



August 24, 2020

Delivered Via Email

Kern County Public Health Services Department
Matthew Constantine, Director of Public Health Services
1800 Mt. Vernon Avenue
Bakersfield, CA 93306

**Re: Request for Information and Meeting re COVID-19 at the Mesa Verde
Detention Facility**

Dear Mr. Constantine:

We are contacting your office with respect to a public health concern that presents a unique and ever-growing challenge to our community during the COVID-19 pandemic, namely the spread of COVID-19 at the Mesa Verde Detention Facility (“Mesa Verde”).

One of the six indicators put forth by Governor Newsom’s plan to reopen the state, is the ability to prevent COVID-19 outbreaks in facilities which are vulnerable to infection, including detention facilities.¹ However, our understanding is that no such plan has been developed by the state for this facility.

At present, California is home to four privately operated civil detention facilities 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.² Currently at Mesa Verde, more than 50% of individuals have tested positive for COVID-19, with continued increase in positive cases and tests still pending for some individuals.³

A study developed by the Nature Public Health Emergency Collection on the spread of COVID-19 in these facilities estimates that coronavirus outbreaks among a minimum of 65 ICE facilities

¹ See California’s Roadmap to Modify the Stay-at-Home Order, pg 7

² 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/>

³ <https://www.desertsun.com/story/news/politics/immigration/2020/08/16/judge-orders-covid-19-tests-all-detainees-bakersfield-mesa-verde-ice/5595819002/>



(59%) would overwhelm ICU beds within a 10-mile radius and outbreaks among a minimum of 8 ICE facilities (7%) would overwhelm local ICU beds within a 50-mile radius over a 90-day period, provided every ICU bed was made available for sick detainees.⁴

While we very clearly understand that Mesa Verde is used by the federal government to house immigrants, we are also aware that privately run facilities are subject to certain mandatory requirements⁵, including but not limited to the following:

- 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.”⁶
- 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.⁷
- 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.”⁸

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. Through pending litigation, it was discovered that facility officials “deliberately limited testing” at the facility, therefore endangering the lives of individuals inside the facility and our surrounding community, including having to transport at least 4 individuals to local hospitals.⁹ Mesa Verde’s callous disregard for human life in and out of the facility requires local monitoring and enforced accountability by the county’s public health department. Failing to do so will continue to have grave consequences on the lives of families of Mesa Verde staff, and thereafter any person they come in contact with, leading to a continued depletion of limited county health resources.

⁴ Modeling COVID-19 and Its Impacts on U.S. Immigration and Customs Enforcement (ICE) Detention Facilities, 2020 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7228433/>

⁵ ICE ERO COVID-19 Pandemic Response Requirements (Version 3.0, July 28, 2020) <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

⁶ ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

⁷ 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.

⁸ *Id.* at pg 6

⁹ <https://www.latimes.com/california/story/2020-08-06/amid-coronavirus-outbreak-at-bakersfield-immigration-facility-emails-show-ice-deliberately-limited-testing>



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.¹⁰

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 Kern 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 Mesa Verde detention facility?
3. Has your department been provided a copy of the COVID-19 mitigation plan for the Mesa Verde 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. Has your department issued any guidance regarding COVID-19 that has been shared with these facilities?
8. Do you believe ICE detention facilities are currently in compliance with local public health orders and requirements?

¹⁰ 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).



In addition to a written response to the above inquiry, we request an urgent meeting to discuss the ever-growing crisis at Mesa Verde and how we can partner to protect the health and safety of staff, individuals presently detained at the facility, and our community at large. Given the current public health crisis, we respectfully request a seven (7) day timely response to the above inquiry.

Sincerely,

The Rapid Response Network of Kern

cc: Melissa Hurtado, State Senator, District 14
Rudy Salas, Assemblymember, District 32
Leticia Perez, Kern County Board of Supervisors, Chairwoman
Kathleen Krause, Clerk of the Board of Supervisors