



September 10, 2020

The Honorable Nancy Skinner  
Chair, Senate Public Safety Committee State Capitol Building  
Room 2031  
Sacramento, CA 95814

Hon. Reginald Byron Jones-Sawyer Sr. Chairman, Assembly Public Safety Committee  
Legislative Office Building  
1020 N Street, Room 111  
Sacramento, CA 95814

**Re: AB 3228- Accountability in Detention Act**

Dear Chair:

I am writing on behalf of Freedom for Immigrants to express our support for AB3228, a bill that provides accountability for the operators of private detention facilities, and protects the health and safety of those detained, as well as the surrounding community. We believe that this bill is a critical step toward holding private prison companies accountable for abuses and lapses in standards that have fueled the proliferation of COVID-19 in detention and within our communities as a whole.

Freedom for Immigrants is a national non-profit dedicated to the abolition of immigration detention. We convene a national network of local visitation programs around the country focused on human rights monitoring, advocacy, and abolition. The network includes approximately 4,500 volunteers who support people detained and their families in over 50 immigrant prisons and jails in nearly 30 states. In California, we conduct monitoring for human rights abuses in all five of the states' immigrant jails. Freedom for Immigrants was proud to play a lead role in drafting, co-sponsoring and helping pass the Dignity Not Detention Act in 2017.

At this time, COVID-19 has contaminated four of the five of Immigration and Custom Enforcement's (ICE) immigrant prisons in California: the Otay Mesa Detention Center; Adelanto ICE Processing Center; Imperial Regional Detention Center; and Mesa Verde ICE Detention Center. All of these facilities are operated by private prison companies, including Management and Training Corporation (MTC), GEO Group, and CoreCivic (formerly known as the Corrections Corporation of America). Currently, an estimated 90% of those detained in California are in the care of for-profit institutions, whose duty is to shareholders as opposed to public safety.

As of September 10, ICE reports 243 cases of COVID-19 within California facilities since the outbreak of the COVID-19 pandemic and 5,670 cases of COVID-19 nationally.<sup>1</sup> However, medical experts, legal services providers, and advocates express the fear that the true rate of COVID-19 in ICE detention is much higher due to the failure of ICE and its contract staff to follow basic public health protocols and continuation of dangerous practices directly linked to the spread of COVID-19 in detention, including inter-facility transfers without adequate screening and failure to implement proper medical quarantines for people who have tested positive or been exposed to the virus.

In several facilities in California, ICE and its contract staff have deliberately limited access to COVID-19 in detention. In a July 6 email, the acting Field Office Director for ICE in San Francisco, stated that ICE lawyers advised that ICE should initiate COVID-19 testing for everyone detained at the Mesa Verde ICE Processing Center, which is managed by the Geo Group.<sup>2</sup> However, in subsequent emails, representatives of Wellpath, a private company which contracts with ICE to provide health care services in ICE detention, expressed concern that mass testing would result in high numbers of positive COVID-19 cases and that the Mesa Verde facility was not equipped to implement quarantines on a large scale.<sup>3</sup> As a result, ICE and its contract staff chose not to administer testing for everyone detained at Mesa Verde. On August 5, Judge District Vincent Chhabria ordered officials to administer weekly COVID-19 tests to everyone detained at Mesa Verde and to halt intake of any additional people.<sup>4</sup> In his ruling, Chhabria stated that ICE has “responded to the health crisis in such a cavalier fashion” that it “lost the right to be trusted.” As of August 18, half of all the people detained at the Mesa Verde facility have tested positive for the virus.<sup>5</sup>

On August 11, attorneys with the American Civil Liberties Union Foundation of Southern California produced testing record demonstrating that 1,900 COVID-19 test kits were allocated for use at the Adelanto Detention Facility, which is also managed by the Geo Group.<sup>6</sup> However, according to testing records, ICE and its contract staff deliberately limited the number of tests that could be used. According to testing records, 305 people detained at Adelanto presented symptoms of COVID-19 between March 1 and July 15, but only one of them was tested.

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<sup>1</sup> <https://www.ice.gov/coronavirus>

<sup>2</sup> <https://www.courtlistener.com/recap/gov.uscourts.cand.358452/gov.uscourts.cand.358452.489.7.pdf>

<sup>3</sup> Castillo, Andrea. “ICE deliberately limited testing at Bakersfield immigration facility with COVID-19 outbreak.” Los Angeles Times. August 6, 2020. <https://www.latimes.com/california/story/2020-08-06/amid-coronavirus-outbreak-at-bakersfield-immigration-facility-emails-show-ice-deliberately-limited-testing>

<sup>4</sup> Aquino, Alyssa. “Judge Rips ‘Cavalier’ Approach to Virus Safety in ICE Facility.” Law360. August 6, 2020. <https://www.law360.com/articles/1298954/judge-rips-cavalier-approach-to-virus-safety-in-icefacility>

<sup>5</sup> Romero, Farida Jhabvala. “Half of all detainees at Bakersfield ICE facility have tested positive for COVID-19.” KQED. August 18, 2020. <https://www.kqed.org/news/11833925/half-of-all-detainees-at-bakersfield-ice-facility-have-tested-positive-for-covid-19>

<sup>6</sup> “ACLU Says ICE Secretly Bans COVID-19 Testing of Adelanto Detainees.” NBC Los Angeles. August 11, 2020. <https://www.nbclosangeles.com/news/local/aclu-says-ice-secretly-bans-covid-19-testing-of-adelanto-detainees/2411290/>

Since the outbreak of the COVID-19 pandemic, ICE has confirmed the death of one person detained in California due to complications from COVID-19: Carlos Ernesto Escobar Mejia, a 57-year-old long time U.S. resident of Salvadoran origin on May 6 at the Otay Mesa Detention Center, which is managed by CoreCivic/CCA.<sup>7</sup> People detained at Otay Mesa facility alongside Escobar Mejia described horrific neglect in the time leading up to his death, including denial of medical care for severe COVID-19 symptoms, save for doses of ibuprofen.<sup>8</sup>

On May 17, Choung Woong Ahn, a 74-year-old man of South Korean origin, died by suicide on May 17 at the Mesa Verde ICE Processing Center. Family members of Ahn are requesting that California Governor Gavin Newsom and Attorney General Xavier Becerra conduct an independent investigation into Ahn's suicide.<sup>9</sup> The family alleges that facility staff placed Ahn in medical isolation and failed to provide continuous monitoring, despite the fact that facility staff previously documented that he was at a high risk for suicide. Prior to this death, Ahn had applied for and been denied release on bond and parole and had underlying medical conditions leaving him vulnerable to COVID-19.<sup>10</sup>

People detained in immigrant jails operated by private prison companies throughout the state report an uptick in retaliation and use of force during the COVID-19 pandemic, including in response to peaceful protests condemning failure of contract staff to observe basic public health protocols.<sup>11</sup> Freedom for Immigrants continues to receive reports of exposure to toxic chemical disinfectants at several ICE prisons operated by private prison companies in California, including the Adelanto facility operated by the Geo Group.<sup>12</sup> Exposure to these chemicals causes severe physical reactions, including chronic cough, loss of consciousness, rashes, sore eyes and throat, vomiting, and head and body aches.

AB 3228 would require all detention facility operators to abide by the minimum standards enumerated in their contracts, or face civil liability for any breaches. Traditionally, private prison corporations acting as federal contractors have enjoyed immunity for liability by claiming derivative sovereign immunity. However, the Supreme Court has ruled that sovereign immunity does not apply to federal contractors who **violate the express terms of a government contract.** - *Campbell-Ewald Co. v. Gomez*,

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<sup>7</sup> Devereaux, Ryan. "ICE Detainee who died of COVID-19 suffered horrifying neglect." The Intercept. May 24, 2020. <https://theintercept.com/2020/05/24/ice-detention-coronavirus-death/>

<sup>8</sup> Ibid.

<sup>9</sup> Plevin, Rebecca. "'This was preventable': Family asks state to probe 74-year-old's suicide in ICE Detention." Desert Sun. August 7, 2020.

<https://www.desertsun.com/story/news/politics/immigration/2020/08/07/family-asks-newsom-probechoung-woohn-ahn-suicide-ice-mesa-verde/5504694002/>

<sup>10</sup> Castillo, Andrea. "ICE said a 74-year-old was too dangerous to release. He died of apparent suicide." Los Angeles times. May 20, 2020. <https://www.latimes.com/california/story/2020-05-20/immigrant-icedetention-suicide-coronavirus>

<sup>11</sup> See Freedom for Immigrants' reporting on COVID-19 in ICE Detention, available at <https://www.freedomforimmigrants.org/covid19>

<sup>12</sup> "Immigrants in Detention At Risk of Toxic Chemical Exposure, According to Newly Compiled Research." Earth Justice. August 13, 2020. <https://earthjustice.org/news/press/2020/immigrants-in-detention-facilities-at-risk-of-toxic-chemical-exposure-according-to-newly-compiled-research>

577 U.S. (2016). Thus, California has the right and duty to hold private contractors liable for any acts that violate the terms of their contracts.

Immigrant detention facilities operate under a subpar inspections regime, particularly when a private operator is involved. The lack of accountability with respect to oversight and conditions in these facilities is the result of an inadequate inspection and compliance scheme. Despite the fact that ICE sets specific conditions standards in their detention contracts, violations of these standards are routinely met with indifference, even when they result in death. In the case of civil detention facilities, both the federal agency and private contractors have agreed upon specific standards within their contracts, and any deviation from those standards, particularly those that result in negligence or harm, should create clear liability on behalf of the operator. However, ICE has shown little to no willingness to hold private operators accountable for violations of minimum standards, even when their negligence results in death. Within the context of the COVID-19 pandemic, lack of consequences for deficiencies in detention standards poses a risk not just to those detained in California immigrant jails, but to our communities as a whole. When ICE and its contract staff cut corners and expose their employees, contractors, and people in their care to COVID-19, all of our communities are at risk.

This bill seeks to create accountability for private operators and ensure that there is a mechanism to ensure compliance and accountability in these facilities. This level of immediate oversight and accountability is more critical than ever given how many California lives are presently imperiled by federal inaction and the rapid spread of COVID-19 in immigration detention facilities.

For the reasons stated above, we strongly support AB 3228 (Bonta).

Respectfully,

A handwritten signature in black ink that reads "Sarah Gardiner". The signature is written in a cursive, flowing style.

Sarah Gardiner  
Policy Director  
Freedom for Immigrants