

IMMIGRATION DETENTION & PUBLIC HEALTH

Executive Summary

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 California is home to six immigrant detention facilities, five of which are operated by for-profit private corporations with no direct state oversight. All five of these private facilities have been the site of COVID-19 outbreaks.

While immigrant detention facilities are under the jurisdiction of the federal government, there are clear requirements for the operation of these facilities, which include explicit requirements to coordinate with and abide by state and local public health mandates. Despite these requirements, private detention operators have consistently failed to meet these standards. In some cases they have refused to comply with requests by local public health departments, in contravention of their own federal contracts.

Problem: Federal immigration detention facilities are required to abide by state and local health care plans related to COVID-19. Immigration detention operators, particularly private operators, have failed to abide by these requirements. To date public health authorities have failed to exercise this legal authority in coordinating with these facilities, and have failed to formulate a comprehensive plan or undertake strategic intervention to protect public health and mitigate the spread of COVID-19 in these facilities.

Recommendations²

- 1.) **Understand Roles & Responsibility-** Clarify the role that local and state public health authorities have in safeguarding public health in immigrant detention facilities, according to guidance issued by the federal government.
- 2.) **Develop a Plan** - Recognize the threat posed to surrounding communities by outbreaks in detention facilities and formulate a clear plan to mitigate the spread of COVID-19.
- 3.) **Take Action** -Undertake strategic actions to ensure oversight, compliance and consistency with respect to public health standards in immigration detention facilities.



Private Immigration Detention Facilities in California

- **Otay Mesa Detention Center** - Capacity 1,970³ (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.)
- **Adelanto ICE Processing Center** - Capacity 1,940 (Operated by The GEO Group Inc.)
- **Imperial Regional Detention Facility** - Capacity 782 (Operated by Management & Training Corp)

Public Immigrant Detention Facilities

- **Yuba County Jail**- Capacity 220 (Operated by Yuba County)

Total Detention Capacity: 6,012⁴

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

² For full recommendations see page 7

³ This total includes individuals detained by ICE as well as the U.S. Marshall Service

⁴ An additional 1,400 private detention beds are slated to be added to this total by ICE pending local permits.

Background

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. These facilities also receive transfers from state prisons and jails, and as such, are part of a larger challenge posed by facilities vulnerable to COVID-19 infections. The potential humanitarian crisis posed by the spread of COVID-19 in immigration detention facilities in California can have disastrous consequences for those detained in these facilities, as well as neighboring communities.

Just as nursing homes have proven to be distinct from other businesses during the COVID-19 based on the high risk to human lives under negligent care, immigrant detention facilities, especially those operated by for-profit corporations pose similar challenges.

The threat is further compounded by the fact that five of the six facilities used to house immigrants by the federal government are operated by for-profit, private corporations which routinely fail to meet minimum standards for health and safety. During a pandemic in which the actions of a few can impact the well being of so many, accountability for private prison operators is paramount.

At present, California is home to five privately operated civil detention facilities that have the capacity to hold more than 5,600 individuals at any given time, with future plans to expand to as many as 7,200. To date, COVID-19 infections have been reported at each of these facilities, with an outbreak of over 160 individuals occurring at the Otay Mesa detention facility which at one point was reportedly the largest in the country.⁵

While the consequences of COVID-19 in immigration detention are dire for those detained, it should be of grave concern given the significant challenges this potential outbreak has for California as a whole. A study published in the [Journal of Urban Health](#) on the spread of COVID-19 in immigration detention 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.⁶

In response to the COVID-19 pandemic, Immigration and Customs Enforcement (ICE) released a set of mandatory requirements for all detention facilities, which expressly require coordination with state and local public health departments.⁷ The requirements include but are 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.”⁸

⁵ 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/>

⁶ 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/>

⁷ ICE ERO COVID-19 Pandemic Response Requirements (Version 3.0, July 28, 2020)

<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

⁸ ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

- 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.⁹
- 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.”¹⁰

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 these private corporations routinely violate the health and safety requirements for these facilities in their daily operations.

For example it has been reported that a private operator, CoreCivic, attempted to require detainees in the Otay Mesa Facility to sign legal waivers before providing them personal protective equipment. Detainees which protested this requirement were subsequently pepper sprayed.¹¹ Accounts from the Adelanto detention facility operated by the GEO Group reveal that detainees have been exposed to hazardous chemicals in the facility, resulting in serious health conditions.¹² In the Mesa Verde Detention facility also operated by the GEO Group, guards placed a 74 year old man with a documented history of suicide attempts in solitary confinement with improper supervision. The man was later found dead of an apparent suicide.¹³

The potential threat posed by negligence in for-profit detention facilities is particularly dire as the two additional detention facilities are set to open in the coming months, bringing the total number of individuals detained in the state to more than 7,200 and the total number of private facilities to seven.

Outreach to Public Health Officials

In an effort to understand what level of coordination has been taking place between private detention facility operators and local and state public health officials, Immigrant Defense Advocates in coordination with other community partners, American Civil Liberties Union- San Diego and Imperial Counties, American Friends Service Committee, California Collaborative for Immigrant Justice, Centro Legal de la Raza, Desert Support for Asylum Seekers, Inland Empire Coalition for Immigrant Justice, Pueblo Sin Fronteras, and Rapid Response Network of Kern, Kern Welcoming and Extending Solidarity to Immigrants, as well as elected officials conducted

⁹ 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.

¹⁰ *Id.* at pg 6

¹¹ 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>

¹² Rebecca Plevin “Immigrants, advocates, members of Congress decry chemical use at ICE facility in Adelanto”, Palm Springs Desert Sun, June 27,2020
<https://www.desertsun.com/story/news/politics/immigration/2020/06/27/immigrants-members-congress-decry-chemical-use-ice-facility-adelanto/3273095001/>

¹³ “Death of 74-year-old in immigration jail is seen as suicide”, The Associated Press, May 19, 2020
<https://abcnews.go.com/Health/wireStory/death-74-year-immigration-jail-suicide-70774858>

outreach to local public health departments, and the California Department of Public Health (“CDPH”). This includes informational inquiries sent to the following public health departments.¹⁴

- Kern County
- Yuba County
- San Diego County
- Imperial County
- San Bernardino County

The responses obtained from each public health department have varied, with some departments being open to a discussion and acknowledging limited coordination with private detention operators, while others treated the inquiry as a Public Records Act request and are presently releasing documents on a rolling basis that only further engender concern.

Far from actively engaging with public health departments, as mandated by ICE, private detention facility operators have seemingly provided limited information to local public health departments, and do not appear to be engaged in cooperation or joint planning around the containment of COVID-19 in these facilities. Some of the key findings include¹⁵:

- A refusal by Core Civic, the private operator of the Otay Mesa Detention Facility, to abide by CDPH recommendations to test all staff, despite an ongoing outbreak of COVID-19. With the assistant Warden stating “Just so we’re clear - at this point we have no intention to mass test our staff.”¹⁶ In other instances, San Diego County officials simply ask the private corporation if there is anything they can do to help “mitigate the spread [redacted]We talk [sic] about this previously...but wanted to ask again .”¹⁷
- None of the local public health departments contacted indicated that they had been consulted by detention providers in formulating a COVID-19 mitigation plan, nor had any received any such plan from the detention providers in their jurisdiction.
- The majority of the local public health departments had not developed a COVID-19 plan for the facility in their jurisdiction. Some departments stated the reason for this was because they lack jurisdiction over the facility in question¹⁸, noting its status as a federal facility, while others provided no explanation for this gap.
- Involvement by CDPH at each facility has been inconsistent with no indication of contact or collaboration in the case of one facility, Imperial Regional Detention Facility, and quite limited in the case of others.¹⁹ The Kern County Department of Public Health where the Mesa Verde Detention Facility is located, referenced what appeared to be its first meeting with CDPH on August 24, 2020, notably the same date that advocates sent an informational inquiry to the Kern County Department of Public Health.²⁰
- At least two of the local public health departments stated that they are not receiving any notification from the private facility operator about impending releases of individuals into the community²¹, raising grave concerns about whether facilities are providing proper care, orientation and screenings to individuals who are released into the community.

¹⁴ For copies of each letter and responses see generally Appendix

¹⁵ Id.

¹⁶ Email correspondence between San Diego County and Core Civic Appendix, pg 15

¹⁷ Email correspondence between San Diego County and Core Civic Appendix, pg 18

¹⁸ Response from the Kern County Public Health Department, Appendix, pgs 10-11

¹⁹ Response from the Imperial County Public Health Department, Appendix, pgs 28-31

²⁰ Response from the Kern County Public Health Department, Appendix, pgs 10-11

²¹ Responses from the Kern County Public Health Department and San Bernardino County Department of Public Health Appendix, pgs 10-11, 23-24

The information obtained from these local departments raises serious questions about the lack of clarity regarding the role and responsibility of public health entities with respect to detention facilities in the state of California, what information they are entitled to and what actions they can take.

It is particularly concerning that seemingly the first meeting with CDPH regarding the Mesa Verde facility did not occur until that late in August when there had been a documented COVID-19 outbreak at that facility at the beginning of August and countless prior reports of reckless behavior by the private operator of that facility that would undoubtedly lead to an outbreak, including failure to test detained individuals not because testing was unavailable but because of the “housing” problem it would create for the private operator managing the facility.²²

In addition to letters sent to local public health departments, on October 12th, twenty-six members of the California legislature penned a letter to the California Department of Public Health with respect to reports of ICE raids targeting sanctuary cities in the state, and the issue of public health in immigration detention. The letter expressed concerns about the threat posed to public health and safety by ICE raids in the community and asked CDPH to clarify what if any coordination or collaboration was ongoing between their department and ICE detention operators.

The letter also asked the department whether ICE detention facilities in California are currently in compliance with state and federal COVID-19 reporting requirements, and if the department had undertaken an assessment on the potential impact of a statewide enforcement operation on public health. The Department has yet to respond to the letter.

The inconsistent responses by local public health departments, and the seeming lack of knowledge with respect to ICE’s mandatory requirements for detention operators underscores an important gap in understanding and policy making that must immediately be addressed in the midst of this public health crisis.



ICE Detention Mandatory Public Health Guidelines

- ICE detention standards **require** facilities to collaborate and comply with federal, **state, and/or local authorities** addressing public health issues, including communicable diseases.²³
- ICE detention facilities must **actively engage with the health department** to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.²⁴
- Report all confirmed and suspected COVID-19 cases to the local ERO Field Office Director (or designee), Field Medical Coordinator, and local health department immediately.²⁵

²²<https://www.latimes.com/california/story/2020-08-06/amid-coronavirus-outbreak-at-bakersfield-immigration-facility-emails-show-ice-deliberately-limited-testing>. See also:

<https://www.aclunc.org/news/judge-orders-ice-provide-covid-19-testing-detained-immigrants-after-emails-reveal-ice-s>

²³ The Performance-Based National Detention Standards (PBNDS) 2008 and 2011 both require facilities to “comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues including communicable disease reporting requirements.” The 2019 National Detention Standards (NDS) similarly require “collaboration with local or state health departments in accordance with state and local laws and recommendations.”-ICE ERO - COVID-19 Pandemic Response Requirement, June 22, 2020

²⁴ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities pg 5

²⁵ ERO COVID-19 Pandemic Response Requirements (Version 2.0, June 22, 2020) pg 10

- Each facility must develop a COVID-19 mitigation plan. **Administrators should plan and prepare for COVID-19 by “Coordinating with public health and correctional partners.”** As well as “Identify **points of contact in relevant state, local, tribal, and/or territorial public health departments** before cases develop.”²⁶
- Facilities are encouraged **to limit or entirely eliminate transfers.** “Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.”²⁷

Conclusion

Faced with the current coronavirus pandemic, 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.

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.²⁸ The need to take action on this issue is not only underscored by the unabated spread of COVID-19 in these facilities, the shocking information revealed through litigation about private operator negligence, but also by the pending expansion of private facilities in the state.

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 which 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.

The Supreme Court has held that a federal contractor who violates the express terms of their contract are no longer protected by derivative sovereign immunity and thus subject to regulation by the state in which they operate. “When a contractor violates both federal law and the government’s express instructions... there is no immunity”. - See *Campbell-Ewald Co. v. Gomez*, 577 U.S. 663 (2016).

In addition, public health authorities should explore the full extent to which they can provide clear guidance, both to local public health authorities, as well as detention operators to clarify questions related to jurisdiction and authority.

²⁶ Id. at pg 6

²⁷ CDC Guidance pg 6

²⁸ This includes the Attorney General’s ability to monitor health and safety of immigrant detention facilities under AB 103.

Lastly, it is incumbent on public health authorities to formulate policies, mandates and directives which will ensure proper health and safety standards in these facilities, and protect and preserve human lives.

Below are recommendations which are by no means exhaustive but provide a high-level roadmap for addressing the challenge posed by immigrant detention facilities in California.

Recommendations

- 1.) **Understand Roles & Responsibility-** California public health authorities must receive clear guidance with respect to their roles and responsibilities related to immigrant detention facilities.
 - a.) This guidance should clarify the mandatory requirements and obligations imposed by the federal government on detention facility operators, including clarifying requirements related to local and state public health.
 - b.) State authorities should understand their responsibility to regulate private corporations operating detention facilities.
 - c.) A legal analysis of the police powers reserved by the state of California which extend to federal facilities.²⁹
- 2.) **Develop a Plan -** Recognize the threat posed to surrounding communities by outbreaks in detention facilities and formulate a clear plan to mitigate the spread of COVID-19.
 - a.) Public health authorities should develop a state-wide comprehensive plan to ensure that immigrant detention facilities do not become 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.
 - b.) Public health authorities should also develop localized plans for each detention facility, integrating it with plans already in place at the local level and acknowledging unique factors or challenges in each region.
 - c.) Public health authorities should identify preventative strategies and intervention points in which they can proactively protect the health and safety of detainees, staff, and community members.
- 3.) **Take Action -** Undertake strategic actions to ensure oversight, compliance and consistency with respect to public health standards in immigration detention facilities.
 - a.) Audit and inspect detention facilities, including requesting COVID-19 mitigation plans and other records related to detainee, employee and public health and safety.
 - b.) Issue mandates with respect to COVID-19 testing in detention facilities, coordination and information sharing with public health authorities and other forms of oversight and compliance.
 - c.) 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.
 - d.) Issue public health mandates suspending the transfer of individuals between state detention facilities and immigration detention facilities.
 - e.) Take legal action against private corporations operating detention facilities when they violate public health protocols.
 - f.) Appoint or establish administrators responsible for health and safety in private facilities that fail to adhere to public health mandates.³⁰

²⁹ For further information see *United States v. California, No. 18-16496 (9th Cir. 2019)* holding that “California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders.”

³⁰ Similar state intervention took place in private nursing homes that failed to provide adequate care during the COVID-19 pandemic.

Appendix

Letters to local Public Health Departments & Responses

1.) Yuba County	Pages 1-5
2.) Kern County	Pages 6-11
3.) San Diego County	Pages 12-19
4.) San Bernardino County I	Pages 20-25
5.) Imperial County	Pages 26-33

Letter to California Department of Public Health from twenty-six California state legislators	Pages 34-36
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September 25, 2020

Delivered Via Email

Yuba County Public Health Department
5730 Packard Avenue, Suite 100 Marysville, CA 95901

Phuong Luu, MD, MHS, FACP Bi-County Health Officer Yuba County and Sutter County
pluu@co.yuba.ca.us

Re: Request for Information and Meeting re COVID-19 at the Yuba County Jail

Dear Dr. Luu:

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 threat of COVID-19 at the Yuba County jail, and the state of health care in this facility.

The Yuba County jail presents a unique challenge related to the outbreak of COVID-19 in state and local facilities as it is the only local county jail in the entire state which houses immigrants in ICE custody.

We have heard ongoing reports of terrible conditions at the Yuba County Jail, and are particularly interested in how this facility is upholding standards it agreed to when it contracted with Immigration and Customs Enforcement (ICE) to house civilly detained immigrants in their facility.

The day to day operations of the Yuba County Jail are under the supervision of the local sheriff, and the facility itself is under the jurisdiction of the local public health department. While we very clearly understand immigrants in federal custody are subject to different jurisdictional questions and considerations as compared to the individuals in local jail custody, we are also aware that county jails that have contracts with ICE are subject to certain mandatory requirements¹, including but not limited to the following:

¹ 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.”²
- 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. ³
- 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.”⁴

These requirements apply to the facility as a whole, and it is the responsibility of the operator to ensure that they are meeting these standards.

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 does not appear that the Yuba County Jail is complying with these safety requirements in their daily operations.

In order to better evaluate 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 the Yuba County Jail and/or the U.S. Immigration and Customs Enforcement (“ICE”) and the Yuba County Public Health Department?
- 2.) Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Yuba County Jail?
- 3.) Has your department been provided a copy of the COVID-19 mitigation plan for the Yuba County Jail 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 Yuba County Jail? If so, please provide that data.

² ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

³ 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.

⁴ *Id.* at pg 6

- 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 the Yuba County Jail is currently in compliance with local public health orders and requirements?
- 9.) How can individuals detained at the Yuba County Jail communicate directly with the Department of Public Health in order to file complaints regarding their health and safety?

In addition to a written response to the above inquiry, we request an urgent meeting to discuss the ever-growing crisis at the Yuba County Jail 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,

Hamid Yazdan Panah
Immigrant Defense Advocates

The County of Yuba

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October 5, 2020

Hamid Yazdan Panah
Immigrant Defense Advocates
Sent via email only to: hamid@imadvocates.org

Re: Your Public Records Act Request to Yuba County

Dear Mr. Panah,

Your correspondence to Dr. Phuong Luu, Bi-County Health Officer, dated September 25, 2020 is being treated as a Public Records Act request.

This letter serves as Yuba County's ("the County") initial response, under California Government Code §§ 6253(c) and 6255(b), to your Public Records Act request where you seek records from the County regarding the County's response to the COVID-19 pandemic at the Yuba County Jail.

Please note that the County will not produce privileged records or documents that are otherwise exempt from disclosure pursuant to California Government Code section 6254(k), including, but not limited to, the deliberative process privilege; preliminary notes, drafts and memoranda exemption (Gov. Code §6254(a)); investigative records (Gov. Code §6254(f)); attorney-client privilege and/or attorney work product (Gov. Code §6254(k)); official information privilege (Evid. Code §1040; Gov. Code §6254(k)); permit applicant's personal financial data information (Gov. Code § 6254(n)); and the public interest exemption (Gov. Code §§ 6254(a); 6255). Further, as we gather the records for production, we may discover other applicable privileges or exemptions or both under Government Code sections 6254, 6255, 6256, or other applicable state or federal laws, and we reserve any and all rights to assert such privileges or exemptions at any time.

The County has identified and is in possession of records that may be potentially responsive to your request. I anticipate these records will be made available for inspection/copying on a rolling basis beginning November 9, 2020, and will continue on a rolling basis as the County continues to compile, review, and redact as necessary.

If you would like to obtain printed copies of the requested records, you will be required to pay the County's copy charge of \$.25 per black and white page (8 ½ by 11)/\$1.00 per color page (8 ½ by 11), per Government Code Section 6253(b) and Title 13, section 13.20.100 of the Yuba County Ordinance Code.

Should the requested records be available in electronic format, we will forward them to you via email. We will send any responsive records to hamid@imadvocates.org unless you instruct us otherwise. However, copying charges may still be necessary for certain digitally-scanned documents. We will notify you if there are any anticipated costs.

Mr. Hamid Yazdan Panah
Page 2 of 2
October 5, 2020

If you have any further questions or concerns, please do not hesitate to contact me directly either by e-mail at asullivan@co.yuba.ca.us or by telephone at (530) 749-7565.

Sincerely,
Yuba County Counsel's Office



Anastasia M. Sullivan
Deputy County Counsel



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

September 9, 2020

Ms. Rosa Lopez,

As you have requested in a letter dated August 24, 2020, please find responses to your questions regarding the Mesa Verde detention facility. If I can be of any further assistance please let me know.

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?

As required, the contracted Mesa Verde medical facility is reporting the results of COVID-19 testing of inmates to Kern County Public Health. Public Health has had a few brief calls with Mesa Verde staff regarding disease control protocols, but we have not received any written documentation from the facility.

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?

On August 24, 2020, Kern County Public Health and the California Department of Public Health (CDPH) met to discuss the current COVID-19 issues at Mesa Verde. CDPH is scheduling a meeting with Mesa Verde and Kern County Public Health to discuss Mesa Verde's disease control strategies and what additional resources Public Health can provide.

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.

No, a mitigation plan has not been provided to Kern County Public Health.

4. Is your department receiving reports of confirmed COVID-19 cases from ICE or the detention facility operator? If so, please provide that data.

Public Health is receiving lab reports for COVID-19 positive inmates, however disclosing these medical records would violate the privacy rights of the inmates.

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?

No, Public Health has not been notified of 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?

Kern County Public Health does not have jurisdiction within a federally contracted detention facility.

7. Has your department issued any guidance regarding COVID-19 that has been shared with these facilities?

Yes, Kern County Public Health has issued various CDC guidance documents to the Mesa Verde detention facility to include cleaning and disinfecting, a COVID-19 employer flow chart, essential worker guidance, COVID-19 testing guidance and duration of isolation and precautions for adults with COVID-19

8. Do you believe ICE detention facilities are currently in compliance with local public health orders and requirements?

Currently, the Kern County Public Health Department does not have Health Officer Orders that apply to Mesa Verde.

Sincerely,



Matthew Constantine
Director of Public Health Services



American Friends
Service Committee



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
Policy Director, Immigrant Defense Advocates
jackie@imadvocates.org
510-847-6247

From: [Roemmich, Joseph](#)
To: [Villasenor, Adriana](#); [McDonald, Eric](#)
Cc: [Adams, Theresa_SDSO](#); [LaRose, Christopher](#); [Lindsey, Susan](#)
Subject: RE: Testing for staff
Date: Tuesday, May 19, 2020 10:05:41 AM

copy

From: Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov>
Sent: Tuesday, May 19, 2020 10:03 AM
To: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>; McDonald, Eric <Eric.McDonald@sdcounty.ca.gov>
Cc: Adams, Theresa_SDSO <Theresa.Adams@sdsheriff.org>; LaRose, Christopher <Christopher.LaRose@corecivic.com>; Lindsey, Susan <Susan.Lindsey@corecivic.com>
Subject: RE: Testing for staff

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Hi Joe,

Thanks for the clarification. It is my responsibility, in my role here in Public Health, to offer the most current and effective recommendations from CDPH to help mitigate the continued spread of this communicable disease within a facility of your size and complexity. As things change and evolve, I will continue to offer tools and assistance to help mitigate, such as the identification of asymptomatic cases at the facility.

Thank you,
Adriana

From: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>
Sent: Tuesday, May 19, 2020 9:44 AM
To: Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov>
Cc: Adams, Theresa_SDSO <Theresa.Adams@sdsheriff.org>; LaRose, Christopher <Christopher.LaRose@corecivic.com>; Lindsey, Susan <Susan.Lindsey@corecivic.com>
Subject: Re: Testing for staff

Doc-

Just so we're clear - at this point we have no intention to mass test our staff.

-Joe

Joseph M. Roemmich
Assistant Warden

Otay Mesa Detention Center
(619) 671-8702 Office
(520) 705-9865 Cell

On May 19, 2020, at 09:39, Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov> wrote:

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Morning Joe,

Yes, we'd spoken about testing OMDF staff a couple weeks back. Now, they (CDPH) is more strongly urging facilities with outbreaks to employ this to get a good baseline of asymptomatic staff and residents (to help mitigate spread). I'm waiting to get word on the status of our SDPHL's ability to conduct the labs on self-collected specimens. This will make it much easier to get your staff completed, as LCDR Miranda stated his staff is not sufficient.

Nothing yet... but hoping to hear something soon.

Adriana

From: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>
Sent: Tuesday, May 19, 2020 9:19 AM
To: Adams, Theresa_SDSO <Theresa.Adams@sdsheriff.org>; Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov>
Subject: Testing for staff

Good morning-

Lt CMDR Miranda with IHSC said that County had mentioned to him about having all of our staff get tested for COVID. I haven't seen anything on this so I wanted to check with you both. Thanks.

-Joe

Joseph M. Roemmich
Assistant Warden
Otay Mesa Detention Center
(619) 671-8702 Office
(520) 705-9865 Cell

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From: [Villasenor, Adriana](#)
To: [Roemmich, Joseph](#)
Cc: [Lindsey, Susan](#)
Subject: RE: Staff Report to SD County Public Health
Date: Wednesday, April 29, 2020 1:18:58 PM
Attachments: [Copy of Staff Report to SD County Public Health_revised.xlsx](#)

Hi Joe,

It turns out I only had one extra, the 2nd one was included in today's report.

Kindest,
Adriana

From: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>
Sent: Wednesday, April 29, 2020 12:08 PM
To: Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov>
Cc: Lindsey, Susan <Susan.Lindsey@corecivic.com>
Subject: RE: Staff Report to SD County Public Health

That'd be fine, at least that way it'll be password protected.

-Joe

Joseph M. Roemmich
Assistant Warden
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154
(619) 671-8702 Office
(520) 705-9865 Cell

From: Villasenor, Adriana <Adriana.Villasenor@sdcounty.ca.gov>
Sent: Wednesday, April 29, 2020 11:54 AM
To: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>
Cc: Lindsey, Susan <Susan.Lindsey@corecivic.com>
Subject: RE: Staff Report to SD County Public Health

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Hi Joe,

Thank you and [REDACTED]. Is there anything we can do to help mitigate spread [REDACTED]? We talk about this previously...but wanted to ask again.

How would you like me to share the names [REDACTED] that tested positive, but are not on your list? I can send you back the list with the names colored differently? I have two more than you.

Adriana

From: Roemmich, Joseph <Joseph.Roemmich@corecivic.com>
Sent: Wednesday, April 29, 2020 11:39 AM
To: Villasenor, Adriana <Adriana.Villasenor@sdcountry.ca.gov>
Cc: Lindsey, Susan <Susan.Lindsey@corecivic.com>
Subject: [WARNING : MESSAGE ENCRYPTED] Staff Report to SD County Public Health

Dr-
See attached.

21 (-5 recovered) [REDACTED] and 8 [REDACTED] (no recovered numbers provided).

-Joe

Joseph M. Roemmich
Assistant Warden
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154
(619) 671-8702 Office
(520) 705-9865 Cell

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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.¹

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.²

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 requirements³, including but not limited to the following:

¹ 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/>

² 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/>

³ 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.”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
- 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.”⁶

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.⁷

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?

⁴ ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

⁵ 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.

⁶ *Id.* at pg 6

⁷ 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

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? [San Bernardino County Public Health \(DPH\) has held conference calls with the Adelanto ICE detention facility to discuss cases. I have been in direct contact with the Assistant Health Services Administrator to ensure that DPH receives updated line lists of positive cases.](#)

2. Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Adelanto detention facility?

[Yes, CDPH has assisted with the cases reported in the Adelanto ICE detention facility by participating on conference calls.](#)

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.

[The COVID-19 mitigation plan for ICE facilities can be found on their website at:
https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf](#)

[Official information about U.S. Immigration and Customs Enforcement’s \(ICE\) response to COVID-19 is posted at
https://www.ice.gov/coronavirus. All detainees are tested for coronavirus disease 2019 \(COVID-19\) upon intake and are isolated and monitored for a 14-day period in accordance with Centers for Disease Control and Prevention \(CDC\) guidelines to ensure for the safety and health of all those in our custody. Additionally, detainees receive a comprehensive exam within 14 days of arrival at a detention facility to identify medical, mental health and dental conditions that require monitoring or treatment. A detainee with a medical condition requiring follow-up treatment will be scheduled for as many appointments as needed, including with outside medical providers or facilities, as appropriate. All ICE detainees, regardless of location, can expect timely and appropriate responses to emergent medical requests, as well as timely medical care appropriate to the anticipated length of detention. At no time during detention is a detainee denied emergent care.](#)

[ICE reviews CDC guidance daily and continues to update protocols to remain consistent with CDC guidance. The agency’s full response to COVID-19 can be viewed on the
ICE.gov website.](#)

4. Is your department receiving reports of confirmed COVID-19 cases from ICE or the detention facility operator? If so, please provide that data. [Yes, there have been fourteen \(14\) reported cases in detainees, one \(1\) case reported in a staff member. The facility has performed 671 COVID tests to date.](#)

[Please visit the ICE website to see the number of cases in staff and detainees:
https://www.ice.gov/coronavirus](#)

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? [Not at this time; I am discussing with the Assistant Health Services Director about having the ICE facility inform Public Health 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?

[San Bernardino County Public Health investigates cases or outbreaks in the Adelanto ICE facility and holds conference calls with the facility and CDPH to give public health response recommendations, including related to testing. As mentioned above, as Interim Health Officer, I have been in direct contact with the Assistant Health Services Administrator to ensure that DPH receives updated line lists of positive cases. DPH is closely monitoring the situation at the facility has provided a letter with guidelines and education materials to the Assistant Health Services Administrator at the Adelanto ICE facility.](#)

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. [I will provide a copy of a letter with resources that we provided to the Adelanto ICE facility.](#)

8. Do you believe ICE detention facilities are currently in compliance with local public health orders and requirements? [Yes](#)



September 24, 2020

Delivered Via Email

Imperial County Public Health Department
Janette Angulo, Director of Public Health
935 Broadway Street
El Centro, CA 92243

Re: Request for Information and Meeting re COVID-19 at the Imperial Regional Detention Facility

Dear Dir. Angulo:

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 Imperial Regional Detention Facility.

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, including at least 3 reported cases in the Imperial Regional Detention Facility according to ICE's own statistics.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 See <https://www.ice.gov/coronavirus>

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 Imperial Regional Detention Facility 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 Imperial County Public Health Department?
- 2.) Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Imperial Regional Detention Facility?
- 3.) Has your department been provided a copy of the COVID-19 mitigation plan for the Imperial Regional 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?
- 9.) How can individuals detained at the Imperial Regional Detention Facility communicate directly with the Department of Public Health in order to file complaints regarding their health and safety?

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

Policy Director, Immigrant Defense Advocates

jackie@imadvocates.org

510-847-6247

Adam G. Crook
County Counsel

Eric Havens
Assistant County Counsel



County Counsel
County Administration Center
940 West Main Street, Suite 205
El Centro, CA 92243
Telephone (442) 265-1120
Fax No. (760) 353-9347
countycounsel@co.imperial.ca.us

October 19, 2020

Via Electronic Mail

Jackie Gonzalez
Immigrant Defense Advocates
jackie@imadvocates.org

RE: Public Records Act Request

Dear Ms. Gonzalez,

Below are the County of Imperial Public Health Department's ("ICPHD") responses to your public records request received on September 24, 2020:

- (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 Imperial County Public Health Department?"*

The ICPHD's Epidemiology Unit has a longstanding working relationship with the Imperial Regional Detention Facility ("IRDF") in Calexico, California. The Infection Control nurses at the IRDF make regular contact with ICPHD staff to inform them of new or suspect cases of communicable disease and to seek guidance or assistance if needed. In addition to these activities, the ICPHD's Emergency Medical Services Agency is responsible for the coordination of scarce medical and health resources, which has included the distribution of personal protective equipment for healthcare providers within the IRDF, upon request.

- (2) *"Are you aware of or has your department requested assistance from CDPH regarding the spread of COVID-19 in the Imperial Regional Detention Facility?"*

ICPHD is not aware of any request for assistance from CDPH regarding the spread of COVID-19 in IRDF.

- (3) *“Has your department been provided a copy of the COVID-19 mitigation plan for the Imperial Regional Detention Facility either by ICE or the facility operator? If so, please provide a copy of that plan.”*

Please find enclosed all records in possession of ICPHD responsive to this request.

- (4) *“Is your department receiving reports of confirmed COVID-19 cases from ICE or the detention facility operator? If so, please provide that data.”*

The California Public Records Act exempts from disclosure “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” Govt. Code §6254(c). Additionally, the California Public Records Act exempts from disclosure “records, the disclosure of which is exempted or prohibited pursuant to federal or state law.” Govt. Code §6250 *et seq.* Accordingly, the names and identification numbers of detainees have been redacted on the grounds that they are exempt from disclosure pursuant to Govt. Code §6254(c); Civil Code §56; Health & Safety Code §128675 *et seq.*; 42 U.S.C. §1320d; and California Constitution Art. 1 §1. Please find enclosed all records in possession of ICPHD responsive to this request.

- (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?”*

ICPHD is notified via email and/or phone call.

- (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?”*

ICPHD does not have a plan developed specifically for IRDF.

- (7) *“Has your department issued any guidance regarding COVID-19 that has been shared with these facilities?”*

Staff at IRDF receive alerts and advisories distributed by ICPHD. Updated guidance is posted on ICPHD’s COVID-19 website at <http://www.icphd.org/health-information-and-resources/healthy-facts/covid-19/>. A statewide alert system known as the California Health Alert Network (“CAHAN”) is used to distribute information, including technical guidance and critical information, to partner agencies, including medical staff at the IRDF.

(8) *“Do you believe ICE detention facilities are currently in compliance with local public health orders and requirements?”*

As far as ICHPD is aware, IRDF is in compliance with local public health orders and requirements.

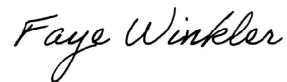
(9) *“How can individuals detained at the Imperial Regional Detention Facility communicate directly with the Department of Public Health in order to file complaints regarding their health and safety?”*

ICPHD is not aware of this information and recommends reaching out to IRDF for such information.

If you have any questions regarding this response, please contact me at (442) 265-1140.

Sincerely,

ADAM G. CROOK
COUNTY COUNSEL



Faye Winkler
Deputy County Counsel

Encl.

*Adam G. Crook
County Counsel*

*Eric Havens
Assistant County Counsel*



*County Counsel
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countycounsel@co.imperial.ca.us*

October 5, 2020

Via Electronic Mail

Jackie Gonzalez
Immigrant Defense Advocates
jackie@imadvocates.org

RE: Public Records Act Request

Dear Ms. Gonzalez,

The Imperial County Public Health Department (“ICPHD”) is in receipt of your request for records dated September 24, 2020.

Your request involves the need to search for and collect the requested records from facilities and establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records; and the need to consult among two or more components of the agency having substantial subject matter interest in the request. Accordingly, pursuant to Government Code section 6253(c), the period of time within which we will respond to your request is extended to October 19, 2020.

If you have any questions regarding this response, please contact me at (442) 265-1140.

Sincerely,

ADAM G. CROOK
COUNTY COUNSEL

Faye Winkler

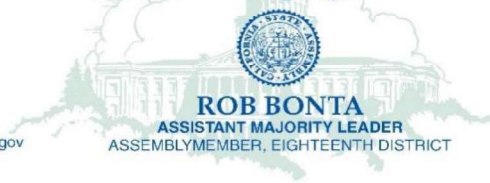
By: Faye Winkler
Deputy County Counsel

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(510) 286-1670
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E-MAIL: Assemblymember.Bonta@assembly.ca.gov

Assembly California Legislature



COMMITTEES
APPROPRIATIONS
COMMUNICATIONS AND CONVEYANCE
GOVERNMENTAL ORGANIZATION
HEALTH

October 12, 2020

Acting Director Sandra Shewry, MPH, MSW
California Department of Public Health
Sacramento, CA 95814

Re: ICE Raids Public Health Concern

Dear Acting Director Shewry,

As members of the State Legislature, 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.

According to reports in the press Immigration and Customs Enforcement (ICE) is preparing to conduct an "enforcement blitz" in the month of October, which targets U.S. cities and jurisdictions that have adopted "sanctuary" policies. According to reports, this operation has already commenced.

While we very clearly understand that the enforcement of immigration laws and the operation of detention facilities used to house immigrants is within the jurisdiction of the federal government, we are also aware that all ICE detention facilities are subject to certain mandatory requirements, 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."¹
- 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. ²
- 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

¹ ICE Performance-Based National Detention Standards (PBNDS) for 2008 and 2011

² 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.

well as “[i]dentify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop.”³

Our offices are particularly concerned that this operation is in direct contradiction with state public health laws and mandates, and in fact ICE’s Enforcement and Removal Operations COVID-19 Pandemic Response Requirements. This guidance issued by ICE requires mandatory compliance with CDC’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. The CDC guidance on detention specifically requires detention facilities to limit transfers of individuals to and from facilities unless absolutely necessary.

According to two officials cited in press reports, the planned operation is intended to be a “political messaging campaign” by ICE. This raises very serious questions about whether ICE is choosing to violate mandatory and specific guidance to achieve political objectives as an agency.

There have been COVID-19 outbreaks in four of the five detention facilities in the state of California, and transfers into two of these facilities have been halted as a result of litigation focused on ICE’s inability to properly address the health and safety of those detained.

In addition to the threat posed to those inside detention we are seriously concerned about the impact this has on public health as a whole. A study published in the [Journal of Urban Health](#) on the spread of COVID-19 in immigrant detention 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.⁴

To that end, we would kindly like to have the following questions addressed in writing:

- 1.) What, if any, coordination or collaboration has taken place between ICE detention operators and your office?
- 2.) Which state health agency is responsible for coordination with ICE detention facilities or operators? Are you willing to request information from relevant state agencies regarding their coordination or lack thereof with ICE on public health grounds?
- 3.) Are ICE detention facilities currently in compliance with state and federal COVID-19 reporting requirements?
- 4.) The ICE Enforcement and Removal Operations (ERO) COVID-19 Pandemic Response Requirements requires coordination with public health partners. Is this operation being coordinated with these partners at the state and local level?
- 5.) Does your office have an assessment of the potential impact a statewide enforcement operation may have on public health resources and community safety?

³ *Id.* at pg 6

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/>

6.) What steps has ICE taken to coordinate with California local and state public health authorities, as required by the ERO COVID-19 Pandemic Response Requirements?

Please contact Assemblymember Bonta's Legislative Director Maheen Ahmed at maheen.ahmed@asm.ca.gov or 916.319.2018 to provide the answers to the questions above or if you have any questions.

Sincerely,



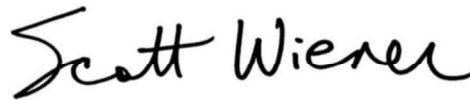
Rob Bonta
Assemblymember, 18th Assembly District



Miguel Santiago
Assemblymember, 53rd Assembly District



Autumn Burke
Assemblymember, 62nd Assembly District



Scott Wiener
Senator, 11th Senate District



David Chiu
Assemblymember, 17th Assembly District



Cecilia Aguiar-Curry
Assemblymember, 4th Assembly District



Phil Ting
Assemblymember, 19th Assembly District



Jose Medina
Assemblymember, 61st Assembly District



Marc Levine
Assemblymember, 10th Assembly District



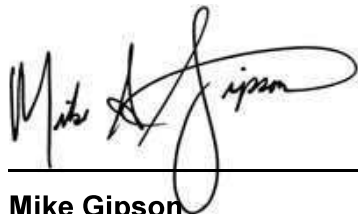
Wendy Carrillo
Assemblymember, 51st Assembly District



Freddie Rodriguez
Assemblymember, 52nd Assembly District



Bill Quirk
Assemblymember, 20th Assembly District



Mike Gipson
Assemblymember, 64th Assembly District



Buffy Wicks
Assemblymember, 15th Assembly District



Cristina Garcia
Assemblymember, 58th Assembly District



Monique Limon
Assemblymember, 37th Assembly District



Nancy Skinner
Senator, 9th Senate District



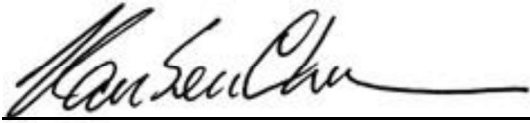
Ash Kalra
Assemblymember, 27th Assembly District



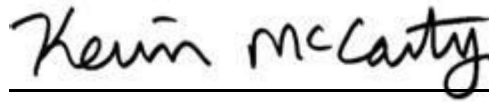
Sydney Kamlager
Assemblymember, 54th Assembly District



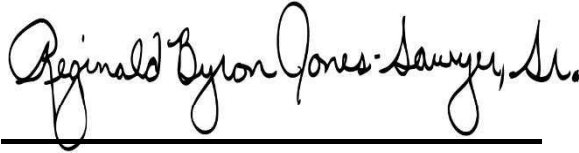
Luz Rivas
Assemblymember, 39th Assembly District



Kansan Chu
Assemblymember, 25th Assembly District



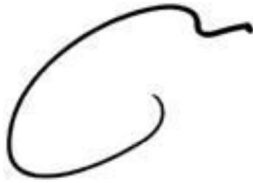
Kevin McCarty
Assemblymember, 7th Assembly District



Reggie Jones-Sawyer
Assemblymember, 59th Assembly District



Maria Elena Durazo
Senator, 24th Senate District



Mike McGuire
Senator, 2nd Senate District



Steven Bradford
Senator, 35th Senate District

CC: Monica Wagoner, Deputy Director