

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

ALL MEMBERS OF CONGRESS SHOULD REJECT THE INHUMANE AND PROFIT-DRIVEN SYSTEM OF ARBITRARY, MASS IMMIGRATION DETENTION AND END THE PRACTICE OF FAMILY DETENTION IN FAVOR OF A MORE TRANSPARENT AND ACCOUNTABLE APPROACH THAT MOVES THE U.S. TOWARD ADHERING TO ITS HUMAN RIGHTS OBLIGATIONS BY MAKING DETENTION THE EXCEPTION, NOT THE RULE, AND UTILIZING JUST AND HUMANE COMMUNITY-BASED PROGRAMS THAT HAVE BEEN DEMONSTRATED TO WORK.

As of early May, over 16,500 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, immigrants and asylum-seekers in detention do not have easy access to an attorney 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, with the illness sweeping through facilities and affecting at least 13,000 people as of early May.

Immigration 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.

Many families in immigration detention came to the U.S. fleeing violence and persecution. While the Biden administration has released all families from long-term detention, it has yet to end the policy of family detention and close the three

family detention centers. Children should never be detained because of their immigration status, and families should not be separated. Family detention should end, and family detention centers closed.

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:

- **Making detention the exception, not the rule.** Right now, many migrants 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 mandatory detention and gives judges the ability to conduct fair and timely bond hearings for all detained immigrants and asylum-seekers.
- **Protecting groups at risk of human rights violations from detention.** The Act ensures that groups – including asylum-seekers who have passed initial screenings, families with children, pregnant people, LGBTI immigrants, and survivors of torture or gender-based violence – do not languish in detention. It requires the government to prove, before detaining vulnerable populations, that detention is 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

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traumatic for them and their families.

- **Promoting community-based case support instead of detention.** Instead of making detention the norm, the Act requires the government to consider alternatives such as release and permits detention only where those alternatives are insufficient to ensure that immigrants show up to their hearings. The Act also promotes access to community-based case management support programs, 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 reduces the use of immigration detention and restores due process by requiring DHS to demonstrate the need for detention, instead of forcing detained immigrants and asylum-seekers to prove their claim to liberty. In cases where DHS does detain immigrants and asylum-seekers, the Act sets standards for humane treatment, including a ban on solitary confinement, and strengthens oversight, transparency, and accountability across the system.

The Freedom for Families Act (H.R. 2925, S. 1517) would commit the U.S. government to the humane treatment of families seeking safety by:

- **Ending the practice of detaining immigrant families and children and ensure that families live in freedom while they pursue their cases.** The Act prohibits the use of federal funds to operate or construct family detention facilities by ICE.

- **Promoting community-based care support instead of detention.** The Act supports the development of humane, nonprofit-operated, community-based programs that can serve as alternatives to detention. Such programs would include legal orientation and meaningful access to counsel, and program personnel would be required to undergo training based on international and social welfare best practices. The Act provides that DHS may place families in such community-based programs or release them to sponsors.

AIUSA RECOMMENDATIONS TO CONGRESS

- **Cosponsor the Dignity for Detained Immigrants Act (H.R. 2222, S. 1186).** The bill is a visionary measure and pragmatic framework that eliminates the blanket use of immigration detention, promotes humane alternatives, eliminates the profit motive in adult and family detention, and strengthens transparency and accountability.
- **Cosponsor the Freedom for Families Act (H.R. 2925, S. 1517)** The detention of children for immigration-related reasons is *never* in their best interests. Members of Congress should take all actions to support the end of the harmful, punitive practice of family detention. Children should be able to live in freedom with their families as they pursue their right to seek safety.
- **Call on the Biden administration to free people from ICE detention.** Detention levels are at historic lows, the 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 that support people going through the immigration court process.

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