



April 29, 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 - Sponsor Letter**

Dear Chair:

We are writing to express our support for AB3228, a bill which provides accountability for the operators of private detention facilities, and protects the health and safety of those detained, as well as the surrounding community. The consequences of COVID-19 in immigration detention facilities are dire for those detained, but should be of concern given the significant challenges this potential outbreak has for California as a whole.

At this time, COVID-19 has contaminated one of the five facilities in California- Otay Mesa Detention Facility in San Diego currently has the highest number of confirmed COVID-19 cases in the nation- with growing concern that it will soon spread to all five facilities which span the entire state (San Diego/Border Region, greater Los Angeles, the Central Valley and Yuba in the North). When an outbreak of COVID-19 occurs in these facilities the potential for mass contamination is high, given the number of individuals held in close proximity, and the inadequate medical resources available. The result of an outbreak will be the hospitalization of dozens or even hundreds of individuals. The immediate impact will result in devastating consequences on the medical resources in surrounding communities, and the long-term effect could mean death for hundreds.

The challenge presented by COVID-19 requires that we ensure public health for everyone in our state, particularly those in vulnerable facilities and communities. The Governor, in his six-point plan to lift shelter in place, included the need to formulate plans to address the threat of COVID-19 in vulnerable facilities. Immigrants in detention fall squarely within that criteria, and thus we must take steps to implement a coherent plan of action to address the threat of COVID-19 spreading in these facilities. To date, no such plan has been developed for immigrant detention facilities, despite the unique and serious challenges they present.

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*, 577 U.S. (2016).

Thus, California has the right and duty to hold private contractors liable for any acts which 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.

Four of the five immigration detention facilities in California are currently operated by private actors, specifically the GEO Group, Core Civic, and the Management and Training Corporation (MTC). These operators act as federal contractors and are often shielded from liability, however there are exceptions, particularly when an operator is violating the specific directions and guidance provided by a federal entity through a contract.

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.

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. Despite these issues arising in many private facilities, ICE has been reluctant to terminate contracts with operators who routinely violate the standards set forth in their contracts, or to provide meaningful levels of oversight or enforcement. As a result, private operators are able to violate basic minimum standards with no consequences.

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,

s/Hamid Yazdan Panah

Advocacy Director  
Immigrant Defense Advocates