

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer, County of San Bernardino  
351 N. Mountain View Avenue  
San Bernardino, CA 92415

September 1, 2020

Re: Informational Inquiry Regarding COVID-19 at the Adelanto ICE Processing Center

Dear Dr. Erin Gustafson,

I am writing to you to follow up Human Impact Partners' May 13, 2020 letter, signed by 41 San Bernardino County health professionals and local community organizations, expressing concern regarding the spread of COVID-19 at the Adelanto ICE Processing Center.

**The situation at the Adelanto ICE Processing Center continues to present a critical health issue for our community.** At present, the Adelanto facility is one of four privately operated civil detention facilities in California. that hold up to 5,000 individuals at any given time, with future plans to expand to as many as 7,000. To date there have been COVID-19 infections reported at each of these facilities, with an outbreak of over 160 individuals occurring at the Otay Mesa detention facility that was reportedly the largest in the country. <sup>1</sup>

The true scope of COVID-19 infections at the Adelanto ICE Processing Center is currently unknown. An ACLU lawsuit recently uncovered that [ICE has "banned" COVID testing at the facility](#). As a result, while 305 people detained at the Adelanto facility presented COVID-19 symptoms between March 1 and July 15, only one was actually tested.<sup>2</sup>

While we very clearly understand that the Adelanto ICE Processing Center is used by the federal government to house immigrants, we are also aware that privately run facilities are subject to certain mandatory requirements<sup>3</sup>, including but not limited to the following:

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<sup>1</sup> Otay Mesa COVID-19 Outbreak Now the Largest At A US Immigration Facility  
<https://www.kpbs.org/news/2020/apr/14/otay-mesa-detention-center-now-largest-immigration/>

<sup>2</sup> ACLU Says ICE Secretly Bans COVID-19 Testing of Adelanto Detainees  
<https://www.nbclosangeles.com/news/local/aclu-says-ice-secretly-bans-covid-19-testing-of-adelanto-detainees/2411290/>

<sup>3</sup> ICE ERO COVID-19 Pandemic Response Requirements (Version 3.0, July 28, 2020)  
<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

- Each facility should “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>
- Each facility must develop a COVID-19 mitigation plan. Administrators should plan and prepare for COVID-19 by “[c]oordinating with public health and correctional partners.” As well as “[i]dentify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop.”<sup>6</sup>

In addition to the mandatory requirements related to public health, ICE has issued broad requirements related to the day to day operations of these facilities, including requirements related to health and safety in these facilities. Based on reports in the press and by those detained inside these facilities, it appears that private corporations are routinely violating the health and safety requirements for these facilities in their daily operations.

We believe that violations of mandatory requirements by private corporations warrant oversight and regulation. We would underscore the fact that this facility is operated by a private actor and not the federal government. Clear legal authority from the U.S. Supreme Court has held that private operators who act in violation of their federal contracts or mandatory requirements are violating the law and should be subject to liability by state and local authorities.<sup>7</sup>

**In order to better evaluate private operator compliance with mandatory local public health requirements, we kindly request the Department’s response to the following informational inquiry:**

### **Informational inquiry**

1. What, if any, coordination or collaboration has taken place between private detention facility operators and/or the U.S. Immigration and Customs Enforcement (“ICE”) and the San Bernardino County local health department?
2. Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Adelanto detention facility?

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<sup>4</sup> ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

<sup>5</sup> This requirement is from CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities pg 5, guidance which is mandatory for all ICE detention facilities.

<sup>6</sup> *Id.* at pg 6

<sup>7</sup> Private prison corporations acting as federal contractors have enjoyed immunity from liability by claiming derivative sovereign immunity, however the Supreme Court has ruled that sovereign immunity does not apply to federal contractors who violate the express terms of a government contract or directive. "When a contractor violates both federal law and the government’s express instructions... there is no immunity". *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 193 L. Ed. 2d 571 (2016), as revised (Feb. 9, 2016).

3. Has your department been provided a copy of the COVID-19 mitigation plan for the Adelanto detention facility either by ICE or the facility operator? If so, please provide a copy of that plan.
4. Is your department receiving reports of confirmed COVID-19 cases from ICE or the detention facility operator? If so, please provide that data.
5. ICE facility operators must notify local public health agencies of any individual who is ill or isolated and is set for release “to coordinate further monitoring, if required.” Is your department being notified by ICE or facility operators about impending releases?
6. Given the tangible threat to local communities posed by these vulnerable facilities, what if any plan has been developed by your department to ensure proper testing and containment of COVID-19 in these facilities by your department?
7. You stated that your department has provided written guidelines and educational materials to those facilities. Please provide more information regarding what specific guidelines and educational materials have been provided to the facility, and provide copies of those materials if possible.
8. Do you believe ICE detention facilities are currently in compliance with local public health orders and requirements?

In addition to a written response to the above inquiry, we again request an urgent meeting to discuss the ever-growing crisis at the Adelanto ICE Processing Center and how we can partner to protect the health and safety of staff, individuals presently detained at the facility, and our community at large.

Sincerely,



Lisa Knox  
Immigration Managing Attorney  
Centro Legal de la Raza