

Congress of the United States
Washington, DC 20515

October 21, 2021

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Dear Secretary Mayorkas:

Earlier this year you testified before Congress and expressed your concern about the excessive use of immigration detention.¹ We share this concern and write to request that you take immediate steps to terminate the Immigration and Customs Enforcement (ICE) contracts with certain detention facilities in the State of California. Specifically, we ask that you examine existing agreements with private prison contractors running the Otay Mesa Detention Center and the Adelanto ICE Processing Center, as well as the Intergovernmental Service Agreement (IGSA) with Yuba County Jail, operated by the Yuba County Sheriff's Office. For years, under multiple administrations, these facilities have been operating in a substandard manner, resulting in repeated violations of the ICE Performance-Based National Detention Standards (PBNDS) and the excessive waste of federal funds.²

Yuba County Jail

We ask that you take steps to terminate ICE's contract with Yuba County Jail. As the last county jail in the State of California with an ICE contract, the facility's consistently unsanitary conditions and low population makes it a microcosm of the many problems with ICE detention facilities around the country. Significantly, Yuba has been subject to a federal consent decree going back to 1979.³ The decree, which was amended in 2018, requires the county to improve conditions at the jail, including by providing timely medical care, changing the physical structure of the jail, and providing mental health care and suicide risk assessments for certain detainees.⁴ Further, the ICE Office of Detention Oversight's most recent inspection of Yuba revealed 31 deficiencies and found that it was in compliance with only half of the 18 ICE detention standards.⁵ Those detained at Yuba have experienced a lack of medical care, broken hygiene facilities, unsanitary conditions including mold and insects, spoiled food, and excessive use of solitary confinement, leading to repeat protests and hunger strikes, when formal complaints were mishandled. In July 2020, guards retaliated against two men peacefully protesting poor conditions related to COVID-19 by ripping up their mattresses and denying them access to phone

¹ Rebecca Beitsch, *Biden Official Defends Trump-Era Immigration Policy*, The Hill (May 26, 2021), <https://thehill.com/policy/national-security/555551-mayorkas-defends-trump-era-covid-policy-immigration-enforcement>.

² California Collaborative for Immigrant Justice et al., *CRCL Complaint Re: First Amendment Retaliation Against Individuals in Immigration Detention in California* (hereinafter "CRCL Complaint") (Aug. 26, 2021), https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf.

³ CRCL Complaint, *supra* note 2 at 3.

⁴ *Hedrick v. Grant*, No. 2:76-cv-00162-JAM-EFB (E.D. Cal 2018).

⁵ Office of Detention Oversight, *Compliance Inspection: Yuba County Jail, Marysville California* (Apr. 5-9, 2021), https://www.ice.gov/doclib/foia/odo-compliance-inspections/yubaCoJailMarysvilleCA_Apr5-9_2021.pdf.

calls, mail, and soap.⁶ As of October 12, 2021, only one detainee remains in ICE custody at Yuba, an obvious waste of resources.⁷ We ask that the IGSA with Yuba be terminated, as the facility has proven that is unable to meet the basic detention standards set by ICE.

Otay Mesa and Adelanto Detention Centers

Private prison facilities, including Adelanto and Otay Mesa, have been the subject of much scrutiny by independent offices within the Department of Homeland Security (DHS) and outside agencies. The DHS Office of the Inspector General (DHS OIG), DHS Office for Civil Rights and Civil Liberties (CRCL), and the Environmental Protection Agency (EPA) have reprimanded Adelanto in a series of reports detailing the dire conditions at the facility. In 2018, the DHS OIG reported egregious violations of the ICE PBNDS, which included observing nooses in detainee cells, the improper use of segregation, and inadequate medical care.⁸ Last year, the early months of the COVID-19 pandemic, a federal court found that “[t]he conditions of confinement at Adelanto are inconsistent with contemporary standards of human decency.”⁹ The Court cited serious overcrowding, with up to 118 women sharing three showers, beds placed inches apart, and filthy conditions that placed individual detained in the facility at serious risk of contracting COVID-19.¹⁰ Shortly thereafter, the EPA found that the facility violated federal law by misusing disinfectant spray that can cause serious bodily harm if swallowed, inhaled, or absorbed through the skin.¹¹ In June 2020, officers in Adelanto reportedly used riot gear, pepper bullets, and pepper spray on detainees who were peacefully protesting COVID-19-related lockdown conditions.¹² As a result of this aggression, detainees experienced vomiting and the burning of eyes and skin, as well as difficulty breathing.¹³ One individual had a seizure, and some detainees were transported to a nearby medical facility for treatment.¹⁴ As reported by CRCL in 2017, existing systems for reporting grievances are inadequate and detainees report experiencing retaliation when abuses have been reported.¹⁵

Otay Mesa has also been publicly condemned for poor conditions and mistreatment of detainees. In a report released last month, the DHS OIG detailed violations of the ICE PBNDS.¹⁶ DHS OIG found that Otay Mesa failed to respond to detainee grievances and

⁶ CRCL Complaint, *supra* note 2 at 4-6.

⁷ California Collaborative for Immigrant Justice, *Leonel Will be Free; Two Men Remain Detained at Yuba County Jail* (Sept. 17, 2021), <https://ccijjustice.org/leonel-will-be-freed-two-men-remain-at-yuba-county-jail/>.

⁸ Dep’t of Homeland Security Office of Inspector General, *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

⁹ Findings of Fact and Conclusions of Law, *Hernandez Roman, et. al. v. Wolf, et. al.*, Case No. 20-cv-00768 (C.D. Cal.), Dkt. No. 53, April 23, 2020.

¹⁰ *Id.*

¹¹ U.S. Environmental Protection Agency, *Adelanto ICE Processing Center Inspection Report* (July 29, 2020) at 11, https://earthjustice.org/sites/default/files/files/final_inspection_report_1.pdf.

¹² Andrea Castillo, *Immigrants Detained at Adelanto Staged a Peaceful Protest. Guards in Riot Gear Pepper-Sprayed Them*, LA Times (June 26, 2020), <https://www.latimes.com/california/story/2020-06-26/immigrants-detained-at-adelanto-staged-a-peaceful-protest-guards-in-riot-gear-pepper-sprayed-them>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Dep’t of Homeland Security Office for Civil Rights and Civil Liberties, CIVIC report (2017) (Nov. 16, 2017) at 10-11, <https://www.documentcloud.org/documents/6278922-HQ-Part2-Copy#document/p10/a541902>.

¹⁶ Dep’t of Homeland Security Office of the Inspector General, *Violations of ICE Detention*

complaints in a timely manner and failed to forward reports of staff misconduct to ICE, as required by policy, unless a detainee filed an appeal. Individuals held in segregation were not given access to recreation, phone calls (including calls to counsel), and mail, in contravention to ICE detention standards.¹⁷ Further, in the spring of 2020, Carlos Ernesto Escobar Mejia and other detainees went on a hunger strike in protest of the conditions that led to multiple COVID-19 outbreaks at Otay Mesa.¹⁸ As a result, Mr. Escobar Mejia was placed in solitary confinement and unfortunately became the first person to die of COVID-19 in ICE custody on May 6, 2020.¹⁹ The use of solitary confinement in response to this situation is consistent with previous reports of retaliation at Otay Mesa, including the use of excessive force, verbal intimidation, and isolation, and staff refusing to allow detainees to communicate with outside advocates.²⁰ Detainees have also reported retaliation after reporting sexual assault.²¹

The contracts to run these facilities are designed in such a way—particularly in light of the COVID-19 pandemic and the September 21, 2021 DHS enforcement priorities—to guarantee government waste. ICE pays an estimated \$1.34 million dollars every day on unused beds through guaranteed minimum contracts, such as the ones with Otay Mesa and Adelanto.²² For example, although ICE pays CoreCivic, the contractor that runs Otay Mesa, for a minimum of 750 detainees per day, in March 2021, Otay Mesa had an average daily detained population of only 396.²³ As reported by the DHS OIG, 47% of bed space at Otay Mesa went unused from April 2020 to March 2021, resulting more than \$22 million dollars in government waste.²⁴ Similarly, the contract with GEO group for Adelanto has a guaranteed minimum of 1,455 detainees, but as of July 2021 there were only 99 ICE detainees at the facility.²⁵

For these reasons, we call for the immediate termination of contracts with private prison contractors for the operation of the Adelanto ICE Processing Center²⁶ and the Otay Mesa Detention Center, and the termination of the IGSA with the Yuba County Jail. Should you determine that closure of these facilities is appropriate, it is also imperative that detainees that do not fit within the September 21, 2021 DHS enforcement priorities are not merely transferred to another facility, but are instead released and if necessary, placed in a case management program

Standards at Otay Mesa Detention Center (hereinafter “Violations at Otay Mesa”) (Sept. 14, 2021) at 3, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-61-Sep21.pdf>.

¹⁷ *Id.* at 8-9.

¹⁸ CRCL Complaint, *supra* note 2 at 13.

¹⁹ *Id.*

²⁰ *Id.* at 13-14; Monika Y. Langarica, Bardis Vakili, and Kimberly Grano, *CoreCivic’s Decades of Abuse: Otay Mesa Detention Center*, ACLU San Diego and Imperial Counties Foundation (April 2021), https://www.aclusandiego.org/sites/default/files/field_documents/2021_04_21_final_corecivics_decades_of_abuse_issue_brief.pdf.

²¹ *Id.*

²² Joel Rose, *Beyond The Border, Fewer Immigrants Being Locked Up But ICE Still Pays For Empty Beds*, N.P.R.(April 1, 2021), <https://www.npr.org/2021/04/01/982815269/beyond-the-border-fewer-immigrants-being-locked-up-but-ice-still-pays-for-empty->.

²³ Violations at Otay Mesa, *supra* note 9 at 11-13.

²⁴ *Id.* at 12.

²⁵ *The California Department of Justice’s Review of Immigration Detention in California* (Feb. 2019) at 11, <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>; Hernandez Roman, No. 20-00768, Dkt. 1232 (government daily status report July 23, 2021).

²⁶ This includes the recently opened Desert View Annex, an expansion of Adelanto run by the same private prison company and operated pursuant to the same contract.

or other alternative to detention. Further, we note that the failures of these facilities are representative of a larger problem with our immigration detention system. As such, we urge you to continue to decrease the detention of immigrants who pose no risk to public safety and who are not flight risks.

Thank you for your prompt attention to this matter.

Sincerely,



Zoe Lofgren
Chair
House Judiciary Committee
Subcommittee on Immigration and
Citizenship



J. Luis Correa
Member
House Judiciary Committee
Subcommittee on Immigration and
Citizenship

/s/
Alex Padilla
Chair
Senate Judiciary Committee
Subcommittee on Immigration and
Citizenship

/s/
Pete Aguilar
Member of Congress

/s/
Karen Bass
Member of Congress

/s/
Julia Brownley
Member of Congress

/s/
Judy Chu
Member of Congress

/s/
Mark DeSaulnier
Member of Congress

/s/
Anna G. Eshoo
Member of Congress

/s/
Jimmy Gomez
Member of Congress

/s/
Jared Huffman
Member of Congress

/s/
Sara Jacobs
Member of Congress

/s/
Ro Khanna
Member of Congress

/s/
Barbara Lee
Member of Congress

/s/
Alan Lowenthal
Member of Congress

/s/
Doris Matsui
Member of Congress

/s/
Jerry McNerney
Member of Congress

/s/
Grace Napolitano
Member of Congress

/s/
Lucille Roybal-Allard
Member of Congress

/s/
Adam B. Schiff
Member of Congress

/s/
Jackie Speier
Member of Congress

/s/
Mark Takano
Member of Congress

/s/
Norma J. Torres
Member of Congress

/s/
Juan Vargas
Member of Congress

Cc: The Honorable Tae D. Johnson, Acting Director, Immigration and Customs Enforcement
The Honorable Joseph V. Cuffari, Inspector General, Department of Homeland Security