

Immigration and Customs Enforcement  
Department of Homeland Security  
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*Submission by email to:*

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October 26, 2017

Re: Response to RFI “Immigration Detention Services – Multiple Areas of Responsibility”

To Whom It May Concern:

On October 12, 2017, Immigration and Customs Enforcement (ICE) issued a Request for Information (RFI) to assist in the identification of new detention sites within 180 miles of Chicago, Detroit, St. Paul, and Salt Lake City to detain up to 3,000 people each day. The RFI specifically solicits information regarding access to pro bono legal services in these areas. The undersigned organizations, who include the primary pro bono legal service providers for detained immigrants in each of these four jurisdictions, submit this response to inform ICE that the expansion envisioned in this RFI cannot be accomplished without undermining due process and civil rights protections for those who will be detained.

In this letter, we provide evidence demonstrating that: 1) The vast majority of those detained pursuant to this proposed expansion will not have meaningful access to pro bono counsel; 2) Expansion of ICE’s already broken detention system will further jeopardize the lives and civil rights of those detained; and 3) Contrary to the text of the RFI, there is no public safety justification for this envisioned expansion 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. For these reasons, we urge ICE to abandon the expansion efforts described in the RFI.

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

ICE has requested that responders to the RFI include information about “[a]ccess to ... pro-bono legal services.” The undersigned organizations include the primary pro bono legal service providers for immigrants detained in ICE’s Chicago, Detroit, St. Paul, and Salt Lake City areas of responsibility (AORs). As of the submission of this letter, none of our organizations have received inquiries or requests for consultations from responders to the RFI regarding our capacity to provide pro bono legal services to a new or newly expanded detention facility. Lacking such inquiries, we now take it upon ourselves to inform you that the expansion proposed by this RFI 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Despite these challenges, the importance of legal representation during removal proceedings cannot be overstated – among immigrants in detention, those with legal representation are twice as likely to obtain immigration relief.<sup>4</sup>

In the Chicago, Detroit, St. Paul, and Salt Lake City jurisdictions, pro bono legal service providers are already stretched far beyond their limits. The undersigned are already unable to meet the legal service needs of the thousands of people currently detained within these AORs and have no reason to believe ICE's expansion will be accompanied by increased private or public funding for detained legal services. *Today, less than one out of every four people detained in each of these four AORs is able to find an attorney – paid or pro bono.* Expansion will necessarily mean more detained immigrants facing removal without a lawyer.

- Chicago AOR: Currently, only 18% of those facing removal from the detained docket in Chicago are represented.<sup>5</sup> The undersigned National Immigrant Justice Center (NIJC) is the primary pro bono legal service provider for immigrants detained in the Chicago AOR, already striving 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 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 will mean even more indigent immigrants are unrepresented.
- Detroit AOR: Currently, only 24% of those facing removal from the detained docket in Detroit are represented.<sup>6</sup> Some non-profit service providers such as the Michigan Immigrant

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<sup>1</sup> Dana Leigh Marks, CNN, “Immigration judge: Death penalty cases in a traffic court setting,” June 26, 2014, <http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html>.

<sup>2</sup> Ingrid Eagly and Steven Shafer, American Immigration Council, *Access to Counsel in Immigration Court* (2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

<sup>3</sup> Kyle Kim, Los Angeles Times, “Immigrants held in remote ICE facilities struggle to find legal aid before they’re deported,” Sept. 28, 2017, <http://www.latimes.com/projects/la-na-access-to-counsel-deportation/>.

<sup>4</sup> Eagly and Shafer, *supra* n. 2.

<sup>5</sup> This data is available through an interactive tool prepared by TRACImmigration at the University of Syracuse, online at <http://trac.syr.edu/phptools/immigration/nta/>. Of a total of 34,979 immigrants facing removal on the detained docket out of Chicago, 6,172 are represented.

<sup>6</sup> Prepared using the TRAC interactive tool, *supra* n. 5. Of a total of 16,142 individuals on the Detroit detained docket, 3,910 are represented.

Rights Center do handle a limited number of detained cases for particularly vulnerable populations including survivors of domestic violence and human trafficking and cases where mental illness is a factor. However, in general, Michigan’s local service providers do not have the resources to handle the complexity and duration of detained removal representation in a systemic manner, even at the current volume. In fact, the list of free legal services provided by the Detroit immigration court includes only one provider, the University of Detroit Mercy Immigration Law Clinic. There are no legal service non-profits in Michigan able to consider open intake from immigrants already detained in the ICE contracted jails throughout Michigan in St. Clair, Calhoun and Monroe Counties. A new facility or expanded use of existing facilities will only exacerbate this urgent but unmet need.

- Salt Lake City AOR: Currently, only 10% of those facing removal proceedings on the detained docket in Salt Lake City are represented.<sup>7</sup> Immigrant Legal Services is one of the primary providers of pro bono immigration legal services in Utah. However, the organization does not have capacity to provide pro bono legal services to immigrants in detention. It is our best understanding that there are no organizations in Utah or Wyoming able to consistently provide pro bono legal representation to detained immigrants.
- St. Paul AOR: Currently, only 21% of detained immigrants in Minnesota are represented.<sup>8</sup> Several legal service providers and law school clinics, including the Immigrant Law Center of Minnesota, Mid-Minnesota Legal Aid, Advocates for Human Rights and the Detainee Rights Clinic at the University of Minnesota endeavor to provide know your rights programming and pro bono services to people detained in the five county jails already contracting with ICE in Minnesota in Sherburne, Carver, Freeborn, Ramsey, and Nobles Counties. These organizations are already overwhelmed and stretched beyond reasonable limits. There is no organizational capacity to provide meaningful pro bono services to the additional number of immigrants that would be detained in Minnesota under this RFI.

**2. Expansion will put human and civil rights in jeopardy. Costs must not be reduced at the expense of health and safety.**

We are gravely concerned by ICE’s request for responders to the RFI to identify “changes to requirements” that might “better meet ‘best value’ – i.e., by reducing cost substantially without sacrificing the effectiveness of core operations.” ICE is constitutionally and ethically obligated to provide for the health and safety of those it detains. Furthermore, the Constitution requires immigration detention to be civil and non-punitive.<sup>9</sup> Nevertheless, the immigration detention system is overwhelmingly outsourced to for-profit prison companies and local jails. This sprawling system is notorious for abusive and inhumane conditions and widely criticized for its lack of transparency and accountability. Further encouragement to cut costs is nothing short of alarming.

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<sup>7</sup> Prepared using the TRAC interactive tool, *supra* n. 5. Of a total of 12,632 individuals on the Salt Lake City detained docket, 1,274 are represented.

<sup>8</sup> Prepared using the TRAC interactive tool, *supra* n. 5. Of a total of 19,416 immigrants facing removal from detention in Minnesota, 4,117 are represented.

<sup>9</sup> *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Fueled by politics and the insidious consequences of campaign donations and lobbying by the private prison industry,<sup>10</sup> the immigration detention system *already* devalues the lives, health and safety of those jailed within its walls. It is well documented that for-profit private prisons companies cut corners that maximize profits<sup>11</sup> and put lives at risk.<sup>12</sup> Advocates and formerly detained immigrants frequently report that conditions in both private prisons and county jails that contract with ICE are profoundly inhumane.<sup>13</sup> Individuals in detention report receiving food with worms and insects and discolored water.<sup>14</sup> Credible reports of abuse of force by officers and excessive use of segregation and lockdown are common.<sup>15</sup> 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.<sup>16</sup> Moreover, in the first months of this administration, ICE shut down the Office of Detention Policy and Planning, which had been charged with overseeing the 2011 Performance Based National Detention Standards and related reforms.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> In one particularly alarming example of

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<sup>10</sup> Eli Watkins and Sophie Tatum, CNN, “Private prison industry sees boon under Trump administration,” Aug. 18, 2017, <http://www.cnn.com/2017/08/18/politics/private-prison-department-of-justice/index.html>.

<sup>11</sup> Alan Gomez, USA Today, “Trump plans massive increase in federal immigration jails,” Oct. 17, 2017, <https://www.usatoday.com/story/news/world/2017/10/17/trump-plans-massive-increase-federal-immigration-jails/771414001/> (reporting that GEO Group’s stock price has increased 63% and CoreCivic’s 81% since the 2016 presidential election).

<sup>12</sup> See, e.g., United States Department of Justice Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons* (Aug. 2016), at p. 14, <https://oig.justice.gov/reports/2016/e1606.pdf> (“In three-quarters of the data categories we analyzed, the contract prisons had more safety- and security-related incidents per capita than the comparable BOP institutions.”).

<sup>13</sup> 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](https://www.splcenter.org/sites/default/files/ijp_shadow_prisons_immigrant_detention_report.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Detention Watch Network and National Immigrant Justice Center, *Lives in Peril, How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* (2015), <http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0>.

<sup>17</sup> Caitlin Dickerson, The New York Times, “Trump plan would curtail protections for detained immigrants,” Apr. 13, 2017, <https://www.nytimes.com/2017/04/13/us/detained-immigrants-may-face-harsher-conditions-under-trump.html>.

<sup>18</sup> 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-trump-executive-order>.

<sup>19</sup> 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://americanimmigrationcouncil.org/sites/default/files/general\\_litigation/complaint\\_increasing\\_numbers\\_of\\_pregnant\\_women\\_facing\\_harm\\_in\\_detention.pdf](https://americanimmigrationcouncil.org/sites/default/files/general_litigation/complaint_increasing_numbers_of_pregnant_women_facing_harm_in_detention.pdf).

negligence leading to death, a young man committed suicide at the Stewart Detention Center in May after officials failed to properly monitor him while he suffered in solitary confinement for 19 days leading up to his death.<sup>20</sup> Negligence is in fact a common contributor to deaths in ICE custody.<sup>21</sup> 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 shortcutting respect for human lives should not be an option.

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

The RFI envisions the expansion of immigration detention “in support of [ICE’s] public safety mission...” This is a faulty premise. 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 and communities torn apart. With unauthorized crossings on the southern border at their lowest rates since the early 1970s,<sup>22</sup> the added detention beds envisioned by this RFI will largely correspond to ramped-up interior enforcement operations. These operations will in no way reflect the “public safety” mission ICE touts. Instead, the new detention beds will be filled with mothers and fathers of the more than four million United States citizen children of an undocumented parent, causing economic instability and psychological harm for generations to come.<sup>23</sup>

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<sup>20</sup> Jeremy Redmon, Atlanta Journal Constitution, “ICE detainee who died in Georgia was isolated for 19 days,” May 16, 2017, <http://www.ajc.com/news/breaking-news/gbi-ice-detainee-who-died-georgia-was-isolated-for-days/DcGHSwotmwlu5oi8yGJqwM/>; Jeremy Redmon, Atlanta Journal Constitution, “ICE detainee wasn’t observed as required before he hanged himself,” Oct. 4, 2017, <http://www.myajc.com/news/state--regional-govt--politics/ice-detainee-wasn-observed-required-before-hanged-himself/6QWVp7xFVnEKSIc9MNJsKK/>.

<sup>21</sup> American Civil Liberties Union, Detention Watch Network, National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention* (2016), <https://www.immigrantjustice.org/research-items/report-fatal-neglect-how-ice-ignores-deaths-detention>; Human Rights Watch, *Systemic Indifference: Dangerous and Substandard Medical Care in U.S. Immigration Detention* (May 2017), <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention> (examining “serious lapses in health care that have led to severe suffering and at times the preventable or premature death of individuals held in immigration detention facilities in the United States”).

<sup>22</sup> Department of Homeland Security, Office of Immigration Statistics, *Efforts by DHS to Estimate Southwest Border Security between Ports of Entry* (Sep. 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0914\\_estimates-of-border-security.pdf](https://www.dhs.gov/sites/default/files/publications/17_0914_estimates-of-border-security.pdf).

<sup>23</sup> American Immigration Council, *U.S. citizen children impacted by immigration enforcement* (Mar. 28, 2017), <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.

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.<sup>24</sup> ATDs cost a fraction of the cost of detention – less than 10% of the costs, according to the Government Accountability Office.<sup>25</sup> ATDs are also extremely effective, with recent pilot programs demonstrating rates of compliance with immigration check-ins and hearings of between 95 and 99%.<sup>26</sup> Yet only months before issuing this RFI, ICE terminated its most recent ATD pilot program in its infancy and despite markers of overwhelming success.<sup>27</sup>

On any given day, ICE jails more than three times the number of immigrants jailed only twenty years ago.<sup>28</sup> Moves to expand this already bloated system are an insult to our national values and to the taxpayer's wallet.

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The undersigned stand united in our opposition to ICE's efforts to expand the detention system. This response serves to put ICE on notice of the grave access to counsel problems and civil and human rights violations the expansion envisioned in this RFI will create. We urge you to abandon plans to expand your existing network of jails and instead implement policies that utilize the discretion permitted you by law to reduce unnecessary detention, allowing the vast majority of people to reside in the community with their loved ones during the course of their removal proceedings.

**Please direct any response or inquiries to:  
Heidi Altman at the National Immigrant Justice Center at [haltman@heartlandalliance.org](mailto:haltman@heartlandalliance.org).**

Sincerely,

Advocates for Human Rights, Minnesota  
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American Civil Liberties Union (ACLU)  
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<sup>24</sup> 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.aila.org/infonet/the-real-alternatives-to-detention>.

<sup>25</sup> United States Government Accountability Office. *Alternatives to Detention* (Nov. 2014), <http://www.gao.gov/assets/670/666911.pdf>.

<sup>26</sup> 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>.

<sup>27</sup> Frank Bajak, ABC News, "ICE shuts detention alternative for asylum-seekers," June 9, 2017, <http://abcnews.go.com/amp/Politics/wireStory/ice-shutters-detention-alternate-asylum-seekers-47931693>.

<sup>28</sup> National Immigrant Justice Center, *7 reasons why Congress must reject Trump's deadly bid to expand immigration detention* (June 2017), <http://immigrantjustice.org/staff/blog/7-reasons-why-congress-must-reject-trumps-deadly-bid-expand-immigration-detention>.

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Contact: Linus Chan<sup>29</sup>, Associate Clinical Professor of Law, [rlchan@umn.edu](mailto:rlchan@umn.edu)

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<sup>29</sup> Institutional listing for purpose of identification.

CC:

The Honorable Ronald Johnson, Chair  
Senate Committee on Homeland Security and Governmental Affairs

The Honorable Claire McCaskill, Ranking Member  
Senate Committee on Homeland Security and Governmental Affairs

The Honorable Michael McCaul, Chair  
House Committee on Homeland Security

The Honorable Bennie Thompson, Ranking Member  
House Committee on Homeland Security

The Honorable Charles Grassley, Chair  
Senate Committee on the Judiciary

The Honorable Dianne Feinstein, Ranking Member  
Senate Committee on the Judiciary

The Honorable Robert Goodlatte, Chair  
House Committee on the Judiciary

The Honorable John Conyers, Ranking Member  
House Committee on the Judiciary

The Honorable John Boozman, Chair  
Senate Appropriations Committee, Subcommittee on Homeland Security

The Honorable Jon Tester, Ranking Member  
Senate Appropriations Committee, Subcommittee on Homeland Security

The Honorable John Carter, Chair  
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The Honorable Lucille Roybal-Allard, Ranking Member  
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