



July 2, 2014

Via Electronic and U.S. Mail

Timothy Aitken, Field Office Director, San Francisco Field Office
Craig Meyer, Assistant Field Office Director, San Francisco Field Office
Immigration and Customs Enforcement, Enforcement and Removal Operations
630 Sansome Street, Suite 590
San Francisco, CA 94111

Re: Transportation Practices Affecting Detained Immigrants

Dear Field Office Director Aitken and Assistant Field Office Director Meyer:

As advocates who represent detained immigrants in their removal proceedings and in other matters, we write to raise serious concerns about the conditions that detained immigrants experience when being transported between their detention facilities and the detained immigration court in San Francisco. We are pleased that pursuant to the settlement agreement in *De Abadia-Peixoto v. Department of Homeland Security*, detained immigrants normally will not be shackled during their merits and bond hearings. Nonetheless, ICE's transportation practices continue to cause detained immigrants pain, sleep deprivation, hunger, dehydration, and humiliation on days that they are transported to San Francisco. These practices obstruct detained immigrants' access to justice by impairing their ability to testify and advocate for themselves effectively in their immigration proceedings. Moreover, they are inconsistent with ICE's Performance-Based National Detention Standards and with legal norms governing the treatment of detained people who are not being held as punishment for a crime. This letter highlights the most problematic aspects of transportation practices within your jurisdiction and proposes reforms that would make the process more humane and just while protecting the safety of detained immigrants, staff, and the public.

I. Overview of the Transportation Process

As you know, ICE routinely transports immigrants detained in the Yuba County Jail ("Yuba"), the Rio Cosumnes Correctional Center ("RCCC"), and the West County Detention Facility ("WCDF") to the detained immigration court and ICE office in San Francisco for various types of appointments, including court appearances, credible and reasonable fear

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interviews, and meetings with pro bono counsel.¹ While ICE is ultimately responsible for the care of detained immigrants in its custody, day-to-day transport operations are carried out by an ICE contractor, G4S Secure Solutions.

On a typical “transport day,” the transportation process from RCCC begins around midnight, when immigrants who have court hearings or appointments in San Francisco are woken up. Detained immigrants wait in a holding area while officers apply handcuffs, a belly chain, and leg irons to each individual. Immigrants then board the bus in full shackles. Instead of heading straight to San Francisco, the bus typically travels north to Yuba to pick up additional passengers. Detained immigrants in Yuba are woken up around 2:30 am and shackled in the same manner before boarding the bus. In both facilities, detained immigrants are provided neither food nor water before beginning the trip.

The bus usually carries dozens of men and a handful of women, who sit toward the front of the bus and are separated from the men by a metal grate. Transgender women are often seated with men in the first row behind the metal grate. While a restroom is located at the rear of the bus, non-transgender women cannot use it because they sit on the other side of the grate, and transgender women do not feel safe using it because the doors to the restroom do not close. No drinking water is provided on the bus. Detained immigrants ride in full shackles on hard metallic seats without seatbelts.

After the bus arrives at the immigration court building around 6:00 am, detained immigrants exit the bus fully shackled, often jumping off the last step of the bus because their leg irons are so restrictive. Immigrants are then moved to gender-segregated holding rooms, where officers finally remove the shackles and serve a sack breakfast. The holding rooms contain a toilet, with no privacy partitions, and a sink with a faucet. Many detained immigrants are unwilling to drink from the faucet due to the water’s discolored appearance and metallic taste. They spend the day in the holding room, except when they are escorted out of the room for court appearances or appointments. They receive a sack lunch and a bottle of water around 11:00 or 11:30 am. Many immigrants describe these sack lunches as barely edible, and some do not eat the sandwiches for fear of getting sick during their hearings.

The timing and logistics of the return trip depend on ICE’s operational considerations, but the conditions of transportation are generally the same as in the mornings. Detained immigrants are shackled approximately one hour before boarding the vehicle and remain shackled until they arrive at the detention facility. For those detained in Yuba and RCCC, the return trip can take anywhere from two and a half to five hours, depending on the length of any stops that are made. For example, the vehicle sometimes stops at an airport for as long as two hours while some passengers are processed for deportation—a detour that both prolongs the physical restraint and inflicts unnecessary psychological suffering on immigrants who are fighting to remain in the United States.

¹ While many of the issues discussed in this letter affect detained immigrants at all three detention facilities, we focus on the transportation process from Yuba and RCCC, which is more burdensome on the detained immigrants due to the distance of those facilities from San Francisco.

On the way back, most detained immigrants ride in the same bus that is used in the mornings, but some ride in a smaller van with darkened windows, whose seating area is so cramped that passengers must crouch forward in a fetal position. Some passengers cannot hold their nausea and have vomited on themselves and on the passenger seats around them. In many cases, the vehicles arrive at Yuba and RCCC at 8:00 pm or later and detained immigrants receive their third sack meal of the day, up to ten hours after they eat lunch.

II. Impact of Harmful Transportation Practices and Proposed Changes

A. Detained Immigrants Are Deprived of Sleep before Critical Court Hearings

On days that they are transported to San Francisco, immigrants detained in RCCC and Yuba must rise at midnight and 2:30 am, respectively. It is impossible for them to sleep on the bus while fully shackled and sliding around on metal seats without seatbelts. One man, for example, recalled falling asleep momentarily on the bus and hitting his forehead on the seat in front of him. As a result, detained immigrants are exhausted and unable to concentrate during court hearings and interviews. For those with counsel, this severe sleep deprivation interferes with their right to consult adequately with counsel and assist in their own defenses. Detained immigrants who are *pro se* have an even greater need for their full mental faculties as they attempt to decipher complex immigration laws and procedures on their own. See *Rutherford v. Pitchess*, 457 F. Supp. 104, 114 (C.D. Cal. 1978) (“Due process can hardly be accorded a defendant that is so worn out by the [transportation] procedure that he lacks the alertness to help his attorney or to try to ‘put his best foot forward’ in the presence of the trier of fact.”).

Detained immigrants’ ability to concentrate and engage, while important for all types of hearings and appointments, is especially critical for bond and merits hearings. In many cases, immigrants must provide extensive testimony during these types of hearings. The credibility and quality of that testimony weighs heavily in the immigration judge’s ultimate decision, which carries life-altering consequences. For example, many asylum seekers who fled their native countries are unable to obtain documentary corroboration of their claims and must stand on their own testimony to sustain their burden of proof. The immigration judge makes a credibility determination based on factors such as immigrants’ “demeanor, candor, or responsiveness” and the internal consistency of their statements. 8 U.S.C. § 1158(b)(1)(B)(iii). Sleep deprivation plainly affects people’s demeanor and alertness, diminishing their ability to present cogent and credible testimony.

The sleep deprivation to which detained immigrants are currently subjected could be mitigated through logistical changes which we believe are administratively feasible:

- Separate vehicles should depart from RCCC and Yuba so that each can travel directly to San Francisco. For immigrants detained in RCCC, the detour to Yuba more than doubles the number of miles they must travel and results in their losing an entire night of sleep.
- ICE should work with the detention facilities to explore whether a later wakeup time could be instituted, with detained immigrants still arriving in San Francisco early enough to permit meetings with counsel prior to morning hearings. For example, the amount of

time that people spend in the holding area before boarding the bus could be reduced or the entire morning transportation process could be shifted an hour later. *See Stewart v. Gates*, 450 F. Supp. 583, 588 (C.D. Cal. 1978) (“The defendants will be expected, within the next sixty days, to reexamine their procedures with a view to establishing a later wake-up hour for court-bound inmates. . . . In the meantime, and except under unusual circumstances, each inmate should be accorded the opportunity for eight hours uninterrupted sleep during the night before he goes to court and during the night following his return from court.”).

- Every afternoon, ICE should give the jails a list of individuals who will be transported to San Francisco the following business day. The jails should then notify the immigrants so that they can prepare themselves accordingly.

B. Excessive and Harmful Shackling in Transport Violates ICE’s Performance-Based National Detention Standards and Causes Physical and Psychological Pain

Detained immigrants spend excessive periods of time in metal shackles while being transported to and from San Francisco. Those held in RCCC and Yuba routinely spend five consecutive hours in shackles, and ten or more hours in shackles in a single day. Even for a healthy person, being shackled for such lengthy periods causes pain, discomfort, and sometimes bruising. For immigrants with disabilities, chronic conditions, prior injuries, or prior traumatic experiences, the overuse of shackles can cause severe physical and mental health complications. For example, a woman who had screws in her back after undergoing surgery experienced debilitating pain each time she was shackled around the waist. A transgender woman who had previously been sexually assaulted by another imprisoned person felt re-traumatized by the protracted period in shackles. Moreover, officers sometimes apply the shackles too tightly and refuse to examine or change their fit when people complain of pain and discomfort. Some detained immigrants wear two pairs of socks to lessen the pain.

Immigrants have also voiced a number of safety concerns associated with the use of full shackles during the transportation process. Due to the use of full restraints and the lack of seatbelts, passengers are prone to falling when the bus changes direction or speed abruptly. We are aware of several incidents where detained immigrants were injured falling off the seats when the bus swerved or collided with another vehicle. In addition, the leg irons pose a safety hazard because they force detained immigrants to jump as they are getting off the bus. Several people have reported falling, or witnessing others fall, while climbing off the bus. One elderly woman was in pain for a month after falling and bruising her knee, on which she had previously had surgery. Another man fell down while climbing off the bus and hit his ear and hip against the ground.

The use of metal shackles at the hands, waist, and feet on all detained immigrants during the transportation process is inconsistent with ICE’s 2011 Performance-Based National Detention Standards (“PBNDs”), <http://www.ice.gov/detention-standards/2011/>. “Barring exigent circumstances, transporting officers shall not handcuff women or minors unless they have shown or threatened violent behavior, have a history of criminal activity, or an articulable likelihood of escape exists.” PBNDs 1.3, “Transportation,” at 53. Moreover, the PBNDs suggest

that the use of shackles on detained immigrants in transit must be justified and documented in each individual case. *See id.* at 49 (“seat detainees in restraints (whose documents or behavior in transit indicate a security risk) in the first seats behind the security screen and record in a log maintained by the officers the detainee’s name, reason for using restraints, type of restraints, and times restraints were applied and removed”).

The limited use of shackles contemplated by ICE’s PBNDS on transportation reflects the low security risk posed by the great majority of detained immigrants. Detained immigrants are unshackled without incident while in the common areas of their housing units and while in the holding rooms of the immigration court building. There may be a heightened risk of flight in the transportation setting, but with detained immigrants locked into their seating areas, the use of leg restraints alone in extreme situations would be more than adequate to prevent escape. We urge ICE to reevaluate its transportation policies and practices to eliminate or at the very least reduce the use of shackles on immigrants whose documented behavior does not suggest a risk of violence or flight. If ICE concludes that full shackles are indeed necessary in individual cases, we urge ICE to adopt the following measures to ease the physical and psychological toll on detained immigrants:

- Consistent with the PBNDS on the use of restraints, ICE should consider the use of soft restraints or ambulatory restraints during transportation. Soft restraints, which are listed as approved restraint equipment in the PBNDS, are “nylon/leather type” restraints with “soft arm and leg cuffs” and “soft belts with key locks.” PBNDS 2.15, “Use of Force and Restraints,” at 219. Ambulatory restraints are “soft and hard equipment that provides freedom of movement sufficient for eating, drinking and other basic needs.” *Id.* The PBNDS on the use of restraints provides that ambulatory restraints (rather than more secure or restrictive restraints) shall be applied “[w]hen sufficient for protection and control of a detainee.” *Id.*
- All ICE officers, contract security personnel, and county officers who are involved in the transportation process should receive regular training on the proper application of restraints to minimize pain or discomfort, as well as the appropriate response to shackled people’s complaints. *See* PBNDS 1.3, “Transportation,” at 53 (“To ensure safe and humane treatment, the officers shall check the fit of restraining devices immediately after application, at every relay point, and any time the detainee complains.”).
- ICE should make efforts to minimize the amount of time that people spend in shackles. For example, vehicles should travel directly to their destination rather than making an intermediate stop at a detention facility or airport. Detained immigrants in the holding rooms of the immigration court building should not be re-shackled until just prior to their boarding the bus.
- Officers should supply a step stool to enable detained immigrants to climb on and off the bus safely.

C. ICE Fails to Meet Detained Immigrants’ Basic Human Needs During the Transportation Process

ICE's policies and practices on transport days deprive detained immigrants of other essential needs in addition to sleep. Immigrants are not provided a sufficient amount of food, and many complain that the sandwiches that are provided are practically inedible. Those who are transported back to the detention facilities later in the day go without food for up to ten hours between lunch and dinner. Other than the one bottle of water provided with lunch, immigrants are denied access to drinking water of adequate quality. No drinking water is available at all on the bus, and many immigrants believe that the water from the faucet in the holding rooms is unsafe to drink due to its discoloration and metallic taste. Consistent with its detention standards, ICE should provide a snack for immigrants who are scheduled to arrive at the detention facility after 6:00 pm and make drinking water of adequate quality available on transport vehicles and in holding rooms. *See* PBNDS 1.3, "Transportation," at 50 ("The vehicle crew shall provide meals and snacks during any transfer that exceeds six hours"); *id.* at 51 ("The crew shall maintain a constant supply of drinking water and ice in the water container(s), along with paper cups"); PBNDS 2.6, "Hold Rooms in Detention Facilities," at 118 ("Detainees shall have access to potable water in hold rooms").

Even more troubling are reports that detained immigrants sometimes soil themselves while being transported because they lack access to appropriate facilities. On the bus, non-transgender women are separated from the restroom by a locked metal grate, and transgender women cannot use the restroom because its doors do not close. On the van, no restroom is available at all. As a result, detained immigrants sometimes experience severe discomfort and urinate on themselves during the hours-long trip. Some immigrants have also reported becoming motion sick and even vomiting on themselves during the ride. One woman explained that she becomes severely motion sick while riding in the van because she cannot see outside through the van's darkened windows. After throwing up on one occasion, she now cries from anxiety each time she must ride in the van, which she describes as a small, dark cage.

This failure to attend to detained immigrants' basic physical needs is humiliating and degrading. While our proposed reforms to shorten the ride would somewhat mitigate the restroom access problem, ICE should nonetheless ensure that restrooms are available to detained immigrants who need to use them while in transit. This may entail providing restroom access for all passengers on the vehicles themselves and/or implementing protocols for stopping en route in urgent situations. Similarly, ICE should implement protocols that require officers to stop en route, or at the very least provide a bag, for individuals who are ill to the point of throwing up.

D. Harmful Transportation Practices Disproportionately Impact Women and Other Vulnerable Populations

ICE's transportation practices burden all detained immigrants, but disproportionately harm women and other vulnerable groups—including gay, lesbian, bisexual, transgender, and gender non-conforming immigrants—in several ways. First, a large percentage of LGBTQ immigrants have strong asylum claims based on persecution they experienced on account of their sexual orientation or gender identity. As described above, the sleep deprivation caused by the transportation schedule can impact the credibility determinations that are so critical in asylum cases. More generally, many LGBTQ individuals and non-LGBTQ women have been victims of

violence and abuse, including violence from police or military in their birth countries. As a result, they may experience many of the traumas associated with the transport process more acutely.

Second, detained women have no access to a restroom on the bus. Nor would it be physically feasible for many women to use the restroom while fully shackled. As already discussed, ICE should make restrooms available to all detained immigrants during the transportation process. In addition, women should not be shackled during transportation, per the PBNDS. PBNDS 1.3, “Transportation,” at 53. In the rare cases where the use of restraints on women is justified under the PBNDS, officers should apply soft or ambulatory restraints that allow the movement necessary for women to use the restroom and/or remove the restraints when women ask to use the restroom.

Finally, we are concerned that women and other vulnerable populations are exposed to harassment while being transported by ICE. Some women have reported feeling uncomfortable and at times intimidated while riding in close quarters with a large group of men, who greatly outnumber the women. We are also aware of an incident in which the lone detained woman in a transport vehicle was seated next to a man who sexually harassed and intimidated her throughout the hours-long ride. Transgender women experience even more severe harassment and intimidation during the transportation process. When seated in the men’s section of the bus, transgender women are the targets of sexual threats and offensive comments, and their shackles prevent them from protecting themselves if a man tries to touch them. Transgender women also sometimes experience slurs and harassment from guards. For example, one woman reported that guards who know she is transgender go out of their way to disrespect her, such as by using a Spanish slur that translates to “Hey man.” Such harassment from both guards and other detained immigrants, along with the threat of sexual violence, create yet another barrier for transgender immigrants to adequately represent themselves in immigration proceedings in which they must discuss transphobic violence in detail.

To ensure the safety of all detained immigrants while minimizing the physical and psychological pain caused by the use of shackles for extended periods of time, it may be necessary to transport women and other vulnerable populations in separate vehicles. We recommend that ICE explore this option. In any event, ICE should ensure adequate supervision of detained immigrants during the transportation process, as well as proper planning that takes into account special vulnerabilities.

III. Conclusion

Detained immigrants are civil detainees who are not being held under criminal process. See *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004) (civil, pre-adjudication detainees are entitled to “more considerate treatment” than pretrial criminal detainees and civilly committed detainees). The San Francisco Field Office is responsible for ensuring that immigrants within its jurisdiction are transported in a secure and humane manner—a goal we all share. But ICE’s current policies and practices with respect to transportation deprive detained immigrants of rest before critical court hearings and force them to endure hours in restrictive metal shackles,

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creating an unacceptable access-to-justice barrier. These policies and practices also cause immigrants needless humiliation and fail to ensure their safety. We urge ICE to undertake a thorough review of the issues raised in this letter. We hope to engage you in a productive dialogue and respectfully request a meeting within the next month. Thank you for your attention to this matter.

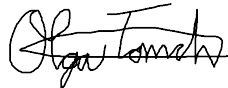
Sincerely,

ACLU of Northern California



Jenny Zhao
Julia Harumi Mass

Transgender Law Center



Olga Tomchin

AIDS Legal Referral Panel
Asian Americans Advancing Justice - Asian Law Caucus
Asian Pacific Islander Legal Outreach
Catholic Charities CYO
Central American Resource Center of Northern California – CARECEN
Centro Legal de la Raza
Community Initiatives for Visiting Immigrants in Confinement
Community Legal Services in East Palo Alto
Community United Against Violence
Familia: Trans Queer Liberation Movement
Interfaith Coalition for Immigrant Rights (CLUE-CA)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
National Center for Lesbian Rights
National Day Laborer Organizing Network
National Gay and Lesbian Task Force
National Immigration Project of National Lawyers Guild
Our Family Coalition
Out4Immigration
Pangea Legal Services
Social Justice Collaborative
Third Wave Fund
UC Davis School of Law Immigration Law Clinic

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