

JOHNSON: These are full-time folks that spend the overwhelming majority of their time. Now, they could have another facility close by that they have to provide roving coverage of, but generally, they are (INAUDIBLE)--

WATSON COLEMAN: --In--in the last couple of years, have you all used your financial penalties to get a facility to do what you needed them to do to meet the standards?

JOHNSON: We have, and--

WATSON COLEMAN: --And so, how many?

JOHNSON: More than two. I heard earlier that that only occurred twice. It's at least been 10, 15 that I'm aware of, but we could get you an exact number.

WATSON COLEMAN: I've asked Mr. Crenshaw if he wanted a second round, and he said that it wasn't necessary, so I'm going to indulge myself a minute. I'm not quite sure why we're having all this consternation about inspections of facilities meeting standards and whether or not the standards are relevant or they're not the scope of the standards are doable and make sense and why we don't have the kind of follow-up that we're supposed to have. So, my question to you, Ms. Shaw, do we need extra people, or do we need streamlining of operation, or do we need better equipment?

SHAW: I think based on our recommendations the primary issue that we have is--is really a process one, ensuring that there is adequate follow-up, that there's documentation to support claims by the facilities that they've implemented corrective action. So, they need a more robust process for ensuring follow-up.

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WATSON COLEMAN: Does that mean that you need more staff, sir?

JOHNSON: I'd like to have more staff at our larger facilities to make sure we have that on-site presence--presence to monitor conditions each day. So certainly, the staff would be welcome.

WATSON COLEMAN: Okay, my last question. How do you do quality control checking of your contract E(ph) Nakamoto?

JOHNSON: So, what I would say is 10 years ago, the government used to inspect its own facilities, but after a lot of criticism about--

WATSON COLEMAN: --No, my question is, how--what do you do to ensure that Nakamoto is doing the job you contracted them to do.

JOHNSON: So--so today, we have seasoned federal employees that accompany Nakamoto on every inspection. They have a role in the inspections process, but they will, from this point forward, be monitoring the--the inspector to make sure that they're providing the services that we're paying for.

WATSON COLEMAN: Thank you, Mr. Johnson. Thank you, Ms. Shaw and Mr. Johnson and to the witnesses in our first panel. Thank you for being here and taking our questions and giving us your testimony. Before adjourning, I'd ask for unanimous consent to submit statements to the record from the American Civil Liberties Union, the Detention Watch Network, the American Immigration Council, the National Immigration Justice Center, the Government Accountability Project, the Southern Poverty Law Center, the Transgender Law Center, and the Asian-American Advancing Justice.

Without objection, so admitted. The members of the subcommittee may have additional questions for the witnesses, and we may ask that you respond expeditiously in writing to those questions. Without objection, the committee record shall be kept open for 10 days. Hearing no further business, the subcommittee stands adjourned.

Classification

Language: ENGLISH

Subject: US DEMOCRATIC PARTY (90%); INSPECTIONS (89%); TALKS & MEETINGS (88%); PRISONS (72%); IMMIGRATION (66%); CORRECTIONS (50%)

Person: XOCHITL TORRES SMALL (92%); DINA TITUS (79%); CLAY HIGGINS (79%); BONNIE WATSON COLEMAN (57%); BENNIE THOMPSON (57%); MIKE ROGERS (57%); NANETTE BARRAGAN (57%); WILLIAM LACY CLAY JR (56%); DAN CRENSHAW (56%)

Geographic: TEXAS, USA (90%)

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