

## *Doe v. Johnson*

# Challenge to Deplorable Detention Conditions in U.S. Customs & Border Protection Facilities

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Last year, the National Immigration Law Center, along with the American Immigration Council, the ACLU of Arizona, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Morrison & Foerster LLP, filed a class action lawsuit in federal district court on behalf of three individuals subjected to deplorable conditions in U.S. Customs and Border Protection (CBP) holding cells in the Border Patrol's Tucson Sector. The lawsuit, *Doe v. Johnson*, challenges the overcrowded, unbearably cold, and unsanitary conditions that adults and children are subjected to and highlights how these conditions violate CBP's own meager policies and the U.S. Constitution.

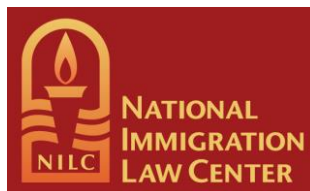
### What are the CBP detention conditions being challenged in *Doe v. Johnson*?

- The Tucson Sector is the second largest CBP sector on the border; more than 63,000 people were apprehended there in fiscal year 2015.<sup>1</sup> Many of these people are held in what are supposed to be short-term detention facilities operated by CBP, with cells designed for temporary use of no longer than 12 hours.<sup>2</sup> Despite this, many people are subjected to **long periods of detention**—often for 24 to more than 72 hours—and **dehumanizing conditions**.
- The plaintiffs in *Doe v. Johnson*, as well as over 100 other individuals interviewed, describe horrific conditions in CBP's short-term detention facilities, including being stripped down to one layer of clothing and kept in extremely cold cells with often little more than a thin aluminum sheet to cover them.<sup>3</sup> Temperatures are so notoriously cold that the **facilities are called “hieleras,” or “iceboxes,”** by detained individuals and CBP officials alike.<sup>4</sup>
- The holding cells are severely overcrowded, with **little room to sit and only concrete benches and floors—no beds—to sleep on**. In addition, lights are kept on 24 hours a day, making sleep extremely uncomfortable and nearly impossible. One mother described watching her infant daughter, lying on the cold concrete, “shivering from the cold as she slept.”<sup>5</sup>
- Conditions are also extremely filthy and otherwise unsanitary, and people held in cells **lack access to showers and appropriate sanitary and hygiene products**.
- There is **no medical screening, medicine is confiscated, and medical care is not provided**, despite the fact that many of the people being held need immediate care after their long and dangerous journeys through the desert.<sup>6</sup>
- As many as 60 people are crammed into a cell. Cells **lack drinking water, soap, sanitary pads, diapers, or paper or cloth towels**. Requests for these basic hygienic items are regularly denied. Even when the request is for toilet paper, CBP guards regularly delay restocking it for many hours. One mother waited 19 hours before she could change her baby's diaper, leaving her one-and-a-half-year-old daughter “to spend the whole night with a dirty diaper.”<sup>7</sup>

### What is the status of *Doe v. Johnson*?

- In 2015, the Federal District Court for the District of Arizona granted a motion for expedited discovery, and CBP turned over hundreds of hours of video and thousands of pages of documents,

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and allowed attorneys and experts in the case to inspect and photograph four of the eight Tucson-area facilities.

- In January 2016, the court granted the case class action status, allowing the three plaintiffs to represent tens of thousands of people who are now or will be held in the CBP's Tucson Sector detention facilities. The court also denied most of the government's motion to dismiss, allowing all of the lawsuit's constitutional claims to proceed.
- In June and August 2016, the court denied the government's attempt to seal all the evidence filed with the plaintiffs' motion for a preliminary injunction asking the court to halt the unconstitutional conditions of detention while the case proceeds. The court's ruling allowed for the public release of evidence, including photographs showing deplorable conditions in the detention cells, which gained significant media coverage.

### What should CBP do?

- CBP **holding cells must be humane, safe and sanitary**, meet basic constitutional standards, and **ensure due process protections**, regardless of the detainees' length of stay.
- CBP must **set up monitoring and enforcement mechanisms** to ensure that constitutional and CBP-policy violations are prevented and addressed.
- In the meantime, CBP should **process people who are detained within 12 hours** of the time they are brought to a detention facility, pursuant to its own policy and consistent with due process protections.
- People held in CBP facilities, regardless of length of stay, should be provided **adequate food and water, sanitary conditions**, access to toilet paper, soap, sanitary pads, diapers and other **basic hygienic needs, medical screening and access to medical care, and humane temperatures**.
- If CBP is unable to process people within 12 hours, it must either provide facilities that can accommodate lengthier stays—including beds, bedding, and showers—or release them.

### FOR MORE INFORMATION, CONTACT

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<sup>1</sup> *Total Illegal Alien Apprehensions by Month: FY 2015* (U.S. Border Patrol, undated PDF), <http://bit.ly/2dlZigi>.

<sup>2</sup> *Hold Rooms and Short Term Custody* (Memorandum for All Chief Patrol Agents from David V. Aguilar, Chief, U.S. Border Patrol, June 2, 2008), <http://foiarr.cbp.gov/streamingWord.asp?i=378>.

<sup>3</sup> *Former Detainees Describe Horrific Conditions in CBP Detention* (American Immigration Council, 2015), <http://bit.ly/2cyNGWs>, p. 3.

<sup>4</sup> Guillermo Cantor, *Hieleras (Iceboxes) in the Rio Grande Valley Sector: Lengthy Detention, Deplorable Conditions, and Abuse in CBP Holding Cells* (American Immigration Council, Dec. 2015), <https://www.americanimmigrationcouncil.org/research/hieleras-iceboxes-rio-grande-valley-sector>, p. 4.

<sup>5</sup> *Former Detainees Describe Horrific Conditions in CBP Detention*, pp. 2–3.

<sup>6</sup> *Id.*, pp. 3–4.

<sup>7</sup> *Id.*, p. 4.