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To: Dr. Santiago Canton, Executive Secretary;  
Mr. Mark Fleming, Inter-American Commission on Human Rights  
From: Laura Rótolo, ACLU of Massachusetts  
Re: Transfers of Immigration Detainees Among Detention  
Facilities in the United States  
Date: July 20, 2009

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Thank you for the opportunity to provide you with information on this important issue. As the Massachusetts affiliate of the American Civil Liberties Union, we welcome your visit to the United States and urge you to consider the nationwide impact of transfers of detained immigrants among detention facilities. Every year, thousands of immigrants who have established a life in our state are arrested by federal authorities and transferred to the facilities you will be visiting. The fluid nature of immigration detention means that the problems faced by one facility or one region affect immigrant communities everywhere.

### **Background**

Each day across the United States, the federal government has in its custody over 30,000 non-citizens who are in deportation proceedings or have entered the U.S. seeking asylum. In 2007, Immigration and Customs Enforcement (ICE) detained more than 311,000 immigrants, who were held in any of over 400 state, local, federal and private detention facilities around the country.

United States law gives the federal government the sole discretion to decide where immigration detainees are housed. In most instances, the place of detention need not be close to the place where the immigrant resides, where his family is or where his lawyer is. For example, with few exceptions, a person detained in Massachusetts can be placed in custody in a facility as far away as Texas or New Mexico.

In addition to the geographically unlimited nature of detention, ICE has almost limitless power to move immigration detainees from one facility to another at any point – without justification or advance notice. ICE takes full advantage of this

power, transferring detainees on a daily basis all over the country. In 2007, ICE transferred 261,910 detainees — over 84 percent of all detained immigrants.<sup>1</sup>

Large detention centers in the southern part of the United States have become the largest recipients of detainees from all over the country. These centers typically are in remote areas far from urban centers and groups of lawyers or communities who can assist the immigrants.

Transfers to faraway facilities have a devastating effect on detained immigrants, their families and the legal process. When detainees are moved, they lose contact with their families and lawyers, face interruption in medical care and tend to give up on legitimate legal claims.

Transfers happen for a variety of reasons. The government reports four official reasons for transferring detainees: specialized medical needs, requested changes of judicial venue; recreational needs when a required recreation is not available, and; security purposes. In practice, advocates have found that transfers happen mainly for two reasons: retaliation for speaking out about abuses and a lack of bed space in local facilities.

### **Use of Transfers as Retaliation for Reporting Abuse**

In 2006 – 2007, the ACLU of Massachusetts conducted a human rights investigation into conditions of confinement for immigration detainees in our state. The report of this investigation, *Detention and Deportation in the Age of ICE*, available at [www.aclum.org/ice](http://www.aclum.org/ice), was based on interviews with forty detainees and dozens of advocates, immigration lawyers and family members. It identified trends that have since been documented in other places around the United States.

Detainees reported a troubling trend — they are transferred to different facilities after speaking out or filing complaints about detention conditions, due process concerns or treatment by guards. As a result, detained immigrants are reluctant to speak out about problems.

These retaliatory transfers are meant to serve two purposes. First, local jails holding ICE detainees do not have to respond to grievances filed by detainees who no longer are in their custody. Second, transfers send an implicit threatening message that has a chilling effect on all other detainees who may be thinking

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<sup>1</sup> U.S. Dep't of Homeland Security, Office of Inspector General, *Immigration and Customs Enforcement's Tracking and Transfers of Detainees*, OIG-09-41, March 2009, available at [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_09-41\\_Mar09.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_09-41_Mar09.pdf)

about filing complaints or grievances. As many reported, it is well-understood that detainees who complain get moved.

The ACLU of Massachusetts report documented five discrete instances in which detainees were transferred to a different jail shortly after complaining about an incident.

- A group of detainees at Suffolk County Jail in Boston wrote to the *Boston Globe* alleging that they had been forced to submit to a strip search in front of other detainees. After the *Globe* reported the story, two of the detainees whom the jail considered to have been part of the complaint were transferred to a jail two hours away after having spent months in Boston without incident. Cell-mates of one of the transferred detainees confirmed that his bed remained empty for weeks after his departure, contradicting justifications that the transfer was done because of lack of bed space.
- A detainee who was picked up by his neck and slammed against the wall by a guard at Suffolk County Jail was transferred to a jail in Vermont, where an ICE agent told him that he had been sent there “to cool things off.” He was then brought back to a different jail in Massachusetts. He never filed a complaint against the jail because he was too afraid of retaliation.
- A detainee at a county jail in Plymouth, Massachusetts, who had spent months asking to see a doctor, was transferred to a different jail shortly after his embassy advocated for him to receive medical care.
- A detainee at Suffolk County Jail did not understand why she was being held in custody because she believed her *habeas corpus* petition had been granted. She wrote a letter to the Sheriff asking about her situation and was soon moved by ICE to York, Pennsylvania. An ICE agent told her that she was being moved so she would stop speaking out.

### **Lack of Local Bed Space**

In some instances, immigrants are detained and immediately shipped to large detention centers far away from their homes and communities because of a lack of local bed space.

The New England regional office of ICE, which has jurisdiction over Massachusetts, Rhode Island, Connecticut, Vermont, Maine and New Hampshire, arrests approximately twice as many people as it can house. This means that half

of those arrested in New England are quickly transferred outside of the six—state region to faraway detention centers.

After a large raid on a factory in New Bedford, Massachusetts in 2007, in which 361 immigrant workers were arrested, ICE transferred approximately 200 of the immigrants to detention centers in Texas and New Mexico within 48 hours of arrest. ICE stated that there simply were not enough beds in local detention facilities to hold the large number of persons detained in that operation.

### **Effect of Transfers on Detained Immigrants' Rights**

Being moved to another facility has several consequences that impact detainees' due process rights, medical treatment and right to humane treatment.

#### **1. Due process**

Once detainees are moved far from their places of residence, they may lose contact with attorneys representing them in their cases. In-person visits may become impossible and phone calls may become prohibitively expensive. Because lawyers cannot call detention facilities to speak with their clients, they must instead communicate by letter or rely on the client to raise enough money in detention to make a long-distance telephone call. Preparation for a legal case, then, becomes very difficult.

Detainees also may be less able to represent themselves in court, as the vast majority of immigrants must do in the absence of a right to free, government-appointed counsel. For example, if a court hearing is taking place in a state that is far away from the detainee's new location, the court may allow an appearance by video. However, video appearances are riddled with their own technical problems, and many lawyers and advocates feel that such appearances are not an adequate substitute for in-person appearances, especially for clients who speak poor English or need interpreters.

The immigrants who were arrested in the New Bedford raid and quickly transferred to Texas and New Bedford saw these effects first hand, as they lost contact with their lawyers, family-members and communities. While Massachusetts has a well-organized community of immigrant rights advocates who had put together a group of volunteer attorneys ready to help, Texas had no such organization.

Additionally, the transfer put most immigrants in an impossible situation — in order to ask a judge to release them on bond, they had to prove that they were not a flight risk by showing ties to the community, but because they had been moved

so far from their homes in Massachusetts, they could show no ties. They had no access to witnesses or advocates, and many remained in detention for months before being granted release on bond.

Others gave in to coercive treatment and signed documents waiving their rights to challenge their deportation orders. Had they been able to meet with the lawyers who were available in Massachusetts, many would not have waived those rights.

## **2. Medical Issues**

Transfers from one facility to another are especially difficult on persons who require daily medication or have other medical concerns. Detainees often are transferred without a supply of their medications and without their medical records, leading to breaks in continuity of treatment.

ICE's own guidelines mandate that when a detainee is transferred, a form with a summary of his medical condition must accompany him, along with three to seven days of any medication he is taking and a copy of his medical record. Despite this guideline, detainees report that this does not happen regularly.

Instead, detainees often are moved without their medical records or medication, and they themselves must alert the staff in the receiving facility of their medical issues. At that point, the receiving facility must request the medical records from the sending facility. This can take several days, during which time detainees may go without their medication.

The ACLU of Massachusetts report documented several such instances.

- A detainee who was receiving daily anti-psychotic medications was transferred three times within one month to three different jails in Massachusetts, each time without his medical records. At each transfer, he spent several days without the required medication, suffering difficult side effects. During one transfer, the detainee reported that the facility gave an envelope (which he believed included the medical records) and a bag with his medication to the officer who was transporting him. This medication and envelope were confiscated at the receiving facility and never given to the detainee.
- ICE arrested a person while he was being confined under a court order at a psychiatric state hospital in Massachusetts. The person had a long history of psychiatric issues, including a suicide attempt, and for months had been receiving intensive psychiatric care,

including a carefully monitored combination of psychiatric medications. ICE removed him from the hospital and within days transferred him to New Mexico without any medical documentation. It took the family's intervention to ensure that the receiving facility was alerted to his situation, and the family itself had to send the detainee's lengthy medical file and medication regimen to New Mexico. He was later transferred to Rhode Island, where, again, ICE did not provide the facility with his medical records. Next, he was moved to a jail in Boston, where, for the third time, ICE did not transfer his medical records or medication, and his family had to take to contact the jail and send along his medical records. Because of the interruption in his treatment, the detainee's mental health deteriorated. He became non-compliant with the medications and spent the rest of his time in detention —almost a year— in solitary confinement.

### **3. Humane Treatment**

Despite being civil detainees, immigration detainees spend months and sometimes years in jails side-by-side with convicted criminals and subject to the same rules as the rest of the prison population. Some of the conditions they face amount to punishment and inhumane treatment. Transfers add to this atmosphere and make conditions of day-to-day life in detention unnecessarily harsh.

One of the most important factors that helps sustain detained immigrants through the months (and sometimes years) in detention is their ability to be in contact with close friends and family. When they are moved far from that community, detained immigrants quickly lose hope.

Many lawyers and advocates believe that detained immigrants who stay close to their families and communities are more likely to challenge their deportation orders in court through the appellate stage. Detained immigrants who are moved far away from their homes are more likely to give up on their cases —even when legal options remain— if fighting their cases means remaining in detention and away from their families for months or even years.

In addition, despite its multi-million dollar budget for daily transfers, ICE's system for tracking detainees does not have an adequate real-time account of the location of detainees in transit. When a person is transferred, it can take several days for ICE's system to catch up with the person's current location. Family members, advocates and lawyers looking for a detained person may have to wait several days before confirming where the person is being detained.

A recent government report found major problems with the tracking system that resulted in some detainees being moved from one facility to another without any record of their moves or locations.<sup>2</sup>

Adding to the strain of detention, every time detained immigrants enter a new facility, they must re-start many processes that may have taken time to complete in the previous facility. For example, every time detainees enter a new facility, they normally must:

- Submit to a strip search, which often means a body cavity search upon entrance to the facility;
- Go through a medical screening and fill out a medical history chart;
- Go through a tuberculosis screening. One person said that, despite her protests, she received two tuberculosis screening injections in the same week when she was transferred from one facility to another.
- Request their daily medication if the medical chart did not transfer with them;
- Set up a canteen or commissary account to be able to purchase items, and wait the requisite amount of time —as long as two weeks— before money can be deposited in it;
- Set up an account with the phone service provider in order to place calls;
- Set up a list of phone numbers that the detainee may call, and wait the requisite amount of time before being able to make calls;
- Set up a list of visitors that the detainee allows to see him or her and wait the requisite amount of time —as long as three weeks— before receiving visits;
- Request any special accommodations such as a bottom bunk, multiple mattresses, or a special type of meal.

In addition, when a person is transferred, he must learn the written and unwritten rules of the jail, and build relationships with new fellow detainees, inmates, guards and administrators. Such demands are extremely stressful and take a toll on immigrants' mental and physical health.

### **Lack of Legal Recourse in the United States**

Detainees who are transferred away from their families and communities have little, if any, legal recourse. U.S. law gives the federal government broad

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<sup>2</sup> *Id.*

powers to decide the location of detention for immigration detainees, and legal challenges to this authority have not been successful.<sup>3</sup>

In addition to these legal barriers, practical barriers make bringing challenges to transfers exceedingly difficult. As mentioned above, once detainees are moved, they lose contact with any lawyers who may have been representing them. In order to prove that the transfer violated any of the detainees' enumerated rights, the assistance of legal counsel is of utmost importance.

Logistically, when detainees are transferred to another jurisdiction, any claims made under the *habeas corpus* statute, 28 U.S.C. § 2241, must be re-initiated in the new jurisdiction. Then, once immigration detainees are deported, legal claims relating to their detention become moot and it becomes almost impossible to bring an action for damages based on the harm suffered by such transfers.

### **Recommendations for the Commission**

- Urge the United States to strive to reduce its use of detention in civil immigration matters.
- Urge the United States to adopt legislation mandating humane treatment for basic human rights for all persons in ICE detention.
- Urge the United States to reduce transferring immigration detainees far from their homes, communities and lawyers.
- Urge the United States to ensure that immigration detainees are not transferred from one facility to another as a consequence of filing a grievance or airing a complaint.
- Urge the United States to update its tracking systems to ensure that there is up-to-date information about the location of immigration detainees, and that this information is available on a timely basis to family-members and attorneys of the detainees.
- Urge the United States to ensure that medical records and prescription medication are transferred along with detainees when they are moved from one facility to another.

### **Conclusion**

The unprecedented increase in immigration detention since 2001 has led to numerous violations of human rights. Chief among these is the arbitrary and retaliatory nature of transfers of detainees among the hundreds of local, state, federal and private detention facilities around the United States. Immigration and Customs Enforcement does not ensure that detainees' rights are protected when

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<sup>3</sup> See, e.g., *Committee of Central American Refugees v. INS* ("CCAR"), 795 F.2d 1434, 1439-40 (9th Cir. 1986); *Rios-Berrios*, 776 F.2d 859, 863 (9th Cir. 1985).



they are moved. As such, the United States is in violation of its international obligations to ensure that immigration detainees have due process, and are treated humanely and with respect for their basic human dignity.

We again thank you for your visit and welcome any questions you may have about this important issue.