

Immigrant Detention in California: Opportunities for Accountability

Policy Brief

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In memory of Carlos Ernesto Escobar Mejía, Choung 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. 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

<p>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.</p>
<p>California Governor's Office: Support legislation, policies, and litigation designed to end the unnecessary detention of immigrants in California.</p>
<p>California Department of Public Health: Provide clear guidance regarding the roles and responsibilities of public health officials with respect to immigrant detention facilities.</p>

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 lee 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.

Immigration Detention Facilities in California	
Private facilities	<ul style="list-style-type: none"> • 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)
Public Facilities	<ul style="list-style-type: none"> • Yuba County Jail - Capacity 220 (Operated by Yuba County Sheriff)
Total Detention Capacity: 7,408	

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.¹

Violations 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.² 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-19.³ 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.⁴
- 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.⁵

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.⁶

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.”**⁷

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.”⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹²

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."¹³

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.¹⁴ The Department of Homeland Security (DHS) has adopted and implemented Section 504's prohibitions as binding regulations to combat disability discrimination.¹⁵ 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.¹⁶ The death of Mr. Choung Woong Ahn, mentioned above, 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 Fieh 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 1973.¹⁷ 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

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.¹⁸ 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 was finally Arellano 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.¹⁹

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 noted 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."²⁰ 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.²¹

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.²² The facility was also the scene of the first COVID 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.”²³ 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.²⁴

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.²⁵ The CDC guidelines, which are part of the PRR, have stated that prisons and detention facilities should avoid this practice.²⁶

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 a survey about their well-being in detention during the COVID-19 pandemic. Respondents were held at Mesa Verde Detention Facility, Yuba County Jail, Golden State Annex, and the Imperial County Facility.

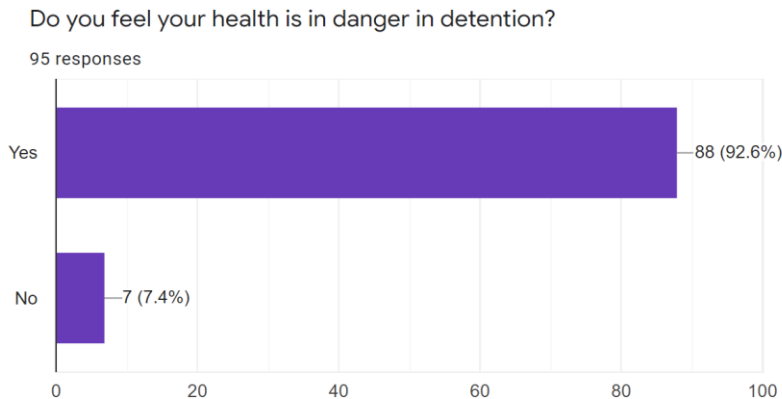
Surveys were self-administered by individuals in detention, and represent an important sample of what may be taking place across all facilities in our state. Despite the limited reach of this survey, there is

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

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. One of the clearest indications of this is the fact that 95% of individuals surveyed believed that their lives were in danger in detention.

- 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. In addition, a full 38% did not know if their existing health conditions could increase their risk for poor outcomes from COVID-19, potentially suggesting a lack of access to health screenings.



- 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.

Violations of Detention Standards

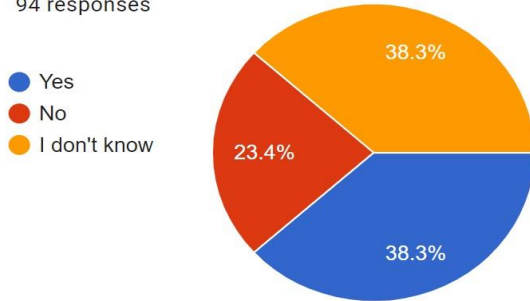
In addition to creating unsafe conditions during the COVID-19 pandemic,

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 had participated in hunger strikes reported experiencing retaliation for their participation, despite the fact that PBNDS forbids retaliation for such activities.

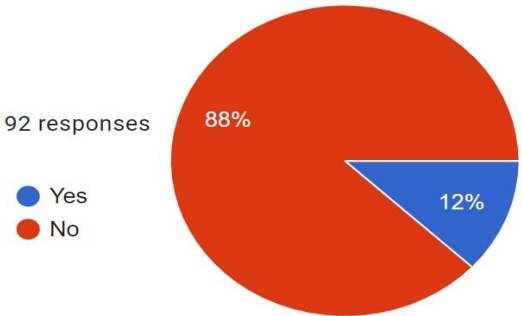
Do you have a medical condition that puts at greater risk of getting gravely sick from covid-19?

94 responses



Have you witnessed ICE undertaking any bi-weekly inspections?

92 responses



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."²⁷

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.

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 deatinee 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.

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 consistent of a small 4 ounce bottle of shampoo... Some of the detainees complaining do not know how to file a grievance or request and reside 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.”

Case Study - Vaccine Access and State Authority

The vaccination of 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."

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.

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 § 101045.128

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.²⁹

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 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). Legal memoranda has also been drafted in analyzing the authority of other states to regulate conditions in ICE detention.³⁰

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.³¹
 - 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.
 - c) Labor violations and trafficking: CAL DOJ should join other states in filing suit against private operators for wage claims by detainees who are underpaid for their labor in detention. CAL DOJ should also explore allegations of forced labor in these facilities that violate the Trafficking Victims Protection Reauthorization Act.

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. ³²

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.

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.disabilityrightsca.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.disabilityrightsca.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](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) (“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”).

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 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

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

30 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>

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

32 For more information on this see the VISION Act ([AB 937](#)).