

**Private Prisons, Immigration, Family Separation and Investment Risk:
Resources for Pension Fund Trustees
September 11, 2018**

Introduction

Private prisons and detention facilities, as well as companies that provide services to them, have faced increased scrutiny, negative headlines, and legislative perils related to both their business practices and human rights concerns. A number of pension funds have divested their holdings from private prisons recently, including the New York City Employees' Retirement System (NYCERS), the New York State Common Retirement Fund, and the City of Philadelphia Board of Pensions and Retirement. This brief is available to pension fund trustees to assist them in assessing the risk to their funds from private prison holdings. It includes a sample letter with questions to ask about private prison investments, a list of resources, and further reading.

What Can Trustees Do?

Assess Risk: Direct fund staff to review the fund's portfolio for direct and indirect exposure to human rights and other dangers posed by private prisons.

Engage: Work with fund staff to lead engagement with both asset managers and individual companies in the portfolio to address the investment risks and human rights impacts of providing services to ICE or other federal agencies involved in enforcing the "Zero Tolerance" immigration policies. The Investor Alliance for Human Rights recommends this question as a starting point:

“Has the company or financial institution made explicit commitments to respect human rights, for example, through the development of a human rights policy commitment to respect internationally recognized human rights, including those found in the International Bill of Human Rights, the labor rights contained in the ILO's Declaration on Fundamental Principles and Rights at Work, and the rights outlined in the Convention on the Rights of the Child and the Convention on the Rights of Refugees?”

Develop, Refine "Investment Beliefs": If your fund has adopted Investment Beliefs, review them for language addressing private prison companies explicitly, or human rights and the rights of children more broadly. If this language is not there, or your fund has not adopted Investment Beliefs, start the process of amending or adopting them.

Sample Letter and Questions to Ask

This sample letter, including questions to ask, was originally written by the California Teachers Association/NEA, and adapted by the National Education Association to share with other affiliates and member trustees to use and adapt for pension plans.

Dear Chair,

We are deeply concerned about the recent events unfolding at the national level regarding family separations, the detention of families, and most importantly the detention of children by Immigration and Customs Enforcement. It has come to our attention that the retirement plan has private prison contracts with groups, which both have family residential centers that are housing families that have been detained by ICE.

While it has been reported that these companies are in compliance with both state and federal law, we have a number of questions we feel compelled to ask to assure our members that their retirement funds are being invested in a legal manner. We are also concerned about the thoroughness of information that has been provided by these companies. We would like verification that these companies are, indeed, following the law, not only to protect the retirement plan from potential fiscal harm should legal costs impact future returns on these investments, but more importantly, to ensure that your systems investments reflect its stated investment beliefs.

To ensure all applicable policies are being followed, we request the following questions be answered to verify for compliance:

CUSTODY

1. How many children are detained at facilities operated by these companies?
2. How long are children detained at the companies' facilities? On average? Currently?
3. If the companies detain children for longer than 20 days, what is their justification?
4. How many children are detained by the companies for more than 20 days? On average? Currently?
5. What do the companies do to ensure the presumption in favor of release is followed?
6. When children are released to community facilities, are those facilities licensed by the state?
7. Are the companies detaining families who presented themselves legally as asylum-seekers?

EDUCATION

1. What education services do the companies provide for the detained children? In what subjects?
2. How frequently and for how many hours? On what days and months?
3. Who provides the instruction?
4. Do those teachers hold state licensing qualifications?
5. What do the companies do to conduct educational assessments of arriving children?
6. How quickly is that assessment made?
7. Who conducts the assessment?
8. What do the companies do to ensure special education demands are met?
9. What is the student/teacher ratio?
10. What translation services are provided?
11. Are school supplies provided, including textbooks and computers?
12. How do the companies maintain student education files?
13. Do the companies' facilities have libraries?
14. How many books are in the libraries?

CONDITIONS

What information have the companies provided to demonstrate that they:

1. Meet health and safety standards
2. Prevent sexual abuse and assault
3. Use minimum physical force against detainees
4. Provide adequate, routine and emergency medical care
5. Comply with all requirements for disciplining children
6. Provide sanitary and nutritious food services
7. Meet all other Family Residential Services

RETIREMENT PLAN

1. What information was provided in response to the retirement plan inquiries about the companies' family detention facilities?
2. What plans have been made for retirement plan representatives to inspect the companies' Texas facilities after becoming aware of this particular situation?
3. What specific questions have been posed to the companies by the retirement plan's staff?
4. What specific requirements have the companies stated they have met?
5. What is the retirement plan doing to identify any existing or potential future investments that may be made with private companies that are involved in detaining children or adults entering the country and awaiting due process?
6. Does the retirement plan have additional investments with companies or firms, or potential future exposure, that are connected with any prison system that contributes to the expansion of detention centers or prisons that incarcerate youth?
7. What is the investment policy that guides the retirement plan staff actions and practices on ensuring that money managers of all asset classes are in compliance with your current investment policy on ESG (Environmental, Social and Governance investment standards) issues? How is this enforced and communicated?
8. Given your socially responsible policy work on your investment beliefs, what are best practices that can be shared and highlighted?
9. Does the retirement plan conduct a yearly or periodic review of its investment policy and belief statements related to socially responsible investments?
10. Do you believe that improvements can be made in regard to your stated investment beliefs and how those beliefs are carried out and implemented?

We appreciate the opportunity to share our concerns about this critically important and sensitive issue and look forward to a thorough response to verify to our members that these groups are indeed following plan policy. Our members look forward to receiving responses to our questions and assurance that their retirement dollars are being invested in accordance with investment beliefs.

Sincerely,

Resources

[Guidance on Corporate Human Rights Due Diligence Related to Immigration Detention and Family Separation](#) by the Investor Alliance for Human Rights, July 2018

“Companies with existing or potential contracts with the U.S. Federal Government associated with the enforcement of immigration policies are exposed to the risk of contributing to, or being directly linked to, violations of human rights, including children’s rights, due process, equal protection, freedom from persecution and torture, and the rights of asylum seekers. This exposes companies to significant legal and reputational risks, including brand risk and workplace unrest by employees who are strongly opposed to these practices.”

[Private Prisons, Immigrant Detention, and Investment Risks, Part One](#) by the American Federation of Teachers, August 2018

“It is well within a public pension fund trustee’s scope of fiduciary responsibility to consider the legitimate risks associated with the investments in the private prison industry and immigration detention centers, and to consider whether to divest entirely, assuming other investment options offer comparable or better risk-adjusted returns.”

“Pension funds can also consider noneconomic secondary factors in making investment decisions; thus consideration of the humanitarian impacts of family separation will not violate the trustees’ fiduciary obligations, provided that (1) the collateral objectives are subordinate to the primary economic objective of retaining qualified managers who will provide competitive, risk-adjusted returns, and (2) the consideration of collateral factors leads to the retention of investment managers who are equivalent, from a qualification and performance standpoint, to other managers available to the plan.”

[Investors and the Prison Problem](#) by Pat Miguel Tomaino in Zevin Views, February 13, 2017
In this article, Pat Miguel Tomaino, director of Socially Responsible Investing at Zevin Asset Management, summarizes the risks their research found that “intersect with the prison problem”:

“Legal/operational risk—For-profit prison operators face the starkest operational risks. Reports show a pattern of human rights issues in private prisons, including the physical and sexual abuse of inmates, wrongful deaths, and increased violence among inmates in understaffed facilities. These conditions can lead to riots, which interrupt operations, and endanger prison employees. More often, operational risks simply create more misery for inmates and conditions that doom them to failure on the outside. And, in rare but notable circumstances, they can [lead to lawsuits](#).”

“Reputational risk—Firms outside the prison industry, especially those with consumer-facing brands, should beware of damage to their reputations from even the smallest involvement with prison labor. A classic example would be a large retailer or manufacturer with a sprawling network of suppliers. It takes only one supplier using ultra-low-wage prison labor to harm the firm’s reputation, as Whole Foods learned when the grocer was criticized in 2015 for sourcing tilapia and goat cheese from vendors that use prison labor.”

“Policy risk—The election of a president who talked tough about crime and pledged to build a border wall was greeted with relief in the prison industry. Prison company stock prices have more than recovered since August when the Obama Justice Department’s decision to stop letting for-profit firms run federal prisons caused their stocks to plummet. But the above risks remain, and growing attention to the prison problem could cause future swings.”

[Bankrolling Oppression: How Wall Street Companies Finance the Private Prison and Immigrant Detention Industry](#) by the Center for Popular Democracy, et al, April 2018

“The private prison and immigrant detention industry, a \$5 billion enterprise, is made possible by government contracts and through debt financing and investments made and facilitated by Wall Street corporations.”

“Executives of Wells [Fargo], JPMorgan, and BlackRock have publicly articulated a commitment to human rights, social responsibility, and the welfare of immigrants,* and yet their financial entanglements clearly indicate otherwise.”

[The Banks that Finance Private Prison Companies](#) by In the Public Interest, November 2016

“Pension funds that are clients and shareholders of these banks may well serve their pensioners by guiding the banks away from an industry that poses a growing reputational risk to all those involved. Endowments, churches, universities, socially responsible investors, municipalities, states, pension funds and other clients and shareholders can use tools ranging from shareholder resolutions and engagement to divestment, according to the laws of their jurisdiction. They can encourage banks to adopt contractual language in lending agreements to limit their exposure to the prison industry. Likewise, asset owners can adopt investing policies and proxy voting guidelines consistent with these efforts. Such policies and guidelines can flow down to their asset managers who also have relationships with the financial institutions discussed here.”

[“More Cities and States Should Divest from Private Prisons”](#) by New York City Comptroller Scott M. Stringer and Community Organizer Javier H. Valdés, Opinion, [New York Times](#), July 30, 2018

“Pension funds have a fiduciary duty to make sound investments that grow their portfolios and help fund retirement benefits for their members. That means constantly evaluating the long-term viability and risk of investments across the pension funds’ portfolios, which is what the New York City Comptroller’s Office does every day.”

“Private prisons fail that basic risk assessment. That’s because the industry’s bottom line depends on locking people up. And when you imprison people for money, it means you have to choose between padding the bottom line and spending the money needed to create safe and healthy conditions. Too often, the bottom line wins out. These companies have a financial interest in perpetuating the inhumane ‘zero tolerance’ policies whose consequences we now see on the front page of the news each day. Consequently, as an investment, they’re at the whims of a seesawing political climate. This combined with the moral issues surrounding private prisons has convinced us that they are imprudent for investors to own and for banks to finance.”

* In some cases, executives have made statements as individuals (in their capacity as Wall Street Executives), and in other cases stated values come directly from corporate documents.