



Immigrant Defense
Advocates



California Collaborative for Immigrant Justice
Colaborativo de California de Justicia para Inmigrantes

September 24, 2020

Delivered Via Email

San Diego County Public Health Department
Dr. Wilma Wooten, Public Health Officer
Health and Human Services Agency
County of San Diego
1600 Pacific Highway, Room 206
San Diego, CA 92101

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

Dear Dr. Wooten:

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 Otay Mesa Detention Center.

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 Center that was reportedly the largest in the country.²

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 (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.³

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 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/>

While we very clearly understand that the Otay Mesa Detention Center is used by the federal government to house immigrants, we are also aware that privately run facilities are subject to certain mandatory requirements⁴, 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.”⁵
- 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. ⁶
- 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.”⁷

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.⁸

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:

⁴ ICE ERO COVID-19 Pandemic Response Requirements (Version 3.0, July 28, 2020) <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

⁵ ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

⁶ 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.

⁷ *Id.* at pg 6

⁸ 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).

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 Diego local health department?
- 2.) Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Otay Mesa Detention Center?
- 3.) Has your department been provided a copy of the COVID-19 mitigation plan for the Otay Mesa Detention Center 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?

In addition to a written response to the above inquiry, we request an urgent meeting to discuss the ever-growing crisis at the Otay Mesa Detention 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,

s/Jackie Gonzalez
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