



Fact Sheet: Immigration Detention in the United States

The United States maintains a system of detention facilities designed to hold individuals awaiting deportation and those suspected of visa violations, illegal entry, or other civil immigration violations. Globally, this system is the largest of its kind, [growing twentyfold since 1979](#), and [expanding by 75%](#) in the first decade of the 21st century alone.

What agencies carry out the detention of immigrants?

The U.S. Department of Homeland Security's (DHS) offices of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) each detain immigrants who have committed or are suspected of committing civil immigration violations.¹ CBP typically holds migrants for short durations at processing centers and ICE holds migrants for longer periods of time.

Separately, unaccompanied alien children (UAC) are placed with the Office of Refugee Resettlement (ORR), which is part of the U.S. Department of Health and Human Services (HHS). The federal government does not include those in ORR custody in their immigration detention statistics.

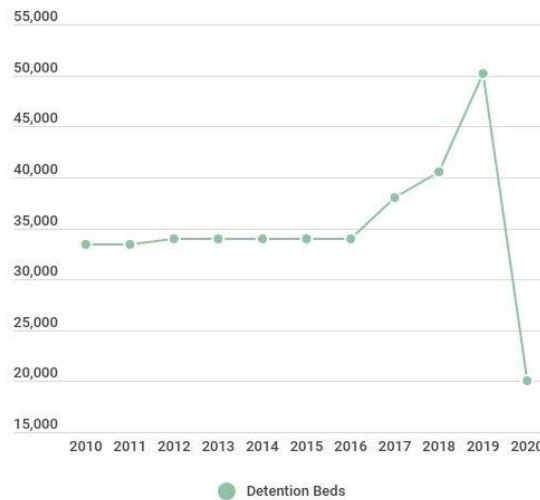
ICE Detention

- Beginning in 2009, Congress has [mandated](#) that ICE maintain a minimum number of detention beds through congressional appropriations for DHS. This daily requirement, known as the national detention bed quota, [remained](#) between 33,400 and 34,000 from fiscal year (FY) 2010 to FY 2016 and has risen from FY 2017 to FY 2020 and returned to 34,000 in FY 2021. On the eve of the COVID-19 pandemic, in 2019, ICE's daily detained population [exceeded](#) 52,000.
- The ICE website lists [131 facilities](#) as being part of ICE's network. [ICE](#) detention facilities operate under a number of different arrangements, [including](#) ICE-owned Service Processing Centers, privately-owned Contract Detention Facilities, and a variety of facilities operated via agreements with state and local governments and federal agencies.
- The standard of care in ICE facilities varies, depending on the type of facility and various contractual arrangements between DHS and the entity operating the facility in question. The [Performance Based National Detention Standards \(PBNDS\)](#), apply to facilities that are [solely dedicated](#) to holding individuals in ICE custody. PBNDS guidelines are more stringent and have been updated frequently since their first

¹ Immigrants arrested and detained for criminal violations are separately held in appropriate state, local, and federal detention facilities, apart from the federal immigration detention system. While DHS agencies may contract for space in such facilities – such as county jails – criminal detention is a distinct category.

publication in 2008. Non-dedicated ICE facilities, including contracted facilities that are not used solely for immigration detention, are – at a minimum – subject to ICE’s self-issued [National Detention Standards \(NDS\)](#), originally published in 2000. In 2013, Congress [instructed](#) ICE to implement the 2011 PBNDS at all ICE facilities within a year, but, at the end of 2019, just [72%](#) of detained immigrants were held in facilities subject to the PBNDS. In addition, ICE has separate [Family Residential Standards \(FRS\)](#) that apply to facilities housing families.

- Conditions in ICE detention centers have been a frequent source of concern, with multiple reports of deficiencies related to understaffing, provision of [health services](#), and absence of [COVID-19 precautions](#).



ICE Average Daily Detained Population

(by fiscal year)

Sources:
<https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>; <https://www.ice.gov/features/ERO-2019>;
<https://www.ice.gov/features/ERO-2020>

CBP Detention

- [CBP](#) detains noncitizens, including children, apprehended between ports of entry or deemed inadmissible at a port of entry or an airport in temporary, short-term holding facilities that are not intended for long-term stays. During an influx of migrants in June 2019, CBP was [holding](#) more than 15,000 detainees [in crowded holding cells](#), far above the Border Patrol’s capacity to adequately house 4,000.

- CBP detention facilities are governed by the [National Standards on Transport, Escort, Detention, and Search \(TEDS\)](#), which were implemented in 2015. The standards specify that “[e]very effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible,” and that individuals “should generally not be held for longer than 72 hours.” However, implementation of TEDS is [limited](#) by what is “operationally feasible”, and observers have frequently reported subpar conditions in CBP facilities, ranging from [uncomfortable temperatures](#) to [inadequate medical care, food, water, and sanitation](#) to [holding children in CBP detention for more than 72 hours](#). These problems have particularly manifested during past influxes, when CBP facilities have faced [overcrowding](#).

ORR Custody

- Under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), unaccompanied children taken in by CBP must be [transferred](#) into the custody of the Office of Refugee Resettlement (ORR) within 72 hours, “except in the case of exceptional circumstances.” [ORR](#) contracts with non-profit organizations and private companies to run permanent shelters for noncitizen children. Minors who turn 18 while in ORR custody are transferred to DHS. ORR has approximately 170 programs across the country, including shelters, group homes, foster care, and therapeutic facilities. In FY 2019, the number of children in ORR custody reached record levels, exceeding 14,000 at one point. The agency also operates temporary influx shelters, which are unlicensed and therefore subject to fewer oversight measures.

What are the limits on detaining children in immigration detention?

The parameters for holding children in immigration detention are set out in the 1997 Flores Settlement Agreement. The Flores agreement resulted from a class action [lawsuit](#) originally filed in 1985 that [challenged](#) the federal government’s treatment, detention, and release of immigrant children.

The Flores agreement [sets standards](#) for the treatment and conditions of children held in immigration detention and has been interpreted to limit the time that children can be held in detention. The Flores agreement requires children to be released to a parent, legal guardian, or a licensed program willing to accept custody, whenever possible. If not possible, then it requires the government to hold the child in the “least restrictive” appropriate setting that meets a minimum standard of care and treatment necessary for children.

According to [a 2016 federal court decision](#), the Flores agreement applies both to children accompanying their parents, as well as to unaccompanied children. Accordingly, children cannot be detained with parents in facilities made for adults and unequipped to properly care for children. And, even in family detention facilities specifically designed to detain parents and children together, federal courts have interpreted the Flores agreement to require that children be detained [no more than 20 days](#).

What is family detention?

Family detention is the practice of [holding immigrants families together in immigration detention](#). In practice, family detention facilities house mothers with their children, including babies. Fathers are detained at separate facilities. DHS currently maintains three facilities that designed to detain families with a total capacity of approximately 3,000 beds. The facilities are located in Karnes City, Texas (530 beds); Dilley, Texas (2,400 beds); and Berks County, Pennsylvania (90 beds).

While DHS officials have [touted](#) the “campus-like settings” of the specially-designed facilities, including classrooms, televisions, and recreation areas, critics have noted that the fenced-in facilities are nonetheless [prison-like](#).

The Trump administration [sought to expand the use of family detention](#) after being forced to roll back family separation policies, although legal limits on the time children could remain in detention restricted its use. Prior to the Trump administration, both the George W. Bush and Obama administrations also used family detention to detain thousands of families at facilities specifically designed to house children. Immigration and children’s advocates have raised significant [due process concerns](#) with family detention, as well as the [negative long-term impacts](#) detention has on children.

Due in part to those negative impacts, federal courts have limited the ability of the federal government to detain children, interpreting the Flores Settlement Agreement to require that children cannot be detained longer than [20 days](#).

What is mandatory detention?

[Mandatory immigrant detention](#), the requirement that certain categories of migrants remain detained throughout the entirety of their immigration proceedings, is a creation of Congress. In 1996, lawmakers passed the Illegal Immigration Reform and Immigrant Responsibility Act ([IIRIRA](#)), which expanded the definition of what is known as an aggravated felony and exponentially increased the use of mandatory detention, with limited opportunities for judicial review and [without the opportunity to seek bond](#).

Under IIRIRA, all [noncitizens](#) — including asylum seekers and lawful permanent residents — are subject to mandatory detention and placed in expedited removal proceedings if they are convicted of an [aggravated felony](#): any crime of violence, theft, or burglary for which the term of imprisonment is at least one year, as well as illegal trafficking in drugs, firearms, or destructive devices.

What is meant by “catch and release”?

There is no official government policy entitled “catch and release,” but the term has been used pejoratively to refer to a [number of different immigration policies, many of which are mandated by law](#). Such policies include the release of unauthorized migrants while they wait for the resolution of their cases pending in the immigration court system, limits on the time in which children may be held in detention, restrictions on the immediate return of Central American UACs, and legal precedents barring indefinite detention of unauthorized migrants whose home countries will not accept them. Critics assert that so-called catch and release policies encourage unlawful immigration.

Migrants are still required to check in with immigration authorities and attend hearings in immigration court.