

# Immigrant Detention in California: Opportunities for Accountability

## Policy Brief



Immigrant Defense  
Advocates



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## ACKNOWLEDGEMENTS

This report was made possible through collaboration with the brave people inside various detention facilities in California. We are indebted to them and acknowledge their courageous efforts to share their stories and organize inside these facilities while facing life threatening conditions and odds.

This report was also made possible through contributions from and collaborations with various organizations and individuals.

Thank you to Mario Martinez and the Centro Legal de la Raza Detention Research Intern Team, for technical assistance and support for this report.

Thank you to Dr. Caitlin Patler for her technical assistance and guidance on designing the survey and making this report possible. The data analysis and visualization in this report was provided by Dr. Caitlin Patler and Julian Garcia at the University of California, Davis.

In memory of Carlos Ernesto Escobar Mejía, Chung Woong Ahn, Martin Vargas Arellano and countless others who have passed away while unjustly held in detention.

# EXECUTIVE SUMMARY

California is home to eight immigration detention facilities, with the capacity to hold more than 7,400 individuals at any given time. These facilities, used to house those in the custody of U.S. Immigration and Customs and Enforcement (ICE) are operated almost exclusively by private, for-profit corporations. These detention facilities have been plagued with violations of federal detention standards, California law, and detained people's civil rights. To date, federal oversight of these facilities has proven ineffective and lacking in accountability.

The COVID-19 pandemic has not only highlighted the failure of accountability and oversight in these facilities, but has demonstrated the clear need for the state of California to act to protect the health and safety of individuals in these facilities. California was the site of the first COVID-19 related death in detention in the entire nation, and conditions in the facilities were among the most egregious in the country. In fact, a federal judge ruled that both ICE and the private operator GEO Group "showed a deliberate indifference to the safety of the detainees."

Under established state police powers, California possesses unique authority to take affirmative steps to address the health and safety of individuals in these detention facilities. In addition, a series of recent laws have expanded and clarified the state's police powers with respect to individuals detained in California. Specifically, AB 103 allows the California Department of Justice (Cal DOJ) to review the health and safety conditions of immigrant detention facilities. According to the Cal DOJ, the California Department of Public Health (CDPH) also exercises broad discretion over the health and safety of individuals in ICE detention facilities in the state.

**California was the site of the first COVID-19 related death in detention in the entire nation, and conditions in the facilities were among the most egregious in the country.**

While California has exercised its right under these laws, it has failed to take any concrete steps to seek accountability.

While California has passed legislation to close private detention facilities, the exact timeline for closure of these facilities remains at issue, and therefore additional steps must be taken by the state. California can and must do more to not only ensure the basic human rights of individuals held in ICE detention, but to seek accountability for violations of the law that result in harm to California residents and to our communities.

This brief documents systematic violations of detention standards, public health orders, disability law, and California law. It provides a roadmap for oversight and accountability, and specific policy recommendations to remedy the challenges posed by these facilities.

## KEY POLICY RECOMMENDATIONS

**California Department of Justice:** Seek accountability from private operators, by taking legal action against private corporations operating detention facilities when they violate public health protocols, or state law.

**California Governor's Office:** Support legislation, policies, and litigation designed to end the unnecessary detention of immigrants in California.

**California Department of Public Health:** Provide clear guidance regarding the roles and responsibilities of public health officials with respect to immigrant detention facilities.

# BACKGROUND

California is home to eight immigrant detention facilities, seven of which are operated by for-profit private corporations. In the past, these private facilities operated under intergovernmental services agreements (IGSAs) with local cities or counties in California. Since December of 2019, all seven private facilities are operating under direct contracts with the federal government. The lack of a local party to these detention contracts has left gaps in local or state participation in accountability.

The COVID-19 pandemic has underscored serious concerns about the health and safety of immigrants in detention in California. Seven of the facilities used to detain immigrants have been the site of COVID-19 outbreaks. Immigration detention facilities in the state of California pose a unique and critical challenge with respect to public health and safety during the COVID-19 pandemic.

Despite the fact that immigration detention facilities are contractually obligated to abide by specific standards regarding health and safety, federal oversight remains woefully inadequate with regard to enforcing standards or seeking accountability.

While immigration detention is a federal issue, the state of California possesses legal authority to protect the health and safety of those detained in the state. This includes individuals in immigration detention.



AB 103 provides a 10-year mandate to the Cal DOJ to review and report back to the Legislature, the Governor, and the public about the conditions of confinement in ICE detention facilities.

In addition, the United States Court of Appeals for the Ninth Circuit has found that California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders, including those in immigration detention facilities.<sup>1</sup>

IMMIGRATION DETENTION FACILITIES IN CALIFORNIA	
<b>Private facilities</b>	
Otay Mesa Detention Center - Capacity 1,994	(Operated by CoreCivic Inc.)
Mesa Verde ICE Processing Center - Capacity 400	(Operated by The GEO Group Inc.)
Golden State Annex - Capacity 700	(Operated by The GEO Group Inc.)
Central Valley Annex - Capacity 700	(Operated by The GEO Group Inc.)
Adelanto ICE Processing Center - Capacity 1,940	(Operated by The GEO Group Inc.)
Desert View Annex - Capacity 750	(Operated by The GEO Group Inc.)
Imperial Regional Detention Facility - Capacity 704	(Operated by Management & Training Corp)
<b>Public Facilities</b>	
Yuba County Jail - Capacity 220	(Operated by Yuba County Sheriff)
<b>Total Detention Capacity: 7,408</b>	

# VIOLATION OF DETENTION STANDARDS

Immigration detention centers, operated pursuant to contracts with ICE, are subject to certain safety requirements. ICE uses the Performance-Based National Detention Standards (PBNDS) to govern conditions inside detention facilities and achieve uniform standards across all facilities. Compliance with these standards are expressly required as part of the facilities' contracts, though violations of these standards rarely result in the termination of contracts.<sup>2</sup> In addition to these minimum standards, in light of the ongoing COVID-19 pandemic, on April 10, 2020, ICE issued the "COVID-19 Pandemic Response Requirements" (PRR), "intended for use across ICE's entire detention network" and "applying to all facilities housing ICE detainees." The PRR requires all ICE facilities to comply with the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities and identify detainees at higher risk of serious illness from COVID-19.<sup>3</sup> Yet violations of the PBNDS and PRR continue.

## Failure to Coordinate With Public Health Officials

The PBNDS and PRR provide clear requirements for facilities to coordinate with public health officials. This includes requirements that:

- Each facility must comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues including communicable disease reporting requirements.<sup>4</sup>
- Each facility should actively engage with local health departments to understand in advance which public health entity has jurisdiction over public health measures for COVID-19 in the facility.<sup>5</sup>

On Aug. 24, 2020, Immigrant Defense Advocates (IDA) and the California Collaborative for Immigrant Justice (CCIJ), in partnership with other organizations, sent a letter to public health officials in Kern County, home to the Mesa Verde Detention Center, inquiring about the department's oversight, including how it planned to ensure detainees were being tested for COVID-19. In a written response, the county's director of public health services stated that his department did not have jurisdiction over the center.<sup>6</sup>

Emails obtained by advocates from the San Diego Public Health Department included correspondence between the department and CoreCivic, the for-profit operator of the Otay Mesa Detention Facility. The correspondence included an email from San Diego health officials recommending mass testing of staff to help mitigate virus spread at the height of an outbreak at that facility, per guidance from the California Department of Public Health. The Warden of the facility responded, "**Doc – Just so we're clear – at this point we have no intention to mass test our staff.**"<sup>7</sup>

**California is home to eight immigrant detention facilities, seven of which are operated by for-profit private corporations. The lack of a local party to these detention contracts has left gaps in local or state participation in accountability.**

## Use of Force & Retaliation

The PBNDS categorically ban retaliation against detainees for reporting unsafe detention conditions. The PBNDS use of force requirements authorize "staff to use necessary and reasonable force after all reasonable efforts to otherwise resolve a situation have failed." It further notes, "Under no circumstances shall staff use force or apply restraints to punish a detainee."<sup>8</sup> Reports from detention facilities indicate routinely improper use of force against detainees.

In June of 2020 it was reported that more than a dozen guards in riot gear shot pepper bullets and

pepper spray at detainees at the Adelanto ICE processing center. “Detainees yelled that they couldn’t breathe. They said the chemicals caused them to vomit and burned their eyes and skin for hours. One man had a seizure. Another fell down the stairs while being taken to shower and was carried out in a stretcher.” ICE confirmed at least four detainees were transferred into medical care following the incident.<sup>9</sup> Individuals detained at the Mesa Verde detention facility allege that they are subjected to persistent retaliation for speaking up about harmful conditions, and organizing protests and hunger strikes.<sup>10</sup>

## Solitary Confinement

The PBNDS provide clear and specific requirements with respect to the use of solitary confinement. These standards have been routinely violated in detention facilities in California, as well as throughout the country.<sup>11</sup> This includes arbitrary and punitive use of solitary confinement, as well as the failure to properly monitor individuals in solitary confinement.

In May 2020, Choung Woong Ahn, a 74 year old detainee who had a number of serious medical conditions, was found dead after being placed in medical isolation in Mesa Verde. Mr. Ahn’s case is particularly troubling as it appears that facility operators ignored his medical history, and failed to properly monitor him after placing him in solitary confinement.<sup>12</sup>

**The compounding failures of the detention center and lack of federal oversight led to Mr. Ahn’s preventable death.**

Juan Jose Erazo Herrera, a detainee in Yuba County Jail reported being placed in solitary confinement for 12 days in a cell with horrific conditions. During this time he was denied access to normal programming, a violation of the PBNDS. “That cell is not for a human being, it’s like for keeping a dangerous animal locked up. There’s no TV, there’s nothing... You start feeling so depressed that you think about killing yourself. You wonder what you’ve done to deserve to be treated this way.”<sup>13</sup>

**The death of Mr. Choung Woong Ahn is just the latest example of how the current systems of detention are not adequate to protect the rights and lives of people being detained.**

## Disability Discrimination

The American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act prohibit disability discrimination in any state or federally funded facility.<sup>14</sup> The Department of Homeland Security (DHS) has adopted and implemented Section 504’s prohibitions as binding regulations to combat disability discrimination.<sup>15</sup> This has not stopped county or privately owned and operated facilities from violating the rights of people with disabilities.

There have been numerous reports of facilities in California failing to meet disability standards.<sup>16</sup> The death of Mr. Choung Woong Ahn, mentioned before, is just the latest example of how the current systems of detention are not adequate to protect the rights and lives of people being detained. Mr. Ahn was a person with an existing mental illness that was unlawfully segregated in an isolation unit because of his disability. In addition to his placement in solitary confinement, Mr. Ahn was not adequately screened to determine the extent of his mental illness. The compounding failures of the detention center and lack of federal oversight led to Mr. Ahn’s preventable death.

In *Fraihat v ICE*, detainees from across the country have filed a class action lawsuit to challenge the federal government’s failure to ensure detained immigrants receive appropriate medical and mental health care, its punitive use of segregation in violation of the Fifth Amendment of the U.S. Constitution, and its failure to ensure that detained immigrants with disabilities are provided accommodations and do not face discrimination as required by Section 504 of the Rehabilitation Act of 1973.<sup>17</sup> The lawsuit details ICE’s lack of oversight in detention facilities, including California, and highlights the need for an alternative to the current system of immigration detention.

## Concealing the true toll of the COVID-19 pandemic in detention



Martin Vargas Arellano died 3 days after being released from immigrant detention from COVID-19 complications.

In March 2021, Mr. Martin Vargas Arellano, a 55-year old man with a history of serious health conditions, died after being released from the Adelanto detention facility. Mr. Vargas Arellano had diabetes, hypertension and hepatitis C. During months in detention, he made multiple requests for release because he was at high risk for COVID, but those requests were denied.<sup>18</sup> Mr. Vargas Arellano contracted COVID-19 in December 2020, and was in and out of the hospital due to complications. On March 5, two days after he had a stroke, Mr. Vargas Arellano was finally released from the Adelanto facility to the hospital, with no notice to his family or attorney. On March 8, he died of COVID-19 complications.<sup>19</sup>

Mr. Vargas Arellano's death raises questions about whether facilities are deliberately concealing the true toll of the COVID-19 pandemic in detention. A federal court judge found that "Based on the notice of death, it appears that the government actively concealed the seriousness of Mr. Arellano's condition, and his subsequent death, from his counsel and the court."<sup>20</sup> This was not an isolated incident. In litigation involving the Mesa Verde facility, another federal court judge found that ICE officials and representatives of for-profit detention operator GEO Group "gave false testimony several times" and deliberately "obstructed the proceedings" in order to hide their failures to take COVID-19 safety measures.<sup>21</sup>

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### Otay Mesa - A Case Study in Violations

There have been widespread reports of violations of the PRR's COVID-19 safety measures throughout facilities in California. Recounting all of these violations is beyond the scope of this report, but the situation in the Otay Mesa Detention facility provides a compelling case study. The outbreak in this facility was at one point the largest of any ICE detention facility in the country with more than 155 confirmed cases.<sup>22</sup> The facility was also the scene of the first COVID-19 death among ICE detainees in the entire

country, when Carlos Ernesto Escobar Mejia died in May of 2020. Fellow detainees recounted that "they did everything they could to alert ICE and CoreCivic...of his worsening condition, and that the officials responsible for his well-being failed to take those alerts seriously."<sup>23</sup> At the outset of the pandemic, it was reported that CoreCivic required detainees to sign legal waivers before providing them personal protective equipment. Detainees that protested this requirement were subsequently pepper sprayed.<sup>24</sup>

CoreCivic has also allegedly used "cohorting" in the Otay Mesa facility, a practice which includes holding people who have been exposed or exhibit possible symptoms in isolated groups, away from the general population.<sup>25</sup> The CDC guidelines, which are part of the PRR, have stated that prisons and detention facilities should avoid this practice.<sup>26</sup>



Carlos Ernesto Escobar Mejia came to the U.S. as a teenager, having fled El Salvador after his brother's murder. He was the first person to die from COVID-19 complications in ICE custody.

**A federal court judge found that ICE officials and representatives of for-profit detention operator GEO Group "gave false testimony several times" and deliberately "obstructed the proceedings" in order to hide their failures to take COVID-19 safety measures.**

# CONDITIONS SURVEY: HEALTH AND SAFETY DURING THE COVID-19 PANDEMIC

In an effort to obtain first hand information about the conditions inside immigrant detention facilities, IDA and CCIJ developed a self-report survey for detainees on conditions in detention and the threat posed by COVID-19. Between September 2020 and April 2021, 98 individuals detained by ICE across four California detention facilities completed the survey. Respondents were held at Mesa Verde Detention Facility, Yuba County Jail, Golden State Annex, and the Imperial County Facility.

Surveys were self administered by individuals in detention, and represent an important sample of what may be taking place across all facilities in our state. Despite the limited reach of this survey, there is overwhelming evidence of detention standards violations and threats to health and safety. **A comprehensive review of these facilities, in partnership with detainees and the community, would likely yield considerable evidence.**  
**COVID-19**

- 45 out of 97 individuals (46%) reported not having received a full medical screening when they were brought into the medical facility, a violation of the PBNDS.
- 88 out of 95 individuals (92%) surveyed believed that their lives were in danger in detention.
- At least 38% of detained individuals reported health conditions that could put them at greater risk for severe outcomes from COVID-19. Common health conditions included diabetes, asthma, high blood pressure, high cholesterol, and respiratory issues.
- 25% of participants requested to be evaluated by ICE for COVID-19, participants were then asked whether this request had been fulfilled within five days; out of the twenty-seven respondents, 74% said they were not evaluated within the five days of their request.
- Unfortunately, COVID-19 resulted in the isolation or hospitalization of many detained immigrants. About 51% of respondents reported that

someone in their pod had been isolated due to COVID-19 and 44% reported that someone in their pod had been hospitalized.

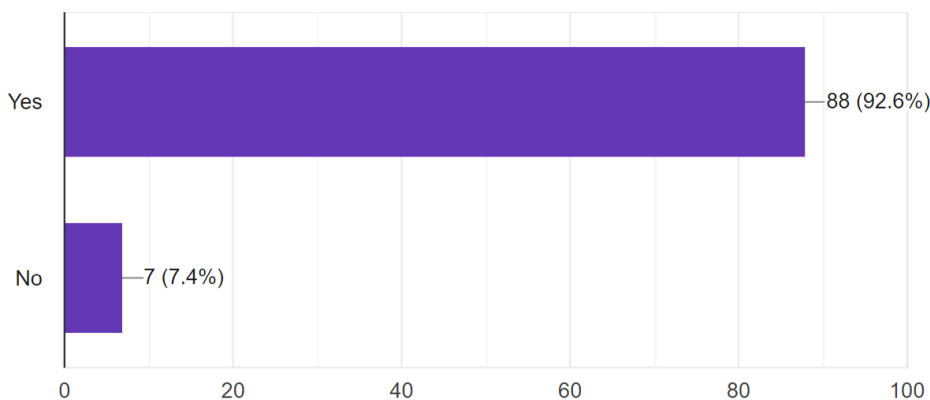
• The COVID-19 pandemic also impacted respondents' ability to work on their legal cases: more than half (45/88, or 51%) reported that COVID-19 had disrupted their access to legal representation. Disruptions to legal representation are arguably a threat not only to due process, but to any hope that individuals have of shortening

their stay in detention.

- Detainees were unable to observe basic social distancing during their time in detention. Out of 73 respondents, 68% responded that at least one other person slept within six feet of their bed.

Do you feel your health is in danger in detention?

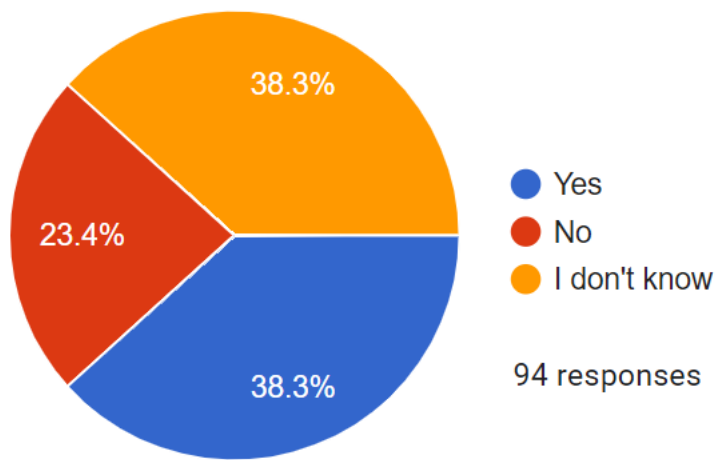
95 responses



The survey included a series of questions related to detainee health and safety during the COVID-19 pandemic. The results paint a grim picture regarding the failure of private operators to observe minimum standards to protect detainees from the spread of COVID-19, and corroborate reports from the press and legal proceedings about the negligence of private operators.



## Do you have a medical condition that puts you at greater risk of getting gravely sick from covid-19?



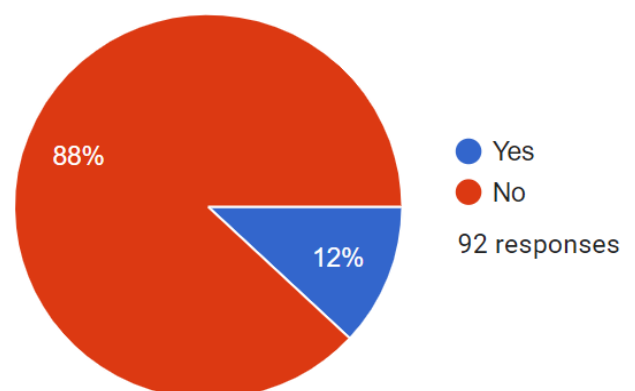
### Violations of Detention Standards

In addition to creating unsafe conditions during the COVID-19 pandemic, it appears that violations of the PBNDS are commonplace in detention. Despite the fact that the PBNDS includes specific and rigorous requirements with respect to the medical screening of new arrivals, as well as the inspection and sanitation of detention facilities, few if any of these standards seem to be consistently observed within detention facilities.

- Less than 12% of 92 respondents had witnessed ICE conducting bi-weekly inspections of the facility, mandated under the PBNDS.
- Of 92 respondents, 94% said they did not have the ability to attend organized programming or activities, despite programming access being required in the PBNDS.
- Access to nutritious food was also a significant issue, with 54% of those surveyed stating that access to nutritious food was either difficult or very difficult.
- 63% of individuals who reported having been disciplined said they were not provided with a written reason as to why.
- The PBNDS has very stringent guidelines with respect to exposing detainees to chemical agents, and requires proper training and supervision when detainees are given chemical agents to clean. Of 43 respondents who said they had been asked to handle cleaning chemicals or agents during their time in detention, only 18% said they had received proper training and instructions, and only 13% said they were supervised, in violation of PBNDS.

- Retaliation was also a major issue in detention. 56% of individuals who filed a grievance with the facility operators reported experiencing retaliation.
- Lastly, 77% of individuals who participated in hunger strikes reported experiencing retaliation for their participation, despite the fact that PBNDS forbids retaliation for such activities.

### Have you witnessed ICE undertaking any bi-weekly inspections?



# TESTIMONIALS ON DETENTION

The following testimonials are from detainees held in the Imperial Regional Detention Facility, based on declarations and legal filings shared with CCIJ and IDA. They provide direct testimonials on the conditions and administration of the facility during the COVID-19 pandemic. The written testimonials included here are copied in their original form. Initials used in place of identifying names.

In February of 2020, the Office of the Inspector General undertook an unannounced inspection of the Imperial Detention facility. Their findings were published in a report in December of 2020, finding that the facility, "...did not meet the standards for segregation, facility condition, medical grievances, and detainee communication. We determined detainees were held in administrative segregation for prolonged periods of 22 to 23 hours a day, including two detainees who had been held in isolation for more than 300 days. We also determined that parts of the facility were in poor condition, medical checks were insufficient to ensure proper detainee care, medical grievances and responses were not properly documented, and ICE communication with detainees was limited."<sup>27</sup>

The testimonials provided by detainees underscores the systematic issues found by the OIG report, and documents a complete lack of accountability despite OIG's supposed oversight.

## O.E.B

On March 31st...the majority of the detainees got together to discuss what to do about the unsanitary conditions we were living in. Everybody that night came to an agreement of going on peaceful hunger strike the following day. On the morning of April 1st all of the detainees did not get up to eat with the exception of one fellow detainee. That caused a sargent and a few officers to come to the dorm and talk to us as well as the Chaplain. We explained to the Sargent as well as to the Chaplain that the reason for eating was because we wanted better conditions which by that I mean that we wanted access to the law library. For better sanitary conditions. We were asking for more soap/hygiene. And the most important one I think was for our release... That day the officers took eight detainees and put them in solitary confinement. Meanwhile myself and the rest of the detainees were kept locked inside our cells and were told by officers that we would not be let out until we ate.



Detainees on strike at the Mesa Verde ICE Processing Center form a heart in the detention center yard.

Photo Courtesy of Kern Youth Abolitionists.

## C.R.

"...I decided not to partake in the hunger strike due to personal reasons...I also believe that the staff made a record that I was the only detainee that ate breakfast that morning...That same day of April 1, 2020...I observed a riot team of staff rush inside the housing unit and cell extract about eight detainees and escorted them to solitary confinement. I, however, later found out that such detainees were moved to a segregation due to allegations that they had threaten the detainee population at Bravo Housing Unit to participate in the above mentioned hunger strike...In addition I learned that their allegations also included the accusations that they had assaulted the only detainee that accepted his tray and that eat breakfast on 4/01/20...As being the only detainee that eat breakfast that morning and that did not participate, I hereby state and clarify that I was not assassinated by any detainee for such reason, nor for any reason.

**77% of individuals who had participated in hunger strikes reported experiencing retaliation for their participation, despite the fact that PBNDS forbids retaliation for such activities.**

## **R.D. - Grievance submitted 4/17/20**

I, along with other similarly concerned detainees, have been constant in submitting request in efforts to be provided sufficient means by which we can practice cleanliness and sanitary precautions, especially in the midst of ongoing serious COVID-19 pandemic. Specifically, we have been requesting that we provided sufficient hand soap as that is what the medical department instructs to utilize. This facility, however, continues to only issue one bottle of 4 oz shampoo per detainee and weekly despite facility's acknowledgement that it is an unrealistic expectation to anticipate detainees to make such extremely small quantity throughout the week to shower and to stay clean. Please know that the PBNDS 4.5 (D) Personal Hygiene Items mandates that facility must provide detainees hygiene items as needed and lists that we be provided (1) one bar of bath soap, or equivalent; and (5) one bottle of shampoo or equivalent.

**9/24/20**

We are being deprived of the means to practice scrupulous hygiene or rather ANY hygiene in the SMU. It has been longer than two weeks since hygiene supplies were distributed in here which consist of a small 4 ounce bottle of shampoo... Some of the detainees complaining do not know how to file a grievance or request and since solitary confinement unit (SMU), it is hard for such detainees.

**12/09/20**

"On every single occasion that I exit my cell Bravo unit officers enter my cell and conduct a cell search. This occurs on EVERY single occasion that I step out of my cell and EVERYDAY. There are times when my cell is searched over 3 times in one single day."...PBNDS 2.10 Searches of Detainees C. Search of Detainees housing and Work Areas, that such searches of detainees housing areas are to be conducted "...routine, but IRREGULARLY..." The method by which cell searches are conducted are NOT in accordance with such standards as cell searches are NOT "irregularly" but are rather conducted every SINGLE time I exit my cell."

**The testimonials provided by detainees underscores the systematic issues found by the OIG report, and documents a complete lack of accountability despite OIG's supposed oversight.**

# CASE STUDY: VACCINE ACCESS AND STATE AUTHORITY

Access to the COVID-19 vaccine for immigrants in California detention facilities provides an important case study on the importance of state oversight with respect to protecting the health and safety of individuals in immigrant detention. In particular this case study underscores the importance of ensuring that policy makers are properly informed about their role and responsibility on this issue, as well as the need for partnership with advocates and community members particularly during a pandemic.

In December of 2020, IDA, CCIJ, and dozens of organizations from across the state sent a letter to Governor Newsom, as well as Public Health Officials and the California Community Vaccine Advisory Committee, seeking clarity on plans to roll out the COVID-19 vaccine in immigration detention facilities. The letter highlighted the need to include providing vaccines to immigrant detention facilities in any discussions or plans for the rollout of the COVID-19 vaccine in California.

In January of 2021, a follow-up letter was submitted to state authorities, noting that ICE had publicly stated that it would be up to each state to administer the vaccine to immigrants in detention facilities. The letter asked for clarity about this gap in policy making between federal and state authorities. The California Department of Public Health declined to provide a response, and directed inquiries about the facilities to ICE.

When asked about the issue during a press conference in February, Governor Newsom stated that the facilities were outside the state's jurisdiction. "Federal detention facilities are operated uniquely and distinctively from the state. I can only talk to you about our responsibility specifically in our stewardship at CDCR and what the state of California has done."

The issue was also addressed during a public meeting for the Community Vaccine Advocacy Committee, "I will tell you very transparently right now, the answer is I don't know," California Surgeon General Nadine Burke Harris, who chairs the state's vaccine advisory committee, told committee members on Wednesday. "There are some real complex jurisdictional issues that are at play."<sup>28</sup>

In March, the state finally offered a clear response to the issue, clarifying that all detainees inside ICE detention facilities in California would be eligible for the vaccine by March 15, 2021.

The campaign was successful as a result of coordination between advocates, detainees and concerned community members, placing political pressure on policy makers. This included sending three letters, signed by dozens of community-based organizations and coordinating hundreds of public comments. There is no doubt that advocates' refusal to accept initial responses from the state that California lacked jurisdiction was a key component of the campaign's success.

**In March 2021, California became one of the first states to ensure vaccine access to immigrants in ICE detention. In doing so, California exposed the complete failure of ICE and private operators to take responsibility for this issue.**

Despite years of advocacy, state policy makers often view ICE detention facilities as outside of their jurisdiction. This view is often shared by local public health departments, despite clear legal guidance and authority on the issue. In fact a 2021 report by Cal DOJ notes, “Public and private detention facilities in California are subject to both state and local health standards and are evaluated by local health officials,” referencing California Code, Health and Safety Code - HSC § 101045.1<sup>29</sup>

Following the announcement in March 2021, California became one of the first states to ensure vaccine access to immigrants in ICE detention. In doing so, California exposed the complete failure of ICE and private operators to take responsibility for this issue, and further reinforced the importance of vigilance and proactive engagement on the issue of health and safety in immigrant detention.

### **Policy Recommendations: Opportunities for Accountability**

Against this backdrop of private negligence and ineffective federal oversight, there is a clear and pressing mandate for the state of California and local authorities to exercise a more meaningful role in ensuring adequate health and safety conditions in immigration detention facilities. Drastic steps and intervention in this respect are warranted and have precedent, including state intervention to take over the administration of private nursing homes, and other ongoing oversight and intervention in private detention facilities.<sup>30</sup>

In addition to increasing state regulation of private corporations that operate detention facilities, California public health officials should understand the legal consequences for private corporations that violate the law, including federal contractors who breach their contracts. The murky legal area that private corporations acting as federal contractors occupy vis-à-vis state regulation is complex, but must be carefully addressed and clarified.

Requirements related to health, safety, and welfare placed on detention operators by ICE can and should be viewed as legally binding. If and when a federal contractor violates the terms of their contract, they are no longer acting as an extension or agent of the federal government, but instead a private entity in violation of the law, and thus subject to the jurisdiction of the state in which they operate.

An in-depth legal analysis of potential constitutional challenges to this authority have been provided, including by the Cal DOJ during litigation involving AB 103 and AB 32.<sup>31</sup>

Legal memoranda has also been drafted in analyzing the authority of other states to regulate conditions in ICE detention.<sup>32</sup>

California must take immediate steps to prevent the unnecessary loss of human lives in immigration detention and surrounding communities, particularly in light of the federal government’s perilous refusal to take action on the matter. California has the legal authority and moral responsibility to protect the health and welfare of immigrants detained in our state. IDA, CCIJ and DRC recommend the following 5 point plan to hold ICE and private detention operators accountable in California.

### **5 Point Plan for Accountability**

- 1. Recognize the failure of federal oversight -** California policy makers should recognize the failure of federal and private oversight in these facilities, and take steps to ensure accountability from the state, particularly with respect to health and safety of individuals in these facilities.
- 2. Develop a strategy for oversight and accountability -** The state has many tools at its disposal to ensure oversight in immigration detention. This includes the authority of Cal DOJ to inspect facilities, as well as to enforce California law in seeking accountability. Local public health authorities also have considerable tools at their disposal to tour facilities, issue orders, and exercise enforcement of violations.
- 3. Partner with the community and impacted individuals -** State officials should take affirmative steps to ensure coordination and partnership with community members and detained individuals. By engaging directly with these groups, state officials can understand first hand what the problems are and develop solutions.
- 4. Build Power -** The state can build collective power through a strategy that incorporates sound public policy with grassroots partnerships, designed to engage with and address long standing needs.
- 5. Seek Justice -** The state’s ultimate goal must be rooted in bringing justice to those harmed by immigrant detention, including those detained as well as impacted communities at large.

# POLICY RECOMMENDATIONS

## California Department of Justice

1. Affirm California's authority and jurisdiction over private immigrant detention facilities.
2. Collaborate with advocates, currently and formerly detained individuals, and civil rights organizations to understand the issues posed by immigrant detention.
3. Audit and inspect detention facilities as part of a plan to seek accountability against private operators. Focus on violations of detention standards that are actionable.
4. Investigate violations of California law, including negligence that causes harm or death. This includes investigating outstanding allegations of misconduct by private operators, including the death of Mr. Choung Woong Ahn at the Mesa Verde Detention Center and Mr. Martin Vargas Arellano shortly after release from the Adelanto Detention Facility.
5. Seek accountability from private operators, by taking legal action against private corporations operating detention facilities when they violate state law and public health protocols.<sup>33</sup>
  - a. Bane Act: Investigate violations of the Bane act by detention operators, particularly in the context of retaliation against detainees.
  - b. AB 3228: Pursue legal action against private operators for breaches of detention standards in state court under AB 3228, a new law which provides a cause of action for violations of the PBNDS.

## Governor's Office

1. Ensure state agencies exercise proper legal authority over private immigration detention facilities.
2. Support bills, policies, and litigation designed to end the unnecessary detention of immigrants in California.
3. End all cooperation between the California Department of Corrections and Rehabilitation (CDCR) and ICE with respect to transferring individuals from state to ICE custody, particularly in light of the egregious conditions in detention centers.<sup>34</sup>

## California Department of Public Health

1. Provide clear guidance regarding the roles and responsibilities of county public health officials with respect to immigrant detention facilities
2. Develop a state-wide comprehensive plan to ensure that immigrant detention facilities do not continue to be the scene of COVID-19 outbreaks, and do not spread to the local community or threaten public health resources. This plan should be part of the broader plan to reopen the state safely.
3. Formulate a special task force which includes the California Division of Occupational Safety and Health (CAL/OSHA) to investigate workplace safety conditions in detention facilities, including labor undertaken by detainees.

# LETTER TO CALIFORNIA STATE OFFICIALS

August 5, 2021

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

Attorney General Rob Bonta  
1300 I Street  
Sacramento, CA 95814

Re: Conditions in Immigration Detention Facilities

Dear Governor Newsom and Attorney General Bonta:

We are reaching out to your respective offices to highlight our ongoing concern with regard to the situation of immigrants in detention in California. As you are aware the COVID-19 pandemic has presented serious challenges to protecting the health and safety of individuals in detention facilities. We commend California's longstanding commitment to immigrants rights but in the face of continued outbreaks and otherwise preventable deaths, we believe that the state of California can and should do more to protect the lives of those detained in immigrant detention facilities in our state.

Accompanying this letter please find a report detailing the conditions of confinement in the detention facilities throughout the state, including specific examples of ongoing violations of California state law. The report includes a sample survey as well as testimony from individuals inside detention facilities. Lastly the report provides specific policy recommendations to your respective offices to seek justice and accountability with respect to these facilities.

Although these facilities are used to detain individuals in the custody of Immigration and Customs Enforcement (ICE), seven of the eight facilities are owned and operated by private prison corporations, who are subject to California state laws requiring them to meet minimum standards of care. The eighth facility is the Yuba County Jail which is subject to oversight from the Board of State and Community Corrections.

Therefore we believe that it is appropriate for the state of California to exercise proactive oversight in these facilities, in order to protect the health and safety of those in detention. The U.S. Court of Appeals for the Ninth Circuit has found that this type of oversight is lawful and appropriate under the state's police powers. See *U.S. v. California*, 921 F.3d 865, 886 (9th Cir. 2019) and *The Geo Group, Inc. v. Newsom*, 19-2491 (S.D. Cal., Oct. 8, 2020)

We kindly request to meet with your staff in order to discuss the report and how we can partner to find solutions to the challenges posed by these facilities.

Respectfully,

Jackie Gonzalez  
Policy Director  
Immigrant Defense Advocates

Bianca Sierra Wolff  
Executive Director  
California Collaborative for Immigrant Justice

Richard Diaz  
Staff Attorney  
Disability Rights California

**Organizational Sign-ons in Support:**

1. Alianza Sacramento
2. American Friends Service Committee- US-Mexico Border Program
3. API Equality-LA
4. Bend the Arc
5. California LULAC
6. California Pan-Ethnic Health Network
7. California Latinas for Reproductive Justice
8. CALMA (Collective Action for Laborers, Migrants & Asylum Seekers)
9. Campaign for Immigrant Detention Reform (CIDR)
10. Central American Resource Center -CARE-CEN- of California
11. Central American Students Association at Harvard
12. Center for Gender & Refugee Studies (CGRS)
13. Centro Binacional Para El Desarrollo Indígena Oaxaqueño (CBDIO)
14. Centro Legal de la Raza
15. Coalition for Human Immigrant Rights (CHIR-LA)
16. CRLA Foundation
17. Desert Support for Asylum Seekers
18. Dolores Street Community Services
19. Education and Leadership Foundation
20. Faithful Friends/Amigos fieles
21. Familia: Trans Queer Liberation Movement
22. Freedom for Immigrants
23. Haitian Bridge Alliance
24. Human Rights First
25. Immigrant Legal Defense
26. IMPORTA Santa Barbara
27. Interfaith Movement for Human Integrity
28. Jewish Coalition Assisting Refugees & Immigrants - Los Angeles
29. Jewish Family & Community Services - East Bay
30. Kern Welcoming and Extending Solidarity to Immigrants
31. Korean Community Center of the East Bay
32. La Raza Community Resource Center
33. Law Office of Helen Lawrence
34. Long Beach Immigrant Rights Coalition
35. Los Angeles Center for Law and Justice
36. Monument Impact
37. Mi Familia Vota
38. Mujeres Unidas y Activas
39. NorCal Resist
40. North Bay Rapid Response Network: Napa, Solano and Sonoma Counties
41. Pangea Legal Services
42. Public Law Center
43. Removal Defense Clinic, Southwestern Law School
44. Reiki Center of the East Bay
45. SALVA
46. Silicon Valley De-Bug
47. Secure Justice
48. SIREN (Services, Immigrant Rights and Education Network)
49. SOLACE in San Diego
50. VIDAS Legal Services (North Bay)



# END NOTES

1 U.S. v. California, 921 F.3d 865, 886 (9th Cir. 2019)

2 Office of the DHS Inspector General (OIG), “ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards,” OIG-19-18, January 29, 2019. p. 7

3 See ICE COVID-19 Pandemic Response Requirements

4 ICE Performance-Based National Detention Standards (PBNDS)

5 This requirement is from CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities pg 5, mandatory guidance for all ICE detention facilities under the ICE Pandemic Response Requirements.

6 Ana Ibarra, “Immigration detention centers showcase California’s vaccine chaos” Cal Matters <https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/>

7 Id.

8 PBNDS 2.15

9 Andrea Castillo “Immigrants detained at Adelanto staged a peaceful protest. Guards in riot gear pepper-sprayed them” LA Times, June 26, 2020

10 Complaint, Zepeda Rivas et al. v. Jennings et al., No. 3:20-cv-02731 (N. D. Cal. Apr. 20, 2020), ECF No. 01

11 See OIG -ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility

12 Rebecca Plevin, “‘This death was preventable’: Family asks state to probe 74-year-old’s suicide in ICE detention” Desert Sun, August 7, 2020

13 Farida Jhabvala Romero “‘They Didn’t Listen to Us’: ICE Detainee Who Waged Hunger Strikes for COVID-19 Protections Gets Virus” KQED <https://www.kqed.org/news/11856995/they-didnt-listen-to-us-ice-detainee-who-waged-hunger-strikes-for-covid-19-protections-gets-virus> January 26, 2021

14 See 42 U.S.C §12201;29 U.S.C. § 794

15 See generally 6 C.F.R. § 15.30; 2011 PBNDS 4.8 at 345.

16 See, e.g., Disability Rights California, There Is No Safety Here: The Dangers for People with Mental Illness and Other Disabilities in Immigration Detention at Geo Group’s Adelanto ICE Processing Center, Mar. 2019, [https://www.disabilityrightscalifornia.org/system/files/file-attachments/DRC\\_REPORT\\_ADELANTO-IMMIG\\_DETENTION\\_MARCH2019.pdf](https://www.disabilityrightscalifornia.org/system/files/file-attachments/DRC_REPORT_ADELANTO-IMMIG_DETENTION_MARCH2019.pdf).; Disability Rights California, Otay Mesa Detention Center: Inhumane Conditions and the Harsh Reality of ICE’s Civil Detention System, Nov. 2020, <https://www.disabilityrightscalifornia.org/system/files/file-attachments/OM-Report-Final.pdf>; Memorandum from DHS CRCL to ICE regarding Adelanto Correctional Facility Complaints (April 25, 2018), [https://www.pogo.org/document/2019/09/dhs-office-for-civil-rights-and-civil-liberties-review-of-adelanto-sent-to-ice-in-april-2018/#document/p47/a520498%20\(finding%20%22Detainees%20with%20serious%20mental%20health%20\(“Detainees with serious mental disorders should only be housed in administrative segregation as a last resort, as that environment is not conducive to improving mental health status”\).](https://www.pogo.org/document/2019/09/dhs-office-for-civil-rights-and-civil-liberties-review-of-adelanto-sent-to-ice-in-april-2018/#document/p47/a520498%20(finding%20%22Detainees%20with%20serious%20mental%20health%20(“Detainees%20with%20serious%20mental%20disorders%20should%20only%20be%20housed%20in%20administrative%20segregation%20as%20a%20last%20resort%20as%20that%20environment%20is%20not%20conducive%20to%20improving%20mental%20health%20status”))

Detention Facilities, Center for Disease Control (March 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>

17 *Fraihat v. ICE*, No. 5:19-cv-01546-JGB-SHK (C.D. Cal, 2019)

18 Alene Tchekmedyan and Andrea Castillo, “ICE released a sick detainee from Adelanto immigration facility. He died three days later”, *Los Angeles Times* (March 20, 2021) <https://www.latimes.com/california/story/2021-03-20/adelanto-detainee-death>

19 Summer Lin, “Man who begged for ICE release dies of COVID days after he’s freed, lawyers say”, *Sacramento Bee*, (Mar. 23, 2021): <https://www.sacbee.com/news/nation-world/national/article250148244.html>

20 Order, *Hernandez Roman v. Wolf*, CV 20-00768 TJH (C.D. Cal, March 22, 2021)

21 Order granting motion for second preliminary injunction, *Zepeda Rivas v. Jennings*, 20-cv-02731 VC (Dec. 3, 2020)

22 Ryan Devereaux, ICE Detainee Who Died of COVID-19 Suffered Horrifying Neglect, *The Intercept* (May 24, 2020), <https://theintercept.com/2020/05/24/ice-detention-coronavirus-death/>;

23 *Id.*

24 Kate Morrissey “Detainees at Otay Mesa detention centers were offered masks but only if they signed contracts” *The San Diego Tribune*, April 10, 2020 <https://www.sandiegouniontribune.com/news/immigration/story/2020-04-10/otay-mesa-detention-center-gets-masks-but-asks-detainees-to-sign-contract-first>

25 *Id.*

26 Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Center for Disease Control (March 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>

27 ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility <https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf>

28 Ana Ibarra, “Immigration detention centers showcase California’s vaccine chaos” *Cal Matters* <https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/>

29 The California Department of Justice’s Review of Immigration Detention in California January 2021, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf> pg 17

30 This includes the Attorney General’s ability to monitor health and safety of immigrant detention facilities under AB 103.

31 See *U.S. v. California*, 921 F.3d 865, 886 (9th Cir. 2019) and *The Geo Group, Inc. v. Newsom*, 19-2491 (S.D. Cal., Oct. 8, 2020).

32 Missed Opportunities: State and Local Authority to Regulate the Northwest Detention Center <https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2020/12/UW-Legal-Appendix-State-and-Local-Authority-NWDC-FINAL.pdf>

33 Under Art. V, Sec. 13 of the Constitution the Attorney General has the authority to enforce all state laws

34 For more information on this see the VISION Act (AB 937).