

NATIONAL IMMIGRANT JUSTICE CENTER

Honorable Jared Anderson
Mayor
Village of Dwight
209 South Prairie Avenue
Dwight, Illinois 60420

Submission by email to:
Jared Anderson, mayor@dwrightillinois.com

March 11, 2019

Re: Opposition to the Immigration Centers of America detention center proposal

Dear Mayor Anderson:

On behalf of the National Immigrant Justice Center (NIJC), I write to express our strong opposition to the proposed construction of a privately run immigrant jail in Dwight, which will be voted on by the village board on Monday, March 11, 2019. NIJC is a non-profit legal service provider that monitors abuses in the federal immigration detention system, while serving as the primary *pro bono* legal service provider for detained immigrants in Illinois. NIJC submits this letter to inform you and the entire Dwight village board that the proposed Immigration Centers of America (ICA) jail cannot be accomplished without undermining due process and civil rights protections for those who would be detained. Furthermore, NIJC is fundamentally opposed to the system of privatized mass incarceration that brazenly maximizes profits at the expense of basic civil and human rights.

In this letter, we provide evidence demonstrating that: 1) Expansion of ICE's corrupt detention system will further jeopardize the lives and civil rights of those detained; 2) There is no public safety justification for this jail and in fact the public would be far better served by decreasing the numbers of those detained and utilizing community-based alternatives to detention for those not released on their own recognizance; 3) The vast majority of those detained pursuant to this proposed expansion will not have meaningful access to *pro bono* counsel; and 4) The proposed ICA jail also comes with significant concerns regarding its environmental impact and potential non-compliance with relevant federal law.

1. Privately run immigration jails routinely place human and civil rights in jeopardy. Inevitably, costs are cut at the expense of health and safety of detained individuals.

The proposed ICA facility in Dwight is part of a massive expansion of the U.S. Immigration and Customs Enforcement (ICE) detention system, a sprawling patchwork of jails and prisons that

now holds more than 50,000 people daily, a historic high.¹ Immigration detention is civil in nature, and those who are jailed include refugees transferred from the southern border where they presented themselves to seek asylum as well as local community members apprehended in their homes and workplaces because of allegations of undocumented status. The system is rife with suffering, and Dwight will be no different. Despite claims to the contrary, the administration continues to tear children from their parents at the border, with recent reports confirming that more than 200 children have been separated from their parents since a federal judge ordered the administration to stop the practice. While the children are sent to the care of the Department of Health and Human Services, their parents are jailed in ICE facilities like the prison proposed in Dwight.² The rapid pace of expansion of the system in overcrowded quarters lacking sufficient medical care is also resulting in the spread of disease, with reports that as of March 7th, ICE was holding more than 2,000 individuals in detention in quarantine.³

ICE's detention system is overwhelmingly outsourced to for-profit prison companies such as ICA and local jails. ICE and its contractors are notorious for abusive and inhumane conditions and widely criticized for a lack of transparency and accountability. For-profit prisons have little incentive to focus on anything other than ensuring profitability for their shareholders.⁴ The debased contracts entered into between for-profit prison companies and ICE are structured to maximize profitability by keeping the building and the beds occupied. It can reasonably be assumed that ICA will fall prey to these same incentives as it seeks to grow its market share in the resurgent for-profit prison business.⁵

Fueled by politics and the insidious consequences of campaign donations and lobbying by the private prison industry,⁶ the immigration detention system devalues the lives, health and safety of those jailed within its walls. It is well documented that for-profit private prison companies cut corners, are actively encouraged to do so by ICE in order to maximize profits,⁷ and put lives at risk.⁸ A common strategy of private prison companies to maximize profits is to rely on free or low-wage labor of immigrants in detention, who are frequently paid \$1 per day for tasks vital to the facility's functioning such as food service, janitorial work, and laundry.⁹ Besides having their

¹ Spencer Ackerman. (March 8, 2019). "ICE is detaining 50,000 people, an all time high." *The Daily Beast*; <https://bit.ly/2tYjoD6>.

² Miriam Jordan and Caitlin Dickerson. (March 9, 2019). "U.S. continues to separate migrant families despite rollback of policy." *The New York Times*; <https://nyti.ms/2VR4JFJ>.

³ Mica Rosenberg and Kristina Cooke. (March 10, 2019). "Mumps, other outbreaks force U.S. detention centers to quarantine over 2,000 migrants." *Reuters*; <https://bit.ly/2EOs7gc>.

⁴ Susan Ferriss & Madeline Buiano. (September 2, 2018). "Despite Outrage Over Immigrant Detention, Private Prisons' Bottom Line is Still Strong." *The Center for Public Integrity*; <https://bit.ly/2Tn8HsN>.

⁵ Livia Luan. (May 2, 2018). "Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention." *Migration Policy Institute*, Washington, DC; <https://bit.ly/2MCDPNM>.

⁶ Sharita Gruberg. (June 28, 2018). "Trump's Executive Order Rewards Private Prison Campaign Donors." Center for American Progress; Washington, DC; <https://ampr.gs/2KvOsAO>.

⁷ Clyde Haberman. (October 1, 2018). "For Private Prisons, Detaining Immigrants Is Big Business." *New York Times*; <https://nyti.ms/2Or1sNa>.

⁸ See, e.g., United States Department of Homeland Security Office of Inspector General, Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (September 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

⁹ Spencer Ackerman, Adam Rawnsley. (December 27, 2018). "\$800 Million in Taxpayer Money Went to Private Prisons Where Migrants Work for Pennies." *The Daily Beast*; <https://bit.ly/2F2iywA>.

labor exploited, advocates¹⁰ and formerly detained immigrants frequently report exploitative and abusive living conditions in immigration detention.¹¹ In September 2018, the Office of Inspector General for the Department of Homeland Security issued an “alert” on a private, for-profit immigrant jail in Adelanto, California outlining conditions including nooses in detained individuals’ cells, improper and overly restrictive segregation, and untimely and inadequate medical care.¹² Individuals in detention report receiving food with worms and insects and discolored water.¹³ Sexual abuse of detained individuals is rampant and unchecked.¹⁴ Credible reports of abuse of force by officers and excessive use of segregation¹⁵ and lockdown¹⁶ are common. ICE oversight of its existing standards is already lacking, as the current system of inspections and oversight is rife with loopholes and woefully inadequate to document and remedy egregious failures.¹⁷

Advocates continue to report the disregard for the human dignity of those detained. In recent months, the administration has doubled down on the detention of vulnerable individuals, engaging in the prolonged detention of asylum seekers without any individualized determination of community safety or flight risk.¹⁸ ICE consistently violates its own policies regarding the detention of pregnant women, with nearly 300 pregnant women detained in the first four months of 2017 and many receiving inadequate medical care.¹⁹ This past year, 18 women suffered miscarriages while in ICE custody, nearly twice as many as the previous year.²⁰ Just this month, news broke that a 24 year old women in a Texas ICE facility suffered a still birth at the 27-week-mark of her pregnancy.²¹ Tragically, negligence is a common contributor to deaths in ICE custody.²² In one particularly alarming recent example of negligence leading to death, a young man committed suicide at the Stewart Detention Center after officials failed to properly monitor

¹⁰ Shane Bauer. (July/August 2016). “My four months as a private prison guard.” *Mother Jones*; <https://bit.ly/2IHyene>.

¹¹ See, e.g., Southern Poverty Law Center and National Immigration Project, *Shadow Prisons: Immigrant Detention in the South* (2016), https://www.splcenter.org/sites/default/files/ijp_shadow_prisons_immigrant_detention_report.pdf.

¹² U.S. Department of Homeland Security Office of Inspector General, Management Alert.

¹³ Human Rights First. (February 2018). “Ailing Justice: New Jersey – Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention.” See <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf>.

¹⁴ Alice Speri. (April 11, 2018). “Detained, Then Violated.” *The Intercept*; <https://bit.ly/2qs2avo>.

¹⁵ Human Rights First, “Ailing Justice.”

¹⁶ SPLC and NIP, *Shadow Prisons*.

¹⁷ Department of Homeland Security Office of Inspector General, ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements (June 26, 2018), <https://bit.ly/2Mwp2Ug>.

¹⁸ Human Rights First, *Judge and Jailer: Asylum Seekers Denied Parole in Wake of Trump Executive Order* (Sep. 2017), <https://www.humanrightsfirst.org/resource/judge-and-jailer-asylum-seekers-denied-parole-wake-trumpexecutive-order>.

¹⁹ American Civil Liberties Union *et al.*, Complaint to DHS Civil IG and CRCL, re “U.S. Immigration and Customs Enforcement’s Detention and Treatment of Pregnant Women,” Sep. 26, 2017, <https://bit.ly/2NtyEkp>.

²⁰ Scott Bixby. (March 1, 2019). “Immigrant miscarriages in ICE detention have nearly doubled under Trump.” *The Daily Beast*; <https://bit.ly/2VD62I6>.

²¹ Scott Bixby. (February 25, 2019). “Migrant woman’s pregnancy ends in stillbirth, in ICE detention.” *The Daily Beast*; <https://bit.ly/2SYEPCV>.

²² American Civil Liberties Union, Detention Watch Network, National Immigrant Justice Center, and Human Rights Watch. (June 2018). “Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention;” <https://bit.ly/2CczKMI>.

him while he suffered in solitary confinement for 19 days leading up to his death.²³ Further cost-cutting in medical care, staffing and services will only exacerbate these risks.

Responsible medical care, compassionate mental health services, nutritious food services, safe transportation, sufficient staffing ratios, and the facilitation of due process rights all cost money. As discussed further below, an obvious cost-cutting mechanism is immediately available to ICE: detaining far fewer people and utilizing effective and cost-saving alternatives to detention where the agency deems supervision necessary. Cutting costs by shortcircuiting respect for human lives should not be an option.

2. Expansion undermines rather than protects public safety. Community-based alternatives to detention are cheaper, effective, and humane.

Proposals such as ICA's serve no public safety function. On the contrary, a *reduction* of the use of jails and prisons for immigrants in favor of release and community-based alternatives to detention would promote family unity, save taxpayers millions, and go a long way toward restoring the United States' standing as a haven for those seeking refuge.

More immigration detention beds mean more families separated, lifelong trauma inflicted on individuals²⁴ and more communities torn apart. Overall, unauthorized crossings on the southern border remain at historical lows.²⁵ The estimated 1,200 detention beds envisioned by ICA will largely correspond to ramped-up interior enforcement operations. These operations will in no way reflect the “public safety” mission ICE touts.

A spectrum of alternatives to detention (ATDs), including parole, affordable bond, community-based support programs and regular check-ins, has long existed as a better option to the mass incarceration of immigrants.²⁶ ATDs cost a fraction of the cost of detention – less than 10% of the costs, according to the Government Accountability Office.²⁷ ATDs are also extremely effective, with recent pilot programs demonstrating rates of compliance with immigration check-ins and hearings of between 95 and 99%.²⁸ However, in June 2017 ICE terminated its most recent ATD pilot program in its infancy, despite markers of overwhelming success.²⁹

²³ Jeremy Redmon, Atlanta Journal Constitution, “ICE detainee who died in Georgia was isolated for 19 days,” May 16, 2017, <https://on-ajc.com/2VeYET3>; Jeremy Redmon, Atlanta Journal Constitution, “ICE detainee wasn’t observed as required before he hanged himself,” Oct. 4, 2017, <https://bit.ly/2T3ko79>.

²⁴ American Immigration Council, *U.S. citizen children impacted by immigration enforcement* (Mar. 28, 2017), <https://bit.ly/2BYDbqv>.

²⁵ Molly O’Toole. (March 7, 2019). “Illegal border crossings hit a decade-long high in February. They’re still historically low. Here’s why.” *Los Angeles Times*; <https://www.latimes.com/politics/la-na-pol-trump-illegal-border-crossing-20190307-story.html>.

²⁶ For a review of the existing literature on ATDs, see American Immigration Lawyers Association *et al.*, *The Real Alternatives to Detention* (June 27, 2017), <http://www.ila.org/infonet/the-real-alternatives-to-detention>.

²⁷ United States Government Accountability Office. *Alternatives to Detention* (Nov. 2014), <https://bit.ly/2EqJww>.

²⁸ American Civil Liberties Union. *Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock Up* (2014), <https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd>.

²⁹ Frank Bajak, ABC News, “ICE shutters detention alternative for asylum-seekers,” June 9, 2017, <https://abcn.ws/2XjE1Hh>.

At this moment, ICE is detaining more than 50,000 people every day in its jails and private prisons. That represents a 40 percent growth of the detention system from the average of just over 34,000 people in 2016.³⁰ Moves to expand this already bloated system are an insult to our national values and to the taxpayer's wallet.

3. The vast majority of those detained pursuant to the proposed expansion will not have meaningful access to counsel.

Federal immigration law provides a right to counsel for immigrants facing removal proceedings,³¹ but there is no right to court-appointed counsel. As the primary *pro bono* legal service provider for detained immigrants in ICE's Chicago area of responsibility, NIJC has not received inquiries or requests for consultation from ICE or ICA regarding our capacity to provide *pro bono* legal services to a new detention facility in Dwight. Lacking such inquiries, we now take it upon ourselves to inform you that the proposed ICA detention center in Dwight cannot be effectuated in a manner that will provide meaningful access to *pro bono* legal services for the vast majority of those detained.

It is widely recognized that immigration law is highly complex and immigration cases often raise issues of life and death.³² Although the Immigration and Nationality Act provides a right to counsel, this right is only realized for those who can afford to pay a lawyer or who secure a *pro bono* attorney. The right therefore means nothing to most immigrants in detention, where nationally fewer than 20% of all immigrants are able to find counsel.³³ Many factors contribute to this due process crisis, including the complexity of detained removal defense for even experienced lawyers, the intensive resources necessary to mount an effective defense for an individual detained far from relevant witnesses and evidence, and the remote location of many ICE facilities.³⁴ Despite these challenges, the importance of legal representation during removal proceedings cannot be overstated – among immigrants in detention, those with legal representation are at least twice as likely to obtain immigration relief.³⁵

Today, less than one in five people before the Chicago immigration court is able to find an attorney – paid or pro bono.³⁶ In ICE's Chicago area of responsibility, NIJC and other *pro bono* legal service providers are already stretched far beyond our individual and collective limits. NIJC strives to provide know your rights programming and legal representation to immigrants detained across the Midwest at the Boone County Jail in Kentucky, the Kankakee County Jail, McHenry

³⁰ Heidi Altman. (January 10, 2019). "DHS's Secret Detention Expansion Is Dangerous For Immigrants, And Democracy." National Immigrant Justice Center, <https://immigrantjustice.org/index.php/staff/blog/dhss-secret-detention-expansion-dangerous-immigrants-and-democracy>.

³¹ 8 USC 1362

³² Dana Leigh Marks (June 26, 2014). "Immigration judge: Death penalty cases in a traffic court setting." CNN, <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html>.

³³ Ingrid Eagly, Esq. and Steven Shafer, Esq. (September 2016). "Access to Counsel in Immigration Court." American Immigration Council, Washington, DC, <https://bit.ly/2wiRroI>.

³⁴ Kyle Kim (September 28, 2017). "Immigrants held in remote ICE facilities struggle to find legal aid before they're deported." *Los Angeles Times*, <http://www.latimes.com/projects/la-na-access-to-counsel-deportation/>.

³⁵ Eagly and Shafer, *supra* n. 2.

³⁶ This data is available through an interactive tool prepared by TRAC Immigration at the University of Syracuse, online at <https://trac.syr.edu/phptools/immigration/nta/>. Of a total of 45,077 immigrants facing removal on the detained docket out of Chicago, 8,752 are represented.

County Correctional Facility and Pulaski Detention Center in Illinois, and the Dodge County Jail and Kenosha County Detention Center in Wisconsin. Despite partnering with law school clinics and leveraging the generosity of those volunteers willing to take cases on a *pro bono* basis from private law firms, NIJC is only able to provide representation to a fraction of the thousands of immigrants jailed in these facilities each year. An expansion in these numbers with a new facility in Dwight will mean even more indigent immigrants are unrepresented.

4. Environmental impact

Based on documents obtained through a Freedom of Information Act request, significant questions remain about the ability of ICA and the Village of Dwight to ensure the proposed project's compliance with the National Environmental Policy Act and other applicable federal and state laws.

The National Immigrant Justice Center is unequivocally opposed to the expansion of immigration detention in the Village of Dwight or elsewhere. This statement serves to put ICA, ICE and the Village of Dwight on notice of the grave problems related to access to counsel, civil and human rights violations, and potential environmental problems the proposed ICA detention center will create. We urge you to abandon plans to work with ICA to expand their existing jails and instead implement policies that utilize the discretion permitted to you by law to reduce unnecessary detention, allowing the vast majority of people to reside in community with their loved ones during the course of their removal proceedings.

Please direct any response or inquiries to:

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Sincerely,

Mary Meg McCarthy
NIJC Executive Director