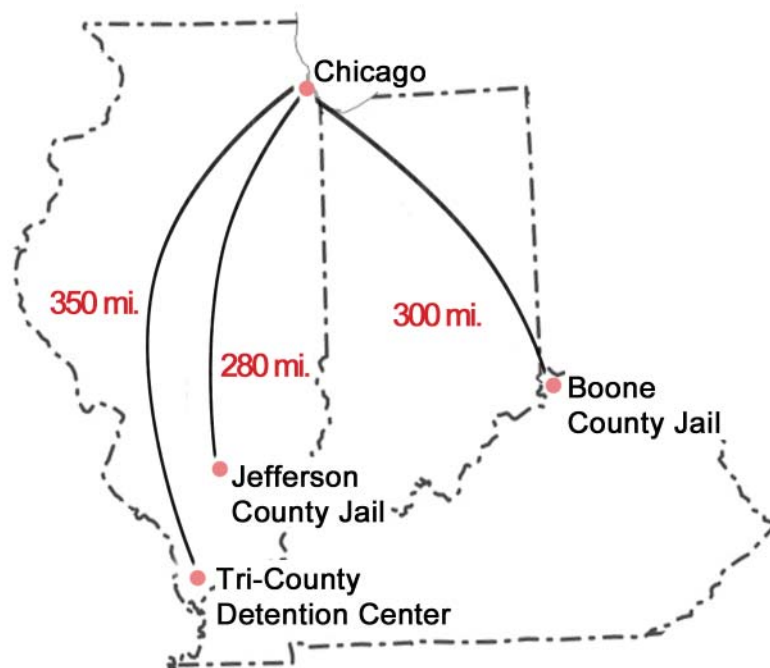


# Not Too Late for Reform

**A Call for President Obama to  
Close Failed Immigration Detention Facilities,  
Halt Costly Privatization  
& Restore Basic Human Rights**

*A Report from the Midwest  
December 2011*



National Immigrant Justice Center

Midwest Coalition  
for Human Rights

*Advocating for fairness  
and human dignity*

"The Heartland Alliance's National Immigrant Justice Center and the Midwest Coalition for Human Rights provide yet another timely reminder that in the Midwest the conditions that gave rise to the federal immigrant detention reform initiative persist; that the old system remains largely intact; and that significant progress is still needed in creating a system more appropriate to a civil population. "

– Donald Kerwin, Executive Director,  
Center for Migration Studies

"There is a critical need for effective independent oversight of all places of detention to ensure that conditions are appropriate and humane, and to provide detainees and staff with the knowledge that someone is watching and reporting on their treatment. But monitoring conditions in remote county jails is exceedingly difficult, which makes these detainees even more vulnerable to abuse and neglect."

– Michele Deitch, Senior Lecturer,  
Lyndon B. Johnson School of Public Affairs at The University of Texas

"Many detainees are already suffering from chronic health issues as a result of the physical and psychological trauma they endured in their countries of origin or on the journey to the U.S. When they are incarcerated in isolated county jails, where physical and mental health services are either sub-standard or altogether unavailable, their health can deteriorate rapidly and often irreversibly."

– Christy C. Fujio, Esq., Asylum Program Director,  
Physicians for Human Rights

## About the Authors



National Immigrant Justice Center

**Heartland Alliance's National Immigrant Justice Center** is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers through a unique combination of direct services, policy reform, impact litigation, and public education. [www.immigrantjustice.org](http://www.immigrantjustice.org)

Midwest Coalition  
for Human Rights

Advocating for fairness  
and human dignity

**Midwest Coalition for Human Rights** is a network of 56 organizations collaborating to promote and protect human rights in the Midwest region, in the U.S., and internationally. Working together, the coalition provides broader visibility for urgent human rights issues in the Heartland and projects a strong Midwest advocacy voice in the national and international human rights debate. [www.midwesthumanrights.org](http://www.midwesthumanrights.org)

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# I. SUMMARY AND BACKGROUND

In October 2010, Heartland Alliance’s National Immigrant Justice Center (NIJC), the Midwest Coalition for Human Rights, and Detention Watch Network published *Year One Report Card: Human Rights & the Obama Administration’s Immigration Detention Reforms*.<sup>1</sup> Released on the first anniversary of the 2009 detention reform announcement, the report highlighted the U.S. Department of Homeland Security’s (DHS) failure to implement its reform agenda.

Today, the administration’s commitment to introduce alternative to detention programs and create “truly civil” immigration detention — including sound medical care, adequate oversight mechanisms, and fiscally prudent detention practices — is no closer to reality. Moreover, real progress on the reform initiatives is impossible while DHS continues to unnecessarily detain massive numbers of immigrants. Nearly 50 percent of immigrants deported in fiscal year 2012 were not convicted of any crime and should not have been incarcerated.<sup>2</sup>

The Obama administration has failed to address the human rights crisis confronting men, women, and children in DHS custody. Deplorable conditions of confinement persist for thousands of people detained at remote jails such as Boone County Jail, Jefferson County Jail, and Tri-County Detention Center. The system remains punitive and lacks accountability.

The administration’s current plans to open at least five new, privately run detention centers is an ill-conceived “fix” to address systemic problems. It ignores the routine human rights violations committed by for-profit private prison corporations. Instead, DHS must immediately:

1. Reduce mass immigration detention by abolishing harsh enforcement practices and referring more individuals into alternative to detention programs
2. Close the worst facilities nationwide. In the Midwest, this must include Boone County Jail in Burlington, Kentucky; Jefferson County Jail in Mt. Vernon, Illinois; and Tri-County Detention Center in Ullin, Illinois
3. Cancel plans to build new facilities run by private prison contractors that are responsible for human rights violations
4. Restore human rights protections with strong oversight measures
5. Save taxpayer dollars by releasing more low-risk individuals who pose no threat to society

## II. ADVOCACY EXPERTISE

NIJC and its partners are uniquely positioned to monitor and report on immigrant detention trends in the Midwest. For more than a decade NIJC has provided direct legal services, including Know Your Rights presentations and legal assessments for DHS Immigration and Customs Enforcement (ICE) detainees at six county jails located in Juneau, Wisconsin; Kenosha, Wisconsin; Woodstock, Illinois; Ullin, Illinois; Burlington, Kentucky; and Mt. Vernon, Illinois.

Based on clients' reports and NIJC's observations, problems are most acute at Boone County Jail, Jefferson County Jail, and Tri-County Detention Center. From August 2009 to November 2011, NIJC and its partners visited these facilities 21 times to give Know Your Rights presentations and conduct individualized legal assessments. Through these visits, NIJC reviewed nearly 1,600 legal intakes and represented a number of individuals in removal proceedings. NIJC also offered a weekly telephone intake for immigrants detained at these facilities.



## III. SUB-STANDARD DETENTION CONDITIONS

The problems at Midwest detention facilities mirror the harsh realities of immigration detention facilities nationwide which are deeply rooted in correctional — rather than civil — practices. For example, the jails confine immigrants to pods and heavily monitor their movement, often denying them access to outdoor recreation. Generally, immigrants are shackled during transport.

**"With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards ... and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained [immigrant] population."**

**— Dr. Dora Schriro, former director,  
DHS Office of Detention Policy<sup>3</sup>**

DHS contracts with approximately 250 local jails and prisons to detain immigrants. ICE's local Enforcement and Removal Operations (ERO) offices are assigned jurisdiction over facilities based on the location of detention centers and immigration courts.

## A. Chicago ERO Field Office: Detaining a Large Immigrant Population Across Six States

In the Midwest, the Chicago ERO Field Office covers 26 facilities across Illinois, Wisconsin, Indiana, Kentucky, Missouri, and Kansas (known as the Chicago Area of Responsibility, or Chicago AOR). The Chicago and Kansas City immigration courts adjudicate proceedings for immigrants detained in these states.<sup>4</sup> Of the 26 facilities in the Chicago AOR, the six largest detention centers hold an average of almost 200 individuals daily.<sup>5</sup>

Facility	ICE Population as of July 18, 2011	ICE Average Daily Population FY2011
McHenry County Detention Center (Illinois)	351	315
Dodge County Jail (Wisconsin)	275	222
Tri-County Detention Center (Illinois)	260	204
Kenosha County Detention Center (Wisconsin)	209	184
Jefferson County Jail (Illinois)	123	103
Boone County Jail (Kentucky)	88	155

**IMMIGRANTS DETAINED WITH NO CRIMES OR MINOR OFFENSES ONLY**  
**Boone = 50%**  
**Tri-County = 40%**

A number of individuals detained at these facilities are eligible to remain lawfully in the United States. However, because they are so isolated from attorneys, social service providers, and immigrant communities, ICE often deports them before they are able to contact their families or seek legal counsel. For example, Boone is located 300 miles from Chicago; to access the jail via public transportation would take approximately 14 hours.

Further, the counties in which the 26 facilities are located are not equipped to meet the needs of the detained population, especially immigrants who face additional challenges like language and cultural barriers.

## B. Immigrants Detained in the Chicago AOR — A Low-Risk Population

ICE claims that it will exercise prosecutorial discretion in “low-priority” cases<sup>6</sup>, yet a majority of immigrants detained in the Midwest fall within these guidelines and should be released. For example, during NIJC’s legal intake conducted at Boone in September 2011, at least 50 percent of immigration detainees assessed for legal relief had either no criminal history or were only charged with minor offenses.<sup>7</sup> Similarly, 40 percent of individuals identified during legal intake at Tri-County in October 2011 had no convictions or were only charged with minor offenses.<sup>8</sup> NIJC and its partners continue to work with a large volume of detained immigrants for whom incarceration is inappropriate, including people suffering from medical and mental health issues.

Alexander\* was stopped by police for driving over the 30 miles-per-hour speed limit. His family was also in the car and became distressed, particularly his eldest son who suffers from a medical condition. Alexander was taken into ICE custody and his family was left alone on the sidewalk with no way home.

\*NIJC client (name has been changed)

### C. Major Barriers to Legal Counsel at Isolated Facilities

Immigration detainees are not appointed counsel in removal proceedings and must either pay for an attorney or rely on scarcely available *pro bono* services. DHS's contractual relationships with remote detention facilities violate the fundamental due process right to counsel because it is exceedingly difficult for detained immigrants to retain attorneys over great distances.

The challenges detainees face to accessing legal counsel are even greater in the Midwest because local nongovernmental organizations (NGOs) do not receive any government funding to conduct regular Legal Orientation Programs and are often unable to visit remote jails.<sup>9</sup>

Immigrants without access to counsel or any understanding of their rights face extreme consequences: deportation to a country in which they fear persecution; displacement from their communities, employment, and social networks; and separation from their families. In removal proceedings completed between 2005 and 2009, less than half of ICE detainees had legal counsel.<sup>10</sup> An estimated 84 percent of immigration detainees had no access to attorneys.<sup>11</sup>

Additionally, immigrants are routinely deported without an opportunity to report human rights violations. Many detained immigrants who do not have legal representation are unable or unwilling to report complaints due to language barriers, cultural differences, and fear of deportation and retaliation by jail and prison guards.

### D. Ongoing Threats to Basic Human Rights

Like many county jails that warehouse immigration detainees, Boone and Tri-County are monitored for compliance based on ICE's outdated 2000 National Detention Standards.<sup>12</sup> Recently, DHS revised those standards and renamed them the Performance Based National Detention Standards (PBNDS). But ICE has yet to implement the PBNDS. Additionally, while the PBNDS are more inclusive than the previous standards, they are not legally enforceable and lack disciplinary and financial consequences for facilities that fail to comply.

In some cases, DHS appears to sanction jails for failing to comply with the detention standards. For example, Jefferson was rated "deficient" against the original detention standards for three years (2007, 2008, and 2009).<sup>13</sup> Yet in 2009, ICE renewed its contract for detention bed space at Jefferson.<sup>14</sup>



## ICE's National Detention Standards<sup>15</sup>

- Detainees shall have access to medical services that promote health and general well-being
- Detainees shall be served at least two hot meals every day
- Detainees shall be served regular meals even when an individual is in transit
- Detainees shall be issued clean, temperature-appropriate, presentable clothing
- Detainees shall be issued socks and undergarments that are exchanged daily at facilities housing ICE detainees
- Every facility will develop and implement standard operating procedures that address detainee grievances

## Constitutional Protections

- Detainees have a right to be free from indefinite detention<sup>16</sup>
- Detainees are entitled to humane conditions of confinement<sup>17</sup>
- Detainees have a right to be free from deliberate indifference to serious medical needs<sup>18</sup>
- Detainees have a right to be free from over-crowding at detention centers<sup>19</sup>
- Detainees must be protected from extremely cold temperatures in facilities and must be provided with proper clothing or blankets<sup>20</sup>

## Human Rights Standards

- Detainees have the right to be treated with humanity and with respect for the inherent dignity of the person<sup>21</sup>
- Individuals have the right to be free from torture, cruel, inhuman, or degrading treatment or punishment<sup>22</sup>



## Jefferson County Jail

Conditions at Jefferson are punitive and inhumane. ICE detainees spend the day hungry because they lack food and report getting a hot meal only once every two weeks. Even in the summer, individuals huddle under blankets because of cold temperatures and inadequate clothing.

Detainees with medical and mental health issues are told that they need to pay to see a doctor, which indigent individuals cannot afford.

Often, detainees are required to buy basic hygiene items. They receive jail uniforms and undergarments that are torn, stained, and threadbare. Because laundry service is inconsistent, detainees are forced to wear soiled clothes week after week. Staff is rude and condescending, and detainees are too intimidated to report grievances. In the rare instances when grievances are filed, complaints are ignored or dismissed without merit.



"I am a 31-year-old woman who was detained at Jefferson from April to August 2011. I was released from ICE custody after I won my case. While at Jefferson, I reported a water leak in the women's pod which the jail did not fix, and constant air-conditioning that made the jail extremely cold. When I closed the air vent so that it would be less cold and complained about the cold temperature, I was placed in segregation. I also reported poor sanitation – the showers were always dirty, and bed linen and jail uniforms were washed infrequently."

– NIJC client

## Boone County Jail

Immigration detainees at Boone face similar struggles. They fear for their safety because they are often intermingled with criminal detainees. Like Jefferson, the jail is kept cold year-round and detainees are often required to pay for medical care. Jail officials are discriminatory and nonresponsive to requests for assistance.

For example, Phillip<sup>23</sup> experienced multiple medical and mental health issues while detained at Boone in 2011. Shortly before he was arrested by ICE, a doctor told him that a growth on his neck required further testing and might be cancerous. During his three months at Boone, Phillip filed numerous requests to see a doctor but only saw nurses. He never received an examination of the growth. He began to experience headaches and it became difficult for him to hold up his head. After one month of detention at Boone, Phillip reported to the nurses that he felt depressed and alone. The facility responded by placing him in segregation.

"Within one day of my arrival at Boone, I told the nurse that I am HIV-positive. She said that she would call the clinic to obtain my medical history. I also complained of depression and high blood pressure and informed a second nurse that I am HIV-positive. This nurse also promised to make a doctor's appointment, but now almost six weeks have passed and I have never received any medication. Nothing has changed since I was moved to Tri-County. I told the nurse right away about my HIV status but still no exam and every day goes by without my pills."

– NIJC client



## Tri-County Detention Center

Conditions at Tri-County are sub-standard. Because there is only one phone for every 50 detainees, it is difficult for detainees to contact family or legal counsel. As a *pro bono* attorney visiting the facility recently reported:

"Tri-County is overcrowded again. One of the detainees told me there were 295 detainees over the weekend. Some of the detainees told me they have put extra beds in the rooms so that they are sleeping with their heads next to the toilet while people are using it. The room where we usually hold Know Your Rights presentations is now being used for extra beds. There are no tables or chairs for us to do legal intake. Two detainees told me that they had made as many as five written requests to use the law library, but had not been given access. One of the individuals wanted an asylum application and couldn't get it. The guard's response was that when they are doing video conferences in the library, no one else can use it."

## E. Growing Costs at Substandard Facilities

Reports made available in response to a Freedom of Information Act (FOIA) request demonstrate that between April 20 and June 30, 2009, ICE paid Jefferson \$217,080 to detain immigrants.<sup>24</sup> By September 30, 2009, the number of beds used by ICE at Jefferson had ballooned to 8,200, costing taxpayers a total of \$494,460 at \$60.30 per ICE detainee per day.<sup>25</sup> The FOIA documents also show that between July 1 and September 30, 2009, Jefferson spent an additional \$90,000 on transportation and associated personnel costs for ICE detainees.<sup>26</sup> With a growing ICE detention population, Jefferson's internal records show that in February 2011, ICE detainee transportation and associated personnel costs were \$290,170.<sup>27</sup>

FOIA documents also reveal that ICE paid \$76 per detainee per day to Tri-County<sup>28</sup>, an exorbitant cost for a facility whose abhorrent conditions violate ICE's own detention standards.

## IV. PRIVATE PRISONS ADD TO THE PROBLEM

Under the Obama administration, ICE has entered into tentative or formal agreements with several private prison corporations, adding a total of 3,485 beds to the immigration detention system.<sup>29</sup> In the Midwest, ICE proposes the construction of a new 700-bed immigration detention facility in Crete, Illinois.<sup>30</sup> Crete is approximately 37 miles from Chicago. The facility is due to be constructed by 2013 and operated by Corrections Corporation of America (CCA), a private prison contractor whose egregious human rights violations are already well known to ICE and the Obama administration.

"ICE requires approximately 500-700 detention beds to meet the local demand in the greater Chicago area. ICE will consider different options to meet this demand. For example:

Option 1: One 500 bed facility with the capability to expand to 700 beds

Option 2: Two 250 bed facilities with the capability to expand to 350 beds

ICE will only consider proposals for facilities with greater than 250 dedicated beds."

— ICE Statement of Objectives  
for Proposed Illinois Detention Facility<sup>31</sup>

ICE has indicated that the new CCA facility will incorporate features more appropriate for a civil population, such as non-institutional clothing, contact visitation, and enhanced programming for detainees.<sup>32</sup> The look of this detention center may be an improvement on some of the older, more run-down county jails that ICE uses, but building new privately run facilities is an ill-conceived “fix” to systemic problems. Civil detention does not mean simply better-looking facilities. It requires referring low-risk individuals into alternatives to detention programs and using detention as a last resort.

Moreover, these facilities are essentially prisons, with a strong correctional culture. The new detention center proposed for Crete, run by a private contractor with a notorious track record of mistreatment and abuse, fundamentally undermines ICE’s detention reform agenda.

### **A. Mega Facilities Run By Private Contractors Are Not Consistent with Civil Detention**

In 2007, Francisco Castaneda, a 37-year-old immigrant, died in ICE custody at a CCA facility in California.<sup>33</sup> In the subsequent lawsuit, the government conceded that Mr. Castaneda had died as a result of medical negligence at the facility.<sup>34</sup> In 2010, a CCA officer at the T. Don Hutto Residential Center in Taylor, Texas — a women-only immigration facility touted by DHS as a national model for civil detention reform — was charged with sexual assault of several detainees at the facility.<sup>35</sup> In August 2010, the CCA officer pled guilty to the charges.<sup>36</sup> In 2011, another CCA officer pled guilty to sexual assault charges against a female detainee at the Willacy County Detention Center in Texas.<sup>37</sup>

ICE’s decision to initiate new contractual arrangements with CCA runs contrary to the principles of genuine civil detention reform and undermines its stated intention to shift away from the penal culture institutionalized at detention centers. Instead of pursuing contractual relationships with repeat-offender correctional partners, DHS should initiate a movement toward the “case management” model.<sup>38</sup> Under this model, case workers who have the expertise to address the needs of a civil detention population and have the capacity to foster a non-correctional culture would refer individuals who pose no threat to the community into alternative to detention (ATD) programs, at significant cost-savings to the federal government.

### **B. Soaring Costs of Immigration Detention and the Role of the Private Prison Industry**

The administration’s fiscal year 2012 budget requests more than \$2 billion — a record high — to maintain 33,400 immigration detention beds daily.<sup>39</sup> Between fiscal years 2002 and 2010, ICE’s overall budget more than doubled to \$5.74 billion.<sup>40</sup>

ATD programs have a proven record of ensuring individuals’ compliance with immigration authorities’ reporting requirements at enormous cost savings. When DHS announced in 2009 that it would reform the immigration detention system, it emphasized that ATD programs cost “substantially less per day than detention: the most expensive form of ATD is only \$14 per day compared to as much as \$100 per day for people detained.”<sup>41</sup> In its fiscal year 2012 budget, DHS stated that 94 percent of participants in its ATD pilot programs complied with immigration court orders, far exceeding the targeted 58 percent.<sup>42</sup>

Immigration detention is big business. In 2009, half of the immigration detention population was housed in privately run contract facilities, including a large number of CCA facilities.<sup>43</sup> In 2010, CCA reported record annual profits of \$1.69 billion, up \$46 million from 2009 and up nearly \$800 million from 2001.<sup>44</sup> CCA operates 14 ICE-contracted facilities with more than 14,000 beds.<sup>45</sup> Federally contracted prisons accounted for the largest annual increase in the private prison population between 2000 and 2008, making the federal government a critical source of revenue for private prison companies.<sup>46</sup> CCA aggressively lobbies Congress and DHS in favor of immigration detention. Between 1999-2009, the major private prison contractors, including CCA, spent more than \$20 million on lobbying.<sup>47</sup>

## **V. URGENT ACTION PLAN FOR 2012**

Immigration detention in the United States remains a crisis that requires urgent attention. In order to realign its immigration detention reform agenda and ensure that abuses do not continue, DHS and the Obama administration must take immediate steps to:

- 1) Reduce mass immigration detention by abolishing harsh enforcement practices and referring more individuals into alternative to detention programs
- 2) Close the worst facilities nationwide including, in the Midwest, Boone County Jail, Jefferson County Jail, and Tri-County Detention Center
- 3) Cancel plans to build new facilities run by private prison contractors that are responsible for human rights violations
- 4) Restore human rights protections with strong oversight measures
- 5) Save taxpayer dollars by releasing more individuals who pose no threat to society

# Endnotes

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