

## The Dignity for Detained Immigrants Act

October 2017

The Department of Homeland Security (DHS) utilizes a sprawling network of jails to detain tens of thousands of immigrants every day in harsh and punitive conditions.<sup>1</sup> The failings of this system have grave repercussions: dozens of deaths,<sup>2</sup> rampant allegations of abuse,<sup>3</sup> and countless deportations accomplished through detention conditions so severe as to lead immigrants to abandon meritorious claims to relief.<sup>4</sup> Our immigration system now holds far too many for far too long in a system that incentivizes profiteering and politics over human life and due process.

**The Dignity for Detained Immigrants Act will significantly reduce the number of individuals held in immigration custody while restoring fairness and integrity to the adjudication system.**

### The Act advances four legislative principles:

1. Removing the profit motive: The Act requires DHS to eliminate the use of private prisons and county jails for civil immigration detention over a three-year transition period.
2. Binding standards requiring humane treatment: The Act obligates the government to a set of standards appropriate to a civil detention setting.
3. Accountability and transparency: The Act implements a robust and independent inspections process in the immigration detention system and requires DHS to make inspections reports, death reviews, and critical information regarding the detention system publicly available.
4. Ensuring individualized and fair bond determinations: The Act remedies legal and ethical frailties in the current bond system by ending the use of “mandatory” or “no-bond” detention, requiring that DHS establish probable cause of removability within 48 hours of detention, and ensuring the right to a fair bond hearing for every detained immigrant.

**The National Immigrant Justice Center is proud to support the Dignity for Detained Immigrants Act and urges Members of the House of Representatives to co-sponsor the bill.**

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<sup>1</sup> See Dora Schriro, THE HILL, [“Don’t make immigration custody part of the criminal justice system,”](#) Apr. 27, 2017.

<sup>2</sup> See Human Rights Watch, [US: Deaths in Immigration Detention](#) (2016) (finding substandard medical care to have contributed to at least 7 of 18 deaths in immigration custody from 2012 to 2015).

<sup>3</sup> See Southern Poverty Law Center and National Immigration Project, [Shadow Prisons: Immigrant Detention in the South](#) (2016).

<sup>4</sup> See Martin Mendez Pineda, WASH. POST, [“I’m a reporter in Mexico. My life is in danger. The United States Wouldn’t Give Me Asylum.”](#) May 25, 2017.

### **Principle 1: Removing the profit motive**

The problem: The ways in which private prison companies are incentivized to cut corners and put lives at risk has been well documented.<sup>5</sup> Advocates and formerly detained immigrants frequently report that the conditions in county jails that contract with ICE are as bad if not worse as those in private prisons. Nonetheless, approximately 65 percent of all individuals in immigration detention are held in privately run facilities and about 25 percent in county or local jails.<sup>6</sup> Immigrants in private prisons and county jails face abuse by officers, lack of adequate nutrition, unhygienic conditions, and significant obstacles to access to counsel.<sup>7</sup>

What does the Act do? Requires DHS to terminate all detention contracts with private prisons and local jails over the course of a three-year phase out period.

### **Principle 2: Binding standards requiring humane treatment**

The problem: DHS has proven itself unable to provide for the basic health and safety of those it detains.<sup>8</sup> Although immigration detention is civil in nature, immigrants are held in punishing conditions that cause psychiatric distress for asylum seekers and other vulnerable populations.<sup>9</sup> Deaths attributable to medical negligence are common.<sup>10</sup> Detainees are served food with worms and discolored water, and credible reports of abuse of force by officers and excessive use of segregation are common.<sup>11</sup> The detention standards currently in use are not binding on DHS and provide minimal protections modeled on correctional rather than civil detention systems.<sup>12</sup>

What does the Act do? Requires DHS to establish detention standards that are appropriate to a civil detention setting, and provides a cause of action for those injured by violations of these standards.

### **Principle 3: Accountability and transparency**

The problem: DHS's current system of inspections and oversight is rife with loopholes and woefully inadequate to document and remedy egregious failures.<sup>13</sup> The entities currently required to

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<sup>5</sup> American Civil Liberties Union, [Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons](#) (Sept. 2016).

<sup>6</sup> See Homeland Security Advisory Council, [Report of the Subcommittee on Privatized Immigration Detention Facilities](#) (Dec. 1, 2016) at p. 6.

<sup>7</sup> See [Shadow Prisons](#), supra n. 3.

<sup>8</sup> See Esther Yu Hsi Lee, Think Progress, ["Chances are high that if you're abused in immigration detention, no one will care."](#) Apr. 12, 2017.

<sup>9</sup> See Human Rights First, [Jails and Jumpsuits](#) (2011).

<sup>10</sup> See Detention Watch Network and National Immigrant Justice Center, [Fatal Neglect: How ICE Ignores Deaths in Detention](#) (2016).

<sup>11</sup> See [Shadow Prisons](#), supra n. 3.

<sup>12</sup> See [Jails and Jumpsuits](#), supra n. 9.

<sup>13</sup> See Detention Watch Network and National Immigrant Justice Center, [Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse](#) (2015).

conduct inspections are paid and vetted through contracts or direct employment by ICE, resulting in a system that incentivizes positive reports. The Eloy Federal Contract Facility in Arizona, for example, has not failed an ICE inspection since 2006, despite having the highest number of known deaths of any detention facility and numerous reports of sexual assault.<sup>14</sup>

What does the Act do? Creates a robust system of inspections of DHS facilities to be conducted by the DHS Office of the Inspector General (OIG), with accountability imposed through meaningful penalties for negative findings. Requires that inspections reports and basic information regarding DHS's use of detention be made publicly available in a timely manner.

#### **Principle 4: Ensuring individualized and fair bond determinations**

The problem: DHS routinely arrests immigrants without a judicially approved warrant, locking people up for days or weeks on end before a charging document is even filed.<sup>15</sup> These practices are compounded by the statutory imposition of mandatory detention—detention without any opportunity to request release on bond or other conditions—for huge categories of individuals.<sup>16</sup> For those few immigrants in detention who are eligible for bond, amounts are often exorbitant and set without consideration of ability to pay.<sup>17</sup> The result is a mass detention system that is exorbitantly costly both in human and fiscal terms.<sup>18</sup> Studies have shown that the goals of immigration detention—ensuring appearance at court hearings and protecting community safety—can be met in the vast majority of cases through alternatives to detention that are cheaper and more humane.<sup>19</sup>

What does the Act do? Requires DHS to comply with the Fourth Amendment by establishing probable cause within 48 hours of detention, and ensures the right to a fair bond hearing for every detained immigrant. Upon arrest, immigrants are to be released to the least restrictive setting unless DHS provides evidence demonstrating flight risk or danger to the community.<sup>20</sup> DHS is required to develop a continuum of alternatives to detention operated in partnership with non-profit community partners.

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<sup>14</sup> See National Immigrant Justice Center, [“In Focus: ICE Inspections at the Eloy Federal Contract Facility, Arizona.”](#) Oct. 22, 2015.

<sup>15</sup> See *Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

<sup>16</sup> 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1226(c); and 8 U.S.C. § 1226A.

<sup>17</sup> TRACImmigration, [“What happens when individuals are released on bond in immigration court proceedings?”](#), Sept. 14, 2016.

<sup>18</sup> Patrick Lee, PROPUBLICA, [“Immigrants in detention centers are often hundreds of miles from legal help,”](#) May 16, 2017.

<sup>19</sup> See American Immigration Lawyers' Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, Women's Refugee Commission, [The Real Alternatives to Family Detention](#) (2017); Government Accountability Office, [Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness](#) (Nov. 2014), at p. 30.

<sup>20</sup> The presumption of release is drawn from current practices in the criminal justice system. See American Bar Association Criminal Justice Section, [Frequently Asked Questions About Pre-Trial Decisionmaking](#), at p. 3; American Bar Association Criminal Justice Standards, [Pre-Trial Release](#), Standard 10-1.2.