



UNITED STATES

## A Costly Move

Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States

HUMAN  
RIGHTS  
WATCH



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Immigrant Detainees in the United States**

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## Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States

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## I. Summary

The transfers are devastating, absolutely devastating. [Detainees] are loaded onto a plane in the middle of the night. They have no idea where they are, no idea what [US] state they are in.

—Rebecca Schreve, immigration attorney, El Paso, Texas, January 29, 2009

Every year, US Immigration and Customs Enforcement (ICE) detains hundreds of thousands of immigrants, including legal permanent residents, refugees, and undocumented persons, while their asylum or deportation cases move through the immigration courts. Detainees can be held for anywhere from a few weeks to a few years while their cases proceed. With close to 400,000 immigrants in detention each year, space in detention centers, especially near cities where immigrants live, has not kept pace. In addition, ICE has built a detention system, relying on subcontracts with state jails and prisons, which cannot operate without shuffling detainees among hundreds of facilities located throughout the United States.

As a result, most detainees will be loaded at some point during their detention onto a government-contracted car, bus, or airplane and transferred from one detention center to another: 52 percent of detainees experienced at least one such transfer in 2009. And numbers are growing: between 2004 and 2009, the number of transfers tripled. In total, some 2 million detainee transfers occurred between 1998 and 2010.

This report updates Human Rights Watch's 2009 report, *Locked Up Far Away*, with recent data analysis that tracks the beginning and ending points of each immigrant's detention odyssey from 1998-2010. It shows that over 46 percent of transferred detainees were moved at least two times, with 3,400 people transferred 10 times or more. One egregious case involved a detainee who was transferred 66 times. On average, each transferred detainee traveled 370 miles, and one frequent transfer route (between Pennsylvania and Texas) covered 1,642 miles. Such long-distance and repetitive transfers have dire consequences for immigrants' rights to fair immigration proceedings. They can render attorney-client relationships unworkable, separate immigrants from the evidence they need to present in court, and make family visits so costly that they rarely—if ever—occur.

Few Americans or their elected representatives grasp the full scope of immigration detention in the US. Even fewer are aware of the chaos that ensues when immigrant detainees are

moved around, sometimes repeatedly, between distant detention centers at great cost to themselves, their families, and US taxpayers.

Human Rights Watch estimates that the transportation costs alone for the 2 million transfers that occurred in the 12 years covered by this report amounted to US\$366 million. However, transferred detainees spend on average more than three times longer in detention than immigrants who are not transferred, suggesting that the most significant financial costs may come from court delays and unnecessarily long periods of detention.

Detainee transfers, a seemingly mundane aspect of the widespread detention of immigrants in the US, happen so regularly and across such large distances they raise serious human rights concerns that intensify as transfers become more common and happen repeatedly to the same person. Indeed, several important rights are being lost in the shuffle, including:

- **The right to access an attorney at no cost to the government:** Under US and international human rights law, detained immigrants have the right to have an attorney of their choice represent them in deportation hearings, at no cost to the US government. Immigrants have a much better chance of finding a low-cost attorney when they stay close to their communities of origin. Once transferred, many volunteer or pro bono attorneys must withdraw from a case because representation across such large distances becomes impossible. In addition, many detainees cannot find an attorney prior to transfer. Their chances of securing representation are often worse in their new locations: the largest numbers of interstate transfers go to Louisiana, Mississippi, and Texas, states that collectively have the worst ratio of transferred immigrant detainees to immigration attorneys in the country (510 to 1).
- **Curtailing the ability of detainees to defend their rights:** Under US and international human rights law, detained immigrants have the right to present evidence in their defense. But when they are transferred, immigrants are often so far away from their evidence and witnesses that their ability to defend themselves in deportation proceedings is severely curtailed. One transfer is enough to wreak havoc on a detainee's ability to defend his rights in court.
- **Undermining the fairness with which detainees are treated:** Fairness is at stake when detainees are transferred from one jurisdiction with laws that are more protective of their rights, to another where the laws are more hostile. The Federal Court of Appeals for the Fifth Circuit (covering Louisiana, Mississippi, and Texas) has jurisdiction over the largest number of detainees (about 175,000) transferred between states. These transfers are of

particular concern because that court is widely known for decisions that are hostile to non-citizens.

- **Impeding detainees' ability to challenge detention:** International human rights and US law require that persons deprived of their liberty should be able to challenge the lawfulness of their detentions. Transfers often occur before a detainee has had a bond hearing, where a court determines whether detention is necessary in a particular case. One of the primary methods by which a detainee can show he should be released from detention is presenting evidence of family relationships and community ties that will not make him a risk of flight from court. But after transfer detainees are often so far away from such witnesses that they cannot convince the court of their intentions to cooperate with immigration authorities and appear for their hearings. Transferred detainees spend on average three times longer in detention than those who are never transferred, and they are less likely to prevail in their bond hearings.

ICE's current internal policy on transfers, called the Performance Based National Detention Standards (PBNDS), states that "the determining factor in deciding whether or not to transfer a detainee is whether the transfer is required for [ICE's] operational needs."<sup>1</sup> According to ICE, any limits on its power to transfer detainees would curtail its ability to make the best and most cost-effective use of the detention beds it can access nationwide.

Even so, starting in October 2009, ICE has announced several reforms intended to alleviate some causes and manifestations of immigrant detainee transfers, including moving towards a more "civil" detention system that decreases reliance on subcontracting with state jails and prisons, locating facilities in regions where they are needed, and reducing transfers.<sup>2</sup> In a time of fiscal challenges, the efficiency concerns expressed by ICE are important but should not come at the expense of basic human rights. This is especially true for detainees with attorneys to consult, defenses to mount in their deportation or asylum hearings, and witnesses and evidence to present at trial. Some detainees may not have such issues at stake. But for those who do, the US government and its immigration enforcement agency must act with restraint.

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<sup>1</sup> US Immigration and Customs Enforcement, "Operations Manual ICE Performance Based National Detention Standards," part 7, chapter 41, December 2, 2008, <http://www.ice.gov/detention-standards/2008> (accessed May 11, 2011), p. 2.

<sup>2</sup> For example, ICE circulated information at the Northeast Detention Briefing, Stakeholders Meeting, indicating objectives to "consolidat[e] and realign detention resources to keep detainees closer to families and legal resources," to "reduce or eliminate the transfer of detainees from one geographic area to another due to the lack of detention resources," and proposed a plan to increase bedspace in Essex County, New Jersey. US Immigration and Customs Enforcement, Northeast Detention Briefing, Stakeholders Meeting, December 20, 2010 (on file with Human Rights Watch).

Moreover, with the exception of ICE's plans to expand bed space in a criminal jail and residential facility in New Jersey, such reforms have yet to be implemented. Nor have they curbed the rising tide of detainee transfers. Even the New Jersey plans rely heavily on an existing state criminal jail and criminal residential facilities, which has long been associated with increased transfers: as the state's need to house criminal inmates ebbs and flows, immigrant detainees are shuffled around accordingly. In fact, data in this report show that most (57 percent) detainee transfers occur to and from such subcontracted state jails and prisons. Such jails and prisons are not under the direct management of ICE, which means that the agency has less control over the conditions in which immigrants are held, and less ability to resist when a state jail warden asks that detainees be transferred out.<sup>3</sup>

Despite its stated intention to alter its reliance upon detainee transfers, ICE has also so far rejected recommendations to place regulatory or legislative constraints on its transfer power.

Some transfers are inevitable: any governmental authority that holds people in custody, particularly one responsible for detaining hundreds of thousands of people in hundreds of institutions, will sometimes need to transport detainees between facilities. For example, inmate transfers are relatively common, even required, in state and federal prisons to minimize overcrowding, respond to medical needs, or properly house inmates according to their security classifications.

However, transfers in state and federal prisons are much better regulated and rights-protective than transfers in the civil immigration detention system, where there are few, if any, checks on the decisions of officials to move detainees. The different ways in which the US criminal justice and immigration systems treat transfers is doubly troubling because immigration detainees, unlike prisoners, are technically not being punished.

In addition, while any plan to reduce transfers will undoubtedly require better allocation of detention space near the locations where immigrants are apprehended, there are also good reasons to use alternatives to detention and avoid curtailing liberty whenever possible. Reducing detainee transfers is not justification for increasing overall numbers of detainees. As an agency charged with enforcing the laws of the United States, ICE should not operate a system of detention that is completely dependent upon widespread, multiple, and long-distance transfers: in other words, it should not rely on a system of detention that violates

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<sup>3</sup> For a more detailed discussion of the way that subcontracting detention space can increase transfers, see Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the US*, December 2, 2009, <http://www.hrw.org/en/reports/2009/12/02/locked-far-away-o>, p. 21

detainees' rights. If ICE worked to emulate the best practices on inmate transfers set by state and federal prison systems, it would reduce the chaos and limit harmful rights abuses.

Transfers do not need to stop entirely in order for ICE to uphold US and human rights law: they merely need to be curtailed through the establishment of enforceable guidelines, regulations, and reasonable legislative restraints imposed by the US Congress. In a time of budget constraints, if state and local prisons can handle inmate transfers without putting basic rights to fair treatment at risk, the federal government ought to be able to do the same.

## **II. Recommendations**

### **To the United States Congress**

- Place reasonable checks on the transfer authority of Immigration and Customs Enforcement (ICE) by amending the Immigration and Nationality Act to require that the Notice to Appear be filed with the immigration court nearest to the location where the non-citizen is arrested and within 48 hours of his or her arrest, or within 72 hours in exceptional or emergency cases.

### **To the Assistant Secretary for Immigration and Customs Enforcement (ICE)**

- Promulgate regulations requiring ICE detention officers and trial attorneys to file the Notice to Appear with the immigration court nearest to the location where the non-citizen is arrested and within 48 hours of his or her arrest, or within 72 hours in exceptional or emergency cases.
- Promulgate regulations prohibiting transfer until after detainees have a bond hearing.
- Reduce transfers of immigration detainees by:
  - Building new detention facilities or contracting for new detention bed space in locations close to places with large immigrant populations, where most immigration arrests occur.
  - Ensuring that new detention facilities are under ICE's full operational control so that the agency is not obliged to transfer detainees from sub-contracted local prisons or jails whenever the facility so requests.
  - Requiring use of alternatives to detention such as monitoring of released detainees when and where possible.
- Address deprivation of access to counsel that is caused by transfers by:
  - Building new detention facilities or contracting for new immigration detention bed space in locations where there is a significant immigration bar or legal services community.
  - Revising the 2008 Performance Based National Detention Standards (PBNDS) to require ICE/Detention and Removal Operations (ICE/DRO) to refrain from transferring detainees who are represented by local counsel, unless ICE/DRO determines that: (1) the transfer is necessary to provide adequate medical or mental health care to the detainee; (2) the detainee specifically requests such a

transfer; (3) the transfer is necessary to protect the safety and security of the detainee, detention personnel, or other detainees located in the pre-transfer facility; or (4) the transfer is necessary to comply with a change of venue ordered by the Executive Office for Immigration Review.

- Amending the “Detainee Transfer Checklist” appended to the PBNDS to include a list of criteria that ICE/DRO must consider in determining whether a detainee has a pre-existing relationship with local counsel, and requiring that ICE/DRO record one or more of the four reasons enumerated above for transfer of a detainee with retained counsel and communicate the reason(s) to that counsel.
- Reinstating the prior transfer standard that required notification to counsel “once the detainee is en route to the new detention location,” and require that all such notifications are completed within 24 hours of the time the detainee is placed in transit.
- Collaborating with the Executive Office for Immigration Review to pilot new projects providing low-cost, pro bono, and/or government-appointed legal services to immigrants held in remote detention facilities.
- Remedy interference with detainees’ bond hearings caused by transfers by:
  - Amending the Detainee Transfer Checklist appended to the PBNDS to include a list of criteria that ICE/DRO must consider in order to determine whether a detainee has received a bond hearing, or has been found ineligible for such a hearing by an immigration judge, or has consented to transfer without such a hearing.
  - Pursuing placement of the detainee in alternative to detention programs prior to transfer.
- Reduce interference with detainees’ capacity to defend against deportation caused by transfers by:
  - Revising the PBNDS to require ICE/DRO to refrain from transferring detainees who have family members, community ties, or other key witnesses present in the local area, unless ICE/DRO determines that: (1) the transfer is necessary to provide medical or mental health care to the detainee; (2) the detainee specifically requests such a transfer; (3) the transfer is necessary to protect the safety and security of the detainee, detention personnel, or other detainees located in the pre-transfer facility; or (4) the transfer is necessary to comply with a change of venue ordered by the Executive Office for Immigration Review.
  - Amending the Detainee Transfer Checklist appended to the PBNDS to include designation of one or more of the four reasons enumerated above for transferring

detainees away from family members, community ties, or other key witnesses present in the local area.

- Ensure that transfer of detainees does not interfere with the ability of counsel and family members to communicate with detainees by:
  - Revising the PBNDS to provide that if a detainee who has been transferred is unable to make a telephone call at his or her own expense within 12 hours of arrival at a new location, the detainee is permitted to make a domestic telephone call at the federal government's expense.
- Improve agency accountability and management practices, as well as accurate accounting of operational costs involved in transfers by:
  - Requiring detention operations personnel to promptly enter the date of transfer, originating facility, receiving facility, reasons for transfer, and counsel notification into the Deportable Alien Control System, or any successor system used by ICE to track the location of detainees.
  - Including costs associated with inter-facility transfers of detainees as a category distinct from transfers made to complete removals from the US in the agency's annual financial reporting.

### **To the Assistant Secretary for ICE, and the Director of the Office of Refugee Resettlement (ORR)**

- Address interference with counsel and other detrimental legal outcomes caused by the transfers of unaccompanied minors by:
  - Providing age-appropriate Office of Refugee Resettlement (ORR) facilities for all unaccompanied minors near their counsel or in locations where there is access to counsel, and, in the case of unaccompanied minors who have resided in the US for longer than one year, near their former place of residence in the US.

### **To the Executive Office for Immigration Review**

- Issue guidance for immigration judges requiring them to allow appearances by detainees' counsel via video or telephone whenever a detainee has been transferred away from local counsel, family members, community ties, or other key witnesses.
- Issue guidance for immigration judges that prioritizes in-person testimony, but when such testimony is not possible, requires judges to allow video or telephonic appearances by detainees themselves, family members, and other key witnesses. Any

decision to disallow these types of appearances should be noted on the record along with the reason for the decision.

- Issue guidance requiring immigration judges who are considering change of venue motions to weigh whether a requested change of venue would result in a change in law that is unfavorable to the detainee.
- Maintain statistics on the total number of motions to change venue filed by the government versus those filed by non-citizens, and the number granted in each category.
- Issue guidance for immigration judges that strongly discourages them from changing venue away from a location where the detainee has counsel, family members, community ties, or other key witnesses, unless the detainee so requests or consents, or unless other justifications exist for such a motion apart from ICE agency convenience. Such guidance should also encourage changes of venue to locations where the detainee has counsel, family members, community ties, or other key witnesses.

### III. Background

#### ICE Internal Policy on Transfers

As an agency responsible for the custody and care of hundreds of thousands of people, it is clear that ICE will sometimes need to transfer immigrant detainees. The question is whether all or most of the 2.04 million transfers that have occurred over the past 12 years were truly necessary, especially in light of how transfers interfere with immigrants' rights to access counsel and to fair immigration procedures.

While ICE has repeatedly indicated willingness to reduce its reliance on transfers, it has not made any official policy changes to translate those intentions into reality—other than a plan to increase immigration bed space at criminal facilities in Essex, New Jersey.<sup>4</sup> And the agency has remained staunchly opposed to placing regulatory or legislative checks on its transfer power, which would be enforceable through the courts.<sup>5</sup>

In August 2009 ICE announced a range of policy reforms intended to shift away from the punitive model for immigration detention towards a more “civil” system. The agency indicated its intention to:

...move away from our present decentralized, jail-oriented approach to a system wholly designed for and based on ICE's civil detention authorities. The system will no longer rely primarily on excess capacity in penal institutions. In the next three to five years, ICE will design facilities located and operated for immigration detention purposes.<sup>6</sup>

A report issued in October 2009 amplified the rationales for ICE detention reform. In that report, Special Advisor to ICE Dora Schriro recommended that “[d]etainees who are

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<sup>4</sup> US Immigration and Customs Enforcement, Northeast Detention Briefing, Stakeholders Meeting, December 20, 2010 (on file with Human Rights Watch).

<sup>5</sup> For a detailed discussion of ICE's transfer power, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/6>.

<sup>6</sup> US Department of Homeland Security, Office of Public Affairs, “2009 Immigration Detention Reforms,” Fact Sheet, August 6, 2009, <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C31038%7C29726> (accessed April 29, 2011).

represented by counsel should not be transferred outside the area unless there are exigent health or safety reasons, and when this occurs, the attorney should be notified promptly.”<sup>7</sup> While many organizations concerned about immigration detention welcomed such recommendations, ICE made no internal policy reforms in line with these statements that would stem the tide of detainee transfers.

In December 2009 Human Rights Watch published *Locked Up Far Away*, which documented 1.6 million transfer movements of immigrant detainees. We intensified advocacy efforts with ICE, asking it to impose some reasonable limits on the transfers of immigrant detainees by changing the agency’s internal policies on transfers. While enforceable regulatory or legislative checks on the use of transfers would be the most protective solutions to this problem, ICE has refused to promulgate enforceable regulations on detention conditions and operations.<sup>8</sup> Congress has not acted either. We therefore pressed ICE to make internal policy reforms to its PBNDS.

On February 22, 2010, three months after publication of *Locked Up Far Away*, ICE wrote to Human Rights Watch announcing the agency’s intention to “minimize the number of detainee transfers to the greatest extent possible.”<sup>9</sup> The agency made similar announcements in various meetings with advocates around the country, suggesting that it would reduce its reliance on transfers. Subsequently, in July 2010, ICE implemented an important reform for transferred detainees: it established an online detainee locator system.<sup>10</sup> This reform was recommended in our previous report and had been a chief goal of immigrants’ rights advocates around the country for years. Before, attorneys and family members would spend stressful hours and days searching for clients and loved ones after a transfer. This online system now allows detainees to be located relatively quickly, and is an important rights-protective achievement for ICE. However, while detainees can now be located more readily, we remain concerned that the agency has still not made any formal

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<sup>7</sup> Dr. Dora Schriro, special advisor on ICE Detention and Removal, US Immigration and Customs Enforcement, “Immigration Detention Overview and Recommendations,” October 6, 2009, <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> (accessed May 11, 2011).

<sup>8</sup> Letter from Jane Holl Lute, deputy secretary of the Department of Homeland Security, to Michael Wishnie and Paromita Shah, July 24, 2009, <http://www.nationalimmigrationproject.org/legalresources/Immigration%20Enforcement%20and%20Raids/Detention%20Standards%20Litigation/DHS%20denial%20-%2007-09.pdf> (accessed May 11, 2011) (denying the “Petition for Rulemaking to Promulgate Regulations Governing Detention Standards for Immigration Detainees”).

<sup>9</sup> “Update: ICE Agrees to Reduce Detainee Transfers,” Human Rights Watch news release, March 29, 2010, <http://www.hrw.org/en/news/2010/03/29/update-ice-agrees-reduce-detainee-transfers>.

<sup>10</sup> “ICE Announces Launch of Online Detainee Locator System,” Detention Watch Network news release, July 23, 2010, <http://www.detentionwatchnetwork.org/node/2703> (accessed May 11, 2011).

internal policy changes aimed at reducing detainee transfers, other than repeatedly announcing its intention to do so.

Therefore, with the assistance of the Transactional Records Access Clearinghouse at Syracuse University (TRAC), we filed a follow-up request for data about detainee transfers under the Freedom of Information Act (FOIA) in February 2010. We specifically requested data that would allow us to determine the starting and ending location for each transferred detainee. In November 2010 we received data from ICE in response to our request. As we commenced analyzing data, we continued to press ICE to change its policies on detainee transfers. In November 2010 we wrote to ICE and to the labor union representing government workers in detention centers, after ICE alleged that contract bargaining issues with the union were delaying improvements to ICE's detainee transfer policies.<sup>11</sup>

Subsequently, in February 2011, we wrote to Secretary of Homeland Security Janet Napolitano to ask for an improved policy on transfers. While ICE continues to signal that improvements to its internal transfer policies are forthcoming, almost two years after the initial promise of reform, no significant policy changes have been made.

## **The Impact of Transfers on Detainees' Rights**

The current US approach to immigration detainee transfers interferes with several important detainee rights. To understand the conditions immigration detainees face, it is instructive to compare their situation to that of federal and state prisoners.

In the US criminal justice system, pretrial detainees enjoy the right, protected by the Sixth Amendment to the US Constitution, to face trial in the jurisdiction in which their crimes allegedly occurred.<sup>12</sup> Immigrant detainees enjoy no comparable right to face deportation proceedings in the jurisdiction in which they are alleged to have violated immigration law, and are routinely transferred far away from key witnesses and evidence in their trials. In all but rare cases, a transfer of a criminal inmate occurs once an individual has been convicted and sentenced and is no longer in need of direct access to his attorney during his initial criminal trial. Immigrant detainees can be, and often are, transferred away from their attorneys at any point in their immigration proceedings.

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<sup>11</sup> Letter from Human Rights Watch to ICE Director John Morton and American Federation of Government Employees National President John Gage, November 3, 2010, <http://www.hrw.org/en/news/2010/11/03/us-immigration-system-should-meet-international-human-rights-obligations>.

<sup>12</sup> US Constitution, Sixth Amendment (“...in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.”).

Immigrant detainees, unlike criminal defendants, have no right to a court-appointed attorney. In 2010, 57 percent of non-citizens appeared in immigration court without counsel.<sup>13</sup> In some urban areas, immigrants can benefit from an active cadre of attorneys willing to represent them at low or no cost, in other words on a pro bono basis. While it is beyond this report's scope to draw a direct causal relationship between transfers of detainees and their inability to secure counsel to represent them in immigration court, it is clear that detainees are often transferred hundreds or thousands of miles from families and home communities before they have been able to secure legal representation.

Almost invariably, there are fewer prospects for finding an attorney in the remote locations to which they are transferred. Our data analysis shows that detainees are transferred, on average, 369 miles, with one frequent transfer pattern crossing 1,642 miles. Detainees transferred long distances must therefore often go through the entire complex process of defending their rights in immigration court without legal counsel.<sup>14</sup> One detainee told Human Rights Watch:

In New York when I was detained, I was about to get an attorney through one of the churches, but that went away once they sent me here to New Mexico.... All my evidence and stuff that I need is right there in New York. I've been trying to get all my case information from New York ... writing to ICE to get my records. But they won't give me my records; they haven't given me nothing. I'm just representing myself with no evidence to present.<sup>15</sup>

A detainee who was transferred 1,400 miles away to a detention facility in Texas after a few weeks in a detention center in southern California said the difference for him was “like the difference between heaven and earth.” He said: “At least in California I had a better chance. I could hire a[n] attorney to represent me. Now, here, I have no chance other than what the grace of God gives me.”<sup>16</sup>

For the relatively fortunate detainees who can afford attorneys or secure pro bono attorneys, transfers severely disrupt the attorney-client relationship because attorneys are rarely, if

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<sup>13</sup> Executive Office of Immigration Review, “FY 2010 Statistical Year Book,” <http://www.justice.gov/eoir/statpub/fy10syb.pdf> (accessed May 11, 2011), p. 23.

<sup>14</sup> For a detailed discussion of the impact of transfers on detainees ability to secure or retain counsel, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/8>.

<sup>15</sup> Human Rights Watch telephone interview with Kevin H. (pseudonym), Otero County Processing Center, Chaparral, New Mexico, February 11, 2009.

<sup>16</sup> Human Rights Watch interview with Michael M. (pseudonym), Pearsall Detention Center, Pearsall, Texas, April 25, 2008.

ever, informed of their clients' transfers. Attorneys with decades of experience told us that they had not once received prior notice from ICE of an impending transfer. ICE often relies on detainees themselves to notify attorneys, but the transfers arise suddenly and detainees are routinely prevented from or are otherwise unable to make the necessary call. As a result, attorneys have to search the online detainee locator for their clients' new locations. Once a transferred client is found, the challenges inherent in conducting legal representation across thousands of miles can completely sever the attorney-client relationship. This is especially true when the same person is transferred repeatedly. Data analyzed in this report show that 46 percent of detainees experience two or more transfers. As one attorney said:

I have never represented someone who has not been in more than three detention facilities. Could be El Paso, Texas, a facility in Arizona, or they send people to Hawaii.... I have been practicing immigration law for more than a decade. Never once have I been notified of [my client's] transfer. Never.<sup>17</sup>

Even when an attorney is willing to attempt long distance representation, the issue is entirely subject to the discretion of immigration judges, whose varying rules about phone or video appearances can make it impossible for attorneys to represent their clients. In other cases, detainees must struggle to pay for their attorneys to fly to their new locations for court dates, or search, usually in vain, for local counsel to represent them. Transfers create such significant obstacles to existing attorney-client relationships that ICE's special advisor, Dora Schriro, recommended in her October 2009 report that detainees who have retained counsel should not be transferred unless there are exigent health or safety reasons.<sup>18</sup>

Although most detained non-citizens have the right to a timely "bond hearing"—a hearing examining the lawfulness of detention (a right protected under US and human rights law)—our research shows that ICE's policy of transferring detainees without taking into account their scheduled bond hearings interferes with those hearings.<sup>19</sup> In addition, transferred detainees are often unable to produce the kinds of witnesses (such as family members or employers) that are necessary to obtain bond, which means that they usually remain in detention. In fact, data contained in this report show that transferred immigrants spend on average three times as long in detention as their counterparts who are never transferred.

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<sup>17</sup> Human Rights Watch telephone interview with Holly Cooper, immigration attorney and clinical professor of law, University of California Davis School of Law, Davis, California, January 27, 2009.

<sup>18</sup> Dr. Dora Schriro, special advisor on ICE Detention and Removal, US Immigration and Customs Enforcement, "Immigration Detention Overview and Recommendations," October 6, 2009, <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>, p. 24 (accessed May 11, 2011).

<sup>19</sup> For a detailed discussion of how detainee transfers violate the right to a bond hearing and to fair venue, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/9>.

Once they are transferred, most non-citizens must proceed with their deportation cases in the new, post-transfer location. Some may ask the court to change venue back to the pre-transfer location, where evidence, witnesses, and their attorneys are more accessible. Unfortunately, it is very difficult for a non-citizen detainee to win a change of venue motion. Transfers can also have a devastating impact on detainees' ability to defend against deportation, despite their right to present a defense.<sup>20</sup> The long-distance and multiple transfers documented in this report often make it impossible for non-citizens to produce evidence or witnesses relevant to their defense. A legal permanent resident from the Dominican Republic who had been living in Philadelphia but was transferred to Texas said:

I had to call to try to get the police records myself. It took a lot of time. The judge got mad that I kept asking for more time. But eventually they arrived. I tried to put on the case myself. I lost.<sup>21</sup>

In addition, the transfer of detainees often literally changes the law applied to them. This is because, prior to transfers, ICE often does not serve detained immigrants with charging documents (known as an NTAs, or Notices to Appear), thus establishing the law and court to hear their case. While NTAs are generally supposed to be filed within 48 hours, in practice there is no legally enforceable deadline, illustrated by the “many detainees identified by NGOs and attorneys who are sitting in detention for days, weeks, and sometimes months at a time without having received an NTA.”<sup>22</sup>

Thus, immigrants taken into custody in one place, for example, Pennsylvania, may spend days or weeks there before being transferred to, for example, Texas: if ICE waits until after transfer to file the NTA, not just the detainee, but the entire matter—including the law applied to the detainee's case—is transferred to Texas. This can have a devastating impact on a detainee's ability to defend against deportation because the act of sending a detainee from one jurisdiction to another can determine whether the law applied to her case will recognize her status as a refugee or permit her to ask an immigration judge to allow her to remain in the United States.<sup>23</sup> As the data analysis in this report shows, most interstate

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<sup>20</sup> For a detailed discussion of how detainee transfers violate the right to defend against deportation, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/10>.

<sup>21</sup> Human Rights Watch interview with Miguel A. (pseudonym), Port Isabel Service Processing Center, Los Fresnos, Texas, April 23, 2008.

<sup>22</sup> Shoba Sivaprasad Wadhia, “Under Arrest: Immigrants' Rights and the Rule of Law,” *University of Memphis Law Review*, vol. 38, Summer 2008, p. 853.

<sup>23</sup> For a detailed discussion of how transfer can alter the outcome of a particular detainee's deportation case, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/11>.

transfers end up in states within the jurisdiction of the Fifth Circuit Court of Appeals, which is known for its decisions hostile to the claims of immigrants.

Transfer can pose unique problems for detainees who are children, without a parent or custodian to offer them guidance and protection.<sup>24</sup> ICE is required to send these unaccompanied minors as soon as possible to a specialist facility run by the Office of Refugee Resettlement (ORR) that is the least restrictive, smallest, and most child-friendly facility available. Placing children in these facilities is a laudable goal, and one that protects many of their rights as children. Unfortunately, there are very few ORR facilities in the US. Therefore, children are often transferred even further than their adult counterparts, away from attorneys willing to represent them and from communities that might offer them support. The delays and interference with counsel caused by these long-distance transfers of children can cause them to lose out on important immigration benefits available to them only as long as they are minors, such as qualifying for Special Immigrant Juvenile Status, which would allow them to remain legally in the United States.

Finally, the long-distance transfer of immigrants to remote locations takes an emotional toll on detainees and their loved ones.<sup>25</sup> Physical separation from family when immigrants are detained in remote locations, impossible for relatives to reach, creates severe emotional and psychological suffering. A sister of a transferred detainee told Human Rights Watch:

Ever since they sent him there [to New Mexico], it's been a nightmare. My mother has blood pressure problems.... [His wife] has been terrified. She cries every night. And his baby asks for him, asks for "Papa." He kisses his photo. He starts crying as soon as he hears his father's voice on the phone even though he is only one.... Last week [my brother] called to say he can't do it anymore. He's going to sign the paper agreeing to his deportation.<sup>26</sup>

Given the serious implications for the fair treatment of detainees created by transfers, it is disturbing that the practice of transfers of immigrant detainees, including multiple and long-distance transports, continues unabated. Our analysis of data on the scope and frequency of detainee transfers follows.

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<sup>24</sup> For a detailed discussion of how transfers affect unaccompanied minor children, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/13>.

<sup>25</sup> For a detailed discussion of the emotional burden that transfers place on detainees and their loved ones, see Human Rights Watch, *Locked Up Far Away*, <http://www.hrw.org/en/node/86760/section/12>.

<sup>26</sup> Human Rights Watch telephone interview with Georgina V. (pseudonym), sister of detainee, Brooklyn, New York, January 23, 2008.

## IV. Data on Detainee Transfers

### Number, Gender, and Nationality of Transferred Detainees

The data represent all 2,271,911 non-citizens held in ICE detention between October 1, 1998 and April 30, 2010. These non-citizens account for 2,869,323 episodes of detention, as some individuals were detained by ICE multiple times. The data show that 1,159,568, or 40 percent of all detainees, experienced at least one transfer during their detention (they are referred to here as “transferred detainees”). Over 46 percent of transferred detainees (505,787 detainees) were transferred two or more times. We found that 16.7 percent of transferred detainees experienced three or more transfers, with over 3,400 detainees experiencing 10 or more transfers. One detainee was transferred between facilities 66 times.

Most (1,045,620) transferred detainees were male, 113,814 were female, and 134 were listed as unknown gender. Most transferred detainees were from Mexico (511,945), Honduras (133,062), and Guatemala (131,691). Shockingly, 38 were from the United States (2 females, 36 males). Why so many of those transferred were listed as being United States nationals is beyond the scope of our analysis. However, we note that previous analysis performed by Human Rights Watch on ICE datasets has revealed serious problems with ICE data management.<sup>27</sup> Moreover, our recent research into the experiences of detainees with mental disabilities revealed several troubling cases of US citizens who were kept in immigration detention for years, and experienced multiple transfers during their time in detention, despite the fact that their US citizenship should have negated any ICE involvement.<sup>28</sup>

### Transfers over Time

As shown in Figure 1, below, transfers have increased steadily over time. Cumulatively, between the beginning of fiscal year 1999 and April 2010, 41 percent of all detention episodes included at least one transfer between facilities. In fiscal year 1999, 23 percent of detention episodes included one or more transfers between facilities, but in fiscal year 2009, 52 percent of detention episodes included one or more transfers. Figure 2 illustrates the percentage of detention episodes experiencing transfer between 1998 and 2010. Table 1 shows the total number of transfer movements for each year between 1998 and 2010.

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<sup>27</sup> Human Rights Watch, *US: Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses*, April 15, 2009, <http://www.hrw.org/en/node/82159/section/6>.

<sup>28</sup> Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 25, 2010, <http://www.hrw.org/en/reports/2010/07/26/deportation-default-o>.

Figure 1

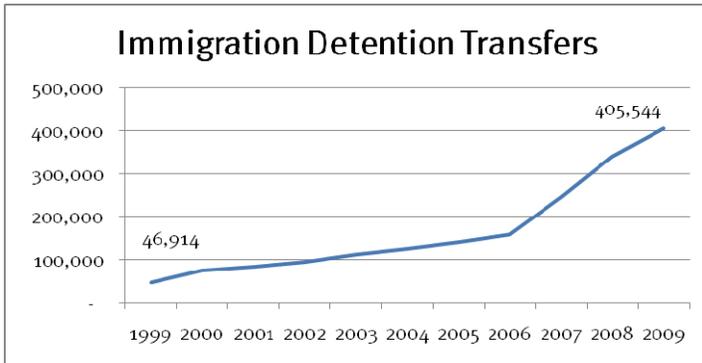


Figure 2

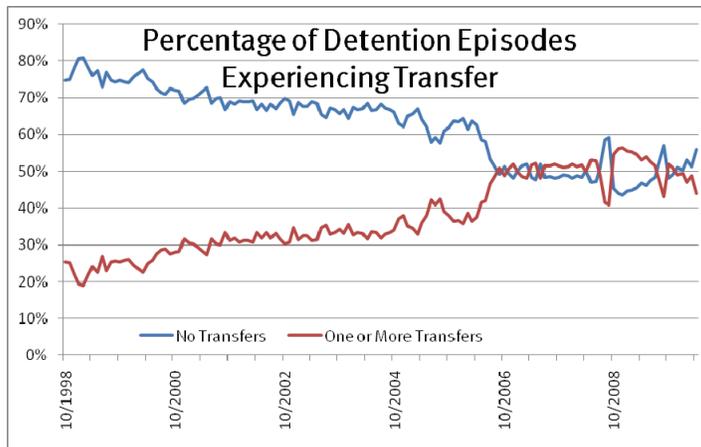


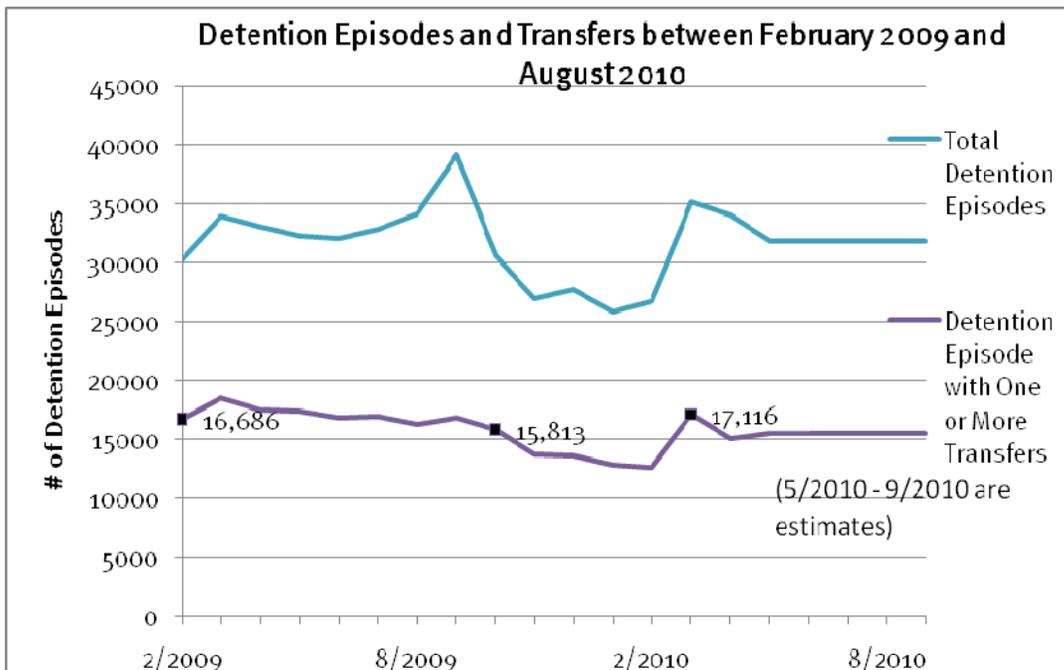
Table 1 – Total Transfer Movements by Fiscal Year

Total Transfer Movements by Fiscal Year	
1999	46,914
2000	74,077
2001	83,361
2002	94,243
2003	112,098
2004	124,899
2005	141,321
2006	157,560
2007	244,901
2008	340,385
2009	405,544
2010 (10/2009-04/2010)	214,800
FY 2010 Estimate	380,196
<b>Total</b>	<b>2,040,103</b>

\* These are only transfers between facilities. Additionally, there were 99,687 movements identified in the dataset as transfers, but which were actually intra-facility movements in which the detainee never left a particular detention facility.

In February 2009 ICE wrote to Human Rights Watch to state its intention to minimize detainee transfers. As shown in Figure 3, below, other than a peak in March 2010, which also saw an overall increase in detention episodes, the number and rate of detention episodes utilizing transfers has decreased slightly since ICE stated its intention to reduce transfers in February 2009. While this may show an informal commitment to reducing the practice, there have been no official policy reforms aimed at reducing transfers. This very slight decrease is therefore unlikely to indicate a continuing trend.

Figure 3



### Geographical Distances Covered

The dataset contained a total of 2,040,103 movements of detainees between detention facilities (referred to here as “transfer movements”), corresponding to 1.07 million individual transferred detainees.<sup>29</sup> Of these transfer movements, 564,209 (27 percent) were interstate. Perhaps the most important finding of our data analysis is the ongoing use of long-distance transfers for detainees. As Table 2 below shows, transfers between Pennsylvania and Texas were the third most frequent type of transfer used, requiring detainees to travel 1,642 miles. In addition, large numbers of detainees were moved between North Carolina and Georgia,

<sup>29</sup> We are not including within our total transfer movements the 99,687 movements identified in the dataset as transfers, but which were actually intra-facility movements in which the detainee never left a particular detention facility.

between Pennsylvania and Louisiana, and between southern California and Arizona. Such long-distance transfers cannot realistically be accomplished without use of an airplane. The 99 longest transfer segments originated or ended in Guam, Hawaii, Alaska, or Puerto Rico. The longest continental US transfers occurred between Florida and Washington.

**Table 2 – Ten Most Frequent Interstate Transfer Movements<sup>30</sup>**

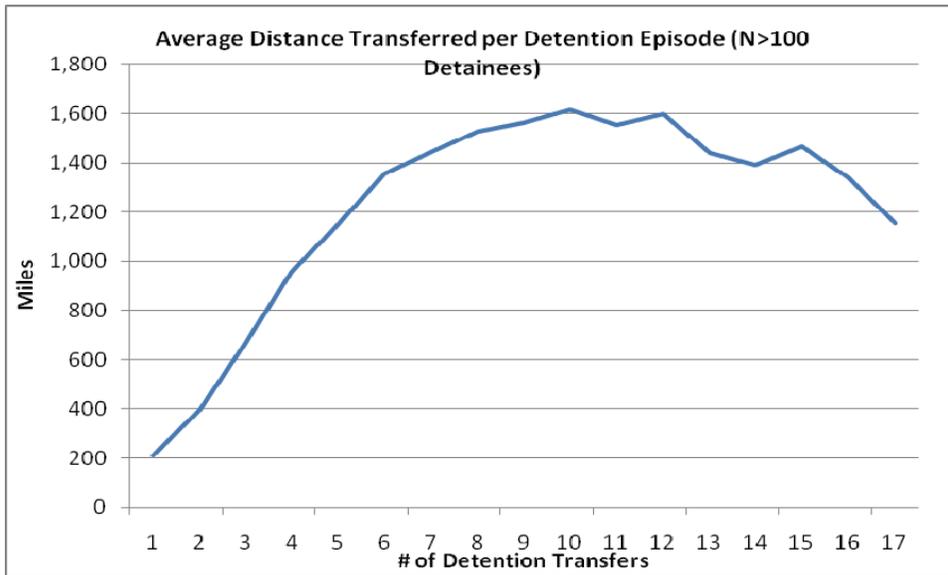
# of Transfers	Originating			Receiving			Distance
	Facility	State	Circuit	Facility	State	Circuit	Miles
15,959	MECKLENBURG CO JAIL	NC	4th Cir.	STEWART DETENTION CENTER	GA	11th Cir.	315.44
11,581	LOS CUSTODY CASE HOLDING FAC., SAN PEDRO	CA	9th Cir.	ELOY FEDERAL CONTRACT FAC.	AZ	9th Cir.	394.82
11,363	YORK COUNTY JAIL	PA	3rd Cir.	HARLINGEN STAGING FACILITY	TX	5th Cir.	1642.28
8,806	VARICK STREET SPC	NY	2nd Cir.	YORK COUNTY JAIL	PA	3rd Cir.	124.13
7,320	ALAMANCE CO. DET. FACILITY	NC	4th Cir.	STEWART DETENTION CENTER	GA	11th Cir.	414.51
7,060	LOS CUSTODY CASE HOLDING FAC., SAN PEDRO	CA	9th Cir.	FLORENCE STAGING FACILITY	AZ	9th Cir.	400.98
6,529	PORTLAND DISTRICT OFFICE	OR	9th Cir.	NORTHWEST DET. CENTER	WA	9th Cir.	115.73
5,553	OTERO COUNTY PRISON FACILITY	NM	10th Cir.	EL PASO SPC	TX	5th Cir.	19.65
5,350	EL PASO SPC	TX	5th Cir.	OTERO COUNTY PRISON FACILITY	NM	10th Cir.	19.65
5,074	COLUMBIA COUNTY JAIL	OR	9th Cir.	NORTHWEST DET. CENTER	WA	9th Cir.	98.56

Since many detainees were transferred multiple times during each period spent in detention, transfers are best counted and measured per detention episode. For all transferred detainees, the average distance transferred per detention episode was 369.81 miles. As shown in Figure 4, there is what approximates a bell curve when examining distance as related to the number of transfers, where distance traveled seems to peak around 10 transfers. It is unknown why average distance moved decreases when detainees experience more than 10 transfers. It is possible that when detainees experience this number of transfers, they are being frequently transferred over short distances.

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<sup>30</sup> If two facilities were in the same city and we could not distinguish separate longitude and latitude values, we used a proxy distance estimate of 1 mile to estimate the distance between facilities.

**Figure 4**



**Table 3 – Top 10 Facilities Utilizing Transfers**

Originating Facility	State	Circuit	Total Transfer Actions	# of Facilities Transferring To	Total Outbound Transfers	# of Facilities Receiving From	Total Inbound Transfers
LOS CUSTODY CASE HOLDING FACILITY, SAN PEDRO	CA	9th Cir.	283,218	301	150,200	251	133,018
FLORENCE STAGING FACILITY	AZ	9th Cir.	205,673	212	120,744	271	84,929
HARLINGEN STAGING FACILITY	TX	9th Cir.	179,190	181	112,890	197	66,300
MIRA LOMA DET. CENTER	CA	9th Cir.	119,118	97	56,433	94	62,685
FLORENCE SPC	AZ	9th Cir.	111,553	141	28,508	150	83,045
YORK COUNTY JAIL	PA	3rd Cir.	100,776	184	42,869	225	57,907
WILLACY COUNTY DETENTION CENTER	TX	5th Cir.	97,040	66	29,585	102	67,455
LAREDO CONTRACT DET. FACILITY	TX	5th Cir.	76,069	126	59,627	165	16,442
SOUTH TEXAS DETENTION COMPLEX	TX	5th Cir.	74,023	92	17,780	194	56,243
HOUSTON CONTRACT DET. FACILITY	TX	5th Cir.	71,456	141	25,507	314	45,949

Table 4 shows the variation between the states that received transfers and those from which transfers originated. Only Pennsylvania, Texas, New York, and Alabama were in the top ten states for both receiving and sending transfers. Louisiana received 19 percent while California sent 12 percent of interstate transfers.

**Table 4 – Top Ten Originating/Receiving States for Detainee Transfers**

Originating State	# of Transfers	% of Originating Transfers	Receiving State	# of Transfers	% of Receiving Transfers
CALIFORNIA	70,002	12%	LOUISIANA	104,703	19%
PENNSYLVANIA	42,166	7%	ARIZONA	79,030	14%
NEW YORK	37,978	7%	TEXAS	77,784	14%
NORTH CAROLINA	35,299	6%	GEORGIA	48,383	9%
TEXAS	28,452	5%	PENNSYLVANIA	35,827	6%
ALABAMA	26,689	5%	WASHINGTON	27,172	5%
OREGON	23,751	4%	ALABAMA	26,765	5%
NEW JERSEY	22,923	4%	NEW MEXICO	23,158	4%
FLORIDA	22,043	4%	NEW YORK	15,646	3%
LOUISIANA	19,146	3%	ILLINOIS	15,160	3%

### **Intra- and Inter-Federal Circuit Court Transfers**

Most transfers (84.8 percent) were between facilities within the jurisdiction of the same Federal Circuit Court of Appeals (which defines the applicable law for each detainee’s case). For example, of the 483,425 transfers originating in the Fifth Circuit, 93 percent were to other Fifth Circuit facilities. As shown in Table 5, most circuits originate and receive about the same percentage of transfers.

However, when examining only interstate transfers, shown in Figure 5 below, we find the Fifth Circuit receives, by a large margin, the most interstate transfers. Originating circuits are color-coded.

Table 5 – Transfers Originating in, and Received by, Each Circuit Court

Court Circuit	Originating		Received	
	Number	Percent	Number	Percent
D.C. Circuit	189	0%	89	0%
First Circuit	31,378	2%	40,143	2%
Second Circuit	41,541	2%	66,287	3%
Third Circuit	108,344	5%	126,855	6%
Fourth Circuit	47,509	2%	104,738	5%
Fifth Circuit	617,586	30%	483,457	24%
Sixth Circuit	45,035	2%	73,624	4%
Seventh Circuit	51,993	3%	47,177	2%
Eighth Circuit	43,422	2%	58,927	3%
Ninth Circuit	756,531	37%	760,606	37%
Tenth Circuit	90,677	4%	90,898	4%
Eleventh Circuit	205,895	10%	187,275	9%
Unknown	3	0%	27	0%
<b>Total</b>	<b>2,040,103</b>		<b>2,040,103</b>	

Figure 5 – Interstate Transfers by Circuit Court

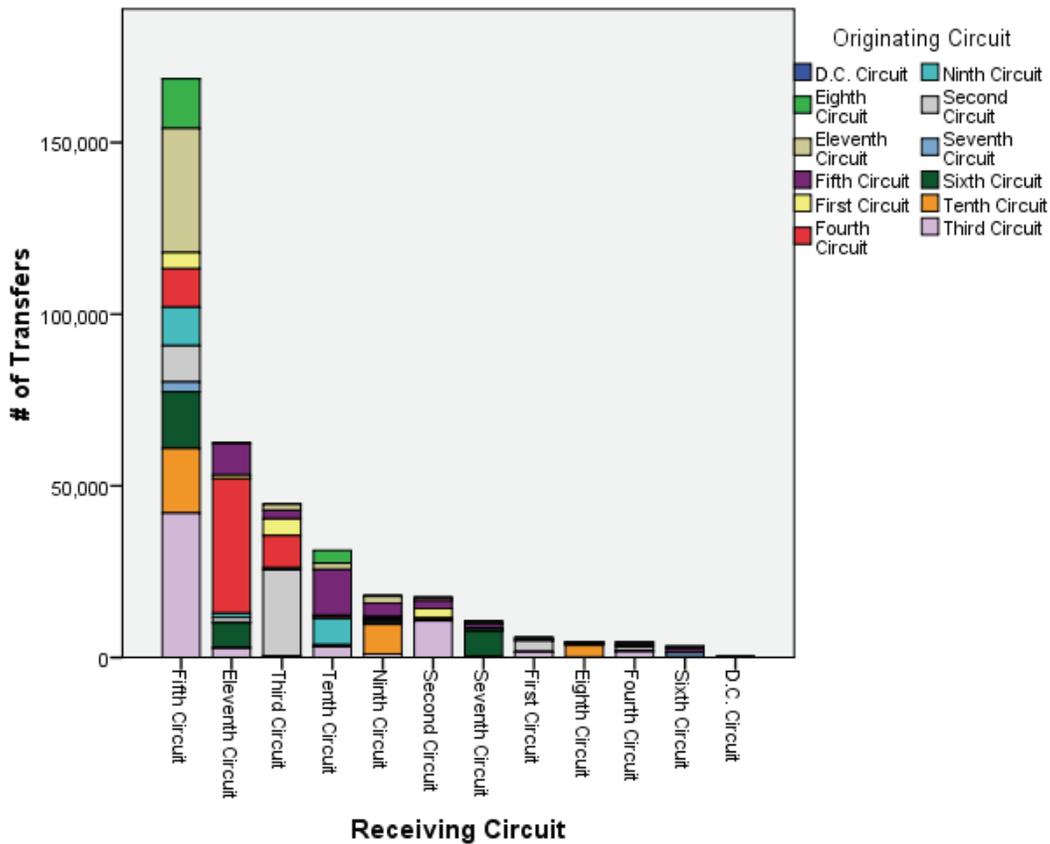


Table 6 below shows that the Fifth Circuit is the federal circuit court district with the worst ratio in the country (510:1) for immigration attorneys to received transferred detainees (as measured by the number of attorneys in the circuit who are members of the American Immigration Lawyers Association).

**Table 6 – Ratio of Attorneys to Transferred Detainees by Federal Circuit Court Districts**

Circuit	Rank by Transferred Detainee to Attorney Ratio	Received Transfers 1998 – 2010	AILA Members as of May 2011	Transferred Detainee to AILA Member Ratio
5th	12	483,457	947	510.51
9th	11	760,606	2674	284.45
10th	10	90,898	424	214.38
3rd	9	126,855	634	200.09
11th	8	187,275	1242	150.79
8th	7	58,927	455	129.51
4th	6	104,738	812	128.99
6th	5	73,624	646	113.97
7th	4	47,177	633	74.53
1st	3	40,143	557	72.07
2nd	2	66,287	1576	42.06
D.C.	1	89	307	0.29

Source for AILA membership numbers: email from Amanda Walkins, Member Outreach Associate, American Immigration Lawyers Association to Human Rights Watch, May 2, 2011.

## Facility Type

More than half of all transfers involved a facility that has an Intergovernmental Service Agreement with ICE to hold immigration detainees. These facilities are most commonly state or local criminal jails and prisons, intended to house people awaiting criminal trial or persons serving criminal punishments. After analyzing transfers by facility type, Table 7 shows that the breakdown of facilities involved in transfers is almost identical between originating and receiving facilities.

**Table 7 – Number of Transfers by Facility Type**

	<b>Facility Type</b>	<b># of Transfers</b>	<b>% of Transfers</b>
<b>Originating</b>	Intergovernmental Service Agreement (state or local jail or prison)	1,155,342	57%
	Holding/Staging Facility	599,309	29%
	ICE Service Processing Center	190,792	9%
	Contract Detention Facility	62,958	3%
	Federal Bureau of Prisons	12,541	1%
	Juvenile Facility	11,478	1%
	Other Facility Type	7,683	0%
	<b>Total</b>	2,040,103	
<b>Receiving</b>	Intergovernmental Service Agreement (state or local jail or prison)	1,131,567	55%
	Holding/Staging Facility	414,006	20%
	ICE Service Processing Center	264,813	13%
	Contract Detention Facility	172,612	8%
	Federal Bureau of Prisons	33,320	2%
	Juvenile Facility	14,242	1%
	Other Facility Type	9,543	0%
	<b>Total</b>	2,040,103	

## Length of Detention

The length of detention was determined using the dates on which detainees entered (were booked into) and left (were booked out of) detention. Individuals that experienced transfers were held on average over three times as long as those that were never transferred, either measured by the mean or median days in detention, as illustrated in Table 8.<sup>31</sup>

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<sup>31</sup> The mean is our common perception of average. The median is the value in the middle of a data set. When there are outliers, they will drive the mean up or down but will have less effect on the median. Both numbers tell a story regarding length of detention. When the mean is higher than the median, it can result from a few people that were held for a long time, thus driving the mean higher. But it can also indicate that many people were held for a short time (i.e., 0-1 days), which may result in a median that is lower than the mean.

**Table 8 – Length of Detention for Transferred and Never-Transferred Detainees**

	Mean Days in Detention	Median Days in Detention
Never Transferred	19.77	5
One or More Transfers	64.9	28

Female detainees (median: 13 days, mean: 33 days) and male detainees (median: 14 days, mean: 39 days) were held in detention for similar lengths of time. When examining length of detention by nationality, Table 9 shows that there were clear differences, as citizens of countries such as Vietnam and Haiti were held for over five times as long as Mexican nationals. This is likely a result of diplomatic and humanitarian problems causing delays in deportations to those countries.

**Table 9 – Length of Detention by Country**

Length of Detention by Country (n > 10,000 Detainees)			
Nationality	Mean Days in Detention	Median Days in Detention	# of Detainees
Vietnam	153.32	108	11,040
Haiti	117.25	48	23,238
Jamaica	106.99	58	27,865
China	98.69	38	40,392
India	87.35	29	11,996
Philippines	82.44	34	10,924
Cuba	78.51	5	66,530
Nicaragua	63.77	37	19,341
Peru	51.56	30	12,931
El Salvador	51.29	33	185,377
Columbia	48.99	27	34,304
Dominican Republic	47.90	22	62,705
Ecuador	42.79	29	24,994
Brazil	41.70	30	42,888
Guatemala	38.80	24	209,182
Honduras	38.14	24	224,879
Mexico	22.10	6	1,595,735

## Deportation or Termination of Detention for Transferred Detainees

The dataset contained a variable coded as “release reason,” which described the reason for each detainee’s departure from immigration detention. Of the 2,271,911 detainees contained in the dataset (both transferred and never transferred), 62 percent, or 1,413,500, were ultimately deported.<sup>32</sup>

The next most common reason for the termination of detention was voluntary departure, in which 343,557 people agreed to leave the US voluntarily. Another 421,538 people were released to undergo their immigration court proceedings outside of the confines of detention, either on bond, on an order of recognizance, or on an order of supervision.<sup>33</sup>

Some 44,110 people had their cases terminated. Many things can lead to termination of a case. One documented in our previous research is the termination of the cases of people with mental disabilities who have been transferred multiple times between detention facilities over many months or years. Ultimately, some of these cases are terminated by judges who decide they cannot continue with the deportation of someone with serious disabilities.

For another 33,439 detainees, their odyssey in immigration detention did not end during the time period. This group lacked a book-out date, or release code, or had a final movement recorded as another transfer. Of this group, 35 percent had already experienced at least one transfer during their current stay in immigration detention.

Finally, 206 immigrant detainees died, and 940 escaped from immigration detention.<sup>34</sup>

As shown in Table 10, detainees who were never transferred had more favorable reasons for their release from detention than those who experienced one or more transfers. Among detainees who were never transferred, 54 percent were ultimately deported, whereas 74 percent of transferred detainees were deported. In addition, a larger percentage of immigrant detainees who were never transferred (16 percent) were released on orders of voluntary departure, as compared with 6 percent of those who were transferred.

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<sup>32</sup> Some people were deported multiple times: 1,413,500 deportees experienced 1,754,443 deportations.

<sup>33</sup> The ICE District Director has discretion to issue an “order of release on recognizance or supervision,” which releases an immigrant from detention, subject to certain conditions as determined by the Director, such as regular reporting to the ICE district office. See Immigration and Naturalization Act, Section 236.

<sup>34</sup> While there has been significant press coverage of the deaths of immigrant detainees, including information provided by ICE itself, we were unable to locate any public information provided by ICE nor any press reports documenting instances of escape from immigration detention.

Finally, a larger percentage of detainees who were never transferred (16 percent) as compared with those who were transferred (14 percent) benefitted from bond or other forms of release from detention while their immigration court proceedings were still ongoing. The ability to remain near communities of support may help explain why more detainees who were never transferred were able to benefit from release from detention while their court cases were still underway. Judges may only order release for persons who are not considered at risk of absconding from proceedings, and this is often proved through strong ties to the community, which transferred detainees rarely have in their post-transfer locations.

**Table 10 – Release Reason for Transferred Detainees Compared with Never Transferred<sup>35</sup>**

Release Reason	Never Transferred	% of Never Transferred	Experienced One or More Transfers	% of Transferred
Deported/Removed	910,818	54%	840,254	74%
Voluntary departure	274,685	16%	68,872	6%
Released with Proceedings Ongoing	270,074	16%	151,464	14%
U.S. Marshals or Other Agency	87,832	5%	25,580	2%
Paroled	64,748	4%	17,144	2%
Outstanding Detention Hanging Closure	39,365	2%	12,469	1%
Proceedings Terminated	25,241	1%	18,869	2%
Withdrawal	11,443	1%	747	0%

## Cost Analysis

ICE provides no publicly available analysis of the savings or costs associated with detainee transfers. There is no public accounting for the costs of bed space in every part of the country in which ICE operates or subcontracts for detention space. The agency also does not provide information on the rationales for transfers in particular cases, which might help the agency and others to better understand the savings or costs associated with its practices.

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<sup>35</sup> This table only includes the most common release reasons and excludes cases with data entry issues (~0.3 percent).

For example, although none of the detainees interviewed for our 2009 report *Locked Up Far Away* had been transferred for medical reasons, it is certainly the case that some percentage of transfers are completed in order to provide immigrant detainees with necessary medical care, and that providing such care prevents illness, loss of life, and costly lawsuits. However, there is no way to estimate these savings since the agency does not make public, or even record in a centralized database, the reasons for detainee transfers.<sup>36</sup>

Therefore, while we have no way to estimate savings associated with transfers, we can roughly estimate some transportation costs associated with transfers, based on information provided to Human Rights Watch by the US Marshals Service and the IRS. Two cost estimates were used, assuming air travel was used for transfers greater than 475 miles and ground transportation used for transfers less than 475 miles. Further details on the information used for these calculations can be found in the Methodology section.

According to our estimates, the over two million transfers that occurred between October 1998 and April 2010 cost approximately \$366,832,842 in total. We believe that these transport costs only represent a fraction of the total costs of transfers: since transferred detainees spend on average more than three times longer in detention than those who are not transferred, the most significant financial costs may come from court delays and unnecessarily long periods of detention.

As illustrated in Table 11, the most costly transfer “segment” has been from York County Jail in Pennsylvania to Harlingen Staging Facility in Texas. Over 11,000 transfers have been sent the 1,642 miles from Pennsylvania to Texas, costing an estimated \$13.2 million. The most costly single transfer movements have occurred between Guam and the continental US. These transfers are nearly 8,000 miles long and likely cost several thousand dollars per detainee. Figure 6 provides the costs of transfers originating from each of the 50 states.

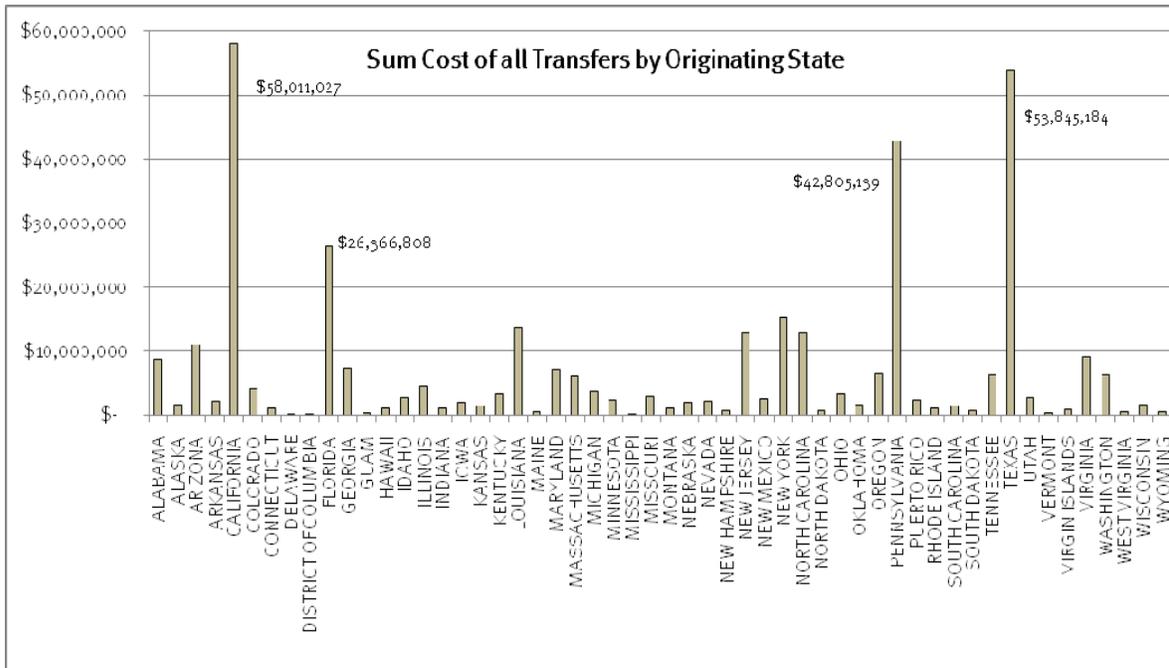
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<sup>36</sup> Even if one accepts the notion that transfers for medical care provide cost savings to the agency, it is also true that transfers for medical care are not adequately addressing detainee medical needs, since ICE’s failure to care for the medical needs of non-citizen detainees (resulting in deaths in several cases) has been the subject of numerous lawsuits, press investigations, and congressional action. See, e.g., “ACLU Sues U.S. Immigration Officials and For-Profit Corrections Corporation Over Dangerous and Inhumane Housing of Detainees,” ACLU press release, January 24, 2007, <http://www.aclu.org/prison/conditions/28127prs20070124.html> (accessed May 11, 2011); “ACLU Sues Over Lack of Medical Treatment at San Diego Detention Facility,” ACLU press release, June 13, 2007, <http://aclu.org/immigrants/detention/30095res20070613.html> (accessed May 11, 2011); Dana Priest and Amy Goldstein, “Careless Detention: System of Neglect,” *Washington Post*, May 11, 2008, [http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc\\_d1p1.html](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html) (accessed May 11, 2011); “In Custody Deaths,” *New York Times*, [http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration\\_detention\\_us/incustody\\_deaths/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration_detention_us/incustody_deaths/index.html) (accessed May 11, 2011) (collecting articles published by the *New York Times* about immigrant detainee deaths and failure to provide medical care from 2005 to 2009); U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, “Hearing on Problems with Immigration Detainee Medical Care,” June 4, 2008, [http://judiciary.house.gov/hearings/hear\\_o60408.html](http://judiciary.house.gov/hearings/hear_o60408.html) (accessed May 11, 2011).

**Table 11 – Most Costly Transfer Segments**

Originating Facility	Originating State	Receiving Facility	Receiving State	# of Transfers	Length (mi.)	Cost per Transfer	Cost for all Transfers
YORK COUNTY JAIL	PA	HARLINGEN STAGING FACILITY	TX	11,363	1,642.28	\$ 1,169.55	\$ 13,289,596.65
MECKLENBURG CO. JAIL	NC	STEWART DETENTION CENTER	GA	15,959	315.44	\$ 325.95	\$ 5,201,836.05
LOS CUSTODY CASE HOLDING FACILITY, SAN PEDRO	CA	ELOY FEDERAL CONTRACT FAC	AZ	11,581	394.82	\$ 407.98	\$ 4,724,816.38
LOS CUSTODY CASE HOLDING FACILITY, SAN PEDRO	CA	MIRA LOMA DET. CENTER	CA	50,289	66.13	\$ 68.33	\$ 3,436,247.37
YORK COUNTY JAIL	PA	PINE PRAIRIE CORRECTIONAL CENTER	LA	3,957	1,192.02	\$ 848.90	\$ 3,359,097.30
ALAMANCE CO. DET. FACILITY	NC	STEWART DETENTION CENTER	GA	7,320	414.51	\$ 428.33	\$ 3,135,375.60
MIRA LOMA DET. CENTER	CA	LOS CUST CASE	CA	45,879	66.13	\$ 68.33	\$ 3,134,912.07
YORK COUNTY JAIL	PA	JENA/LASALLE DETENTION FACILITY	LA	3,815	1,136.78	\$ 809.56	\$ 3,088,471.40
LOS CUSTODY CASE HOLDING FACILITY, SAN PEDRO	CA	FLORENCE STAGING FACILITY	AZ	7,060	400.98	\$ 414.35	\$ 2,925,311.00
YORK COUNTY JAIL	PA	OTERO CO. PROCESSING CENTER	NM	2,246	1,804.73	\$ 1,285.24	\$ 2,886,649.04
<b>Most Costly Transfer Segments (per Segment)</b>							
OSBORN CORR. INST.	CT	DEPARTMENT OF CORRECTIONS	GUAM	1	7,925.57	\$ 5,644.21	\$ 5,644.21
HOWARD COUNTY DET. CENTER	MD	DEPARTMENT OF CORRECTIONS	GUAM	1	7,914.54	\$ 5,636.36	\$ 5,636.36
DEPARTMENT OF YOUTH AFFAIRS	GUAM	BERKS COUNTY FAMILY SHELTER	PA	1	7,883.01	\$ 5,613.90	\$ 5,613.90
DEPARTMENT OF CORRECTIONS	GUAM	BERKS COUNTY FAMILY SHELTER	PA	1	7,881.05	\$ 5,612.51	\$ 5,612.51
NOL D D & P	LA	DEPARTMENT OF CORRECTIONS	GUAM	3	7,705.43	\$ 5,487.44	\$ 16,462.32
DEPARTMENT OF YOUTH AFFAIRS	GUAM	SOUTHWEST YOUTH VILLAGE	IN	1	7,496.3	\$ 5,338.51	\$ 5,338.51
HOUSTON CONTRACT DET. FAC.	TX	DEPARTMENT OF CORRECTIONS	GUAM	7	7,429	\$ 5,290.58	\$ 37,034.06
DEPARTMENT OF YOUTH AFFAIRS	GUAM	JUVENILE FACILITY/ HEARTLAND	IL	9	7,361.82	\$ 5,242.74	\$ 47,184.66
GARVIN COUNTY JAIL	OK	DEPARTMENT OF CORRECTIONS	GUAM	1	7,179.42	\$ 5,112.84	\$ 5,112.84
JEFFERSON COUNTY JAIL	OK	DEPARTMENT OF CORRECTIONS	GUAM	2	7,158.41	\$ 5,097.88	\$ 10,195.76

Figure 6



As noted above, our conservative estimate of \$366 million dollars for detainee transfers between 1998 and 2010 does not include other costs that may be associated with transfers, such as flights made by carriers more costly than the Justice Prisoner and Alien Transportation System (JPATS); personnel time spent on paperwork or other administrative tasks; costs of additional court time, court delays, or lengthened detention caused by transfers; costs associated with needless transfers of persons who are found to be eligible for bond and therefore are unnecessarily detained; or costs associated with duplicative medical screenings or tests. Therefore, without better public information on ICE’s operational budget related to transfers, it is impossible to conclude whether transfers result in net costs or savings for the agency.

## V. Methodology

The data provided in response to the original Freedom of Information Act (FOIA) request arrived from ICE on a single data disc and contained 5,061,411 comma-separated value records, comprising 1.16 GB of data.

ICE did not provide a data key or code book for deciphering the data. After exploring the database, researchers determined that of the 18 included variables, five variables were either completely empty or contained major data entry flaws. For example, the variable “Apprehension Date” has a large percentage of entries (over 120,000 people) with the same date of apprehension: 1/1/2001. This is clearly a result of a data management error such as a wrongly labeled bulk import.

Researchers found that each row of data was based upon a single action (transfer or deportation or other release) or segment of someone’s detention, not a single person’s history. After further analysis, researchers were able to use consistencies among several variables to determine the ordering of the database. With the ordering of the database known, we were able isolate individuals’ histories within ICE detention by identifying the individual non-citizen that corresponded to each row of data.

Our analysis relied on descriptive statistics, including frequencies and cross-tabulations. Distance estimates were developed by determining latitudes and longitudes of each detention facility and computing the distance between each facility. Cost estimates were developed using data provided by the US Marshals Service on cost per flight hour per seat for transfers conducted by the Justice Prisoner and Alien Transportation System (JPATS). The US Marshals Service provided six years of estimates for flights using different sizes of airplane frames. We averaged these estimates to produce an average per transfer cost.

The last date included in the database was May 25, 2010, which corresponds to 64 percent of fiscal year 2010. Therefore, we developed estimates for the remainder of FY2010. Estimated FY2010 will be labeled “Estimated.” Because the volume of ICE actions follows an annual pattern, with drops in enforcement actions around the fiscal year changeover, we did not use a linear rate for estimates. Rather, estimates were developed by using rate ratios determined using data from 2007 through 2009 in an attempt to improve accuracy. These ratios compared the volume of ICE detentions, transfers, and deportations from October through April to May through September. A ratio of 1:1 would mean that the volume from October to April would equal the volume from May to September. The averaged ratio of the

previous three fiscal years was applied to the October through April 2010 data to estimate the aggregate sums for the remainder of 2010.

For cost estimates, two formulas were used to calculate the approximate cost per transferred detainee:

- For each ICE detainee transferred 475 miles or more, we assumed air travel and calculated the cost as:<sup>37</sup>  $\text{cost} = [(C / 525) \times \$373.88]$ .
- For each detainee transferred under 475 miles, the following formula was applied:<sup>38</sup>  $\text{cost} = [(\text{mileage traveled} / 60) \times \$32 \text{ per hour for 2 guards}] + (\text{mileage traveled} \times \$0.50 \text{ per mile})$ .

Data that the Department of Homeland Security provided has not been altered for our analysis. Any errors within the dataset, including user-generated errors such as mislabeling

<sup>37</sup> Formula explanation:

C = distance (over 475 miles) traveled by each detainee. The 475-mile cut off is based on a comparison between the Internal Revenue Service (IRS) standard mileage rate for automobiles in FY 2010, which was \$0.50 per mile (<http://www.irs.gov/newsroom/article/0,,id=216048,00.html>), and flights on commercial carriers between a variety of destinations, to determine at what distance a prudent decision-maker might choose to transport detainees by plane as opposed to over land (see table below). Some of the flight costs were based on rates that included one stop-over, since the US Marshalls described using stopovers while transporting immigrant detainees. Email from Steve Blando, US Marshalls Service Headquarters, to Human Rights Watch, May 30, 2008 (“On average an alien may move 1.4 times before reaching final destination”).

FROM NEWARK, NJ TO (miles)	Over land	By commercial carrier
Philadelphia (77 miles)	\$ 38.50	\$ 183
Washington, D.C. (197 miles)	\$ 98.50	\$ 145
Richmond, VA (283 miles)	\$ 141.50	\$ 169
Detroit, MI (474 miles)	\$ 237	\$ 162
Charlotte, NC (526 miles)	\$ 263	\$ 173
Atlanta, GA (735 miles)	\$ 367.50	\$ 130
New Orleans, LA (1,163 miles)	\$ 581.50	\$ 199

525 = number of miles traveled per flight hour. (The “typical cruise speed” of a Boeing 737 at 35,000 feet is about 525 mph). The Boeing Company, “Commercial Airplanes: 737 Family,”

[http://www.boeing.com/commercial/737family/pf/pf\\_80otech.html](http://www.boeing.com/commercial/737family/pf/pf_80otech.html) (accessed May 11, 2011).

\$373.88 = price per flight hour per seat charged by Justice Prisoner and Alien Transportation Service (JPATS) of the US Marshalls Service to ICE, on average between fiscal years 2006 and 2011 and among all types of aircraft frame. Letter from William E. Bordley, Associate General Counsel/FOIPA Officer, US Department of Justice, United States Marshalls Service, to Human Rights Watch, regarding freedom of information/privacy act request no. 2011USMS17132, March 3, 2011.

<sup>38</sup> The formula is a rough estimate based on the following assumptions. A transfer requires the presence of at least two guards. In 2007 guards were compensated at a rate of \$16 per hour. See Amendment of Solicitation/Modification of Contract between ICE and Lincoln County, Troy, Missouri, “The purpose of this modification is to add Article XVIII (Guard/Transportation Services) to this agreement,” August 23, 2007 (“At least two (2) qualified law enforcement or correctional officer personnel employed by the Service Provider under their policies, procedures and practices will perform services.”). In addition, billing for transportation costs is based on the IRS standard mileage rate for automobiles of \$0.50 per mile in FY 2010 (<http://www.irs.gov/newsroom/article/0,,id=216048,00.html>). Depending on the number of detainees transported in a transfer, more than two guards may be required. In addition, hourly rates for guards may have increased since 2007. Therefore, we believe that these estimates for ground transportation costs are conservative.

in data entry, would have occurred before the dataset was received. Because original files on each deportee are not accessible, it is impossible to double check the data entry for errors. Therefore the analysis uses data that ICE provided, regardless of any potential errors.

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## A Costly Move

### Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States

Detained immigrants facing deportation in the United States, including legal permanent residents, refugees, and undocumented persons, are being transferred, often repeatedly, to remote detention centers by US Immigration and Customs Enforcement (ICE).

Transfers separate detained immigrants from the attorneys and evidence they need to defend against deportation, which can violate their right to fair treatment in court, slow asylum or deportation proceedings, and prolong the time immigrants spend in detention.

With close to 400,000 immigrants in detention each year, space in US detention centers, especially near cities where immigrants, their families, and attorneys live, has not kept pace. As a result, ICE has built a system of detention—relying on subcontracts with state jails and prisons—that cannot operate without transfers.

*A Costly Move* shows that between 1998 and 2010, 1 million immigrants were transferred 2 million times. Forty-six percent of transferred detainees were moved two or more times: in one egregious case, a detainee was transferred 66 times. On average, each transferred detainee traveled 370 miles, with one frequent transfer pattern (from Pennsylvania to Texas) covering 1,642 miles. Such long-distance and repetitive transfers can render attorney-client relationships unworkable, separate immigrants from evidence they need in court, and make family visits so costly they rarely, if ever, occur.

An agency charged with enforcing US laws should not establish a system of detention that is literally inoperable without widespread, multiple, and long-distance transfers. ICE would reduce the chaos and limit harmful human rights abuses if it worked to emulate best practices on inmate transfers set by state and federal prison systems. Transfers do not need to stop entirely in order for ICE to respect detainees' rights; they merely need to be curtailed through the establishment of enforceable guidelines, regulations, and reasonable legislative restraints.

*Immigrants aboard an ICE flight between Chicago and Harlingen, Texas, May 25, 2010.*

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