



PRACTICE ADVISORY

California Accountability in Detention Act Claims Against ICE Private Detention Contractors¹

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United States Immigration and Customs Enforcement (“ICE”) detains immigrants at six facilities in California, and private prison corporations run them all. GEO Group leads the pack, operating Adelanto ICE Processing Center, Desert View Annex, Mesa Verde ICE Processing Center, and Golden State Annex. The other two detention centers—Imperial Regional Detention Facility and Otay Mesa Detention Center—are operated by Management & Training Corporation and CoreCivic, respectively. All three private operators violate the minimum detention standards of care in their ICE contracts with impunity, inflicting harm upon detained individuals.² The Accountability in Detention Act (California Government Code Section 7320)³—which went into effect in 2021—requires operators of private detention facilities in California to adhere to the standards of care and confinement agreed upon in the facility’s contract for operations and provides a cause of action for individuals who are harmed by violations of such standards. This new law applies to private operators of ICE detention facilities. Section 7320 is the first of its kind in the country and provides a unique opportunity to hold private prison operators accountable for failing to meet the standards of health and safety they are required to provide in their contracts with ICE.

This advisory is intended as an overview of Section 7320 claims. Though Section 7320 applies to all non-exempted private detention facilities, this advisory only focuses on Section 7320 claims in the immigration detention context.

¹ This practice advisory was created by the California Collaborative for Immigrant Justice (CCIJ) and the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCRSF). The information provided in this advisory does not and is not intended to constitute legal advice.

² For example, Management and Training Corporation continued to subject individuals to lengthy periods of solitary confinement at the Imperial Regional Detention Facility despite reports from both the California Department of Justice and the Office of the Inspector General criticizing both the conditions and duration of solitary confinement. Appendix A, *Murillo Vega v. Management & Training Corporation* (*Murillo Vega v. MTC*), 21-cv-01770-GPC, ECF No. 1 ¶¶ 30-35 (S.D. Cal. Oct. 14, 2021).

³ The Accountability in Detention Act is interchangeably referred to by its assembly bill name, AB 3228, and its California Civil Procedure Code Section, Section 7320.

I. Elements of Section 7320 claims

A. **The statutory text imposes a duty of reasonable care on detention contractors.**

The following provisions of Section 7320⁴ illuminate the elements of the claim:

- Section 7320(c): “If a private detention facility operator . . . ***commits a tortious action which violates subdivision (a)***, an individual who has been injured by that tortious action may bring a civil action for relief.”
- Section 7320(a): “Any private detention facility operator ***shall comply with . . . the detention standards of care and confinement*** agreed upon in the facility's contract for operations.”
- Section 7320(b)(5): “Tortious action means ***any act or willful misconduct that violates a duty of care***, as specified in Section 1714 of the Civil Code.”⁵

Section 7320’s text makes clear that private detention contractors owe an affirmative duty to detained individuals to comply with the detention standards set forth in their contracts with ICE. Noncompliance with the detention standards constitutes a negligent breach of that duty of care. Section 7320 may also be understood as establishing privity of contract between detained individuals and private contractors.

B. **Section 7320 eliminated prior doctrinal uncertainty of detention contractors’ duty to non-contracting parties, i.e., people in detention.**

Traditionally, “no tort cause of action ar[ose] from negligent breach of a contractual duty in the absence of privity of contract between the plaintiff and defendant.” 6 Witkin, Summary 11th Torts § 1327 (2023). In other words, contracts did not create duties of care towards non-contracting third parties. Third parties could not recover for damages suffered from negligent performance of the contract.

California departed from this traditional view in *Biakanja v. Irving*, 49 Cal. 2d 647 (1958). In *Biakanja*, the California Supreme Court enumerated factors to consider when deciding whether to find a duty exists between contracting and non-contracting parties. *See id.* at 650. The factors include the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to the plaintiff, and the moral blameworthiness of the defendant’s conduct. *See id.* Courts have found that no duty exists in many instances. *See, e.g., Goonewardene v. ADP, LLC*, 6 Cal. 5th 817, 838–39 (2019) (holding that a payroll company did not owe a duty to employees to exercise ordinary care in executing its contract with their employer).⁶ Prior to Section 7320, theoretically, courts would have addressed this question on a

⁴ Full text of statute available at:

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=7.&title=1.&part=&chapter=17.95.&article=

⁵ “Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” Cal. Civ. Code § 1714 (a).

⁶ *See also Goodman v. Kennedy*, 18 Cal. 3d. 335, 339 (1976) (holding that an attorney did not owe a duty to non-clients to exercise ordinary care in giving accurate legal advice); *Bily v. Arther Young & Co.*, 3 Cal. 4th 370, 376 (1992) (holding that an auditor owes no “duty of care regarding the conduct of an audit to persons other than the client”).

case-by-case basis, individually deciding which duties of care ICE contractors owed detained people. Now, the text and legislative history of Section 7320 make clear that private detention facility operators are liable to detained individuals for negligent breach of their contract with ICE, regardless of the lack of contractual privity.

C. Section 7320’s legislative history undermines any burden on plaintiffs to prove ordinary negligence in addition to breach of the ICE detention standards.

The legislative history indicates that the legislature passed Section 7320 to create a new cause of action that would make suits for violations of the detention standards so widely available that facilities would be forced into compliance. In the Senate Judiciary Committee Report, the bill’s author wrote that the “bill provides for a cause of action for any violations of the agreed upon standards.” Cal. Senate Judiciary Comm. Rep. at 4, (August 13, 2020). The report states that “AB 3228 protects Californians from serious harms . . . by ensuring that these facilities adhere to the minimum detention standards agreed upon in the contract for the facility.” *Id.* at 8. In the same report, the bill’s sponsor wrote that any deviation from the detention standards of care “should create clear liability on behalf of the operator” and that the “bill seeks to create accountability” so that private operators are no longer “able to violate basic minimum standards with no consequences.” *Id.* at 5. The clear intent of this legislative history lends support to a reading of the statute allowing claims based upon negligent attempts to comply with the ICE standards.

By eliminating the duty hurdle for non-contracting parties and allowing detained individuals to sue when private detention companies negligently breach their contracts, Section 7320 achieves its intended purpose of using individual liability to force wide-scale compliance with detention standards.

II. Summary of ICE Detention Standards

There exist two main sources of relevant “detention standards of care and confinement” for privately operated immigration detention facilities: ICE’s Performance-Based National Detention Standards (PBNDS)⁷ and “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” or the DHS Prison Rape Elimination Act (PREA). Both sources of standards are routinely incorporated into contracts between ICE and private prison companies; other standards may also appear in individual contracts, and a careful review of the individual contract is warranted to ensure that all relevant standards are considered.

A. Performance-Based National Detention Standards (PBNDS).

The PBNDS lays out specific standards for a wide variety of subject areas, including regulating the use of solitary confinement, the provision of reasonable accommodations, and the use of force and restraints.

⁷ Immigration and Customs Enforcement, “2011 Operations Manual ICE Performance-Based National Detention Standards,” available at <https://www.ice.gov/detain/detention-management/2011>.

Detention facilities in California rampantly violate the PBNDS.⁸ Examples of common violations include:

- Forcing detained individuals to submit to excessively frequent, intrusive, and often sexually abusive pat downs, in violation of various sections of chapter 2.10 (“Searches of Detainees”). *E.g.*, PBNDS 2.10(V)(A) (“All facilities shall have written policy and procedures consistent with . . . employing the least intrusive method of search practicable, as indicated by the type of suspected contraband and the method of suspected introduction”).
- Placing individuals with serious mental illness in long-term, restrictive isolation, in violation of various sections of chapters 2.12 (“Special Management Units”), 2.2 (“Custody Classification System”), and 4.8 (“Disability Identification, Assessment, and Accommodation”).
- Providing inadequate and delayed medical care, in violation of various sections of chapter 4.3 (“Medical Care”) of the PBNDS.
- Retaliating against individuals who file grievances and official complaints, become plaintiffs in civil rights actions, speak to media, or otherwise speak out against mistreatment and abuses occurring in detention, in violation of various sections of chapters 3.1 (Disciplinary System) and 6.1 (Grievance System) of the PBNDS.

B. Prison Rape Elimination Act (PREA)

In addition to the PBNDS, private detention facilities also must comply with DHS’s “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” or the DHS Prison Rape Elimination Act (PREA) standards. PREA’s stated purpose is to “prevent, detect, and respond to sexual abuse in [DHS] confinement facilities.”⁹ Issued in 2014, the DHS PREA standards are distinct from the Department of Justice’s PREA standards, which were issued in 2012. The following references to PREA, unless otherwise stated, will be to the DHS PREA standards.

PREA is somewhat duplicative of some provisions of the PBNDS. However, there are key differences. Notably, PREA outlines more specific standards for preventing and responding to sexual abuse and harassment than the PBNDS, which speaks in more general terms while referencing PREA. In addition, PREA’s investigatory and reporting requirements for facilities go beyond those provided by the PBNDS.

⁸ *See, e.g.*, DHS Office of the Inspector General, “ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility” (Dec. 18, 2020), available at <https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf>; California Department of Justice, “Review of Immigration Detention in California” (Jan. 2021), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf>; ACLU of Northern California, “The California Immigration Detention Database: Tracking Grievances in ICE’s For-Profit Detention Facilities” (last accessed Jan. 25, 2024), available at https://www.aclunc.org/CA_database; CRCL Complaint, “First Amendment Retaliation, Medical Negligence, Violations of Civil Rights, and Other Abuses Against Individuals in Immigration Detention at the Imperial Regional Detention Facility” (Sept. 12, 2022), available at <https://www.ccijjustice.org/laf-09-13>.

⁹ 6 C.F.R. § 115.

Detention facilities in California routinely violate PREA. Some examples include, but are by no means limited to:

- Failing to protect detainees detained individuals from known perpetrators of sexual abuse, in violation of § 115.62 (Protection duties)
- Maintaining inadequate reporting mechanisms (e.g., grievance systems, PREA hotlines) for detainees detained individuals to report sexual abuse, in violation of several sections of PREA, including § 115.51 (Detainee reporting), 115.52 (Grievances), and 115.52 (Detainee access to outside confidential support services).
- Subjecting individuals to intrusive, often sexually abusive pat-down searches, in violation of § 115.15(j) (Limits to cross-gender viewing and searches).
- Failing to adequately investigate reports of sexual abuse, in violation of several sections of PREA including §115.71 (Criminal and administrative investigations).
- Failing to report the results of required internal investigations to survivors of sexual assault, in violation of § 115.73 (Reporting to detainees).

III. Statute of Limitations

Section 7320 does not include a specific statute of limitations. *See* Cal. Gov. Code § 7320. Most Section 7320 claims likely fit under the “general catch-all statute” for personal injury claims provided by California Code of Civil Procedure § 335.1. *See Vafi v. McCloskey*, 193 Cal. App. 4th 874, 881 (2011). Section 335.1 establishes a two-year statute of limitations “for tort actions based on injuries to plaintiffs caused by the wrongful act or neglect of others.” *See Prue v. Brady Company/San Diego, Inc.*, 242 Cal. App. 4th 1367, 1382 (2015); Cal. Code Civ. P. § 335.1. And, as recently stated by a district court in *Murillo Vega v. MTC*, although Section 7320 “incidentally involves a contractual violation,” claims under this section are tort claims. *Murillo Vega v. Mgmt. & Training Corp.*, Case No.: 21-CV-1770-GPC-LR, 2023 WL 3012568, at *11 (S.D. Cal. Apr. 19, 2023).

Although Section 335.1 will likely apply to most Section 7320 claims, “a specific limitations provision prevails over a more general provision,” so practitioners should assess whether a more specific limitations provision might apply to their Section 7320 claim.

IV. Conclusion

This advisory is intended as a general overview of Section 3228 claims and is not a comprehensive guide to these claims. To request further guidance, please contact Mariel Villarreal (mariel@ccijustice.org) and/or Victoria Petty (vpetty@lccrsf.org).