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NOTE

CORPORATIONS' CONTRACTS WITH ICE HAVE AN EXPLICIT
AND IMPLICIT DUTY TO PROTECT IMMIGRANT DETAINEES

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*Veronica Oviedo**

INTRODUCTION

COVID-19 statistics have flooded our national news for the past two years. However, most news outlets fail to address the ongoing surges of COVID-19 outbreaks and deaths in immigration detention centers. This failure does not include other unaddressed issues in immigration detention centers, including sexual misconduct, medical negligence, and racist violence.¹ Immigrants in detention centers “can be undocumented or documented immigrants, including people whose immigration status is not current, is expired, or is under review.”² As such, we question the inaction of the United States government to enforce policies to mitigate these issues. Immigration Customs Enforcement (often referred to as “ICE”), a federal law enforcement agency under the U.S. Department of Homeland Security (“DHS”), contracts with local governments, private prison corporations, and well-known corporations for its detention centers.³ Immigration detention

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¹ Syra Ortiz-Blanes, *‘Lives continue to be in danger’: Lawmakers want FL migrant detention center to close*, MIAMI HERALD, Feb. 2, 2022, <https://www.miamiherald.com/news/local/immigration/article257963263.html>.

² *Immigration Detention 101*, DET. WATCH NETWORK, <https://www.detentionwatchnetwork.org/issues/detention-101> (last visited Sept. 27, 2021).

³ *Id.*

centers have become a “multibillion-dollar industry.”⁴ Immigration detention centers have become an exemplary model that creates a “perverse financial incentive” to keep individuals detained.⁵ Corporations profiting from detaining immigrants have an obligation to protect the detainees.

Corporations supplying goods and services to support these detention centers have faced “increasing public and political scrutiny from investors, employees, and activists.”⁶ Private prison corporations have explicitly acknowledged in their U.S. Securities and Exchange Commission (“SEC”) filings that “‘increasing activist resistance’ could ‘result in [their] inability to obtain new contracts or the loss of existing contracts’ or could ‘impact [their] ability to obtain or refinance debt financing or enter into commercial arrangements.’”⁷ In 2019, well-known corporations including Wayfair, Bank of America, American Airlines, and many others withdrew their goods and services supporting immigration detention centers.⁸ Nevertheless, many corporations remain, and other well-known corporations swoop in to obtain a contract with ICE.⁹ For both private prison corporations of GEO Group and CoreCivic, their principal business model is to profit from immigration detention centers.¹⁰ Corporations are generally held to no standard of accountability for the ongoing issues within the detention centers. However, upon closer examination of these corporations’ government contracts with ICE, there are methods that can hold corporations accountable for the unaddressed ongoing issues in detention centers.

This Note assesses the various legal avenues that can hold a corporation accountable for the unaddressed and ongoing issues in detention centers. This Note proposes that corporations can face criminal and civil liabilities via (i) their government contract standards, (ii) contract misrepresentations, and (iii) the Alien Tort Statute. Other solutions include: (i) shareholder human rights review, (ii) oversight of ICE standards into ICE contracts,

⁴ Yuki Noguchi, *Under Siege and Largely Secret: Businesses that Serve Immigration Detention*, NPR, June 30, 2019, <https://www.npr.org/2019/06/30/736940431/under-siege-and-largely-secret-businesses-that-serve-immigration-detention>.

⁵ *Immigration Detention 101*, *supra* note 2.

⁶ Noguchi, *supra* note 4.

⁷ Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEO. IMMIGR. L.J. 573, 588 (2020).

⁸ *Id.*

⁹ Noguchi, *supra* note 4.

¹⁰ Booth, *supra* note 7, at 584.

(iii) presidential executive order, and (iv) promotion of state bills to exert liability.

Part I of this Note gives a historical and legal framework for detaining immigrants in the United States. Part II describes the different standards ICE must observe to govern the conditions of its detention centers. Part III examines corporations' financial incentives to contract with immigration detention centers. Parts IV through VII analyze solutions to invoke criminal and civil liabilities upon corporations. Part IV analyzes shareholder human rights review and SEC misrepresentation of criminal liabilities. Part V analyzes state bills to exert liability over corporations and the exertion of Alien Tort Statute civil liabilities. Part VI analyzes the solution of expanding President Biden's executive order to include immigration detention centers in excluding private prison corporations from contracts. Part VII concludes by suggesting the use of legal avenues against corporations who have supported immigration detention centers to hold them accountable for mitigating the ongoing and unaddressed issues in those centers.

I. LEGISLATION AND HISTORY OF U.S. POLICY DETAINING IMMIGRANTS

The first U.S. law enacted referencing immigrant detention was the Alien Enemies Act in 1798. This Act allowed for the wartime detention of immigrants from "hostile" countries, as well as their removal.¹¹ In 1875, Congress enacted laws restricting the entry of immigrants with criminal convictions, requiring their detention until removed.¹² In 1952, Congress passed the Immigration and Naturalization Act ("INA"). The INA was marked by its distinction on entry as opposed to presence, as it provided for a legal difference for immigrants who physically arrived in the United States and those who properly entered the country.¹³ Detention initially was authorized but not obliged, and immigrants in proceedings could be released on bond.¹⁴

¹¹ HILLEL R. SMITH, CONG. RES. SERV., R45915, IMMIGRATION DETENTION: A LEGAL OVERVIEW 5 (2019).

¹² *Id.*

¹³ SMITH, *supra* note 11, at 6.

¹⁴ *Id.*

In the early 1980s, Cuban and Haitian refugees arriving in Florida were taken to detention facilities.¹⁵ U.S. immigration policy began to model after the criminal justice system in the late 1980s.¹⁶ As the United States expanded prisons in the 1980s and 1990s, the detention of immigrants began to rise.¹⁷ During the War on Drugs, Congress amended the INA to mandate the detention of immigrants with specific criminal convictions.¹⁸ As a result, immigration detention became “automatic and compulsory, without a hearing or any consideration of their circumstances.”¹⁹

In the 1990s, U.S. immigration policy shifted, and detention became an increasingly prevalent immigration enforcement method.²⁰ In 1996, the United States continued this new shift in priorities by implementing legislation that expanded the use of detention.²¹ Both the Antiterrorism and Effective Death Penalty Act (“AEDPA”) and the Illegal Immigrant Reform and Immigrant Responsibility Act (“IIRIRA”) which replaced the INA’s language from whether an immigrant had physically entered the United States to the new framework of whether an immigrant had been lawfully admitted into the country.²² These laws resulted in making “any non-U.S. citizen, including legal permanent residents, vulnerable to detention and deportation.”²³ In the aftermath of September 11, 2001, the Immigration and Naturalization Service (“INS”) was divided into subdivisions of U.S. Citizenship and Immigration Services (“USCIS”), ICE, and Customs and Border Protection (“CBP”).²⁴ In addition, it moved from the Department of Justice (“DOJ”) to DHS.²⁵ Immigration shifted to a national security issue reflected by ICE’s strategic plan, “[to] promote the public safety and national security by ensuring the departure from the [U.S.] of all removable aliens

¹⁵ *Immigration Detention 101*, *supra* note 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² SMITH, *supra* note 11, at 6.

²³ *Immigration Detention 101*, *supra* note 2.

²⁴ *Id.*

²⁵ *Id.*

through the fair and effective enforcement of the nation's immigration laws."²⁶

The INA provides authority and power to DHS and sometimes requires DHS to detain non-U.S. nationals arrested for immigration violations that subject them to removal from the United States.²⁷ DHS sustains the discretion to release a detainee from custody, but its authority shifts when immigrants have committed specific crimes for which INA statutes allow release.²⁸ Four INA provisions govern when the detention of an immigrant may occur: INA Section 236(a), INA Section 236(c), INA Section 235(b), and INA Section 241(a).²⁹ DHS has broad authority over detaining immigrants without limitation, and courts have to deal with legal and constitutional challenges of immigration detention.³⁰

II. IMMIGRATION DETENTION CENTER STANDARDS

ICE has different standards to govern the conditions of its detention centers, including "medical care, use of force, and protection against sexual assaults."³¹ ICE standards are modeled on jail and prison standards.³² ICE standards include the 2000 National Detention Standards, the 2008 and 2011 Performance-Based National Detention Standards, and the National Detention Standards 2019.³³ The 2000 National Detention Standards ("NDS") outlined conditions of "confinement, program operations and

²⁶ *Id.*

²⁷ SMITH, *supra* note 11, at 1.

²⁸ *Id.*

²⁹ *See id.* ("INA Section 236(a) authorizes detention of [immigrants] pending removal proceedings and permits [immigrants] who are not subject to mandatory detention to be released on bond or on their own recognizance, INA Section 236(c) requires detention of [immigrants] who are removable because of specified criminal activity or terrorist grounds after release from criminal incarceration, INA Section 235(b) requires detention of [immigrants] for admission, such as [immigrants] arriving at a designated port of entry as well as certain other [immigrants] who have not been admitted or paroled into the United States, who appear subject to removal, and INA Section 241(a) requires detention of [immigrants] during a 90-day period after completion of removal proceedings and permits the detention of certain [immigrants] after that period.")

³⁰ *Id.*

³¹ AM. FOR IMMIGRANT JUST., *Prison By Any Other Name: A Report on South Florida Detention Facilities* 2, 6, https://www.splcenter.org/sites/default/files/cjr_fl_detention_report-final_1.pdf.

³² *Id.*

³³ *ICE Detention Standards*, U.S. IMMIGR. & CUSTOMS ENF'T (Nov. 9, 2021), <https://www.ice.gov/factsheets/facilities-pbnds>.

management expectations within the agency's detention system."³⁴ The 2008 Performance-Based National Detention Standards ("PBNDS") were developed with agency stakeholders' input and were to improve "safety, security, and conditions of confinement for detainees."³⁵ The 2011 Performance-Based National Detention Standards ("PBDNS 2011") were developed "to improve medical and mental health services, increase access to legal services and religious opportunities, improve communication with detainees with limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation."³⁶ The National Detention Standards 2019 added unaddressed topics of "medical care, segregation, disability access, sexual assault and abuse prevention, and intervention, and language access."³⁷

However, ICE's standards are not codified into law.³⁸ As such, detention centers instead are contractually obligated to follow the standard in their contracts.³⁹ Unfortunately, in 2018, it was reported only 65% of detention centers were found to have only one of these standards in their contracts.⁴⁰ ICE uses two methods to inspect its detention centers: the Nakamoto Group, a private company, and its Office of Detention Oversight.⁴¹ In addition, ICE has a Detention Monitoring Program for ICE staff to monitor compliance with the standards.⁴² Nonetheless, ICE's oversight methods have been "described as a 'theater of compliance' . . . to cover up abuses and avoid accountability."⁴³ The DHS Office of Inspector General discovered that none of ICE's methods "adequately correct[ed] systemic deficiencies or ensure[d] consistent compliance with detention standards."⁴⁴ Moreover, ICE has "rarely [imposed] financial penalties or legal mechanisms to ensure . . .

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ AM. FOR IMMIGRANT JUST., *supra* note 31, at 6.

³⁹ *Id.*

⁴⁰ AM. FOR IMMIGRANT JUST., *supra* note 31, at 6.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Jesse Franzblau, *Cut the Contracts: It's Time to End ICE's Corrupt Detention Management System*, NAT'L IMMIGRANT JUST. CTR. 5 (Mar. 16, 2021), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-03/Policy-Brief_Cut-the-Contracts_March-2021_Final.pdf.

⁴⁴ AM. FOR IMMIGRANT JUST., *supra* note 31, at 6.

compliance.”⁴⁵ Instead, ICE has relied on issuing waivers to detention centers not in compliance and allowing possible contract violations by a corporation.⁴⁶

III. CORPORATIONS' FINANCIAL INCENTIVE TO CONTRACT WITH IMMIGRATION DETENTION CENTERS

A. Selection Process of Government Contracts with ICE

Some “[a]gencies use[] procurement procedures [to] solicit proposals from [corporations] . . . allowing market forces to price down and quality up.”⁴⁷ However, immigration detention centers’ services’ “market . . . competition is [absent],” which often leads detention centers to “[resort to] sole-source awards.”⁴⁸ Initially, “ICE [performs] market research to [assess] the capabilities of potential contractors . . . by issuing a Request for Information (‘RFI’).”⁴⁹ Afterward, it is contingent if there is “more than one company compet[ing] for the contract.”⁵⁰ If there are no competing companies, ICE may “stop the competitive bidding process” and “issu[e] a ‘sole-source’ award” to the company.⁵¹ The sole-source award can “tak[e] as little [as] a month to complete.”⁵² However, if there are competing companies, “ICE continues the competitive bidding process[,]” and “ICE issues a Request for Proposals (‘RFP’) so [companies] can submit a bid or proposed contract.”⁵³ “ICE [will then] issu[e] [a] contract to the most competitive bidder.”⁵⁴ Nevertheless, this “bidding process can take about a year.”⁵⁵

⁴⁵ *Id.*

⁴⁶ *See id.*

⁴⁷ *Government Contracts*, IMMIGRANT LEGAL RES. CTR. (Oct. 24, 2019), https://www.ilrc.org/sites/default/files/resources/government_contracts_1.pdf.

⁴⁸ *Id.*

⁴⁹ IMMIGRANT LEGAL RES. CTR., *supra* note 47.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

ICE manages its detention centers through different contract types, including (i) Non-Dedicated Intergovernmental Services Agreements (“IGSA”), (ii) Dedicated Intergovernmental Service Agreements (“DIGSA”), (iii) Family Residential Centers (“FRC”), (iv) U.S. Marshals Service Intergovernmental Agreements (“USMS IGA”), (v) Service Processing Centers (“SPC”), and (vi) Contract Detention Facilities (“CDF”).⁵⁶ The most common contract type ICE executes is the IGSA, which “usually entail[s] a ‘pass-through’ arrangement.”⁵⁷ A pass-through allows “counties or municipalities hosting the detention centers to contract with . . . [corporations] [] opera[ting] the [centers and to] receiv[e] kick-back funds.”⁵⁸ In 2018, the DHS Inspector General investigated the South Texas Family Residential Center IGSA and found that the city of Eloy, Arizona, earned \$400,000 per year through the IGSA, and the private prison corporation received \$261 million between 2014 to 2016.⁵⁹

B. ICE Government Contract Terms

Some “ICE detention contracts include guaranteed minimums, [otherwise known as] ‘bed quotas,’ which require ICE to pay contractors for a minimum number of detention beds regardless of whether those beds are used.”⁶⁰ “ICE [uses] . . . millions in taxpayer dollars on . . . contracts with [corporations] for . . . services including food, guards from military contractors and mercenary firms, transport for children to detention shelters and hotels, and surveillance technology.”⁶¹ Detention centers’ profits depend on the number of detainees and detainees’ length of stay.⁶² Some government contracts incorporate a provision where “[t]he government must pay a fine to the [prison corporations] if [the number of detainees] fall[s] below 70%

⁵⁶ See Franzblau, *supra* note 43, at 2.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.*

⁵⁹ See Franzblau, *supra* note 43, at 2.

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

⁶² See Jindan-Karena Mann, *Re-reviving the Alien Tort Statute for Human Rights Claims*, RETHINKING SLIC (Feb. 13, 2020), <https://rethinkingslic.org/blog/tort-law/63-re-reviving-the-alien-tort-statute-for-human-rights-claims>.

capacity.”⁶³ Moreover, ICE generally enters into long-term detention center contracts that extend a decade, invoking minimal oversight.⁶⁴

C. Private Prison Corporations' Contracting with ICE

“[P]rivate prison corporations [including] GEO Group, CoreCivic, LaSalle Corrections, and the Management and Training Corporation [either] own or operate” the majority of ICE’s detention centers.⁶⁵ During former President Trump’s administration, 81% of detained immigrants as of January 2020 were in detention centers either “owned or operated by [a] private prison corporatio[n].”⁶⁶ Under the administration of President Biden, as of September 2021, this number was 79%.⁶⁷ “In 2019, [an estimated] 30% of both CoreCivic and GEO Group revenue” was derived from its detention contracts.⁶⁸ In 2018, “CoreCivic and GEO Group’s revenues totaled [] \$4.1 billion[], and . . . a quarter of that” revenue was from detention contracts.⁶⁹ “From 2008 to 2016, CoreCivic earned \$689 million . . . and GEO Group earned \$1.18 billion” from their detention center contracts.⁷⁰ For both corporations, “ICE contracts are [the] . . . largest source of revenue.”⁷¹ Given that “[m]ost detained immigrants have not committed [prior] violent crimes,” both corporations can have low “security costs . . . [compared to] privately managed state and federal prisons.”⁷² Moreover, both corporations can maintain lower costs and higher profits due to no explicit requirement to provide detained immigrants with rehabilitative services.⁷³ Both corporations can increase profits by having detained immigrants perform labor instead of hiring third-party employees.⁷⁴ Detained immigrants awaiting deportations

⁶³ *Id.*

⁶⁴ See Franzblau, *supra* note 43, at 4.

⁶⁵ Eunice Cho, *More of the Same: Private Prison Corporations and Immigration Detention Under the Biden Administration*, ACLU (Oct. 5, 2021), <https://www.aclu.org/news/immigrants-rights/more-of-the-same-private-prison-corporations-and-immigration-detention-under-the-biden-administration/>.

⁶⁶ Cho, *supra* note 65.

⁶⁷ *Id.*

⁶⁸ Booth, *supra* note 7, at 584.

⁶⁹ Noguchi, *supra* note 4.

⁷⁰ Booth, *supra* note 7, at 584.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See *id.*

⁷⁴ See *id.*

hearings are integral for profits for the corporations.⁷⁵ “In 2010, Congress [enacted] a law requiring ICE to maintain ‘not less than 33,400 detention beds,’ . . . [which] are managed by private [prison] corporations.”⁷⁶ ICE has an incentive to ensure these beds are occupied since ICE already paid for a certain quota.⁷⁷ Thus, “if [private] prison corporations remain profitable, they will [continue to attract] big investors.”⁷⁸

D. Non-Private Prison Corporations’ Contracting with ICE

In 2019, various corporations began to withdraw their services to detention centers due to public backlash.⁷⁹ After an employee uncovered its services, Wayfair discontinued supplying bedroom furniture to a detention center for immigrant children.⁸⁰ On the other hand, Bank of America voluntarily decided to cease its financing services to immigration detention centers after JPMorgan Chase and Wells Fargo proceeded to do the same.⁸¹ Financing serves as a vital component for the “construction and expansion of [other] detention centers”; however, other corporations are still willing to contract with ICE.⁸² After uncovering immigrant children were being separated from their families using its flights as transportation, “American Airlines . . . and other airline carriers asked the [U.S.] government to stop using their planes for that purpose.”⁸³ However, other well-known corporations, such as Microsoft, still benefit from long-standing contractual relationships with ICE.⁸⁴

In 2019, Microsoft, the parent company of Github, was estimated to have earned \$14.6 million from its ICE “contracts for consulting and

⁷⁵ *See id.*

⁷⁶ *Id.*

⁷⁷ Booth, *supra* note 7, at 584.

⁷⁸ *Id.* at 588.

⁷⁹ *See* Noguchi, *supra* note 4.

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² *Id.*

⁸³ Noguchi, *supra* note 4.

⁸⁴ Donald Shaw, *Microsoft Has Made \$14.6 Million from Contracts with ICE Since 2010*, SLUDGE (Oct. 10, 2019, 8:44 AM), <https://readsludge.com/2019/10/09/heres-how-github-justifies-making-money-from-ice/>.

software since 2010.”⁸⁵ In the same year, Github, a subsidiary of Microsoft, performed a \$200,000 sale of its Enterprise Service product to ICE.⁸⁶ Github executed an email to its employees explaining its position on its contract with ICE, acknowledging both Github’s and Microsoft’s public opposition of ICE’s immigration law enforcement policies, but also the companies’ support of ICE’s efforts in “fighting human trafficking, child exploitation, terrorism and transnational crime, gang violence, money laundering, intellectual property theft, and cybercrime.”⁸⁷ Nonetheless, Github acknowledged in its email to its employees, “We do not know the specific projects that the on-premises Github Enterprises Server license is being used with, but recognize it could be used in projects that support policies we both agree and disagree with.”⁸⁸ Github’s leadership publicly acknowledged that the corporation “would donate \$500,000 to nonprofits working to support immigrants” and display continual support for policy and advocacy efforts.⁸⁹ However, donation-based remedial efforts fail to offset the harm of Github’s continued profit from its contractual relationship with ICE; in particular, where such a relationship could potentially be used to support policies Github does not support. It is apparent that Github made no efforts to perform due diligence as to how their Enterprises Server would be used.

IV. RESPONSIBILITY OF CORPORATIONS TO ICE DETAINEES

A. Corporations’ Human Rights Risks Associated with their ICE Contracts

Corporations that have contracts with ICE expose themselves to the “risk of contributing to, or being directly linked to, violations of human rights, including children’s rights, due process, equal protection, freedom from persecution and torture, and the rights of asylum seekers.”⁹⁰

⁸⁵ *Id.*

⁸⁶ Shaw, *supra* note 84.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Guidance on Corporate Human Rights Due Diligence Related to Immigration Detention and Family Separation*, INV. ALL. FOR HUM. RTS. 1, https://www.nea.org/sites/default/files/2020-06/Guidance_Corporate%20Human%20Rights%20Due%20Diligence_Immigration%20Detention%20%26%20Family%20Separation%20%20.pdf (last visited Nov. 21, 2021) [hereinafter *Guidance*].

Corporations are exposed to “significant legal and reputational risks,” including potential employee and shareholder opposition.⁹¹ Corporations at risk of impacting human rights include technology companies providing hardware or infrastructure, private prisons engaged in detention center businesses, contractors involved in the processing and transporting of children or providing other services related to the management of ICE, and financial institutions that provide capital and financial support.⁹² In December 2016, the United States adopted the United Nations Guiding Principles on Business and Human Rights (“UNGP”) into its National Action Plan on Responsible Business Conduct (“NAP”).⁹³ In 2021, on the tenth anniversary of the enactment of UNGP, the U.S. Secretary of State Anthony Blinken announced that the United States would update its NAP.⁹⁴ The UNGP acknowledged that corporations

have a responsibility to respect human rights by exercising human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts regardless of whether the state upholds its duty [to protect human rights], and both must provide [a] remedy for victims of corporate related abuses.⁹⁵

However, the first version of U.S. NAP solely focused on U.S. businesses operating overseas rather than those operating in the United States.⁹⁶ Moreover, the first U.S. NAP received mixed reviews including criticisms on “calling only for voluntary efforts by business and promising no new concrete action by the government.”⁹⁷ As such, the U.S. NAP has served more as a tool and lacked binding principles.⁹⁸ Nonetheless, the current administration’s emphasis on “promot[ing] domestic labor rights and [] end[ing] the use of private prisons, among other domestic human rights-

⁹¹ *Id.*

⁹² *See id.* at 2.

⁹³ *See* Marti Flacks, *Updating U.S. National Action Plan on Responsible Business Conduct*, CTR. FOR STRATEGIC AND INT’L STUD. (June 18, 2021), <https://www.csis.org/analysis/updating-us-national-action-plan-responsible-business-conduct>.

⁹⁴ *See* Antony J. Blinken, *10th Anniversary of the UN Guiding Principles on Business and Human Rights*, U.S. DEPT. OF STATE (June 16, 2021), <https://www.state.gov/10th-anniversary-of-the-un-guiding-principles-on-business-and-human-rights/>.

⁹⁵ *Guidance*, *supra* note 90, at 2.

⁹⁶ *See* Flacks, *supra* note 93.

⁹⁷ *Id.*

⁹⁸ *See id.*

related initiatives,” may place “more pressure on the administration to broaden the scope.”⁹⁹ The new NAP could serve as a vehicle to mandate the oversight of the inclusion of ICE standards into all corporations’ contracts with ICE. A domestic-focused NAP would serve as a powerful tool to bind corporations by law that contract with detention centers by holding them accountable.

Currently, corporations can mitigate these risks by following the UNGP recommendations. Corporations should “identify, prevent, and eliminate the risk that their products and services could be used to abuse.”¹⁰⁰ Corporations should also take into consideration whether they have taken a stance on condemning immigration policies harmful to human rights.¹⁰¹ Furthermore, corporations should consider if continuing business with ICE is inconsistent with their policies.¹⁰² Private prison corporations should consider if they have taken measures to ensure the shortest detention time possible and adequate staff training.¹⁰³ Transportation corporations should consider if they have informed policy makers and federal agencies that using their services to deport children away from the family is not permitted.¹⁰⁴

Moreover, corporations are subject to a fiduciary duty of refraining from acting in their interests.¹⁰⁵ A corporation’s fiduciary duty entails maximizing its shareholders’ profits instead of a duty to societal interests.¹⁰⁶ Most courts are cautious about interfering in a corporation’s decisions “because courts recognize their limited competence in business affairs.”¹⁰⁷ As a result, courts currently do not have to balance societal concerns versus shareholder profits.¹⁰⁸ However, shareholders have begun to consider a corporation’s ICE contracts for misrepresentation liability or moral considerations.¹⁰⁹ As such,

⁹⁹ *Id.*

¹⁰⁰ *Guidance, supra* note 90, at 3.

¹⁰¹ *Id.* at 4.

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ *Guidance, supra* note 90, at 5.

¹⁰⁵ *See generally* Hajin Kim, *Can Mandating Corporate Social Responsibility Backfire?*, 18 J. EMPIRICAL LEGAL STUD. 189 (2021).

¹⁰⁶ *See id.* at 197.

¹⁰⁷ *Id.* at 192.

¹⁰⁸ *See id.*

¹⁰⁹ *See infra* Sections IV(b) and V.

corporations would have to worry about not complying with their fiduciary duties.¹¹⁰

B. Corporations' Shareholders Initiative of Human Rights Review on ICE Contracts

In 2021, Microsoft announced after public pressure from its employees and shareholders over its ICE contracts to commission an independent human rights review.¹¹¹ The announcement was after “Investor Advocates for Social Justice, a nonprofit representing faith-based institutional investors[,]” proposed to Microsoft to evaluate its commitments to human rights statements and policies.¹¹² Its commitment includes “a review of any human rights impacts that its products or services have on . . . Black, Indigenous, and People of Color in contracts for police, immigration enforcement and . . . other government agencies,” which is expected to include “sixteen active contracts with ICE and U.S. [CBP].”¹¹³ Microsoft is expected to publish its report sometime in 2022, which will be conducted by the law firm Foley Hoag LLP.¹¹⁴ Admittedly, Microsoft is not the only corporation facing scrutiny and proposals by its shareholders for such changes.

Since as early as 2015, Thomson Reuters has had a contractual relationship with ICE providing its “services including access to databases and staff to monitor social media accounts.”¹¹⁵ As of 2020, Thomson Reuters Special Services, a subsidiary of Thomson Reuters, held active contracts with ICE estimated at \$39.1 million.¹¹⁶ In early 2021, “[a] majority of independent shareholders of Thomson Reuters . . . voted in favor of a proposal . . . [for] the company [to] . . . assess and report on the potential human rights abuses” from its ICE contracts.¹¹⁷ The proposal by the British Columbia Government

¹¹⁰ *See id.*

¹¹¹ Dina Bass, *Microsoft Agrees to Human Rights Review of Deals with Law Enforcement and Government*, TIME (Oct. 13, 2021, 4:54 PM), <https://time.com/6106681/microsoft-human-rights-review/>.

¹¹² *Id.*

¹¹³ Bass, *supra* note 111.

¹¹⁴ *See id.*

¹¹⁵ Chris Mills Rodrigo, *Majority of independent shareholders vote to review Thomson Reuters' ICE contracts*, THE HILL (June 9, 2021, 2:18 PM), <https://thehill.com/policy/technology/557591-majority-of-independent-shareholders-vote-to-review-thomson-reuters-ice>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

and Services Employees' Union, a company shareholder, was supported by over 70% of independent shareholders.¹¹⁸ However, the Woodbridge Company, a private company holding approximately 68% of Thomson Reuter's shares, voted against the passage of the proposition.¹¹⁹ Ultimately, the passage of the proposition failed.¹²⁰ Nonetheless, corporate shareholders of companies who contract with ICE have invoked suits for criminal liability against the corporations.

C. Rise of Shareholder Suits for Misrepresentation of Detention Centers Quality

“Section 18 of the Exchange Act imposes liability for false and misleading statements in documents filed with the SEC to any person who makes such false or misleading statements.”¹²¹ “[H]owever, Section 18 applies only to [] documents . . . includ[ing] annual, quarterly, and special reports.”¹²² A plaintiff invoking a Section 18 claim must prove “the defendant knowingly made a false statement, the plaintiff relied on the false or misleading statement, and the plaintiff suffered damages as a result of that reliance.”¹²³ On April 15, 2021, CoreCivic settled a \$56 million securities violation class-action lawsuit¹²⁴ in which shareholders alleged securities fraud based on false and/or misleading public statements about the quality of its centers.¹²⁵ The lawsuit was filed in 2016 on behalf of CoreCivic shareholders who held shares between February 27, 2012 and August 17, 2016.¹²⁶ The lawsuit was based on “materially false and misleading

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Rodrigo, *supra* note 115.

¹²¹ U.S. SEC. & EXCH. COMM'N., EXISTING REGULATORY PROTECTIONS UNCHANGED BY EITHER H.R. 3606 OR S. 1933 (2011), <https://www.sec.gov/info/smallbus/acsec/ongoinginvestorprotections.pdf>.

¹²² Jason Gordon, *Liability Under Section 18 of 1934 Act—Explained*, THE BUS. PROFESSOR (Sept. 25, 2021), https://thebusinessprofessor.com/en_US/business-transactions/liability-under-section-18-of-1934-act.

¹²³ *Id.*

¹²⁴ See generally Grae v. Corr. Corp. of Am., 330 F.R.D. 481 (M.D. Tenn. 2019).

¹²⁵ See David M. Reutter, *\$56 Million Settlement in CoreCivic Securities Violation Lawsuit*, PRISON LEGAL NEWS (Oct. 1, 2021), <https://www.prisonlegalnews.org/news/2021/oct/1/56-million-settlement-corecivic-securities-violation-lawsuit/>.

¹²⁶ See *id.*

statements issued during the class period.”¹²⁷ The statements in the Annual Reports of CoreCivic filed with the U.S. SEC in 2012 reported “40-43% of [its] revenue was derived from contracts with the federal government through the operation of prisons and detention centers.”¹²⁸ The report had also stated “that as of December 10, 2010, the American Correctional Association (‘ACA’), “an independent organization of corrections industry professionals that establishes standards by which a correctional facility may gain accreditation,” had accredited 85% of its facilities.”¹²⁹ In 2016, “Deputy General Attorney Sally Yates announced the [DOJ] had decided to end its use of private prisons” because they “compar[ed] poorly to its own Bureau facilities . . . in services, programs, and resources.”¹³⁰ After the statement went public, CoreCivic “stock ‘fell \$9.65, or 39.45% to close at \$17.57’” which was alleged to “caus[e] the class to suffer ‘significant losses and damages.’”¹³¹ More importantly, the suit alleged CoreCivic executives knew its public statements about the quality of its centers were false.¹³² Thus, Section 18 serves as a legal avenue to hold corporations liable for not maintaining centers to certain standards.

V. CORPORATIONS’ CIVIL LIABILITY FOR IMMIGRATION DETENTION CENTERS CONDITIONS

A. Corporations Can Be Held Civilly Liable for Harms in Immigration Detention Centers

Corporations with ICE contracts can and should be held accountable for ongoing injustices in immigration detention centers. Some states have invoked bills to hold private corporations, especially private prison corporations, accountable for harms in immigration detention centers.¹³³

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Reutter, *supra* note 125.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See Travis Loller, *CoreCivic to Settle Shareholders Lawsuit for \$56 Million*, U.S. NEWS (Apr. 19, 2021, 4:04 PM), <https://www.usnews.com/news/business/articles/2021-04-19/corecivic-to-settle-shareholders-lawsuit-for-56-million>.

¹³³ See *infra* notes 134–39.

In June 2018, the U.S. DHS investigation published a report finding that due to “flaws in inspections of ICE detention [centers], deficiencies ‘remain[ed] uncorrected for years.’”¹³⁴ The report also found that “typically, three to five inspectors have only three days to complete the inspection, interview 85 to 100 detainees, brief facility staff, and begin writing their inspection report for ICE.”¹³⁵ An ICE employee notified investigators that this was insufficient time to oversee if the detention center is implementing its required policies.¹³⁶ Other ICE personnel notified investigators that the inspections were not “difficult to fail” and were “useless.”¹³⁷

In October 2019, Governor Gavin Newsom signed AB 32, which “prohibit[ed] the private operation of immigration detention [centers] in California beginning in 2020.”¹³⁸ However, two weeks before the bill went into effect, ICE secured “long-term multi-billion-dollar contracts with the operators of the state’s four existing centers . . . rush[ing] the bidding process . . . to circumvent the law.”¹³⁹ Additionally, California has taken the initiative of promoting state bills to hold private prison companies more accountable for harms in immigration detention centers.¹⁴⁰ On September 27, 2020, California Governor Gavin Newsom signed the bill AB 3228 that would require the California operators of private prisons and immigration detention centers to comply with the standards in their contracts with the state and federal government.¹⁴¹ The bill AB 3228 is “the first of its kind in the nation.”¹⁴² More importantly, the bill provides detained immigrants “a forum for legal challenges in the event . . . those standards [are breached.]”¹⁴³ When

¹³⁴ Grace Meng, *Holding Companies Accountable for US Detention Abuses*, HUM. RTS. WATCH (Nov. 25, 2019, 3:30 PM), <https://www.hrw.org/news/2019/11/25/holding-companies-accountable-us-detention-abuses#>.

¹³⁵ Meng, *supra* note 134.

¹³⁶ *See id.*

¹³⁷ *Id.*

¹³⁸ Rebecca Plevin, *‘They need to be regulated’: Bill seeks to hold private prison companies accountable*, DESERT SUN (Sept. 11, 2020, 7:54 AM), <https://www.desertsun.com/story/news/2020/09/11/calif-bill-seeks-hold-private-prison-companies-accountable/3462096001/>.

¹³⁹ *Id.*

¹⁴⁰ *See id.*

¹⁴¹ *See California Passes AB 3228 Bill to Protect Immigrants in Detention*, IMMIGRANT LEGAL DEF. (Oct. 2020), <https://ild.org/california-passes-ab-3228-bill-to-protect-immigrants-in-detention/> [hereinafter IMMIGRANT LEGAL DEF.].

¹⁴² *Id.*

¹⁴³ Plevin, *supra* note 138.

a detainee is harmed based on a violation of those standards, they will be able to take that corporation to state court.¹⁴⁴ The need for immediate change for detained immigrants begins with bills such as AB 3228. However, state-based bills are only one alternative to the solution, as corporations can also be subjected to liability under the Alien Tort Statute (“ATS”).

B. Alien Tort Statute Civil Liability for ICE Detention Centers

“The [ATS] is a U.S. federal law [that was] first adopted in 1789.”¹⁴⁵ ATS is beneficial for detained immigrants because it provides “federal courts [with] jurisdiction to hear lawsuits filed by non-U.S. citizens for torts committed in violation of international law.”¹⁴⁶ Despite the fact that the ATS was drafted initially during a time when “international law [focused on] . . . regulating diplomatic relations between States and outlawing crimes such as piracy, . . . [it] has [now] expanded to include the protection of human rights.”¹⁴⁷ In 1948, the Universal Declaration of Human Rights “gave the ATS renewed significance.”¹⁴⁸ Since 1980, the ATS has successfully been used to rebut cases entailing “torture, state-sponsored sexual violence, extrajudicial killing, crimes against humanity, war crimes and arbitrary detention.”¹⁴⁹ The ATS was recognized as “one of the foremost judicial avenues for vindicating human rights violations until two Supreme Court cases limited its scope, leading practitioners and scholars to pronounce its death as a tool for human rights litigation.”¹⁵⁰ However, the ATS can offer detainees another legal avenue to sue corporations for liability for their harms.¹⁵¹

Some cases have utilized this revival initiative “claiming civil damages for harms arising out of [the] current [practices] in [] detention centers.”¹⁵² More specifically, these cases are contesting “violation[s] of ordinary torts

¹⁴⁴ See IMMIGRANT LEGAL DEF., *supra* note 141.

¹⁴⁵ *The Alien Tort Statute*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/the-alien-tort-statute/> (last visited Nov. 21, 2021).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Mann, *supra* note 62.

¹⁵¹ See *id.*

¹⁵² *Id.*

and statutory provisions[,] . . . characteriz[ing] them [also] as violations of international law . . . [for] conduct . . . internationally considered to constitute grave human rights violations.”¹⁵³ In application to immigration detention centers, these centers undergo overcrowding, sexual misconduct, medical negligence, racist violence, and many other issues that rise to human rights abuses.¹⁵⁴ When detention centers began to overcrowd, conditions became inhumane, including “exposure to extreme temperatures, . . . inadequate food, and lack [of] water, sanitation, clothing and medical care.”¹⁵⁵ “A U.S. [DHS] internal memorandum [entailing] allegations made by [] whistleblowers describe[d]” their experience at the detention centers as “provid[ing] inadequate healthcare including . . . forcible medical injections as a means of behavior control[,] misdiagnosis of health conditions and serious medical errors[,] and inadequate care leading to death while in custody.”¹⁵⁶ Thus, ATS provides a possible legal avenue for detainees to bring their claims, which must also constitute “violations of [the] laws of nations.”¹⁵⁷

The “violations of the laws of nations” are considered “crime[s] against humanity . . . in ATS litigation.”¹⁵⁸ “A crime against humanity [] is when a [] crime is committed in the context of a widespread or systematic attack against a civilian population.”¹⁵⁹ The attack is not explicitly defined as “an armed attack” but can also include “any mistreatment of the civilian population.”¹⁶⁰ The current treatment of detainees in detention centers can be characterized as a “crime[s] against humanity includ[ing] . . . persecution.”¹⁶¹ Persecution is defined as “when a person is deprived of fundamental rights because of [their] membership in a specific group, such as based on nationality.”¹⁶² Detainees can claim persecution for

¹⁵³ Mann, *supra* note 62.

¹⁵⁴ *See id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Mann, *supra* note 62.

¹⁶² *Id.*

overcrowded and unsanitary conditions[,] . . . severe assault on their personal dignity, especially when taking into account that lack of medical care has resulted in severe injury and even death Other abuses, including sexual abuse, verbal abuse, and standard provisions of food and water, further support such a finding.¹⁶³

It is estimated that 70% of detainees in immigration detention centers held by private prison corporations face more abusive and unsafe circumstances than compared with federally run facilities.¹⁶⁴ Although the U.S. government perpetrates the conduct of “crimes against humanity, torture, or prolonged arbitrary detention, the private prison companies, who not only operate the detentions but also profit enormously off the policies that such harms, are complicit.”¹⁶⁵ ATS offers “[a]iding and abetting liability . . . for claims” against corporations.¹⁶⁶ “[P]rison [corporations’] actual operations of the [] centers and acceptance of [the] detainees despite lack of capacity, [can be considered] . . . assist[ing] ICE and the U.S. government’s wrongful acts.”¹⁶⁷

VI. POLICY REFORM

A. ICE Detention Centers Medical and Mental Health Conditions

On March 11, 2020, the World Health Organization (“WHO”) declared a global pandemic otherwise known as “COVID-19.”¹⁶⁸ ICE detention centers have unique challenges in mitigating risks of COVID-19 because “the detainee population comes from a variety of geographic locations, turns over frequently, and cannot leave the facility[,]” and there may be “finite medical resources, difficulty maintaining environmental cleanliness, and limited options for social distancing.”¹⁶⁹ “Since January 2020, the Centers for Disease Control and Prevention (‘CDC’) has issued ongoing guidance to

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See JOSEPH V. CUFFARI, U.S. DEP’T OF HOMELAND SEC., *OIG-21-58, ICE’S MANAGEMENT OF COVID-19 IN ITS DETENTION FACILITIES PROVIDES LESSONS LEARNED FOR FUTURE RESPONSES 2* (2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>.

¹⁶⁹ *Id.*

prevent and mitigate . . . COVID-19” for “detention facilities . . . in its *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.”¹⁷⁰ “ICE detention centers [were also required to] . . . comply with *ICE’s Pandemic Response Requirements*.”¹⁷¹

As of May 2021, it was reported that there was “nearly 1,500 active COVID-19 cases in ICE detention centers compared with just sixty cases in the much-larger Federal Bureau of Prisons.”¹⁷² On February 24, 2021, an investigation reported that ICE misrepresented its initiatives to vaccinate detainees.¹⁷³ “ICE [has] rel[ie]d on state and local health departments to vaccinate [detainees] in their facilities.”¹⁷⁴ Moreover, ICE has stated “that distributing the COVID-19 vaccine among the people held in their facilities is not their responsibility.”¹⁷⁵ As of the week of June 28, 2021, it was reported that ICE held more than 27,000 detainees but only 1,300 detainees had received two doses of the COVID-19 vaccine.¹⁷⁶ By December 2021, data indicated “that only a small percentage of 1.6 million [detainees] . . . [had] received COVID-19 vaccinations.”¹⁷⁷ As of January 2022, President Biden’s administration has not required anyone in ICE centers to get vaccinated.¹⁷⁸

On September 7, 2021, Joseph Cuffari, Inspector General of the DHS, released his report on ICE’s management of COVID-19 in nine detention centers during September and October 2020.¹⁷⁹ The inspection entailed reviewing:

[F]acility-specific custody rosters, COVID-19 cases and deaths, cleaning intervals, visitor logs, contract discrepancy reports, general and medical grievances, requests to ICE, health care treatment logs, intake forms, transfer checklists, PPE inventories, housing unit sign-in logs, sick leave and telework policies, and local pandemic plans We also reviewed surveillance video and

¹⁷⁰ *Id.* at 3.

¹⁷¹ *Id.*

¹⁷² *Immigration Detention and Covid-19*, BRENNAN CTR. FOR JUST. (Jan. 7, 2022), <https://www.brennancenter.org/our-work/research-reports/immigration-detention-and-covid-19>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Immigration Detention and Covid-19*, *supra* note 172.

¹⁷⁷ *Id.*

¹⁷⁸ *See id.*

¹⁷⁹ *See* CUFFARI, *supra* note 168, at 2, 4.

images to remotely observe facility staff and detainees wearing face masks and practicing social distancing, how facilities adjusted the use of common areas for social distancing purposes, as well as the cleanliness of housing units.¹⁸⁰

The investigation uncovered instances of inconsistent usage of wearing face masks and social distancing.¹⁸¹ Moreover, some centers were inconsistent with managing detainee medical sick calls and communicating COVID-19 results to detainees.¹⁸² Detainee sick-call request comments translated from Spanish included, “(I think I have been neglected by the staff . . . [These] symptoms [] every single day are getting wors[e] []: dry c[o]ugh [], headaches . . . short of breathing, constant fatigue, diarrhea. Please take me serious[ly].”¹⁸³ The most important findings of the report were insufficient detainee and staff testing and ICE’s lack of adequate oversight throughout the pandemic.¹⁸⁴ A detainee stated, “I learned about ‘social distancing’ from watching the news in the detention center. Even if the authorities had told us about social distancing though, it doesn’t seem like there would be any way to practice social distancing here.”¹⁸⁵ Inadequate standards for protecting detainees against COVID-19 continues to be a prevalent problem. However, COVID-19 is not the only instance highlighting the immigration detention centers’ inadequate conditions for detainees, which may subject corporations to liability if they are not up to contractual standards.

The absence of “nonbinding detention medical standards . . . [gives] officers and guards [an] arbitrary discretion to [] assist[] [] detainees [wit]h their medical needs.”¹⁸⁶ Detention centers’ conditions often entail “overcrowding, poor air quality and lighting, noise pollution, and insufficient bathroom facilities.”¹⁸⁷ Detainees have been documented to “have a higher suicide risk” and “significant symptoms of depression.”¹⁸⁸ “ICE [] estimates

¹⁸⁰ *See id.* at 4.

¹⁸¹ *See id.* at 5.

¹⁸² *See id.*

¹⁸³ CUFFARI, *supra* note 168, at 12.

¹⁸⁴ *See id.* at 5.

¹⁸⁵ *Detained Immigrants File Class Action Lawsuit Against ICE, Demand Immediate Releases During Global Pandemic*, ACLU (Apr. 21, 2020), <https://www.aclusocal.org/en/press-releases/detained-immigrants-file-class-action-lawsuit-against-ice-demand-immediate-releases>.

¹⁸⁶ Riddhi Mukopadhyay, *Death in Detention: Medical and Mental Health Consequences of Indefinite Detention of Immigrants in United States*, 7 SEATTLE J. SOC. JUST. 693, 709 (2008).

¹⁸⁷ *Id.* at 708.

¹⁸⁸ *Id.*

that 15% of [detainees] . . . suffer[] from depression and other mental health conditions.”¹⁸⁹ “Most [detention centers] do not [offer] onsite mental health staff and must rely on outside consultants, who have limited availability.”¹⁹⁰ In 2008, Representative Zoe Lofgren and Senator Robert Menedez¹⁹¹ introduced the HR 5950 (110th), the Detainee Basic Medical Care Act.¹⁹² The bill would have mandated DHS to “implement a basic standard of care in [the centers;]” however, the bill did not surpass the floor.¹⁹³

B. President Biden’s Executive Order for DOJ to Eliminate Private Prison Contracts Exclusion of ICE Detention Centers

Within “his first week in office, President Biden signed an executive order [to] phas[e] out [DOJ government] contracts with private prison operators.”¹⁹⁴ However, the issue with this executive order was its failure to include “one of the most significant areas of the federal government’s use of private prison companies[,]” which are immigration detention centers.¹⁹⁵ “[T]he executive order does not affect [immigration detention center] contracts because ICE is part of the Department of Homeland Security, not [the] DOJ.”¹⁹⁶ In 2020, the death count in immigration detention centers “reached levels that [had not been] seen in [over] fifteen years.”¹⁹⁷ Moreover, as of early August 2021, “[m]ore than 25,000 people [were] . . . held in ICE detention . . . and about 80% of ICE detention beds [were] still owned or managed by for-profit firms.”¹⁹⁸ Immigration detention centers contracts should be pushed to be included by the current administration. This inclusion

¹⁸⁹ *Id.* at 709.

¹⁹⁰ Mukopadhyay, *supra* note 186, at 710.

¹⁹¹ *See id.* at 694.

¹⁹² *See* Detainee Basic Medical Care Act of 2008, H.R. 5950, 110th Cong. (2008).

¹⁹³ Mukopadhyay, *supra* note 186, at 694.

¹⁹⁴ Carrie Johnson, *Biden Ended Contracts with Private Prisons. So One May Turn to House Immigrants*, NPR (Sept. 15, 2021, 4:49 PM), <https://www.npr.org/2021/09/13/1036576308/biden-ended-contracts-with-private-prisons-so-one-may-turn-to-house-immigrants>.

¹⁹⁵ Eunice Cho, *Opinion: Biden is ending the Justice Department’s contracts with private prisons. Now end ICE’s.*, WASH. POST (Jan. 28, 2021, 4:45 PM), <https://www.washingtonpost.com/opinions/2021/01/28/biden-is-ending-justice-departments-contracts-with-private-prisons-now-end-ices/>.

¹⁹⁶ Lauren-Brooke Eisen, *Breaking Down Biden’s Order to Eliminate DOJ Private Prison Contracts*, BRENNAN CTR. FOR JUST. (Aug. 27, 2021), <https://www.brennancenter.org/our-work/research-reports/breaking-down-bidens-order-eliminate-doj-private-prison-contracts>.

¹⁹⁷ Cho, *supra* note 195.

¹⁹⁸ Eisen, *supra* note 196.

would result in a step forward towards the U.S. government taking action and taking responsibility for its inaction.

VII. CONCLUSION

Corporations have a direct and indirect responsibility to detainees via their governmental contracts with ICE at immigration detention centers. The legal avenues discussed throughout this Note must be used to hold corporations who have supported detention centers accountable. While these solutions are not an exhaustive list, they highlight critical solutions to resolve these unaddressed issues of inefficient and inadequate conditions of detention centers. With increased public resistance, corporations have begun to withdraw their services or goods from detention centers. However, detention center contracts are a revolving door, with many corporations awaiting to contract with ICE. While ICE has implemented standards and oversight methods, they are inefficient and inadequate solutions. For change to occur, corporations need to be held accountable through civil or criminal liabilities. Corporations can be held civilly liable through breach of contractual standards, the Alien Tort Statute, a presidential executive order to exert liability, mandating standards into all ICE contracts, or state bills. Corporations can also be held criminally liable by the U.S. SEC for misrepresentations through shareholder suits or the incorporation of a shareholder human rights review. The time for change is upon us and exerting these solutions will not be easy, but necessary.