



# FLATTEN THE CURVE

Protecting Public Health Requires that  
Jails Stop Transferring People to ICE



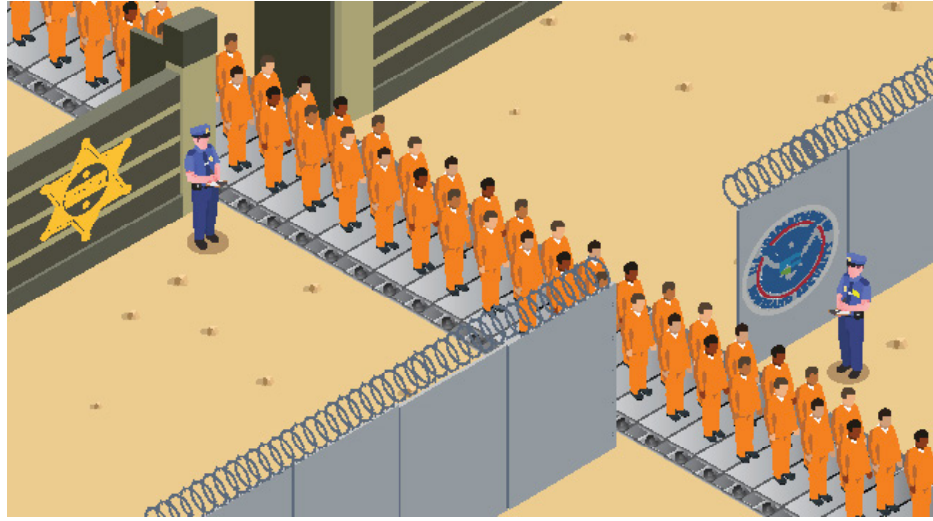
## THOUSANDS OF TRANSFERS FROM JAILS TO ICE ARE WORSENING THE COVID-19 CRISIS

To slow the spread of the COVID-19 pandemic, some jails and prisons are reducing their populations. But for immigrants in custody, this often means transfer to ICE detention, rather than actually being released. In this moment, transfers not only affect the individuals themselves, but contribute to community spread of COVID-19. Jails and prisons – and the sheriffs and wardens that run them – are the primary funnel into immigration detention centers across the nation. [Thousands of medical professionals](#) have already called for the release of people in ICE detention facilities, yet our criminal systems continue playing a key role in populating them. Local and state actors are making a choice to spread COVID-19 by transferring people to ICE. In order to halt the unnecessary spread of COVID-19, we must stop all these transfers now.

*Local and state actors are making a choice to spread the virus by transferring people to ICE rather than allowing them to go home and shelter in place.*

# WHAT IS A TRANSFER?

A transfer is when a person in local or state custody who is being released is instead handed directly to ICE, rather than going home. ICE requests these transfers on a form called a [detainer](#) or ICE hold, or they may happen on the jail's own initiation. The transfer may involve working closely with ICE to coordinate the hand-off, and in many places involves holding a person for days beyond when they should have been released to give ICE time to arrive.



**A 68 year old man was ordered released from Los Angeles jail by the local court on March 25. Instead of actually being released, he was transferred to ICE and is now detained at the Adelanto ICE Processing Center, a facility infamous for poor sanitary conditions and inadequate medical care, where many inmates have shown symptoms of COVID-19, but have not been tested or treated.**

# WHICH JAILS/PRISONS USUALLY TRANSFER PEOPLE TO ICE?

**ALL OF THEM.** Unless your county has an extremely strict policy against any collaboration with ICE, the jail is regularly handing people over to ICE when they should be released, instead of letting them go home. Only a handful of jails in the country have policies that really prevent *all* transfers to ICE. Even at the height of the pandemic, local jails and ICE have continued transferring people, in spite of measures to depopulate jails and widespread awareness that detained populations are particularly vulnerable to COVID-19.

# IS THIS STILL HAPPENING DURING THE PANDEMIC?

Yes, across the country. Jail transfers are the primary driver of ICE detention: Nationally, about 70% of people arrested by ICE are transferred directly from the criminal legal system.

- **CALIFORNIA** – California passed legislation in 2017 that set limits on transfers and other types of local involvement in immigration enforcement. Despite this, and despite recent state and local measures to depopulate California jails, the state’s prison system and local sheriffs continue to transfer people to ICE detention. Dozens of counties have transferred people to ICE in recent weeks, and lawyers report that the vast majority of new arrivals in ICE detention recently have come from local jails. Advocates are currently calling for a moratorium on all transfers to ICE.
- **TEXAS** – In Texas, while some localities have released individuals who are medically vulnerable or have been jailed for low level offenses, state law requires localities to hold people on ICE detainers when they should be released. In spite of the pandemic and grave concerns about the spread of COVID-19 in Texas detention facilities, the governor has refused to suspend this requirement.
- **NEWYORK** – Even though it is against the law for law enforcement and corrections officers in New York to hold a noncitizen based on a detainer, prisons and jails provide information to ICE to let them know of someone’s release without additional detention time. During the pandemic, advocates and lawyers have confirmed that noncitizens continue to be transferred from state prisons to ICE detention.

***Local and state jails transferred 3,300 people to ICE between March 1 and April 25. Slowing the spread of COVID-19 requires local and state jails to stop these transfers.***

## WHAT IS ICE DOING?

ICE has done only limited testing of detainees in their custody, but has [reported a 60% rate of infection among those tested](#). At least two people detained by ICE have died of COVID-19, with 943 people testing positive out of 1788 tested as of May 13. ICE has released only a few people from custody, and those have largely been achieved by hard fought court orders. Moreover, ICE has continued to transfer people in its custody across the country between different detention facilities. [Epidemiological models](#) estimate that at least 70% of people detained by ICE could contract the virus; [another model](#) warns that overall, mass incarceration could lead to an additional 100,000 COVID-19 deaths in the U.S.

***In the midst of the COVID-19 global pandemic, sending our community members to ICE detention can be a death sentence.***

## WHO CAN BE TRANSFERRED?

People who would otherwise be released. People who are transferred are those being *released* from state/local custody – including people whose charges have been dropped, people released on their own recognizance, people released on bail, people who have served their sentence, and people released under COVID-19 jail depopulation efforts. Instead of going home to shelter in place, they are taken to the COVID-19 tinderbox that is ICE detention. There is no social distancing in ICE detention, where hundreds of people may be in bunk beds only two feet apart.

**On April 7, a 62 year old man in New York State prison completed all of the requirements for his conditional release. Instead of being released, however, he was illegally detained for three weeks for transfer to ICE custody. After he filed a lawsuit challenging his unlawful detention, he was picked up by ICE and transferred to Buffalo Detention Center, an ICE facility with one of the highest number of COVID-19 cases nationwide.**

## WHAT IS IMMIGRATION DETENTION?<sup>4</sup>

- ICE systematically deprives tens of thousands of people of liberty each day, creating the *world's largest* system of immigration detention. Yet just four decades ago, this system did not exist.
- People facing deportation are often detained during their proceedings, which may last months or even years.
- Although ICE detention is supposedly non-punitive, it is in fact incarceration in jail and private prisons, many of which have abysmal medical attention care and extremely poor conditions.
- There is no right to a public defender in immigration court - around **86% of detained** people nationwide must fight their cases themselves, even children.

## WHO IS IN IMMIGRATION DETENTION?

- Green card holders
- Asylum-seekers
- Essential workers
- Families detained with children
- People with expired visas
- Parents of US citizen children
- Undocumented workers
- U.S. citizens have been falsely held in some cases

## WHAT IS IT LIKE TO BE TRANSFERRED TO IMMIGRATION DETENTION UNDER COVID-19?

- ICE detention facilities are infamous for poor conditions and medical neglect, sometimes resulting in deaths. Under COVID19, these conditions are exacerbated, and current detainees are in [fear](#) for their lives.
  - Crowded dorms and eating areas – most areas are communal – there is no such thing as 6 ft “social distancing” in detention
  - People are constantly cycling in and out; staff do not have protective gear
  - No access to soap and other essential hygiene needs like gloves, sanitizer, or masks
  - In one facility, people were denied masks unless they signed a waiver of liability
  - Documented medical neglect; medical requests ignored even for chronic illness; testing has been extremely rare
  - In December 2019, ICE refused to give flu vaccines to thousands of individuals detained in immigration centers despite calls by doctors concerned for their health
- ICE flouts public health guidelines and common sense by further [transporting people around the country](#) by bus and plane, as well as continuing to [deport people in large group flights](#) with infected passengers.

*All of our health depends on reducing the spread of COVID-19 within detention facilities, not furthering the spread by transferring people to ICE.*

## WHAT CAN BE DONE?

- **The solution is simple: stop transferring people to ICE.**
- In most situations, transfers to ICE are discretionary.<sup>1</sup> Local and state actors choose whether to work with ICE and whether to transfer people to ICE or not. Local and state policies restricting some transfers to ICE exist in many places and have been successfully defended in the courts.
- Moreover, the vast majority of people taken into ICE custody through arrests inside the U.S. have homes waiting for them to which they can go and shelter in place. A broad network of organizations are able to facilitate safe releases from jail and provide post-release services.

## WHO CAN STOP THIS?

A variety of actors, including the Governor, the Attorney General, state legislators, the state department of corrections, and particularly local sheriffs, among others, have the power to stop these transfers wholesale, right now.

### FURTHER RESOURCES

#### Sample letters to local officials

- [Emergency Action Plan Toolkit](#)
- [Alameda County, CA](#)
- [San Mateo County, CA](#)

#### Tools for meeting with your sheriff:

- [National Map of Local Entanglement with ICE](#)
- [Meeting with Law Enforcement Toolkit](#)
- [Chart connecting demands on the criminal system with immigration-specific counterparts for different targets](#)

1. State laws in Texas, Florida, Iowa, and Arkansas require jails to hold people on ICE detainers and transfer them to ICE if the agency arrives to take custody within 48 hours. Reducing transfers to ICE in these states may be more legally complicated than in the rest of the country. In Tennessee, state law prohibits local policies that reject ICE detainers, but does not specifically require action on an ICE detainer and may permit release of people in spite of an ICE detainer. In most states it is largely up to the jailor how much they will work with ICE. In some states, state law specifically restricts certain forms of involvement in immigration enforcement.

## FURTHER RESOURCES

### Tools for public defenders

- [Practice Alert for Public Defenders: Seeking Release of Immigrant Clients From State and Local Custody During the COVID-19 Health Emergency](#)

### Sample legal writ to stop transfers to ICE

- [Petition for Writ of Mandate to Stop Transfers to ICE](#)

### More information about ICE detainers:

- [ICE Detainers Are Illegal — So What Does That Really Mean?](#)
- [Annotated ICE Detainer](#)
- [Explaining the Gonzalez v. ICE Injunction](#)
- [Practice Alert: Immigration Enforcement In New York After \*People ex rel. Wells o.b.o. Francis . DeMarco\*](#)

### Information about COVID-19 Behind Bars

- [Is Social Distancing Possible Behind Bars?](#)



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