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Assembly California Legislature



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COMMITTEES
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GOVERNMENTAL ORGANIZATION
HEALTH

July 6, 2020

VIA ELECTRONIC CORRESPONDENCE

The Honorable Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

RE: Request to Suspend Transfers to Immigration Detention Facilities

Dear Governor Gavin Newsom,

Thank you for your leadership in saving lives through the emergency orders you have issued during this unprecedented global pandemic. **We write to respectfully ask you to take further steps to protect all Californians by issuing an executive order that suspends California's role in transferring people to immigration detention centers during the state of emergency.**

On May 6th, officials confirmed the first death of a detained immigrant, Carlos Escobar-Mejia, from COVID-19 at Otay Mesa, an ICE detention center located in San Diego County.¹ And on May 17th, Choung Won Ahn, a 74-year-old immigrant with severe health problems making him especially vulnerable to COVID-19, died by suicide after being transferred by the California Department of Rehabilitation and Corrections (CDCR) to Mesa Verde, an ICE detention center in Bakersfield in Kern County.²

We are deeply concerned that in the midst of the unprecedented, COVID-19 pandemic, immigrants who are eligible to be released from local and state custody continue to be transferred to Immigration and Customs Enforcement (ICE) detention facilities where the virus is spreading rapidly and unabated. These transfers not only jeopardize the lives of immigrant community members, they also undercut the state's

¹ Tatiana Sanchez, "'This is a cry for help': ICE detainees beg California lawmakers to intervene after coronavirus death," *San Francisco Chronicle*, May 13, 2020,

<https://www.sfchronicle.com/news/article/This-is-a-cry-for-help-ICE-detainees-beg-15268548.php>

² Associated Press, "Death of 74-Year-Old in Immigration Jail Is Seen as Suicide," *NY Times*, May 19, 2020, <https://www.nytimes.com/aponline/2020/05/19/us/ap-us-immigration-detention-suicide.html>.

hard-fought efforts to flatten the curve and reduce the health risks of this highly transmissible virus for all Californians.

We encourage you to act swiftly to suspend these voluntary transfers, and consequently save lives by preventing COVID-19 infections that are altogether avoidable.

1. COVID-19 Poses Grave Risk of Harm to Californians Transferred to ICE Detention

When people are incarcerated, they are, by design, kept in very close quarters. This makes social distancing impossible and puts people at serious risk of contracting COVID-19, a highly transmittable and potentially deadly virus. The risk of contracting severe symptoms of the virus are heightened for people who are incarcerated because as a result of poor living conditions and inadequate medical care, people in prison tend to be far less healthy than the general public. For example, 9% of California's inmates were classified as high clinical risk in 2012, meaning they had serious medical conditions that required significant resources to manage.³ In addition, more than one in ten male and one in five female people in prison used medication to treat asthma in 2010—about double the rate among Californians.⁴ People of color also are disproportionately represented in our state's prisons and ICE detention and are at higher risk of contracting and dying from the COVID-19 virus.⁵ Shockingly, a new epidemiological study projects that "COVID-19 could claim the lives of approximately 100,000 more people than current projections stipulate if jail populations are not dramatically and immediately reduced."⁶

The poor health outcomes of people who are incarcerated are compounded further when they are transferred by the California Department of Corrections and Rehabilitation (CDCR) and local jails to ICE detention facilities, which are notorious for medical neglect and unhygienic conditions. Given the rapid spread and lethal nature of COVID-19, especially in carceral settings as shown by the alarming outbreak of this virus in San Quentin state prison, ensuring that our community members return home can be a matter of life or death.

³ Heather Harris, "Severe COVID-19 Infections May Threaten California's Prisons," Public Policy Institute of California, March 27, 2020, <https://www.ppic.org/blog/severe-covid-19-infections-may-threaten-californias-prisons>.

⁴ See *id.*

⁵ Jill Cowan, "Why Covid-19 Is Deadlier for Black and Latino Californians," *NY Times*, April 28, 2020, <https://www.nytimes.com/2020/04/28/us/coronavirus-california-black-latinos.html> ("Latinos made up 64.9 percent of the Covid-19 deaths among patients age 18 to 49, and 43.5 percent of that overall population. In the same age group, 15.3 percent of the people who died were black, while just 6.3 percent of the overall population is black.")

⁶ Ed Pilkington, "Mass incarceration could add 100,000 deaths to US coronavirus toll, study finds," *The Guardian*, April 22, 2020, <https://www.theguardian.com/us-news/2020/apr/22/coronavirus-us-jails-incarceration-death-toll-study>.

COVID-19 poses grave risk of harm to Californians transferred to ICE detention. Not only is it impossible to socially distance while detained, ICE is wholly ill-prepared and unwilling to provide adequate medical care to individuals in their facilities or protect its staff. In recent weeks, in at least three of California's detention centers, immigrants have spoken out about and organized hunger strikes to call attention to the crowded conditions, the influx of new detainees in the midst of the pandemic, the absence of adequate medical care, the lack of clean water, lack of basic cleaning supplies and personal protective equipment, and the utter impossibility of social distancing.⁷

Predictably, the ongoing medical neglect and inhumane conditions in immigration detention facilities have caused COVID-19 to spread inside these facilities at devastating rates. On April 26, 2020, ICE confirmed that 178 detained individuals tested positive for COVID-19.⁸ Two months later, as of June 30, 2020, ICE has reported a fifteen-fold increase in positive cases and a 26% positive testing rate with 2,742 positive cases out of 10,513 detained people tested.⁹ The fourth largest outbreak of the virus among all immigration detention facilities in the country is at the Otay Mesa facility in San Diego, California with 167 cases and counting.¹⁰ In light of the fact that ICE has only tested 12% of the 22,805 people locked in immigration detention facilities throughout the country, the number of COVID-19 cases are undoubtedly even higher.¹¹

In light of these deplorable conditions in immigration detention facilities in California, the state should use its powers to stop voluntarily funneling people into these facilities.

2. Earning Release from Criminal Custody Should Not Result in a Transfer to ICE

While we recognize the initial steps you have taken to conduct early releases of people from CDCR custody to protect them from contracting the virus, we are concerned that for immigrants, being “released” means being transferred directly to ICE. People who have served time in jail or state prison and have earned release through obtaining parole, receiving a commutation from your office, or completing their sentence should have an opportunity to return home to their families to shelter in place and avoid potentially contracting the virus. A conviction for an offense committed decades or years ago, for which the person has served time and

⁷ See Andrea Castillo, “Advocates say hundreds of immigrants detained in California are on hunger strike. ICE says only two,” *LA Times*, Apr. 19, 2020, www.latimes.com/california/story/2020-04-19/advocates-say-hundreds-of-immigrants-detained-in-california-are-on-hunger-strike-ice-says-just-two-are.

⁸ See ICE Guidance on COVID-19, Immigration and Customs Enforcement, <https://www.ice.gov/coronavirus> (last visited on July 4, 2020).

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

demonstrated that they have been on the path of rehabilitation, should not be turned into a potential death sentence by transferring that person to inhumane conditions in immigration detention.

It also is important to note that when individuals are released back to their families and communities, this provides them with an opportunity to seek immigration counsel and prepare for any deportation proceedings that may be initiated against them. Many of these individuals had green cards and are facing potential deportation due to the state criminal conviction resulting in the loss of their immigration status. With the recent criminal justice reforms in California that provide avenues for obtaining post-conviction relief, individuals may be able to vacate or reduce their sentence, and thereby win their immigration case.

3. California Should Stop the Unnecessary and Voluntary Practice of Transferring Immigrants to ICE and Shut Off the Pipeline to Immigration Detention

Tragically, CDCR and many local jails continue to transfer community members who have earned release to immigration detention in the midst of this pandemic, even though California is under no legal obligation to assist the federal government with deportations.¹² By contrast, California does have an obligation to protect all Californians from exposure to COVID-19, including people who are in state and local custody.

Since the pandemic started, transfers from California's prisons and jails have become the primary source of ICE's new bookings into California's immigration detention centers. In other words, it is the actions of the State of California, more than actions of ICE at this unique moment that are keeping a flow of new people into ICE detention facilities. In litigation, ICE admitted that it "is continuing to transfer detainees from state and local criminal custody" while otherwise "limit[ing] the intake of new detainees being introduced into the ICE detention system."¹³ In addition, Centro Legal de la Raza recently issued a report, using data compiled by legal services providers through the CA Collaborative for Immigrant Justice, finding that, "[i]mmigration arrests at state prisons and county jails make up a disproportionately large percentage of the detention pipeline. No other identified source of the detention pipeline comes close to

¹² See *New York v. United States*, 505 U.S. 144, 188, 112 S.Ct. 2408 (1992) ("The Federal Government may not compel the States to enact or administer a federal regulatory program."); *Printz v. United States*, 521 U.S. 898, 925 (1997) (Under the Tenth Amendment and other provisions of the Constitution, "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.").

¹³ *Fraihat v. ICE*, No. CV 19-1546-JGB, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020), Decl. of Russell Hott (Exh. 42) ¶ 12.

the level of immigration arrests that occur at state prisons and county jails.”¹⁴ In particular, the report determined that 44% of ICE detainees at the Mesa Verde Detention Facility and 50% of ICE detainees at Yuba County Jail are from jail or state prison transfers.¹⁵

While courts have ordered ICE to release some individuals through individual and class habeas petitions, these decisions will have little impact if ICE can simply replenish its detainee population through CDCR and local jail transfers. Indeed, as long as California continues to voluntarily hand over Californians to ICE facilities--where COVID-19 runs rampant and unchecked--many of our community members will face grave illness and death.

4. Conclusion

The COVID-19 pandemic has made it abundantly clear that the fates of all Californians-- including detained immigrant community members -- are intertwined. As the federal administration further steps up attacks on our immigrant communities to increase fear and tear apart immigrant families, and as our immigration detention facilities have become a tinderbox for this deadly virus, we strongly believe California has an ethical and moral obligation to exercise bold and responsive leadership and take action to protect the rights of immigrants and the public health. As long as California continues to transfer community members to immigration detention where conditions are indisputably dangerous and even deadly, we cannot meaningfully stem the spread of COVID-19.

For all of these reasons, we respectfully ask you to protect all Californians by issuing an executive order that suspends transfers to ICE as long as COVID-19 poses a public health threat to community members in immigration detention. We look forward to collaborating with your office to ensure California continues to lead on immigrant rights and protecting public health. If you have any questions, please do not hesitate to reach out to my Legislative Director, Maheen Ahmed, at maheen.ahmed@asm.ca.gov or 916.319.2018.

Sincerely,



Rob Bonta
Assemblymember, 18th Assembly District



Cecilia Aguiar-Curry
Assemblymember, 4th Assembly District

¹⁴ Centro Legal de la Raza, “Immigration Enforcement During the COVID-19 Pandemic,” May 27, 2020.

¹⁵ See *id.*



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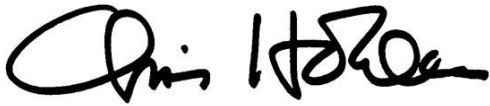
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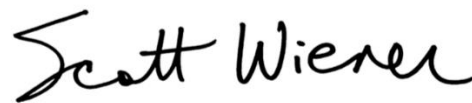
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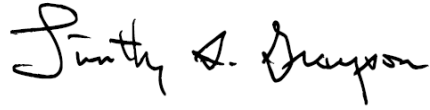
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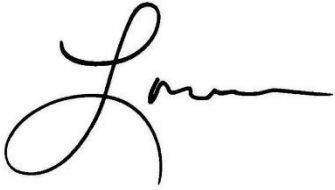
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