



October 3, 2017

Re: ACLU Urges Passage of the Dignity for Detained Immigrants Act of 2017

(H.R. 3923)

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), we urge you to support the Dignity for Detained Immigrants Act of 2017 (H.R. 3923), an Act that will significantly reduce the number of people held in immigration detention; ensure fair and individualized bond determinations; end detention profiteering by private prisons and local jails; and set enforceable standards to ensure those who remain in custody are in a system that is safe, humane, transparent, subject to robust oversight, and accountable to the public.

For years, the ACLU and other organizations have documented deaths, suicides, sexual abuse, solitary confinement, and denial of medical care in ICE's sprawling network of detention facilities. 173 people have died in ICE custody since 2003, including twelve people in FY 2017. The ACLU has litigated against ICE and its contractors over sexual assault, inadequate medical care, limitations on access to counsel, and other human rights issues in detention facilities across the country. We have also testified before the U.S. Civil Rights Commission and international human rights bodies regarding the agency's record of abuse and neglect. Yet the agency has repeatedly failed to remedy these serious, often life-threatening issues.

H.R. 3923 will address the long-standing and widespread failures of the immigration detention system that have often resulted in serious harm with sometimes deadly consequences for the people detained by immigration officials. Specifically, the bill will:

- **Discontinue the Use of Private Prisons and County Jails to Detain Immigrants.** The overwhelming majority of people in ICE custody are held in non-federal facilities. Approximately 65% of the individuals in ICE detention are held in detention centers run by for-profit prison corporations; 25% are in jails run by sheriffs and other local officials who rent spare jail space to ICE. Advocates and detained immigrants report inhumane and unlawful conditions in both types of contracted facilities. This outsourced model of detention fosters detention profiteering and inhumane treatment of detained immigrants. Corner-cutting by detention contractors has resulted in deaths,

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suicides, sexual abuse, and denial of medical care.¹ When deprivation of physical liberty is at stake, profiteering should never be part of the equation. Following the adoption of this Act, DHS will be required to phase out its practice of contracting with private and county/local prisons within three years.

- **Establish Enforceable Civil Detention Standards for DHS Detention Facilities.** Immigration detention is intended to be civil and non-punitive; its chief purpose is to ensure that people attend their immigration court proceedings and comply with all court orders. Yet DHS overwhelmingly relies on jails and jail-like facilities that are punitive and inhumane, and has never adopted binding standards. Even when ICE’s own internal investigations identify medical negligence as contributing factors in detainee deaths, the agency frequently renews its contracts with these detention contractors.² And in one recent case, a detention facility reacted to a guard’s sexual misconduct by instructing detained women to avoid wearing tight clothing or short shorts.³ To ensure that the living conditions and services in detention comport with its civil, non-punitive purpose, this Act requires the DHS Secretary to adopt regulations establishing civil detention standards that are at least as protective as the Civil Immigration Detention Standards adopted by the American Bar Association in 2012,⁴ and provides a cause of action for detainees injured by violations of the standards. The ABA Standards were established by a blue-ribbon panel that included law enforcement officials like the former Commissioner of the Immigration and Naturalization Service and a former Commissioner of the New York City Department of Correction, along with experts from the fields of corrections, medicine and academia.
- **Require Clear Oversight, Accountability and Transparency of DHS Detention Facilities.** As the number of people in DHS custody has risen in recent years, its sprawling network of detention facilities has remained devoid of rigorous oversight and transparency. For example, the Eloy Federal Contract Facility in Arizona operated by Corrections Corporation of America (which rebranded as “CoreCivic” last year), has the highest number of recorded detainee deaths of any detention facility in the country. At

¹ See ACLU, [Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons](#) (2016); U.S. Commission on Civil Rights, [With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities](#) (2015).

² See ACLU, Detention Watch Network and National Immigrant Justice Center, [Fatal Neglect: How ICE Ignores Deaths in Detention](#) (2016).

³ Maurice Chammah, [Long Shorts and Baggy Shirts: An immigration detention facility tries a new method for curbing sexual assault: Make the women dress differently](#), The Marshall Project (Apr. 17, 2015).

⁴ [ABA Civil Immigration Detention Standards](#), amended Aug. 2014.

least five of these deaths were suicides, but Eloy *still* had not adopted a suicide prevention plan when Jose de Jesus Deniz Sahagun killed himself in his cell in May 2015. Indeed, since 2006, Eloy has yet to fail an ICE inspection.⁵ To increase the transparency and effectiveness of the inspection process, the Act requires the DHS Office of Inspector General (OIG) to carry out truly independent inspections and impose meaningful penalties for negative findings. It also requires DHS to provide annual reports to Congress and promptly make death investigations, facility inspections, and other basic information promptly available to the public.

- **Ensure Fair, Individualized Custody Determinations.** In the criminal justice system, a growing consensus of federal courts has recognized that incarcerating criminal defendants solely because they cannot afford to pay a bail bond is unconstitutional. The same concerns apply to immigrants kept in detention solely because they cannot afford to pay an ICE or immigration bond. However, current immigration statutes set arbitrary minimum bonds, provide little guidance about conditions of release that could be imposed in place of a monetary bond, and purport to deny bond eligibility altogether to entire categories of individuals. DHS relies on these statutes to avoid providing many of the fundamental procedural safeguards. For example, the ACLU is currently litigating in the Supreme Court over whether DHS may detain people for months without ever being able to have a bond hearing before an immigration judge.⁶ Many immigrants remain in ICE custody for days or weeks before a charging document is even filed with the immigration court, and remain subject to prolonged detention even though they have substantial challenges to removal and pose no flight risk or significant danger to public safety. Perversely, individuals who win relief in their immigration cases end up with far longer average stays in detention than those who are ordered removed. This Act will require a probable cause hearing within 48 hours of any warrantless arrest, require DHS to make an initial release/ custody determination hearing within 48 hours of detainment, and give detained persons the right to appeal that determination to an immigration judge within 72 hours, and bring the standards for release/custody determinations into line with fundamental norms of fairness by adopting the same burden of proof that is used for making similar determinations in federal criminal cases.

The Act also requires DHS to adopt a continuum of alternatives to detention that will be operated by non-profit community partners. These alternatives to detention will enable DHS to ensure individuals appear for their proceedings and to address any public safety risks posed by an individual's release, without relying on extended detention or unaffordable monetary bonds. This will enable DHS to reduce the unnecessary use of detention and instead rely on alternatives that are less expensive, more humane, and

⁵ See National Immigrant Justice Center, [“In Focus: ICE Inspections at the Eloy Federal Contract Facility, Arizona.”](#) Oct. 22, 2015; ACLU, [Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons](#) (2016).

⁶ See Michael Tan, In America, [No One—including Immigrants—Should Be Locked Up Without Due Process of Law](#), ACLU (Nov. 28, 2016).

allow people to remain with their families in the community while they undergo immigration proceedings.

By adopting these critical reforms, H.R. 3923 will significantly reduce the fiscal and human costs of the current mass detention apparatus, end the detention profiteering that dominates the current system, and bring immigration custody decisions in line with fundamental norms of fairness.

Federal courts have recognized that the goals served by the immigrant detention system are to ensure that immigrants attend their immigration proceedings and address any public safety risks posed by an individual's release. Instead, however, the mass detention of immigrants is punitive and inhumane, wrongly enriches detention profiteers, inflicts harms wildly out of proportion to the government's stated interests, and raises grave human rights and civil rights concerns. This Act will fundamentally reshape that system to remove the profit motive, impose binding standards, ensure accountability and transparency, and ensure a fair and individualized process for custody determinations. For these reasons, the ACLU urges you to support the Dignity for Detained Immigrants Act of 2017 and encourages you to join your colleagues in co-sponsoring the Act.

Thank you for your time and consideration. If you have any question, please feel free to contact Lorella Praeli (202) 675-2328 or at lpraeli@aclu.org

Sincerely,



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