

NWDC CONDITIONS RESEARCH UPDATE

THREE YEARS OF CLEANLINESS CONCERNS,
NO CONSEQUENCES

UNIVERSITY *of* WASHINGTON

CENTER FOR HUMAN RIGHTS

HENRY M. JACKSON SCHOOL OF INTERNATIONAL STUDIES

**NWDC Conditions Research Update:
Three years of cleanliness concerns, no consequences**

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The University of Washington Center for Human Rights is committed to interdisciplinary excellence in the education of undergraduate and graduate students in the field of human rights; promoting human rights as a core area of faculty and graduate research; and engaging productively with local, regional, national, and international organizations and policymakers to advance respect for human rights.

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EXECUTIVE SUMMARY

Documents provided to UWCHR under FOIA reveal that despite voicing concerns about cleanliness at the NWDC multiple times over the course of three years, ICE chose never to sanction GEO for failing to comply with its contract to operate the Northwest Detention Center.

This, cross-referenced with other ICE and GEO documents UWCHR has reviewed, reveal that despite receiving credible information about conditions at the facility that threatened the health and well-being of those detained, and despite the complaints of its own employees, ICE repeatedly failed to invoke its contract enforcement mechanisms to force GEO to comply with basic cleanliness standards. Records show the situation persisted for three years and resulted in what ICE employees deemed an unsafe working environment. If ICE's employees felt unsafe, it is unsurprising that the people forced to live in that environment have repeatedly expressed grave concern.

INTRODUCTION

In recent years, concerns about conditions at ICE's Northwest Detention Center¹ in Tacoma have mounted among many local community members² and their elected representatives in city³, state, and federal⁴ government.

Federal and state courts have adjudicated cases stemming from alleged abuses, and the Washington state legislature has passed two significant laws, HB 2596 (2020) calling for a study to examine the feasibility of local government exercising oversight of health and safety at the facility⁵, and HB 1090 (2021) mandating the closure of private detention centers including the NWDC⁶.

In this context, in fulfillment of our mandate to inform the public as well as policymakers on issues of human rights concern, including immigrant rights in our state, the UWCHR launched a multi-part investigation of human rights concerns at the facility in 2020.⁷ Past

1 In recent years, ICE has renamed the facility the "Northwest ICE Processing Center," although it remains better known by its earlier name and is still occasionally referred to as the Northwest Detention Center in ICE documentation.

2 For examples, see La Resistencia, "With NWDC a 'Tinderbox' for COVID-19 Outbreak, Detained People Begin Mass Hunger Strike to Highlight Their Plight," March 28, 2020, <https://laresistencianw.org/wp-content/uploads/2020/03/Hunger-Strike-Press-Release.pdf>; La Resistencia NW, Twitter Post, November 23, 2021, <https://twitter.com/ResistenciaNW/status/1463353027385909257>; La Resistencia, "#FreeThemAll," filmed 2022, <https://twitter.com/ResistenciaNW/status/1485709031922569217>.

3 Luna Reyna, "Movement to Shut Down Northwest ICE Processing Center Finds a New Ally in the Tacoma City Council," *South Seattle Emerald*, September 25, 2020, <https://southseattleemerald.com/2020/09/25/movement-to-shut-down-northwest-ice-processing-center-finds-a-new-ally-in-the-tacoma-city-council/>.

4 4. U.S. Congresspeople have called for inspections and investigations, apparently without result. See for example, Letter from Gov. Jay Inslee to U.S. Department of Homeland Security Acting Inspector General John V. Kelley, November 28, 2018, <https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2023/02/InsleeKelly20181128.pdf>; Letter from U.S. Senator Maria Cantwell to U.S. Department of Homeland Security Inspector General Dr. Joseph V. Cuffari, November 28, 2018, <https://www.cantwell.senate.gov/imo/media/doc/10.23.19%20NWDC%20Letter%20To%20DHS%20Inspector%20General.pdf>.

5 Washington State Legislature, House, *An act relating to private detention facilities; adding a new 2 chapter to Title 70 RCW; creating new sections; and declaring an emergency*, House Bill 2576, 66th Legislature, introduced in House January 15, 2020, <https://app.leg.wa.gov/billsummary?BillNumber=2576&Year=2019&Initiative=false>.

6 Washington State Legislature, House, *An act relating to private, for-profit detention facilities; 2 adding a new chapter to Title 70 RCW; creating a new section; and declaring an emergency*, House Bill 1090, 67th Legislature, introduced in House January 11, 2021, <https://app.leg.wa.gov/billsummary?BillNumber=1090&Initiative=false&Year=2021>.

7 University of Washington Center for Human Rights, *Conditions at the Northwest Detention Center* (Washington: UW

reports have examined sanitation of food and laundry;⁸ allegations of medical neglect;⁹ use of solitary confinement;¹⁰ COVID-19 and health standards;¹¹ and reporting of sexual assault and abuse.¹² This research continues to date.

Among other things, UWCHR researchers are currently examining the enforcement of conditions in ICE’s contract with the GEO Group, Inc. governing operations at the facility.¹³ This is an important area of inquiry because right now, the only existing mechanisms short of litigation to ensure that conditions at the NWDC comply with minimum human rights standards are those contained in the contract. Understanding to what extent the contract’s enforcement mechanisms provide meaningful guarantees is therefore an urgent human rights question – and one on which the present research update is intended to provide time-sensitive insights, while we work towards the production of a more comprehensive analysis of contract enforcement more generally.

EXISTING ENFORCEMENT MECHANISMS UNDER THE CONTRACT

Although contract # HSCEDM-15-D-00015 between ICE and GEO references multiple mechanisms relevant to contract enforcement, the Contract Discrepancy Report and invoice deduction system outlined in the Performance Work Statement drafted by ICE remain the primary enforcement mechanism.¹⁴ The “discrepancies” in question are those between GEO’s actions at the NWDC and the standards set out in the Performance-Based National Detention System (PBNDS), last revised in 2016.¹⁵ In addition to being enumerated in the published PBNDS, these same standards are duplicated in ICE’s Quality Assurance Surveillance Plan and each contractor’s Quality Control Plan. These plans require a process for ensuring that these standards are enforced, and this process mandates the production of certain types of records. These include Contract Discrepancy Reports, which are created by ICE officers charged with overseeing the contract – known as Contracting Officers (COs) or Contracting Officers’ Technical Representatives (COTRs) – when attempts to address the concern by speaking directly to the contractor fail to resolve matters. In some cases, Contract Discrepancy Reports that are not satisfactorily addressed by contractors can result in ICE withholding a portion of the contractor’s pay as a consequence. The threat of withheld pay is the principal incentive for compliance.

Center for Human Rights, 2020-2022), <https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/>.

8 University of Washington Center for Human Rights, *Conditions at the NWDC: Sanitation of Food & Laundry* (Washington: UW Center for Human Rights, 2020), <https://jsis.washington.edu/humanrights/2020/03/27/nwdc-sanitation-of-food-laundry/>.

9 University of Washington Center for Human Rights, *Conditions at the NWDC: Allegations of Medical Neglect* (Washington: UW Center for Human Rights, 2020), <https://jsis.washington.edu/humanrights/2020/04/16/nwdc-medical/>.

10 University of Washington Center for Human Rights, *Conditions at the NWDC: Solitary Confinement* (Washington: UW Center for Human Rights, 2020), <https://jsis.washington.edu/humanrights/2020/11/30/nwdc-solitary/>.

11 University of Washington Center for Human Rights, *Conditions at the NWDC: COVID-19 and Health Standards* (Washington: UW Center for Human Rights, 2020), <https://jsis.washington.edu/humanrights/2020/12/16/nwdc-covid/>.

12 University of Washington Center for Human Rights, *Conditions at the NWDC: Reporting of Sexual Abuse and Assault* (Washington: UW Center for Human Rights, 2022), <https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-abuse-reporting/>.

13 *Exhibit A*, State of Washington v. The Geo Group, Inc., 2017, W.D. Wash. at Tacoma, https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2023/02/NWDC-GEO-ICE-Contract-WA-v-GEO-compressed_1.pdf.

14 U.S. Immigration & Customs Enforcement Agency, *Performance Work Statement Detention Services Seattle Area Contract Detention Facility*, <https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2023/02/Performance-Work-Statement-Detention-Services-Seattle-Area-Contract-Detention-Facility.pdf>.

15 U.S. Immigration & Customs Enforcement Agency, *2011 Operations Manual ICE Performance-Based National Detention Standards*, 2011, <https://www.ice.gov/detain/detention-management/2011>.

As part of our effort to gauge the extent to which these mechanisms are being effectively used, UWCHR has filed FOIA requests for all of these types of documents, some of which remain pending¹⁶. In September 2022, UWCHR brought suit against ICE in federal district court in for failure to comply with the requirements of federal transparency law (FOIA), including in its response to these requests. In response to this lawsuit, and as part of a settlement agreement still under negotiation at the time of this writing, ICE provided 78 pages of Contract Discrepancy Forms to UWCHR in December 2022. This report update is drawn from our researchers' analysis of those forms.

FINDINGS

On November 15, 2019, ICE's Contracting Officer Representative, or person charged with overseeing the NWDC contract, issued a [Contract Discrepancy Report](#) noting that GEO's failure to carry out the janitorial services required under its contract with ICE had resulted in "unsanitary working conditions" for ICE personnel at the NWDC. "The unsanitary working conditions have been reported directly to the Contractor countless times from all government-occupied components within the facility," the COR noted, adding that concerns

included "trash not being dumped, bathrooms not being cleaned... supplies such as hand soap, paper towels and toilet paper not being provided."¹⁷ Appended to the report were a series of emails and photographs documenting maintenance failings over the span of 3 years, including at least 11 written expressions of concern from ICE personnel about the lack of cleanliness in the medical unit and at least 3 such statements regarding the lack of daily janitorial services more broadly.

Below is a typical example of such complaints:

From: [REDACTED]
 To: David Delony
 Cc: [REDACTED]; [REDACTED] Stephen Langford
 Subject: FW: Medical clinic cleaning issues
 Date: Thursday, March 28, 2019 5:07:00 AM
 Attachments: IMG_0961.JPG
 IMG_0962.JPG
 IMG_0963.JPG

Good day,

I wanted to follow up the email I sent you on the 14th. No one has cleaned the floors in the MHU at least by the nursing station. The photos I attached from 2 weeks ago remain unchanged with large dust bunnies, dirt, and stains on the floor. We need someone to clean this as soon as possible. Thank you.

[REDACTED] RN-BC, CCHP
 Assistant Health Services Administrator
 USPHS
 ICE Health Service Corps.
 Northwest Detention Center
 1623 East J Street #4
 Tacoma, WA 98421
 O: [REDACTED]
 C: [REDACTED]
 [REDACTED]@ice.dhs.gov

16 Among these requests, in August 2020 UWCHR researchers sought: 1) All Contract Discrepancy Forms (CDRs) created by ICE employees designated as COTR (Contracting Officer's Technical Representative) for the Northwest Detention Center aka Tacoma ICE Processing Center during fiscal years 2019 and 2020#. Under the terms of the Performance Work Statement HSCEDM-09-R-00003 governing the Seattle Area Contract Detention Facility, for which the contract was subsequently awarded to GEO Group, "the COTR maintains a record of all open and resolved CDRs."# As the COTR is a government employee, not a GEO employee, their records are subject to FOIA. 2) Any and all investigations undertaken by the COTR in response to deficient or at-risk performance by the Contractor noted in the CDR, for the same time period; 3) Any and all written recommendations for withholding or deductions in response to at-risk or deficient performance issued by the COTR or CO." ICE responded to this request in August 2021, indicating that 78 pages of responsible documents were available, yet inexplicably only provided access to 5 pages.

17 *Contract Discrepancy Report*, sent from Contracting Officer Representative to The GEO Group, Inc., 2019, 1, https://drive.google.com/file/d/1cRj5w8Nk1pbID_m581CebgxTXtu-MoDU3/view?usp=sharing.

Two of the complaints reference upcoming inspections – revealing that these are scheduled in advance, affording GEO and ICE opportunity to ensure things look good before inspectors arrive. Below is one example:

From: (b)(6), (b)(7)(C)
To: Stephen Langford
Cc: (b)(6), (b)(7)(C)
Subject: FW: Medical clinic cleaning issues
Date: Sunday, May 12, 2019 7:13:00 PM
Attachments: IMG_1022.JPG
IMG_1024.JPG
IMG_1018.JPG
IMG_1019.JPG
IMG_1020.JPG
IMG_1021.JPG
IMG_1023.JPG

Good day,

I wanted to update you on the status of the cleanliness of medical since your last walkthrough we did. It appears that the x-ray room and lab have been taken care of as we talked about so a big thank you for that. Unfortunately it doesn't appear that the medical rooms in intake(Mental Health) have been addressed yet so I included those photos as well. It also looks like exam #4 and the breakroom are in pretty bad shape for an inspection on Tuesday. I read the email trail from Deloney concerning waxing the breakroom at the end of this week which again is much appreciated but it will still need some mopping prior. Thank you for your assistance.

(b)(6), (b)(7)(C) RN-BC, CCHP
Assistant Health Services Administrator
USPHS
ICE Health Service Corps.
Northwest Detention Center
1623 East J Street #4
Tacoma, WA 98421
O: (b)(6), (b)(7)(C)
C: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) @ice.dhs.gov

Lastly, in the below example one of ICE's attorneys threatens to contact the health department "if you think that will get GEO to provide the required janitorial services, that I am guessing are part of our contract."

The suggestion that ICE could contact local government officials to ensure GEO's compliance is interesting, given that Tacoma-Pierce County Health Department officials have repeatedly insisted that health conditions at the facility are not their responsibility¹⁸.

18 See, for example, TPCHD Director Anthony Chen's statement to the News Tribune: "Tacoma Pierce County Health Department has no jurisdiction over the Northwest Detention Center," Josephine Peterson and Debbie Cockrell, "Q&A with Chen: Pierce County health director discusses plateau in cases, protests & more." The News Tribune, August 11, 2020. This position was reiterated and expanded upon by two of his staff members in a November 2020 conversation with UWCHR researchers, cited in our December 16, 2020 report.

From: (b)(6), (b)(7)(C)
Sent: Wednesday, April 25, 2018 6:03 AM
To: (b)(6), (b)(7)(C) @ice.dhs.gov; (b)(6), (b)(7)(C) @ice.dhs.gov
Subject: Janitorial Services

(b)(6), (b)(7)(C) we have not have janitorial services since last Friday. The trash is full, the floors need vacuuming and the bathroom is gross. We need to have daily janitorial service. This is an ongoing issue, whenever our assigned janitor is out we get no service. I am happy to contact the health department if you think that will cause GEO to provide the required janitorial services, that I am guessing are part of our contract.

Sincerely,
(b)(6), (b)(7)(C)
Assistant Chief Counsel
Seattle Office of the Chief Counsel / OPLA
Tacoma sub-office
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Tel: (b)(6), (b)(7)(C) Fax: (253) 779-6006

It is noteworthy that none of ICE's complaints reference the living or dining quarters occupied by detained people, or the consequences to the health of those receiving care in the unsanitary medical clinic, despite this being a well-documented concern of those detained¹⁹.

The Contract Discrepancy Report concludes with an implicit threat to dock 20 percent of the monthly amount paid to GEO by ICE until the situation is addressed, although there is no indication that this threat was carried out. Indeed, under the terms of ICE's contract with GEO, while ICE encourages contract officers and companies to resolve complaints informally, without recurring to a Contract Discrepancy Report²⁰, once such a report is filed it should trigger an immediate response, including investigation and corrective action plan by GEO. UWCHR requested these documents "as returned by the Contractor with notations indicating the correctional action taken or planned," but in this case, no such notation exists, nor was any correctional action plan provided in response to the Contract Discrepancy Report. Despite these apparent

19 For more on this, see University of Washington Center for Human Rights, *Conditions at the NWDC: Sanitation of Food & Laundry* (Washington: UW Center for Human Rights, 2020), <https://jsis.washington.edu/humanrights/2020/03/27/nwdc-sanitation-of-food-laundry>.

20 U.S. Government Accountability Office, "Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts," January 13, 2021, 38-39, <https://www.gao.gov/products/gao-21-149>.

failures to respond, there was also no proposal to actually withhold payment to GEO. It is unclear, from these documents, whether the cleanliness problem was rectified or not, but it is evident that despite its persistence for three years, GEO was never sanctioned under the terms of the contract.

IMPLICATIONS

When cross-referenced against other documents requested and reviewed in UWCHR's research on conditions at the NWDC, this evidence of non-enforcement becomes more worrisome. This cross-referencing shows that in 2019-2020, ICE chose to do nothing despite having credible reports from outside sources of conduct violating its standards at the NWDC – even in cases where those standards stem from federal law.

For example:

- During the early months of the pandemic, testimony in federal court revealed an apparent disagreement between ICE and GEO over the implementation of Covid precautions at the NWDC. For example, CDC and ICE standards recommended the wearing of masks; on April 6, 2020, ICE ERO requested that officers who have contact with detainees in any area of the facility voluntarily wear masks.²¹ On May 11, ICE headquarters reportedly informed ICE leadership in Seattle that GEO Corporate had agreed to implement a mandatory mask-wearing policy,²² but it was not until October 16, 2020, that GEO issued a memorandum requiring all personnel to wear masks any time they interacted with others.²³ This apparent delay, which

jeopardized the health of hundreds of detained people and which ICE officer Drew Bostock was forced to answer for in federal court, apparently did not lead to any disciplinary consequences for GEO.

- In previously-published research, UWCHR has documented failures of both ICE and GEO to comply with the requirements of the federal Prison Rape Elimination Act (PREA), also reiterated in the facility contract.²⁴ In response to multiple FOIA requests, ICE has now confirmed to UWCHR that GEO did not provide ICE with copies of any sexual abuse incident reviews conducted between 2015 and 2021²⁵, despite the requirement that such a review be conducted in every case of a reported sexual assault or abuse at the facility. Tacoma Police Department documents and ICE records show that at least 25 such cases were reported at the facility during this period.²⁶ Relatedly, ICE has confirmed to UWCHR that GEO did not provide ICE with copies of any annual sexual abuse reviews during this same period, despite the contractual requirement that such reviews be conducted and shared every year²⁷. The fact that no Contract Discrepancy

2020, <https://kuow-prod.imgix.net/store/b9f726d6b45a55b-7f99bcc2f340f5cc4.pdf>.

24 UWCHR's May 2022 report, *Conditions at the NWDC: Reporting of Sexual Abuse and Assault*, describes in detail the mechanisms required in ICE's contract with GEO regarding the documentation and investigation of sexual abuse and assaults reported at the NWDC. University of Washington Center for Human Rights, *Conditions at the NWDC: Reporting of Sexual Abuse and Assault* (Washington: UW Center for Human Rights, 2022), <https://jsis.washington.edu/human-rights/2022/05/16/nwdc-assault-abuse-reporting/>.

25 Response to Requester from U.S. Immigration and Customs Enforcement Supervisory Paralegal Specialist Brian L. Hearn to UW Center for Human Rights Director Angelina Godoy, April 5, 2022, <https://jsis.washington.edu/human-rights/wp-content/uploads/sites/22/2023/02/6.15.22-ICE-0151ICE-Response-to-Requester-No-Records-7.pdf>.

26 See University of Washington Center for Human Rights, *Conditions at the NWDC: Reporting of Sexual Abuse and Assault* (Washington: UW Center for Human Rights, 2022), <https://jsis.washington.edu/humanrights/2022/05/16/nwdc-assault-abuse-reporting/>.

27 Response to Requester from U.S. Immigration and Customs Enforcement Supervisory Paralegal Specialist Meronica D. Stoney to UW Center for Human Rights Director Angelina

21 *Declaration of Drew H. Bostock*, Castañeda Juarez v. Asher, Case No. 20-cv-700-JLR-MLP, W.D. Wash., May 15, 2020, <https://www.wawd.uscourts.gov/sites/wawd/files/20-700-63.pdf>.

22 Ibid.

23 *Declaration of Drew H. Bostock*, Castañeda Juarez v. Asher, Case No. 20-cv-700-JLR-MLP, W.D. Wash., October 22,

Reports were filed despite GEO's repeated failure to comply with these requirements derived from PREA – arguably the strongest of all ICE's standards – cannot but suggest that ICE is uninterested in using the power it could wield to bring GEO into compliance with the terms of its contract.

Ultimately, the standards ICE inscribes in its PBNDS and upon which it bases its contracts are guidelines, not laws. The agency says it expects facilities like the NWDC to adhere to these standards, but there is no legal requirement that they do so, and when violations are

identified, ICE independently decides what, if anything, to do in response.²⁸ As the ACLU has written, "Despite the explosive growth in immigration detention in recent years, there are no regulations or enforceable standards regarding detention conditions, including medical treatment, mental health care, religious services, transfers, and access to telephones, free legal services, and library materials."²⁹

Godoy, May 23, 2022, <https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2023/02/6.15.22-ICE0153-no-records-ICE-Response-to-Requester-No-Records-6.pdf>

28 See U.S. Department of Homeland Security Office of Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, OIG-18-67, June 26, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.
29 "Immigration Detention Conditions," ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/immigration-detention-conditions>.

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