

END THE HARMFUL AND UNJUST DETENTION OF IMMIGRANTS AND ASYLUM-SEEKERS



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THE ISSUE

Every day, tens of thousands of immigrants and asylum-seekers are held in a sprawling network of over 200 immigration detention facilities throughout the country while they fight for their right to stay in the United States. Though detention is civil, not criminal, and is meant to ensure that people show up at their hearings, in practice, detention facilities look and feel like prisons and punish people for seeking protection here.

Spending months or even years behind bars, people in detention have limited access to legal counsel and are detained far from their loved ones in remote locations, in conditions that are oftentimes abusive and sometimes even deadly. Black and brown immigrants make up the overwhelming majority of people detained by Immigration and Customs Enforcement (ICE). The COVID-19 pandemic has only heightened the dangers of detention as the illness continues to sweep through facilities under ICE's watch, and at least 9 people have died due to COVID-19 in detention.

ICE detention has also become a booming business: 70 to 80 percent of facilities are run by for-profit corporations, which are notorious for poor treatment of people in ICE detention, including unsafe and unsanitary conditions, reports of assault and abuse, negligent medical care, and excessive use of solitary confinement. In the past 15 years, the vast majority of deaths in custody have taken place in ICE facilities run by private prison companies.

THE SOLUTION

The Dignity for Detained Immigrants Act (H.R. 2222, S. 1186) sets out a transformative vision and practical framework to address these harms and brings the U.S. more in line with our human rights obligations by:

- **Establishing a presumption of liberty for all.** The Act requires that detained immigrants have a custody hearing within 48 hours in which there is a presumption that they will be released. The Act puts the burden on the government to prove using clear and convincing evidence that someone must remain in detention in order to protect public safety or ensure their presence to court. This will result in a total overhaul of immigration detention, ending the mass detention system as we know it today.
- **Making detention the exception, not the rule.** Right now, many immigrants are subject to “mandatory” detention – meaning they are forced to remain behind bars for the months or years their proceedings may take to complete without being allowed to seek bond. The Act eliminates the mandatory detention provision and requires judges to conduct fair and timely bond hearings for all detained people.
- **Protecting groups at risk of human rights violations from detention.** The Act creates an even higher standard to ensure that vulnerable groups – including asylum-seekers who

have passed initial screenings, families with children, pregnant people, LGBT migrants, and survivors of torture or gender-based violence – do not end up in detention. It requires the government to prove, before detaining vulnerable populations, that detention is absolutely necessary and that community-based supervision alternatives won't work. Right now, people in these groups often spend months and even years in detention, which can be irreversibly traumatic for them and their families.

- **Promoting community-based case support instead of detention.** The Act also promotes access to community-based case management support programs for those that need them, which are more humane and cost effective. The U.S. government has previously found that people participating in its case management programs appeared at their immigration hearings in 99.6 percent of cases. Community-based case management helps immigrants and asylum-seekers find legal representation, guides them through the court system, and connects them with other community resources.
- **Eliminating for-profit immigration detention.** The Act eliminates the use of private prisons and jails for ICE detention, giving the Department of Homeland Security (DHS) three years to phase out their use. This will end profiteering incentives which helped drive the expansion of immigration detention to a historic high of over 50,000 people detained during the Trump administration.
- **Increasing transparency and accountability and ending the use of solitary confinement.** The Act dramatically reduces the use of immigration detention and in the few cases where DHS will continue to detain immigrants and asylum-seekers, the Act mandates new civil detention standards for humane treatment, including a ban on solitary confinement, and strengthens oversight, transparency, and accountability across the system.

BACKGROUND

Amnesty International is working to end the arbitrary and indefinite detention of asylum-seekers and immigrants. Immigrants and asylum-seekers, as anyone else, must benefit from a presumption of liberty. The detention of immigrants and asylum-seekers should be exceptional and resorted to only when it is necessary and proportionate to a legitimate purpose, based on an assessment of the individual's circumstances. The blanket use of detention in the U.S. violates this standard and is arbitrary. No one should be detained solely because of their immigration status, particularly LGBTI individuals, asylum-seekers, survivors of violence, people with medical vulnerabilities, or other at risk groups. Children should never be detained, and families should be released as a unit. The policy and practice of family detention should end.

Recently, Amnesty's work in the U.S. has focused on the detention of particularly vulnerable populations – including LGBT individuals and families with children. In 2018, we published [You Don't Have Any Rights Here](#), which catalogues the mistreatment of asylum-seekers at the Mexico/U.S. border, including the arbitrary detention and denial of parole of trans women who fled life-threatening situations only to be locked up here. In 2020, we published [We Are Adrift, About to Sink](#), about the impact of the COVID-19 pandemic in U.S. immigration detention facilities, [an updated briefing](#), and [Family Separation 2.0](#), which documents how ICE weaponized its public health response to the pandemic to punish and deter families seeking safety.

On the advocacy front, Amnesty has fought to release people from detention, cut funding levels for detention, end contracts for private prison companies and county jails, advance the use of community-based alternatives to detention for those that need them, end family detention, and improve standards for those that remain in detention facilities. We strive for a world where liberty and due process are norms, not exceptions, and where people seeking protection here are

welcomed into the community, with appropriate support, not detained. The Dignity for Detained Immigrants Act brings us closer to that vision.

DEFINITIONS OR SIDEBARS

- **Immigration detention** generally refers to the practice of taking an immigrant – including immigrants with lawful status and immigrants with no lawful status – into the custody of the government (usually ICE) until the government makes a final decision on their ability to stay in the country.
- **Mandatory detention under INA 236(c):** The concept of “mandatory detention” was introduced in a 1996 immigration reform bill. Immigrants who are subject to mandatory detention must remain in detention for the duration of their cases, though ICE has the discretion to release people for urgent humanitarian reasons.
- **Alternatives to detention** include measures to support people as they go through their immigration court proceedings and should not rely on ankle monitors or other punitive methods and should utilize proven community-based case management programs and other community support services for those that need them.

WHAT IS AIUSA ASKING CONGRESS TO DO

- **If your representative has not yet signed on**, ask them to cosponsor the Dignity for Detained Immigrants Act (H.R. 2222, S. 1186).
- **If your representative has signed on, urge them to call on the Biden administration to free people from detention.** Detention levels have sharply and needlessly risen this year, the ongoing COVID-19 pandemic has made detention facilities especially deadly, and the continued mass detention of Black and brown people perpetuates the systemic harms of racial inequity. There are rights-respecting alternatives for people that need support going through the immigration court process. Sustained advocacy is needed, as the administration has failed to take concrete actions on immigration detention.

MORE ABOUT THE BILL

Lead Sponsors: House: Reps. Pramila Jayapal (WA-7) and Adam Smith (WA-9); Senate: Sen. Cory Booker (NJ)

Bill Numbers: House: H.R. 2222; Senate: S. 1186

Status: Reintroduced in the House and the Senate in the 117th Congress

TARGETS

In the House:

- Judiciary Committee, especially the Subcommittee on Immigration and Citizenship
- Homeland Security Committee
- Congressional Hispanic Caucus (Endorsed)
- Congressional Progressive Caucus (Endorsed)
- Congressional Black Caucus

In the Senate:

- Judiciary Committee, especially the Subcommittee on Immigration, Citizenship & Border Safety
- Homeland Security and Government Affairs Committee
- Congressional Hispanic Caucus
- Congressional Black Caucus

COUNTERARGUMENTS AND RESPONSES

COUNTERARGUMENT

Less detention means that dangerous immigrants will be let loose into the community.

RESPONSE

This is a xenophobic and inflammatory talking point that paints immigrants as “criminal,” and it is also factually untrue. The bill still allows an immigration judge to make an individualized determination that an immigrant must remain detained if they pose a danger to the community or are a flight risk, something the judge determines in a bond hearing. Furthermore, Black and brown immigrants are subjected to a broken criminal justice system that over-polices and over-criminalizes Black and brown communities across the U.S.

COUNTERARGUMENT

It’ll be inconvenient and costly not to let the government contract with private detention companies.

RESPONSE

Detention in private facilities is costly and dangerous. In the past 15 years, the vast majority of deaths in custody have taken place in privately operated detention facilities, which often cut costs, overcrowd prisons, have unsafe or unsanitary conditions, and excessively use solitary confinement. If the bill is passed, far fewer immigrants will be in detention, dramatically lowering costs and improving the safety of the few facilities that continue to operate. President Biden has already pledged to phase out Department of Justice-contracted private prisons – it’s high time private prisons operating as immigration detention facilities are phased out, too.

COUNTERARGUMENT

Eliminating detention will create a pull factor for migrants to come here.

RESPONSE

Arbitrary and indefinite detention is not a deterrent for migrants, particularly asylum-seekers and others being driven from their countries by the violence and persecution they face there. Those root causes are not going to change because of U.S. detention policy. Furthermore, deterrence isn’t a legitimate basis for immigration detention under human rights law. Far from preventing people from coming, detention only harms them when they seek protection here and is a cruel waste of taxpayer dollars.

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