



Legislative Affairs
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2021-2022 Legislative Memorandum

**Subject: The Dignity Not Detention Act - A.7099-A (Reyes) / S.7373
(Salazar)**

Position: SUPPORT

The detention of immigrants for civil immigration violations is a national disgrace. Across the country, tens of thousands of people who have come to the United States fleeing persecution or seeking a better life for their families are held in county jails and federal detention facilities. This occurs here in New York, where several counties contract with U.S. Immigration and Customs Enforcement (ICE) to detain people in local jails, helping to maintain an unjust immigration detention system.

The NYCLU strongly supports the Dignity Not Detention Act, which would end these contracts between ICE and county jails, and ensure that New York is not complicit in upholding a fundamentally unjust immigration detention system. The NYCLU calls on the legislature to pass this important legislation.

New York enables an overgrown and cruel immigration detention system.

The mass detention of immigrants who have come to the United States seeking a better life is a gross moral failing. Under the Trump administration, the number of people in ICE custody exploded, with ICE holding upwards of 50,000 people in detention on a given day.¹ Immigrants are detained in federal detention facilities, county jails, and private prisons across the country. Despite a change in rhetoric, the new administration has failed to meaningfully reduce the use of immigration detention, bringing the number of people in detention back to levels seen during the final weeks of the Trump administration.²

Within detention centers, immigrants are subject to abuse, exploitation, and inadequate medical care. Independent reports have uncovered widespread incidents of

¹ ACLU, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, p. 5, <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>.

² Sophia Gurule and Abdullah Shihpar, *ICE is Detaining More Immigrants. COVID is Putting Them in Danger*, *The Nation* (Jan. 25, 2022), <https://www.thenation.com/article/society/covid-ice-detention-centers/>.

physical and verbal abuse and denying people in detention food.³ Immigrants in detention are often compelled to work for as little as \$1 a day.⁴ Government oversight agencies have found serious limitations in ICE's ability to provide adequate medical care to people in detention,⁵ which has been linked to alarming increases in deaths of people detained.⁶ The COVID-19 pandemic has exacerbated these problems, with immigration detention centers continuing to see uncontrolled waves of viral transmission.⁷

While the federal government is chiefly responsible for immigration detention, it does not operate this system on its own. ICE uses contracts with local jails to rent cell space and increase its detention capacity.⁸ This happens across New York State. In addition to the federally operated detention facility in Batavia, ICE identifies six county jails in New York that it contracts with to detain people in immigration detention.⁹ The largest of those facilities is in Orange County, where upwards of 100 people in ICE detention have been held at a given time in recent years.¹⁰ Rensselaer County also has a 287(g) agreement with ICE to enforce immigration law,¹¹ and its jail has been known to hold people for ICE for varying periods of time.¹²

³ Supra note 1, p. 41.

⁴ Zusha Ellinson, *Detention Operators Face Suits Over \$1-a-Day Work Programs for Migrants*, Wall Street Journal (July 21, 2018), <https://www.wsj.com/articles/detention-operators-face-suits-over-1-a-day-work-programs-for-migrants-1532170801>.

⁵ Office of Inspector General for the U.S. Department of Homeland Security, *Many Factors Hinder ICE's Ability to Maintain Adequate Medical Staffing at Detention Facilities*, Oct. 29, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-11/OIG-22-03-Oct21.pdf>.

⁶ Human Rights Watch, *Code Red: The Fatal Consequences of Substandard Medical Care in Immigration Detention*, June 20, 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

⁷ Katy Murdza, *COVID-19 Rates in ICE Detention Are at Record Highs. Advocates Are Demanding an Investigation*, The American Immigration Council: Immigration Impact (Feb. 14, 2022), <https://immigrationimpact.com/2022/02/14/covid-ice-detention-investigation/#.YhfwIqhKhPY>.

⁸ See Government Accountability Office, *Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Facility Contracts*, p. 7, <https://www.gao.gov/assets/gao-21-149.pdf>.

⁹ U.S. Immigration and Customs Enforcement, *Detention Facilities: New York*, <https://www.ice.gov/detention-facilities?state=21&office=&name=>. In addition, the Rensselaer County Correctional Facility has an active 287(g) agreement with ICE, and is known to hold people in ICE custody on contract for varying periods of time. See, e.g., Rebecca Carballo, *Rensselaer County sheriff renews contract with ICE for immigrant inmate program*, Albany Times Union (May 20, 2020), <https://www.timesunion.com/news/article/Rensselaer-Co-sheriff-renews-contract-with-ICE-15284376.php>.

¹⁰ See Transactional Records Access Clearinghouse (TRAC), *Immigration and Customs Enforcement Detention: New York: Orange County*, <https://trac.syr.edu/phptools/immigration/detention/> (latest available data from July 2019).

¹¹ See ICE, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, <https://www.ice.gov/identify-and-arrest/287g>.

¹² See, e.g., Rebecca Carballo, *Rensselaer County sheriff renews contract with ICE for immigrant inmate program*, Albany Times Union (May 20, 2020), <https://www.timesunion.com/news/article/Rensselaer-Co-sheriff-renews-contract-with-ICE-15284376.php>.

Immigrants detained in New York often experience the same kind of abuses that occur in immigration detention facilities elsewhere. In early 2022, advocates filed a complaint with the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties on behalf of several people detained at the Orange County Correctional Facility alleging discrimination, physical abuse, and retaliation against people who spoke out about the conditions there.¹³ In Rensselaer County, women in ICE detention at the jail have complained of abuse by jail guards and lack of access to medical treatment.¹⁴

The inherent cruelties of immigration detention are enabled and compounded by these local detention agreements. Through these contracts, people accused of violating civil immigration laws are placed in the same carceral settings as those caught in the criminal legal system. These agreements allow ICE to outsource its responsibility for maintaining custody of detained people, weakening federal oversight of the detention process and making local partners directly complicit in the federal government's immigration enforcement policies – and policy failures.

The legislature must do its part to shrink the immigration detention system.

Immigration detention could not exist on the scale it does today without the help ICE receives from local partners. Shrinking the harmful immigration detention system begins with cutting off ICE's access to jail space, compelling federal officials to rethink its approach to detaining immigrants and giving more people the opportunity to live in their communities while navigating the immigration legal process. New York must do its part.

By passing the Dignity Not Detention Act, New York State can help end ICE's convenient access to detention space and limit the federal government's ability to detain people for civil immigration offenses. The bill would prohibit counties that have detention agreements with ICE from renewing their contracts, ban new contracts with ICE, and make it unlawful to accept money for immigration detention. The bill would also prohibit private immigration detention facilities from operating in New York. Together with similar legislation in other state, such as recent laws passed in New Jersey,¹⁵ these measures will constrain ICE's immigration detention capacity and aid efforts to build a more humane immigration system.

¹³ Catholic Charities Community Service Archdiocese of New York, et. al., *RE: Racist and Retaliatory Abuse, Violence, and Medical Neglect Endured by Individuals Detained at Orange County Correctional Facility*, Feb. 17, 2022, available at https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf.

¹⁴ Spencer Conlin, Detainee files complaint against ICE and Rensselaer County Jail, Spectrum News (Sep. 21, 2021), <https://spectrumlocalnews.com/nys/capital-region/news/2021/09/21/complaint-filed-against-ice-and-rensselaer-county-jail>.

¹⁵ Dustin Racioppi & Mary Ann Koruth, NJ jails can no longer contract with ICE to hold federal immigrant detainees, NorthJersey.com (Aug. 20, 2021), <https://www.northjersey.com/story/news/new-jersey/2021/08/20/nj-jails-ice-federal-detainees-banned-murphy-law/8212074002/>.

Ending detention agreements between ICE and local governments is critical, but it is just one part of ensuring dignity for the people who are the subject of ICE's abuses. Prohibiting local jails from contracting with ICE will not alone end immigration detention or guarantee the release of those detained. Accordingly, the legislature must simultaneously take measures to end other types of collusion between law enforcement and ICE, and just as critically, guarantee that immigrants in New York facing deportation have fully funded counsel even if they are taken to a detention facility outside the state.

Conclusion.

The mass detention of people accused of violation civil immigration law is a national disgrace that New York must not enable. The Dignity Not Detention Act would ensure that local jails across the state no longer profit from immigration detention, and in doing so, would help shrink our overgrown immigration detention system.