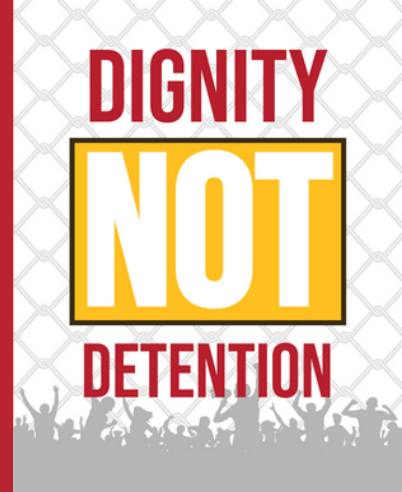


# NEW MEXICO DIGNITY NOT DETENTION ACT



The New Mexico Dignity Not Detention Act is an intergovernmental service agreement (IGSA) ban, which would prohibit the state, local government, and local law enforcement agencies from entering into an agreement with Immigration and Customs Enforcement (ICE) to detain people in civil immigration custody. Through this legislative vehicle, New Mexico legislators can build a more humane immigration system by ending its complicity in the mistreatment of migrants and asylum seekers.



## WHAT DOES IMMIGRATION DETENTION LOOK LIKE IN NEW MEXICO?

New Mexico has three ICE immigration detention centers that have the capacity to detain up to 2000 people. The three facilities are the Cibola County Correctional Center (CCCC), the Otero County Processing Center (OCPC), and the Torrance County Detention Facility (TCDF). Each location also incarcerates people in criminal custody. The facilities have well-documented histories of inhumane living conditions, restricted access to legal counsel, inadequate health care, and even deaths, as described below.

As of June 27, 2023, there are 1,110 people held in ICE custody in New Mexico. Nearly all individuals are recently arrived asylum seekers whose detention is discretionary under federal immigration law. Each facility is experiencing significant staffing shortages. Staffing levels at each of the facilities are as follows: 60% at OCPC; 68% at CCCC without temporary detailed staff from out of state (77% staffed with out of state, temporary staff); 66% at TCDF without temporary detailed staff from out of state (80% staffed with out of state, temporary staff).

Each county contracts with ICE to detain people in immigration custody pursuant to an IGSA. In turn, the counties enter into contracts with private contractors to operate the facilities. Each IGSA contains contract termination provisions. IGSA's are issued for several years. The current expiration dates for each IGSA are as follows: TCDF will expire on May 15, 2024; OCPC will expire on March 31, 2025; CCCC will expire on October 27, 2026.

Each facility detains several different populations, including people in ICE custody, US Marshal's custody, as well as state, county, and local custody. An IGSA ban would only impact people in ICE custody.

## WHAT DOES AN IGSA BAN DO?

The New Mexico Dignity Not Detention Act seeks to end the human suffering and torture inside New Mexico's immigration detention centers under the state's authority to regulate the health and safety of people in New Mexico. The bill specifically does the following:

**One.**

Prohibits New Mexico governmental entities from entering into contracts for the purpose of immigration detention, and prohibits New Mexico governmental entities from receiving any payments related to immigration detention.

**Two.**

Prohibits New Mexico governmental entities from renewing any existing immigration detention contracts.

**Three.**

Requires any New Mexico governmental entities with existing immigration detention contracts to exercise the termination provision in the contract. If an IGSA ban were passed in 2024, it would require that contract termination provisions be exercised by January 1, 2025. If an IGSA ban were passed in 2025, it would require that contract termination provisions be exercised by January 1, 2026.

## IS AN IGSA BAN THE SAME AS A PRIVATE PRISON BAN?

No. An IGSA ban is much narrower than a private prison ban. An IGSA ban would prohibit New Mexico local governments from entering into contracts for immigration detention. An IGSA ban only regulates the behavior of local New Mexican governments, and only prevents detention contracts by local New Mexican governments for civil immigration violations. A private prison ban is broader and would necessitate closure of facilities or making prisons publicly owned.

## IS AN IGSA BAN CONSTITUTIONAL?

Yes. Similar legislation was successfully passed in California, Washington, Illinois, Maryland, Oregon, New Jersey, and most recently, Colorado.

An IGSA ban would not be impacted by the Ninth Circuit litigation called *Geo Grp. Inc., v. Newsom*, No. 20-56172 (9th Cir. 2022) (en banc). There, the Court held California's private prison ban (AB32) was preempted by federal immigration law and violated intergovernmental immunity, and therefore violated the Supremacy Clause of the US Constitution. However, California's IGSA ban AB103, which was passed several years before the private prison ban, was not impacted by Geo Group, and that law remains valid in California.

**There is favorable case law out of the Seventh Circuit**, which upheld the legality of the IGSA ban in Illinois in *McHenry Cty. v. Raoul*, 44 F.4th 581 (7th Cir. 2022). Under the Seventh Circuit's analysis, an IGSA ban is clearly constitutional. An IGSA ban is not preempted by federal immigration law because it is a legitimate exercise of the state's historic power to regulate the health and welfare of individuals in our state. An IGSA ban in New Mexico does not regulate the federal government. It only regulates the behavior of New Mexico local governments, by prohibiting them from entering into contracts for the purposes of immigration detention, where there are numerous concerns related to health and safety. And importantly, an IGSA ban in New Mexico would not obstruct the ability of the federal government to utilize its own federal facilities pursuant to 8 U.S.C. § 1231(g), or to contract with private entities.

An IGSA ban in New Mexico would not be impacted by a negative decision in the pending litigation *CoreCivic v. Murphy*, Case No.: 2:2023cv00967 in New Jersey. New Jersey's IGSA ban attempted to also regulate the behavior of private corporations, by prohibiting contracts between private corporations and the federal government. By contrast, the New Mexico IGSA ban would only prohibit contracts between New Mexico local entities and ICE.

## WHY IS THIS BILL IMPORTANT?

In all three facilities, there are dangerous and life-threatening conditions. At TCDF, in August of 2022, a young Brazilian asylum seeker, Kesley Vial, tragically died by suicide. This mental health crisis continues at Torrance, in large part due to the unlivable and horrific conditions that plague the facility. On August 21, 2023, legal service providers submitted another civil rights and civil liberties complaint against the facility, detailing systemic due process violations, ongoing human rights abuses, and mistreatment which has led to retaliatory behavior against noncitizens and their legal advocates. The congressional delegation has called for the ICE contract at Torrance to be terminated three times since December 2021 given ongoing violations.

At CCCC, there have been two suicide attempts in the past year. CCCC was previously shut down for negligence which led to the death of three other noncitizens who were detained in that facility. After its reopening, there was yet another death of Roxana Hernandez in 2018, a trans woman and asylum seeker. Her death, believed to be a heart attack, was allowed to happen despite clear warnings and indicators of declining health.

OCPC is the facility at the center of family separation, the only facility in New Mexico which holds men and women in ICE custody, and the facility which currently holds the most individuals in ICE custody of the three facilities. There was yet another suicide attempt in December 2022. Given the high population at Otero, and the fact that illnesses and diseases spread faster in settings like prisons and jails, there are regularly outbreaks of illnesses, including COVID-19 and scabies. Individuals held at Otero regularly report medical needs going unmet, discriminatory treatment, and unlivable conditions of confinement.

**FOR MORE INFORMATION,  
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**ICE DETENTION SEPARATES FAMILIES AND HAS  
PROVEN DEADLY IN NEW MEXICO. IT IS HARMFUL,  
UNNECESSARY, AND NEW MEXICANS DON'T WANT  
TO BE COMPLICIT IN HUMAN RIGHTS VIOLATIONS.**

**WE CAN BUILD A FUTURE WITHOUT ICE  
DETENTION AND INSTEAD INVEST OUR SKILL AND  
OUR TIME IN PROJECTS THAT ACTUALLY SERVE  
OUR COMMUNITIES, LIKE PROGRAMS FOR YOUTH,  
EMERGENCY MEDICAL SERVICES, SUPPORT FOR  
PEOPLE LIVING WITH ADDICTION, AND TRAINING  
FOR NECESSARY TRADES LIKE WELDING.**

