



C A L I F O R N I A

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DEPARTMENT OF JUSTICE

# ***IMMIGRATION DETENTION IN CALIFORNIA:***

***A Review of Detention Facilities'  
Response to COVID-19 as of Fall 2021***

July 2022

# **IMMIGRATION DETENTION FACILITY REVIEW TEAM**

***Rob Bonta***  
**Attorney General**

<b>Damon Brown</b>	Special Assistant Attorney General
<b>Michael Newman</b>	Senior Assistant Attorney General
<b>Vilma Palma-Solana</b>	Supervising Deputy Attorney General
<b>Susan Slager</b>	Supervising Deputy Attorney General (retired)
<b>Randie C. Chance, Ph.D.</b>	Director, Department of Justice Research Center
<b>Domonique C. Alcaraz</b>	Deputy Attorney General
<b>Robin Goldfaden</b>	Deputy Attorney General
<b>Marissa S. Malouff</b>	Deputy Attorney General
<b>Julia Harumi Mass</b>	Deputy Attorney General (former)
<b>James E. Richardson</b>	Deputy Attorney General
<b>Katyria Serrano</b>	Associate Governmental Program Analyst
<b>Myrna Cintron-Valentin, Ph.D.</b>	Research Associate, Department of Justice Research Center

## **Consultant Experts**

<b>Dr. Lisa Anderson</b>	Medical Expert
<b>Dr. Dora Schriro</b>	Corrections Expert

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## EXECUTIVE SUMMARY

For its third report under Assembly Bill 103 (2017) (AB 103), the California Department of Justice (Cal DOJ) examines how the locked facilities that contract with U.S. Immigration and Customs Enforcement (ICE) to house noncitizens in ICE custody have responded to the unique challenges that have arisen during the COVID-19 pandemic. The facilities’ responses were directed in large part by requirements and recommendations from ICE and the Centers for Disease Control and Prevention (CDC), as well as by court mandates seeking to remedy especially dangerous situations through specific requirements for social distancing, testing, monitoring, and caps on facility populations. As a result of both ICE and court requirements, detainee populations at ICE facilities in California were sharply reduced in 2020 and remained well under pre-pandemic numbers in 2021. This meant that, although a number of facilities across the State had lower detainee counts, ICE had to continue paying for empty beds under contractual terms guaranteeing payment for a minimum number of beds. At the same time, the average number of days a person was detained in the facilities across the State increased exponentially.

The table below shows each facility Cal DOJ visited, the maximum number of beds for ICE detainees, the contractual guaranteed minimum number of beds for which ICE has agreed to pay regardless of the actual detainee count, the date of Cal DOJ’s visit, the detainee count on the date of Cal DOJ’s visit, the average length of stay (LOS) in days for the detained population on the day of Cal DOJ’s visit, and the average length of stay in days for federal fiscal years (FFYs) 2019, 2020, and 2021:

Facility	Max. ICE Capacity	Guaranteed Minimum <sup>1</sup>	Cal DOJ Visit			FFY 2021 Avg. LOS (days) <sup>2</sup>	FFY 2020 Avg. LOS (days) <sup>3</sup>	FFY 2019 Avg. LOS (days) <sup>4</sup>
			Date	Detainee Count	Avg. LOS (days)			
Adelanto	1,940	1,455	11/15/21	79	719	244	83	54
Desert View Annex	750	120	12/14/21	95	108	29	N/A	N/A
Mesa Verde	400	320	11/16/21	45	269	480	41	25
Golden State Annex	700	560	12/15/21	141	107	55	N/A	N/A
Imperial	704	640	10/5/21	576	55	72	87	37
Otay Mesa	1,358	750	10/4/21	815	73	101	100	87
Yuba	210	150	11/2/21	0	N/A	422	81	51

Cal DOJ sought to understand the management of COVID-19 risk at all facilities in California—not just with respect to the prevention and treatment of infection, but also in terms of how facilities’ responses impacted the conditions of confinement that are subject to inquiry under AB 103, such as detainees’ access to recreation and to the legal resources necessary to navigate their immigration proceedings. Cal DOJ reviewed all seven facilities presently in use by ICE:<sup>5</sup>

- 1 ICE, Dep’t of Homeland Security, Budget Overview Fiscal Year 2022 Congressional Justification, p. 118, <[https://www.dhs.gov/sites/default/files/publications/u.s.\\_immigration\\_and\\_customs\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf)> (as of May 4, 2022).
- 2 ICE, Detention Management, Detention Statistics, FY 2021 ICE Statistics <<https://www.ice.gov/doclib/detention/FY21-detention-stats.xlsx>> (as of May 4, 2022).
- 3 ICE, Detention Management, Detention Statistics, FY 2020 ICE Statistics <<https://www.ice.gov/doclib/detention/FY20-detention-stats.xlsx>> (as of May 4, 2022).
- 4 ICE, Detention Management, Detention Statistics, FY 2019 ICE Statistics <<https://www.ice.gov/doclib/detention/FY19-detention-stats.xlsx>> (as of May 4, 2022).
- 5 The eighth facility, which is under contract but not in use by ICE, is Central Valley Modified Community Correctional Facility in McFarland. Cal DOJ did not inspect this facility.



1. Adelanto ICE Processing Center (Adelanto) in Adelanto, operated by GEO Group;
2. Desert View Annex in Adelanto, operated by GEO Group;
3. Mesa Verde ICE Processing Facility (Mesa Verde) in Bakersfield, operated by GEO Group;
4. Golden State Annex in McFarland, operated by GEO Group;
5. Imperial Regional Detention Facility (Imperial) in Calexico, operated by Management and Training Corporation (MTC);
6. Otay Mesa Detention Center (Otay Mesa) in San Diego, operated by CoreCivic; and
7. Yuba County Jail (Yuba) in Marysville, operated by the Yuba County Sheriff's Department.

While Cal DOJ's findings focus on the effects of and responses to the COVID-19 pandemic, they are also highly specific to October through December 2021 when Cal DOJ inspected the facilities. The COVID-19 landscape during our inspections was a unique time within the history of the pandemic. The pandemic had been ongoing for a year and a half, vaccines and booster shots had become widely available, COVID-19 numbers were low, and the scientific understanding of how to prevent transmission of the virus had advanced significantly since the beginning of the pandemic. While facilities initially varied widely in the effectiveness of their responses, as mentioned above, interventions by federal courts forced facilities that lagged behind in COVID-19 mitigation to take more aggressive action in the form of lower population numbers and testing requirements. Moreover, facilities had not yet faced the considerably more contagious Omicron variants that proliferated in California beginning in December 2021. As a result, this report captures a snapshot in time.

With respect to the policies and practices directed at minimizing the introduction and spread of COVID-19 into facilities, Cal DOJ observed:

- All of the facilities performed verbal symptom screenings and tested newly arrived detainees with either a rapid antigen test, a PCR test, or both. Several of the symptom screening checklists were incomplete (e.g., they did not require screening for nausea or fatigue), which decreased the sensitivity for identifying individuals who would be isolated pending further assessment.
- Detainees who tested positive were housed separately from others while they were either treated or monitored for symptoms. Detainees who tested negative were placed in an intake "quarantine" dorm for fourteen days before being housed in general population. In several facilities, the addition of new arrivals to an existing quarantine unit extended the period of quarantine for earlier arrivals, impacting detainees' liberty interests.
- Some, but not all, facilities re-tested detainees at the end of the quarantine period before transferring them to a new housing unit. Regular "saturation" testing also occurred for all or a sample of detainees and staff at some facilities, depending on infection rates within the facility.
- When detainees exhibited symptoms in a housing unit, the symptomatic detainees were generally tested within 24 hours. COVID-positive detainees were then isolated and treated or monitored.
- Detainees exposed to infection were generally placed in a separate quarantine cohort, and

some, but not all, facilities tested detainees following exposure.

- Detainee and staff vaccination rates varied widely, from a 72% detainee vaccination rate and 70% staff vaccination rate at Adelanto to a 36% vaccination for detainees and 58% vaccination for staff at Imperial.<sup>6</sup>
- All facilities provided masks to detainees and required their use outside of the housing unit, but none enforced masking inside housing units.
- Facilities generally provided prompt monitoring of symptoms and vital signs for individuals who tested positive for COVID-19, but Cal DOJ noted instances in which records failed to show prompt assessments and monitoring of infected patients.
- Across facilities, Cal DOJ's medical expert noted a failure to offer, or have guidance related to referring patients for, monoclonal antibody or antiviral treatment options.
- There was some inconsistency in implementation of appropriate protocols. For example, at one facility, Cal DOJ's review found two individuals with symptoms of COVID-19 who were not tested within 24 hours.

With respect to the impact these policies have had on conditions of confinement and detainee access to due process, Cal DOJ observed:

- All facilities, except Yuba, suspended social visitation in March 2020 and had not reinstated it at the time of Cal DOJ's site visits, nearly two years later, despite vaccine and testing availability and where non-contact or outdoor visitation space was available.
- Formal Legal Orientation Programs that previously provided important access to legal representation and advice at Adelanto were suspended and remained so, despite guidance from ICE that would allow the programs to continue. The programs at Otay Mesa were suspended for one month but resumed telephonically and virtually in April and June 2020, respectively. Similarly, the informal legal orientation program provided at Imperial was suspended but had been reinstated since at least September 2021.
- Religious services were essentially eliminated at many facilities, due to the facilities' previous reliance on outside volunteers to provide services. In some facilities, even the staff chaplain suspended in-person religious services, and facilities have moved to television-based religious programming.
- Access to classes and other programming and recreation was curtailed due to the pandemic, with different facilities providing widely different opportunities for programming.

In sum, despite being subject to largely consistent rules and guidance, most notably from ICE and the CDC, facilities' responses to managing the COVID-19 pandemic and the broader effects of those responses varied widely.

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<sup>6</sup> The variability in detainee vaccination rate may be attributable to the static and lower population at Adelanto as compared to the higher and more transitory population at Imperial. Additionally, the detainee vaccination rate may have been underreported based on vaccination prior to detention.

## **GLOSSARY OF TERMS**

**AB 103**

**California Assembly Bill 103 (2017)**

**Cal DOJ**

**California Department of Justice**

**CDC**

**Centers for Disease Control and Prevention**

**COVID-19**

**Coronavirus disease 2019, an infectious disease caused by the SARS-CoV-2 virus.**

**DHS**

**U.S. Department of Homeland Security**

**OIG**

**Department of Homeland Security's Office of the Inspector General**

**ERO**

**ICE Enforcement and Removal Operations**

**FFY**

**Federal Fiscal Year**

**ICE**

**U.S. Immigration and Customs Enforcement**

**IHSC**

**ICE Health Services Corps**

**INA**

**Immigration and Nationality Act**

**LOP**

**Legal Orientation Program**

**LOS**

**Length of (detention) Stay**

**NDS**

**National Detention Standards (2000 and 2019)**

**NIOSH**

**National Institute for Occupational Safety and Health**

**PBNDS**

**Performance-Based National Detention Standards (2008 and 2011)**

**PCR test**

**Polymerase chain reaction test**

**PPE**

**Personal protective equipment**

**PRR**

**ICE ERO COVID-19 Pandemic Response Requirements**

**US DOJ**

**U.S. Department of Justice**

## INTRODUCTION

AB 103, codified at section 12532 of the Government Code, requires the Attorney General to review “locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California,” through July 1, 2027. The statute directs the Attorney General to examine the conditions of confinement in such facilities, the standard of care observed by each facility, and the effect of conditions of confinement on the due process rights of those held in these facilities.<sup>7</sup> The Attorney General has discretion to determine the order and number of facilities reviewed and is charged to provide updates and information to the Legislature and the Governor regarding these reviews during the budget process. Cal DOJ issues this report pursuant to this statutory obligation.

The legislature enacted AB 103 in response to growing concerns about the conditions in facilities within California used by the United States government to detain noncitizens pending civil immigration proceedings. AB 103 does not impose substantive requirements on immigration detention facilities in California. Instead, it contemplates increased transparency regarding the conditions in and operation of detention facilities across the State.

The Attorney General, through Cal DOJ, issued the first AB 103 report in February 2019 (2019 Report).<sup>8</sup> The 2019 Report provided an overview of the ten detention facilities that were in operation at the time the Legislature enacted AB 103, six of which county officials operated. The 2019 Report found that detainee experiences varied drastically within and across facilities, but some of the issues of concern common to the facilities included: excessive restrictions on liberty, language barriers, obstacles to obtaining medical and mental health care, barriers to contacting family and other support systems, and barriers to obtaining legal representation or to effective self-representation in immigration proceedings. The second report, published in January 2021 (2021 Report),<sup>9</sup> again identified issues of considerable concern that were not limited to any one facility, including misuse of security classifications and related excessively severe conditions of confinement, overuse of restrictive housing—particularly for detainees with mental health needs—and failure to provide language access for non-English speakers. The 2021 Report also provided an overview of immigration detention facilities’ initial responses to the COVID-19 pandemic across the State and described litigation that sought to reduce the detained population to prevent transmission of the virus to medically vulnerable individuals.<sup>10</sup>

The instant report provides a focused review of how the seven facilities operating in the State were responding to the pandemic in the fall of 2021. While shedding light on facilities’ level of compliance with critical public health and safety measures, this report represents a snapshot in time. At the point in time when Cal DOJ conducted its facility reviews, court orders required certain protective measures be in place and had thus altered conditions of confinement in subject facilities. Court orders also required ICE to decrease the number of individuals it detained.<sup>11</sup> At the same time, the COVID-19 surge attributable to the Omicron variant of the virus had not yet occurred. If new variants arise or the number of detainees significantly increases at these facilities, these changes will test the effectiveness of the facilities’ practices described in this report and ICE’s oversight.

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7 AB 103 further directs the Attorney General’s Office to review circumstances surrounding the apprehension and transfer of detainees under section 12532, subdivision (b)(1)(c). However, in reviewing a challenge by the federal government to AB 103, the U.S. Court of Appeals for the Ninth Circuit held that the United States was likely to succeed on its claim that this provision violates the intergovernmental immunity doctrine. (*United States v. California* (9th Cir. 2019) 921 F.3d 865, 870, cert. den. (June 15, 2020) 141 S. Ct. 124 (Mem.).)

8 Cal. Dep’t of Justice, Office of the Attorney General, *Immigration Detention in California* (Feb. 2019) <<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>> (as of May 4, 2022).

9 Cal. Dep’t of Justice, Office of the Attorney General, *Immigration Detention in California* (Jan. 2021) <<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf>> (as of May 4, 2022).

10 Id. at pp. 131-43.

11 These court orders are discussed below in the Section on “Court Orders Addressing Immigration Detention During the COVID-19 Pandemic”.



## BACKGROUND

The CDC warned early in the COVID-19 pandemic that close living conditions heighten the risk of the virus's transmission, rendering people confined to detention facilities and similar congregate care settings especially vulnerable to contracting COVID-19.<sup>12</sup> Several aspects of immigration detention add to the risk of disease transmission. Those detained come into given facilities from wide-ranging geographic locations, there is frequent turnover in the detainee population, and—while the detained individuals cannot leave—others such as staff, contractors, and permitted visitors come in and out, allowing for new sources of transmission.<sup>13</sup> Along with other constraints of congregate care settings, these factors combine to present significant challenges to the mitigation of risk associated with COVID-19 in facilities used to house persons in ICE custody.

COVID-19 is more likely to be severe and even fatal for those with certain pre-existing health conditions.<sup>14</sup> Individuals in immigration detention have a higher prevalence of health problems, including many that are associated with an increased risk of COVID-19 becoming severe or deadly.<sup>15</sup> For example, medical files reviewed by Cal DOJ's experts at Imperial showed nine out of 11 detainees had conditions putting them at risk for severe illness from COVID-19. At Desert View, seven of nine were high-risk for severe illness from COVID-19.

Given the heightened risk of transmission in immigration detention settings and the higher medical vulnerability of some individuals within the detained populations, careful adherence to protocols designed to reduce and ameliorate COVID-19 transmission is critical. Below is an overview of the legal requirements and public health protocols pertinent to immigration detention facilities' responses to COVID-19 in California.

### 1. REGULATION AND OVERSIGHT OF IMMIGRATION DETENTION IN CALIFORNIA

Federal, state, and local laws, including applicable state health and safety statutes and county public health orders, govern all immigration detention facilities operating in California.<sup>16</sup> Facilities that contract to hold detained noncitizens are also bound by national detention standards established and periodically revised by ICE. The National Detention Standards for Non-Dedicated Facilities (NDS) were first issued in 2000 and were most recently updated in 2019.<sup>17</sup> The Performance-Based National Detention Standards (PBNDS) were issued in their present form in 2011, with revisions in 2016.<sup>18</sup>

- 12 CDC, Guidance on Prevention and Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (May 3, 2022) <<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html#People>> (“People in correctional and detention facilities are at greater risk for some illnesses, such as COVID-19, because of close living arrangements with other people.”).
- 13 DHS OIG, *ICE's Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic Responses* (Sept. 7, 2021), p. 2, <<https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>> (as of May 4, 2022).
- 14 See, e.g., CDC, *People with Certain Medical Conditions* (May 2, 2022) <<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>> (as of May 4, 2022).
- 15 See, e.g. *Fraihat v. U.S. Immigration and Customs Enforcement* (C.D. Cal. 2020) 445 F.Supp.3d 709, 725-26, *order clarified* (C.D. Cal., Oct. 7, 2020, No. EDCV191546JGBSHKX) 2020 WL 6541994, and *rev'd and remanded* (9th Cir. 2021) 16 F.4th 613. (listing categories of health and disability conditions acknowledged by ICE as rendering individuals in detention vulnerable to serious illness or death from COVID-19).
- 16 See, e.g., U.S. Const. Amends. V, XIV; Prison Rape Elimination Act of 2003, Pub. L. No. 108 - 79; Rehabilitation Act of 1973, Pub. L. No. 93-112; *Jones v. Blanas*, (9th Cir. 2004) 393 F.3d 918, 931; *Castillo v. Barr*, (C.D. Cal. 2020) 449 F. Supp. 3d 915, 919-20; ICE, PBNDS 2011, Part 4.3, Part V, Section C. pp. 261-62 <<https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf>> (requiring 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”). Contracts between ICE and detention facility operators commonly make explicit the requirement that facility operators comply with both federal and state law.
- 17 ICE, National Detention Standards for Non-Dedicated Facilities, <<https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>> (as of May 4, 2022) (hereafter NDS).
- 18 ICE, Performance Based National Detention Standards, <<https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016>.

PBNDS governs all the facilities presently operating in California, except for Yuba, which NDS governs.<sup>19</sup> As a facility operated by a subdivision of the State, Yuba is also required to comply with California detention standards.<sup>20</sup>

Both the NDS and PBNDS establish requirements for emergency planning, security protocols, detainee classification, discipline, medical care, food service, activities and programming, detainee grievances, and access to legal services. The PBNDS set forth the expectation that “[CDC] guidelines for the prevention and control of infectious and communicable diseases shall be followed,” and direct that each facility shall have written plans that “address the management of infectious and communicable diseases.”<sup>21</sup> The NDS similarly require “written plans that address the management of infectious and communicable diseases, including, but not limited to, testing, isolation, prevention, and education” as well as “reporting and collaboration with local or state health departments in accordance with state and local laws and recommendations.”<sup>22</sup>

Both ICE and the operators of individual detention facilities bear responsibility for housing detained individuals in conditions that meet legal requirements. Failure to ensure adequate conditions of confinement related to COVID-19 can violate the due process and statutory rights of immigration detainees.<sup>23</sup> ICE has contractual authority to enforce its detention standards, and has faced criticism for its failure to do so.<sup>24</sup>

## 2. PROTOCOLS FOR THE COVID-19 PANDEMIC

In March 2020, ICE Enforcement and Removal Operations (ERO) and ICE Health Service Corps (IHSC) issued guidelines for the operation of immigration detention facilities during the pandemic, but they did not mandate compliance with specific, enforceable requirements.<sup>25</sup>

On April 10, 2020, ICE ERO issued its COVID-19 Pandemic Response Requirements (PRR),<sup>26</sup> developed in consultation with the CDC,<sup>27</sup> which itself had issued interim guidance for detention facilities on March 23, 2020.<sup>28</sup> The PRR set forth both specific requirements and recommended “best practices”

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[pdf](#)> (as of May 4, 2022) (hereafter PBNDS).

19 ICE, Detention Management, Detention Statistics, FY 2022 ICE Statistics, <[https://www.ice.gov/doclib/detention/FY22\\_detention-Stats\\_03022022.xlsx](https://www.ice.gov/doclib/detention/FY22_detention-Stats_03022022.xlsx)> (as of June 16, 2022).

20 See, e.g., Penal Code §§ 4000, et seq., and Titles 15 and 24 of the California Code of Regulations. Title 15 and 24 minimum detention and building standards address health and safety, access to healthcare, personnel training, suicide prevention, grievances, administrative and disciplinary segregation, mail, library services, security, recreation, treatment of confined individuals, and the types and availability of visitation, among other subjects.

21 ICE, PBNDS 2011, Part 4.3, Part V, §C. pp. 258, 261.

22 ICE, NDS, Part 4.3 Medical Care, p. 114.

23 See, e.g., *Roman v. Wolf*, (9th Cir. 2020) 977 F.3d 935 (upholding district court ruling that conditions of confinement, including lack of social distancing, inadequate sanitation, lack of adequate hygiene supplies, inadequate quarantine practices, and not requiring staff to wear masks and gloves, violated due process right to reasonable safety).

24 See, e.g., U.S. House of Representatives, Committee on Homeland Security, Majority Staff Report, *ICE Detention Facilities: Failing to Meet Basic Standards of Care* (Sept. 21, 2020) <<https://homeland.house.gov/imo/media/doc/Homeland%20ICE%20facility%20staff%20report.pdf>> (as of May 4, 2022).

25 IHSC, Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19) (Mar. 6, 2020); ICE ERO, Memorandum on Disease 2019 (COVID-19) Action Plan, Revision 1 (Mar. 27, 2020) <<https://www.ice.gov/doclib/coronavirus/attF.pdf>>; see also *Fraihat v. U.S. Immigration and Customs Enforcement* (C.D. Cal. 2020) 445 F.Supp.3d 709, 725-26, *order clarified* (C.D. Cal., Oct. 7, 2020, No. EDCV191546JGBSHKX) 2020 WL 6541994, and *rev'd and remanded* (9th Cir. 2021) 16 F.4th 613 (“As of the drafting of this Order, Defendants have not provided even nonbinding guidance to detention facilities specifically regarding medically vulnerable detainees, pending individualized determinations of release or denial of release. Second, Defendants delayed mandating adoption of the CDC guidelines, and unreasonably delayed taking steps that would allow higher levels of social distancing in detention.”).

26 ICE ERO, COVID-19 Pandemic Response Requirements (Version 1.0, Apr. 10, 2020), <<https://www.ice.gov/doclib/coronavirus/ero-COVID19responseReqsCleanFacilities-v1.pdf>>.

27 ICE, COVID-19 Pandemic Response Requirements (April 4, 2022) <<https://www.ice.gov/coronavirus/prr>>.

28 CDC, *supra*, fn. 12.

for immigration detention facilities.<sup>29</sup> ICE issued six revisions to the PRR between June 2020 and October 2021.<sup>30</sup> Versions six (issued on March 16, 2021) and seven (issued on October 19, 2021) of the PRR were in effect when Cal DOJ conducted its site visits and are cited throughout this report, as applicable.<sup>31</sup> The CDC and other public health authorities have similarly updated guidance and protocols over the course of the pandemic to reduce and mitigate the spread of COVID-19.<sup>32</sup> Unless otherwise specified, references to the PRR in this report are to versions six and seven.

The PRR addresses conditions for confined persons, as well as staff, contractors, or others who may enter and exit facilities. Certain PRR apply only to dedicated facilities—those housing only ICE detainees—while others apply more generally to any facility holding persons detained for ICE.<sup>33</sup> Requirements for all facilities include compliance with the CDC’s *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.<sup>34</sup> From the outset, the CDC instructed detention facilities to:

- practice extreme social distancing;
- employ continual and correct use of personal protective equipment (PPE);
- ensure heightened sanitation and vigorous hygiene throughout the facility;
- use cohorting and screening for symptomatic individuals, testing of asymptomatic individuals, quarantine and contact tracing; and
- provide vaccines, once available.<sup>35</sup>

The PRR imposes requirements beyond adherence to CDC guidelines. As the PRR involves a high level of detail, highlighted here are a few critical components, and some additional details are included as they pertain to sections of this report that follow:<sup>36</sup>

- Within five days of entering ICE custody, all newly detained individuals must be evaluated to determine whether the individual is within a population identified by the CDC or the court order in *Fraihat* (discussed below) as being at increased risk for severe COVID-19 if infected.<sup>37</sup>
- Testing for COVID-19 is required: (1) upon intake to any ICE facility, (2) as directed by medical personnel based on CDC requirements and clinical presentation, (3) upon removal/deportation as required by the receiving country, and (4) upon release or transfer to another facility.<sup>38</sup>

29 DHS OIG, *supra*, fn. 13 at p. 3.

30 ICE, COVID-19 Pandemic Response Requirements (April 4, 2022) <<https://www.ice.gov/coronavirus/prr>>.

31 ICE ERO, COVID-19 Pandemic Response Requirements (Version 6.0, Mar. 16, 2021), <<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v6.pdf>> (hereafter ICE PRR 6.0); ICE ERO, COVID-19 Pandemic Response Requirements (Version 7.0, Oct. 19, 2021), <<https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v7.pdf>> (hereafter ICE PRR 7.0).

32 See, e.g., CDC, COVID-19 Archived Content (Jan. 24, 2022) <<https://www.cdc.gov/coronavirus/2019-ncov/more/more-resources-archive.html>>.

33 ICE PRR 6.0, *supra*, fn. 31; Reporting indicates that, at least initially, the employment of different standards for different facilities engendered some confusion. (DHS OIG, *Early Experiences with COVID-19 at ICE Detention Facilities* (June 18, 2020) p. 14 <<https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>> (May 4, 2022).)

34 ICE PRR 7.0, *supra*, fn. 31 at p. 9; ICE PRR 6.0, *supra*, fn. 31 at p. 11; ICE PRR 1.0, *supra*, fn. 26 at p. 5.

35 CDC, *supra*, fn. 12.

36 As noted, ICE updated the PRR seven times between when it first issued in April 2020 and October 2021. The October 2021 update followed some of Cal DOJ’s facility inspections reported here and preceded others, but the amendments to the PRR made then did not materially change the required protocols that are highlighted in the text and that were the focus of the facility inspections reported here. (See ICE PRR 7.0, *supra*, fn. 31 at p. 3.)

37 ICE PRR 6.0, *supra*, fn. 31 at p. 17.

38 ICE PRR 6.0, *supra*, fn. 13 at p. 19.

Those who test positive must be isolated in accordance with the PRR until medically cleared, and facilities must provide all appropriate medical care, including outside hospitalization as needed.<sup>39</sup>

- Facilities are also responsible for reinforcing healthy hygiene practices, adhering to cleaning and disinfecting practices, and maintaining adequate stock of hygiene supplies and PPE such as masks for both staff and detainees.<sup>40</sup>
- Additionally, all detention facilities must offer COVID-19 vaccines to those detained, in accordance with state priorities and guidance.<sup>41</sup>

### 3. COURT ORDERS ADDRESSING IMMIGRATION DETENTION DURING THE COVID-19 PANDEMIC

When the COVID-19 pandemic took hold, the extraordinary risks posed to persons confined in close quarters prompted numerous lawsuits alleging that both ICE and its contracted detention facilities had failed to take necessary precautions to prevent transmission of the virus and mitigate resulting detainee illness. Class action lawsuits and individual petitions filed in courts across the State sought the release of medically vulnerable individuals held in immigration detention facilities.<sup>42</sup> Plaintiffs also sought court intervention to bring about facility adherence to protocols understood to be necessary to reduce transmission.<sup>43</sup>

Three class action lawsuits resulted in court orders that broadly impacted immigration detention in California during the pandemic. One addressed screening of those held by ICE and resulted in a decrease in the number of individuals detained in facilities across the State and nationally. Two led to the implementation of measures aimed at lowering the risk of transmission at the facilities that were the subject of the litigation. These latter cases involved reductions of the populations at those facilities and shaped conditions for those who continued to be subject to detention.

The first lawsuit was *Fraihat v. ICE*, a nationwide class action filed against federal immigration authorities before the onset of the pandemic. *Fraihat* challenged the adequacy of medical and mental health care, segregation practices, and disability access in immigration detention facilities across the country. Early in the pandemic, the *Fraihat* plaintiffs secured a preliminary injunction requiring ICE to identify and track all detained persons with any enumerated risk factor and make timely decisions as to whether ICE would continue to detain those individuals.<sup>44</sup> The court's order also required that ICE promptly issue a performance standard or a supplement to the PRR "defining the minimum acceptable detention conditions for detainees with the Risk Factors, regardless of the statutory authority for their detention, to reduce their risk of COVID-19 infection pending individualized determinations or the end of the pandemic."<sup>45</sup>

As a result of the *Fraihat* ruling, ICE was directed to undertake a process to review the cases of detained people with specified risk factors and consider them for release. The court subsequently

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39 ICE PRR 7.0, *supra*, fn. 31 at pp. 16, 18-25, 27; ICE PRR 6.0, *supra*, fn. 31 at pp. 17, 19, 20.

40 ICE PRR 7.0, *supra*, fn. 31 at pp. 30-35; ICE PRR 6.0, *supra*, fn. 31 at pp. 14, 27-32.

41 ICE PRR 7.0, *supra*, fn. 31 at p. 15, 25-26; ICE PRR 6.0, *supra*, fn. 31 at p. 24.

42 See, e.g., *Singh v. Barr*, (N.D. Cal. May 15, 2020 No. 20-cv-02346-VKD) 2020 WL2512410; *Rodriguez v. Wolf*, (C.D. Cal. March 30, 2020, No. 5:20-cv-00627); *Doe v. Barr*, (N.D. Cal. March 28, 2020 No. 3:20-CV-02141). Though filed before the pandemic, *Fraihat* led to a significant number of releases after the plaintiffs there secured class certification and secured a preliminary injunction that included the requirement that ICE to screen those in its custody for identified risk factors and make timely custody determinations for those with risk factors.

43 See, e.g., *Zepeda Rivas v. Jennings*, (N.D. Cal. 2020) 445 F.Supp.3d 36.

44 *Fraihat v. U.S. Immigration and Customs Enforcement* (C.D. Cal. 2020) 445 F.Supp.3d 709, *order clarified* (C.D. Cal., Oct. 7, 2020, No. EDCV191546JGBSHKX) 2020 WL 6541994, and *rev'd and remanded* (9th Cir. 2021) 16 F.4th 613.

45 *Fraihat v. U.S. Immigration and Customs Enforcement* (C.D. Cal. 2020) 445 F.Supp.3d 709, *order clarified* (C.D. Cal., Oct. 7, 2020, No. EDCV191546JGBSHKX) 2020 WL 6541994, and *rev'd and remanded* (9th Cir. 2021) 16 F.4th 613.

clarified its order upon finding that the federal defendants “ha[d] not provided evidence that the Docket Review Guidance standards are being meaningfully implemented, such that Risk Factors receive significant weight.”<sup>46</sup> In the months following issuance and clarification of the injunction, the number of individuals detained nationally by ICE dropped significantly.<sup>47</sup> On October 20, 2021, a divided panel of the U.S. Court of Appeals for the Ninth Circuit issued an order reversing the district court’s grant of a preliminary injunction;<sup>48</sup> however, that order had not yet become final at the time of this report’s publication, and the preliminary injunction remained in effect at all points during Cal DOJ’s review.<sup>49</sup> The PRR continues to direct the screening required by the court in *Fraihat*.<sup>50</sup>

On the same day that the district court ordered preliminary injunctive relief in *Fraihat*, ICE detainees held in Mesa Verde and Yuba filed *Zepeda Rivas v. Jennings*, a class action alleging that conditions of confinement put detainees at heightened risk during the pandemic in violation of due process. In June 2020, the court issued a preliminary injunction initiating a bail process that led to the temporary release of some individuals.<sup>51</sup> The court issued a second preliminary injunction in December 2020, requiring the defendants to maintain litigation-precipitated changes in the conditions at Mesa Verde, including pre-intake screening, point-of-care tests for all intakes, saturation testing, per-dorm population limits, constraints on transfers, reservation of a dorm to allow for isolating as a cohort those testing positive, and reservation of a dorm for the temporary quarantining of individuals testing negative upon arrival.<sup>52</sup> Mesa Verde saw a substantial reduction in the number of people held there in the wake of *Zepeda Rivas*.<sup>53</sup>

On April 13, 2020, one week prior to the filing of *Zepeda Rivas*, individuals detained at Adelanto filed *Roman v. Wolf*, seeking relief from dangerous conditions they faced in that facility. The *Roman* litigation resulted in two orders in effect at the time of Cal DOJ’s inspections. First, under a modified preliminary injunction issued September 29, 2020, the court ordered federal authorities to submit a plan for reducing the detainee population at Adelanto, and the facility was barred from accepting any new or transferred detainees until its population was sufficiently reduced.<sup>54</sup> The court further ordered various testing and distancing measures.<sup>55</sup> Second, the court issued a population reduction order requiring detainees be released or deported until the total detainee population at Adelanto fell to 475.<sup>56</sup>

More recently filed litigation has sought booster shots for those in immigration detention. One such lawsuit was filed on March 1, 2022, as a class action on behalf of all medically vulnerable people and people ages 55 or older detained by ICE nationwide.<sup>57</sup> The complaint alleged that between November 2021 and February 21, 2022, amid the surge caused by the Omicron variant of COVID-19, a total of only 1,436 boosters were provided to people detained in ICE detention facilities nationwide, despite those

46 *Fraihat v. U.S. Immigration and Customs Enforcement* (C.D. Cal., Oct. 7, 2020, No. EDCV191546JGBSHKX) 2020 WL 6541994, at \*11.

47 See TRAC Immigration, ICE Detainees <[https://trac.syr.edu/immigration/detentionstats/pop\\_agen\\_table.html](https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html)> (as of June 16, 2022).

48 *Fraihat v. U.S. Immigration and Customs Enforcement* (9th Cir. 2021) 16 F.4th 613.

49 *Fraihat*, Docket No. 20-55634 (reflecting that the parties have extended the time for a rehearing petition to be filed) (last checked June 16, 2022).

50 ICE PRR 7.0, *supra*, fn. 31 at p. 10; ICE PRR 6.0, *supra*, fn. 31 at p. 11.

51 *Zepeda Rivas v. Jennings*, (N.D. Cal. 2020) 465 F. Supp. 3d 1028.

52 *Zepeda Rivas v. Jennings* (N.D. Cal. 2020) 504 F.Supp.3d 1060, *appeal dismissed* (9th Cir., Dec. 17, 2021, No. 20-16276) 2021 WL 6803131.

53 *Zepeda Rivas v. Jennings* (N.D. Cal. 2020) 504 F.Supp.3d 1060, *appeal dismissed* (9th Cir., Dec. 17, 2021, No. 20-16276) 2021 WL 6803131; de Marco, *Sharing Covid Vax Facts Inside ICE Detention, One Detainee at a Time*, California Healthline (March 17, 2022), <<https://californiahealthline.org/news/article/immigrant-covid-treatment-vaccination-counseling-ice-detention-centers/>> (as of June 16, 2022).

54 *Roman v. Wolf* (C.D. Cal., Sept. 29, 2020, No. EDCV2000768TJHPVCX) 2020 WL 5797918, *aff’d in part, vacated in part*, remanded (9th Cir. 2020) 977 F.3d 935.

55 *Roman v. Wolf* (C.D. Cal., Sept. 29, 2020, No. EDCV2000768TJHPVCX) 2020 WL 5797918, *aff’d in part, vacated in part*, remanded (9th Cir. 2020) 977 F.3d 935.

56 *Roman v. Wolf* (C.D. Cal. Jan. 11, 2021, No. 5:20-cv-00768) ECF No. 914.

57 *Escalante v. U.S. Immigration and Customs Enforcement*, (D.D.C. March 1, 2022, No. 1:22-cv-00541) ECF No. 1.



facilities holding between 18,800 to 22,000 people on average daily. The plaintiffs voluntarily dismissed their complaint on March 11, 2022, after all four named plaintiffs received booster shots.<sup>58</sup>

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58 *Escalante v. U.S. Immigration and Customs Enforcement*, (D.D.C. March 11, 2022, No. 1:22-cv-00541) ECF No. 11.

## OVERVIEW OF LOCKED FACILITIES ICE USES TO DETAIN NONCITIZENS IN CALIFORNIA

For civil immigration detention in California, ICE has contracts for eight facilities, three of which are annexes, but it used only seven facilities at the time of Cal DOJ’s review.<sup>59</sup> Private companies operate all but one of these facilities. Except for Yuba, which has a 99-year Intergovernmental Support Agreement (IGSA) with ICE, the facilities entered into new contracts with ICE in December 2019. These latter contracts expanded the number of beds available to house immigration detainees to approximately 7,408, and are in effect for five years from the date of execution, with the option to extend for two additional five-year periods.

Cal DOJ reviewed all seven facilities presently in use by ICE: (1) Adelanto ICE Processing Center in Adelanto; (2) Desert View Annex in Adelanto; (3) Mesa Verde ICE Processing Facility in Bakersfield; (4) Golden State Annex in McFarland; (5) Imperial Regional Detention Facility in Calexico; (6) Otay Mesa Detention Center in San Diego; and (7) Yuba County Jail in Marysville.

**Table 1** below provides an overview of: (1) the maximum number of beds available to hold ICE detainees; (2) the contractual guaranteed minimum number of beds for which ICE has agreed to pay regardless of the actual detainee count; (3) ICE’s PRR recommended reduced capacity; (4) the date of Cal DOJ’s visit; (5) the detainee count on the date of Cal DOJ’s visit; (6) the average length of stay (LOS) in days for the detained population on the day of Cal DOJ’s visit; and (7) the average LOS in days for FFYs 2019, 2020, and 2021:

*Table 1. Facility Overview.*

Facility	Max. Capacity	Guaranteed Minimum	Capacity per PPR <sup>60</sup>	Cal DOJ Visit			FFY 2021 Avg. LOS (Days) <sup>61</sup>	FFY 2020 Avg. LOS (Days) <sup>62</sup>	FFY 2019 Avg. LOS (Days) <sup>63</sup>
				Date	Detainee Count	Avg. LOS (Days)			
Adelanto	1,940	1,455	1,455	11/15/21	79	719	244	83	54
Desert View Annex	750	120	562	12/14/21	95	108	29	N/A	N/A
Mesa Verde	400	320	320	11/16/21	45	269	480	41	25
Golden State Annex	700	560	525	12/15/21	141	107	55	N/A	N/A
Imperial	704	640	528	10/5/21	576	55	72	87	37
Otay Mesa	1,358	750	1,018	10/4/21	815	73	101	100	87
Yuba	210	150	112	11/2/21	0	N/A	422	81	51

59 The eighth facility, which is under contract but not in use by ICE, is Central Valley Modified Community Correctional Facility in McFarland. Cal DOJ did not inspect this facility.

60 Recognizing that strict “social distancing” may not be possible in a congregate care setting, ICE has directed facilities to adopt measure that facilitate social distancing. These include undertaking efforts to reduce facility populations to approximately 75 percent of capacity. See ICE PRR 7.0, *supra*, fn. 31 at p. 38; ICE PRR 6.0, *supra*, fn. 31 at p. 35.

61 See ICE, Detention Management, Detention Statistics, FY 2021 ICE Statistics <[FY21-detentionstats.xlsx \(live.com\)](#)> (as of June 2, 2022).

62 See ICE, Detention Management, Detention Statistics, FY 2020 ICE Statistics <[FY20-detentionstats.xlsx \(live.com\)](#)> (as of June 2, 2022).

63 See ICE, Detention Management, Detention Statistics, FY 2019 ICE Statistics <[FY19-detentionstats.xlsx \(live.com\)](#)> (as of May 19, 2022).

## **1. ADELANTO ICE PROCESSING CENTER**

Adelanto is owned and operated by the GEO Group and has a 1,940 bed capacity. Its contract with ICE guarantees payment to GEO Group for a minimum of 1,455 beds, regardless of the actual detainee population count. The PRR recommends a reduction in capacity to approximately 75 percent, reducing the maximum number of individuals who could be detained down to the guaranteed minimum of 1,455. Over the course of the pandemic, the number of individuals confined to Adelanto dropped significantly below the guaranteed minimum, but consistent with the contractual guaranteed minimum provision, staffing was maintained at the level accordant with a census of 1,455. Adelanto suspended intake in September 2020 pursuant to a court order not to accept any transfers or newly detained individuals into the facility until it met specified conditions.<sup>64</sup>

Adelanto combines two facilities. The East facility houses males and females in dormitory-style housing units, and the West facility consists of six housing modules with two- to eight-person cells. Due to the low detainee count, at the time of Cal DOJ's visit Adelanto was only using the West building, meaning it housed all detainees in cells.

## **2. DESERT VIEW ANNEX**

ICE's 2019 Adelanto contract with GEO Group added the Desert View Annex, a 750-bed facility. ICE and GEO Group regard Desert View Annex as a separate stand-alone facility notwithstanding ICE's acquisition of Desert View Annex beds through a single contract with Adelanto and the sharing of certain staff positions across both facilities. ICE had a guaranteed minimum of 120 beds at Desert View Annex in FFY 2021. With a 25 percent reduction of the facility's operating capacity as recommended under the PRR, the number of beds available to ICE was 562 beds. The staffing plan nonetheless stayed at the level required for the detention of 120 individuals based on the contract's guaranteed minimum provision.

## **3. MESA VERDE ICE PROCESSING FACILITY**

The GEO Group owns and operates Mesa Verde. The facility has a 400-bed capacity consisting of four 100-bed dorms (three for men and one for women) with a guaranteed minimum of 320 beds. With the 25 percent capacity reduction under ICE's PRR, 300 of the original 400 beds were available, with staffing for that level based on the guaranteed minimum provision.

At the time of Cal DOJ's visit, Mesa Verde reported that it was only accepting transfers from other facilities, but not detainees ICE had just apprehended. Thus, it accepted transfer detainees from Golden State Annex upon completion of their initial quarantine period.

## **4. GOLDEN STATE ANNEX**

In 2019, when ICE executed its new Mesa Verde contract with GEO Group, it added the Golden State Annex and the Central Valley Modified Community Correctional Facility, as annexes to Mesa Verde. The Golden State Annex started housing immigration detainees early in the pandemic. Although contractually listed as an annex to Mesa Verde, the Golden State Annex has its own workforce including a dedicated Facility Administrator, and it operates independently of Mesa Verde. Beyond the contract, the Golden State Annex's one nexus with Mesa Verde involves intake.

Golden State Annex has a 700-person capacity with a 560-bed guaranteed minimum. It is a single-story facility with two wings, each divided into four 88-bed housing units. The PPRs recommended a reduced operating capacity to 75%, or 525 beds, but pursuant to the guaranteed minimum provision with ICE,

<sup>64</sup> *Roman v. Wolf* (C.D. Cal. Jan. 11, 2021, No. 5:20-cv-00768) ECF No. 914, p. 14.

the Golden State Annex maintained a staffing plan accordant with the detention of 560 individuals.

## **5. IMPERIAL REGIONAL DETENTION FACILITY**

Imperial is owned by the Imperial Valley Gateway Center, LLC and operated by MTC. This dedicated facility has a capacity of 704 beds, with a guaranteed minimum of 640 beds. The recommended reduction to 75 percent under the PRR took capacity during the pandemic down to approximately 586 beds. Imperial is a single-level structure with 11 general-population housing units, each with 64 beds in either dorm-style and cell-style units.

## **6. OTAY MESA DETENTION CENTER**

CoreCivic operates Otay Mesa. The facility holds persons detained by the U.S. Marshals Service and persons detained by ICE. While persons held for ICE in general population are not housed with persons detained under the authority of the U.S. Marshals Service, both populations are co-located in the special management units. The facility has an overall capacity of 1,970 beds, including 1,358 for ICE. The facility's modified operating capacity for the pandemic reduced the number of ICE beds to 75 percent, or 1018 beds. The guaranteed minimum number of beds for FFY 2021 was 750 beds.<sup>65</sup> Otay Mesa is two-story facility with some open-bay housing units and some two- to four-person cells.

## **7. YUBA COUNTY JAIL**

Yuba is a four-story structure owned by Yuba County and operated under the jurisdiction of the Yuba County Sheriff's Department, which has an IGSA with ICE. The jail has a capacity of 420 beds. ICE contracted for 150 of those beds. Under the PRR, this capacity was recommended to be decreased to 75 percent (112 beds).

Yuba held both men and women for ICE prior to the pandemic, but subsequently held only males. At the time of the site visit on November 2, 2021, the jail did not hold anyone for ICE but was expecting soon to resume and possibly expand detention for ICE; the last two men held for ICE had been released or removed in October.

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<sup>65</sup> DHS's Office of the Inspector General determined in 2021 that the decline in the number of individuals ICE detained at Otay Mesa, in combination with the guaranteed minimum provision in the contract between ICE and CoreCivic, resulted in ICE paying more than \$22 million for unused bed space at the facility. (DHS OIG, Violations of ICE Detention Standards at Otay Mesa Detention Center (Sept. 14, 2021) p. 4 <<https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-61-Sep21.pdf>> [as of May 19, 2022].)

## METHODOLOGY

The findings contained in this report are the result of a multi-faceted methodology and extensive data analysis. Important aspects of Cal DOJ's reviews included researching publicly available information; obtaining and reviewing documents from Adelanto, Desert View Annex, Mesa Verde, Golden State Annex, Imperial, Otay Mesa, and Yuba; consulting with subject matter experts about medical care and correctional standards in light of the COVID-19 pandemic; and conducting focused, one-day site visits to each facility to inspect, review files, and interview staff and immigration detainees. In addition to subject matter experts, Cal DOJ's review team consisted of attorneys and staff from the Civil Rights Enforcement Section, and a research associate from the Cal DOJ Research Center.

### 1. REVIEW OF PUBLICLY AVAILABLE INFORMATION

In preparing the report, Cal DOJ consulted relevant publicly available government and nongovernmental entity reports, news articles, and legal filings related to the facilities. Specific to COVID-19, Cal DOJ reviewed publicly available guidance materials, including those issued by the CDC and ICE ERO.

### 2. CONSULTATION WITH EXPERTS

Cal DOJ retained one correctional expert (Dr. Dora Schriro) and one medical expert (Dr. Lisa Anderson) to assist in the reviews contained in this report. The correctional and medical experts evaluated the seven facilities in accordance with best practices and in consultation with the NDS 2019 and PBNDS 2011, rev. 2016, Title 15 of California's Code of Regulations, and industry standards, including standards promulgated by the American Correctional Association (ACA), National Commission on Correctional Health Care (NCCHC), and the PRR. These experts provided invaluable feedback as Cal DOJ developed and implemented the review methodology, sharing key analyses in accordance with applicable standards and best practices that informed the report's findings.

### 3. SITE VISITS

Cal DOJ's review process targeted two AB 103 focus areas: "conditions of confinement" and "the standard of care and due process provided" in light of the COVID-19 pandemic. The review for each facility consisted of an assessment of: (i) requested documentation, including policies and procedures, staff and training records, facility logs, operations schedules, and other documents; (ii) facility tours; (iii) on-site records review; and (iv) interviews with facility personnel and detainees.<sup>66</sup>

***Requested Documentation.*** The Cal DOJ team requested and received preliminary documentation from all seven of the reviewed facilities prior to each on-site facility review. This documentation included policies, practices, and protocols related to COVID-19 that the facilities implemented to prevent, detect, and treat COVID-19. For instance, Cal DOJ requested documents that addressed (i) preventative measures that the facilities took with respect to screening, testing, and infection control for staff, visitors, and detainees; (ii) changes the facilities made in response to COVID-19 with respect to availability of hygiene items, PPE, and cleaning supplies; (iii) the accommodations the facilities made to address COVID-19-related limitations on social and legal visits; (iv) changes to work, housing, meal service, recreation, and programs; (v) the measures, if any, that were taken with respect to staffing and employment in response to COVID-19; among other documentation.

In addition, each facility provided a detainee roster that generally reflected the gender, age, length of stay, country of origin, and security classification of detainees held at the facility. An updated roster

<sup>66</sup> Each facility maintains records differently, as reflected in different sections of this report.



reflecting the active population at the time of each site visit was also provided to Cal DOJ. Some facilities additionally provided Cal DOJ with data on the number of detainees held in their facilities since January 2020.<sup>67</sup> Cal DOJ summarized this data and prepared tables and charts included throughout this report.

Cal DOJ's retained experts also conducted an on-site review of detainee records (detention files and health records) during each site visit based on their subject-matter expertise.

**Detainee Interviews.** Cal DOJ interviewed 71 detainees across the seven reviewed facilities. Fifty-four of the interviewed detainees participated in standard interviews consisting of 17 main questions pertaining to detainees' experiences within the facility and based on eight major categories: (i) due process; (ii) intake, including questions regarding COVID-19 screening and testing; (iii) COVID-19 prevention measures, including access to PPE, hand cleansing and cleaning items; (iv) communication; (v) programs, work, and recreation; (vi) access to medical and mental healthcare; (vii) interaction with staff; and (viii) food. The remaining 17 detainees participated in expert interviews led by Cal DOJ's retained corrections and medical experts and based on their subject-matter expertise.<sup>68</sup>

Cal DOJ generally identified detainees for interviews based on rosters provided by the facilities on the day of the site-visits.<sup>69</sup> All interviewed detainees provided verbal consent to be interviewed by the team following an initial explanation regarding the purpose of the review and why they were being interviewed.

Interview spaces varied by facility. At Adelanto, Desert View Annex, and Mesa Verde, the interviews took place in a non-contact visitation room where individuals were separated by a plexiglass barrier and had to speak and listen to the other person through a telephone or via an opening in the plexiglass. The non-contact visitation space was not offered to Cal DOJ at Golden State Annex; instead the interviews were conducted remotely with detained individuals and Cal DOJ staff in designated offices communicating through a landline in separate rooms.<sup>70</sup> Interviews at Imperial and Otay Mesa took place in individual and private settings in the facilities' attorney visitation rooms or designated conference rooms or offices with Cal DOJ staff and detainees present in the same room. Where the interviewers and detainees were in the same room, Cal DOJ staff and detainees wore masks during the interviews and appropriate social distancing measures were followed.

Cal DOJ interviewed detainees in their preferred language, either by Cal DOJ staff who were proficient in the language or through a telephone interpretation service.<sup>71</sup> The telephone interpretation service was not used during the interviews at Adelanto, Mesa Verde, and Desert View Annex given that landlines were not accessible in the non-contact visitation rooms. The languages used during the interviews included English (33), Spanish (29), Mandarin (3), Bengali (2), Nepali (2), Gujarati (1), and Portuguese (1).

Overall, detainees with whom Cal DOJ spoke came from 27 countries of origin, with most coming from Latin America (44); were on average 40 years old (ranging from 20 to 78 years of age); and had an

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67 Only Imperial, Otay Mesa, and Yuba provided documentation responsive to this request.

68 The number of detainees at each facility who participated in standard interviews is as follows: Adelanto (5); Desert View Annex (12); Mesa Verde (7); Golden State Annex (9); Imperial (12); Otay Mesa (9). The number of detainees at each facility who participated in expert interviews is as follows: Adelanto (4); Desert View Annex (2); Mesa Verde (2); Golden State Annex (1); Imperial (3); Otay Mesa (5).

69 The review team developed a standardized sampling strategy to randomly select detainee interviewees in order to ensure that the interviewed detainees would be representative of each facility's population with respect to the number of detainees housed at each facility and demographic information, such as detainee nationality, gender, and age. However, its implementation was not always possible given the limited length of each visit and limitations on the space available to interview detainees due to COVID-19 protocols at certain facilities.

70 When interviews occurred in separate rooms, detainees verbally confirmed facility staff was not inside of the room with them.

71 At least two interviewers were proficient in both English and Spanish during each of the site-visits.

average length of stay at the facilities of 244 days (ranging from 3 days to 991 days).<sup>72</sup>

Cal DOJ analyzed the data obtained from the individual interviews and the results were integrated into the discussion of each of the topics that are the focus of this report. The retained experts analyzed the data obtained from the interviews they conducted and Cal DOJ integrated those findings into the reviews of the facilities.

**Staff Interviews.** Cal DOJ and its experts interviewed facility leaders in the highest positions, such as wardens and healthcare services administrators and mid-level and rank and file staff who either had expertise in particular functions—likely to be affected by the COVID-19 pandemic, such as recreation, programming, and law library—or who had a great deal of detainee contact. Although most facilities required that facility counsel be present for interviews, Cal DOJ advised staff that their participation was voluntary, that they would not be named in Cal DOJ’s report, and that they would not be subject to retaliation for participating in the interviews.

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72 Cal DOJ staff also interviewed detainees from the following subregions: South Asia (5), Africa (4), Anglophone Caribbean/Central America (4), Southeast Asia (3), Australia/Oceania (3), East Asia (3), Middle East (2), Central Asia (2), and Europe (1).

# DETAINEE POPULATIONS

## 1. DETAINEE DEMOGRAPHICS SNAPSHOT

The following sections provide individual demographic snapshots for the active population of each detention facility at the time of Cal DOJ’s site visits. The data included in each demographic profile generally reflects age, gender, and length of stay information. **Table 2** indicates the date in which each detainee roster was generated, as well as the detainee arrival date range for all active detainees at the time of the site visits. Demographic information is not available for Yuba since it was not housing immigration detainees at the time of the Cal DOJ site visits.

*Table 2. Date Span of Data Provided by Facilities.<sup>73</sup>*

Detention Facility	Date Roster was Generated	Detainee Arrival Date Range
Adelanto	November 15, 2021	December 22, 2018 to January 9, 2020
Desert View Annex	December 13, 2021	February 25, 2021 to December 9, 2021
Mesa Verde	November 15, 2021	January 18, 2018 to September 25, 2021
Golden State Annex	December 15, 2021	September 15, 2020 to December 14, 2021
Imperial	October 5, 2021	January 18, 2019 to October 4, 2021
Otay Mesa	October 4, 2021	August 24, 2016 to October 3, 2021

## 2. DETAINEE AGE AND GENDER

**Table 3** shows the age and gender composition of each facility at the time of the Cal DOJ site visits.

*Table 3. Detainees’ Age and Gender by Facility.<sup>74</sup>*

Detention Facility	Count (%)		Average		Standard Deviation		Min-Max	
	Women	Men	Women	Men	Women	Men	Women	Men
Adelanto	9 (11%)	70 (89%)	42.78	41.09	8.44	11.76	34-56	21-78
Desert View Annex	3 (3%)	92 (97%)	44.67	39.97	14.22	10.60	35-61	21-68
Mesa Verde	None	45	None	44.11	None	8.89	None	29-61
Golden State Annex	None	141	None	39.56	None	11.27	None	21-67
Imperial	70 (12%)	506 (88%)	29.26	31.36	9.53	8.81	18-54	18-63
Otay Mesa	114 (14%)	701 (86%)	29.41	31.90	8.97	8.93	18-54	18-63

<sup>73</sup> The date of arrival for one detainee from Golden State Annex was not available.

<sup>74</sup> The standard deviation for a data set provides context for averages. A low standard deviation indicates that the data points tend to be close to the mean of the set, while a high standard deviation indicates that the data points are spread out over a wider range of values.

### 3. DETAINEE LENGTH OF STAY

**Table 4** shows the average detainee length of stay in days by facility and the range in lengths of stay from the lowest number of days to the detainees with the longest lengths of stay.

*Table 4. Detainees’ Length of Stay by Facility.<sup>75</sup>*

Facility	Average No. of Days	Median	Standard Deviation	Min-Max
Adelanto	719.04	707.00	251.35	52-1,685
Desert View Annex	108.14	105.00	72.22	5-292
Mesa Verde	268.58	69.00	354.01	52-1,398
Golden State Annex	106.8	92.00	100.54	1-456
Imperial	55.12	39.00	89.50	1-991
Otay Mesa	72.92	45.00	136.45	1-1,867

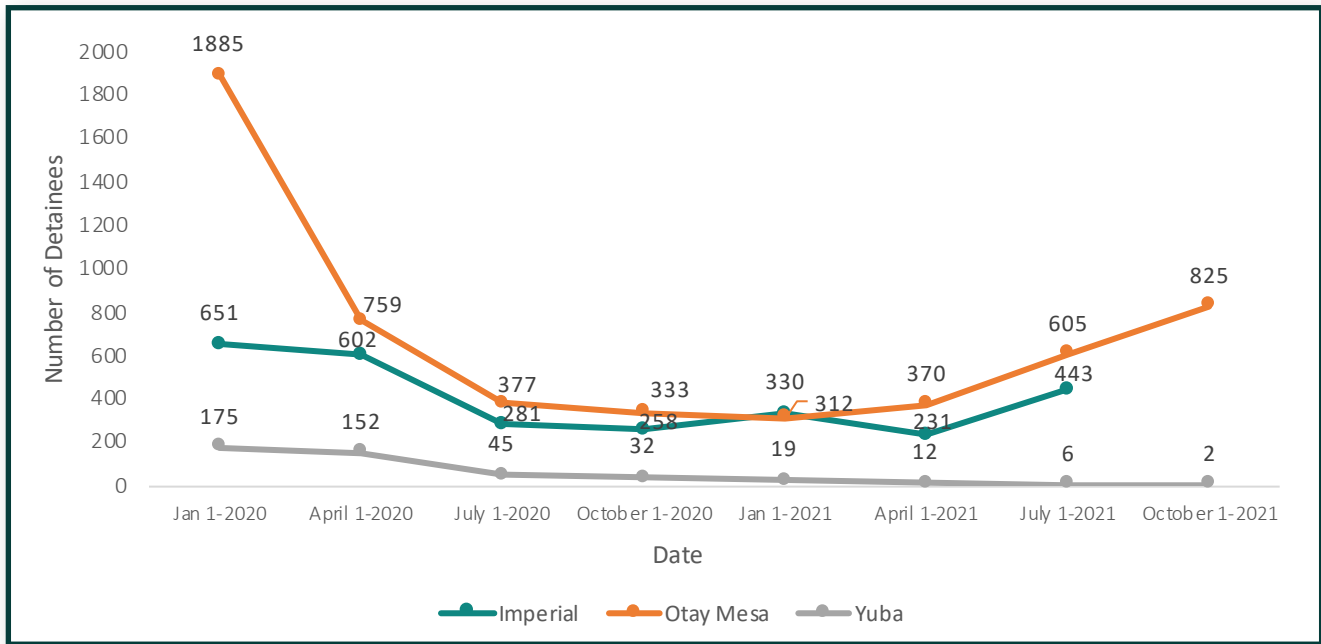
### 4. CHANGES IN THE DETAINEE POPULATION SINCE JANUARY 1, 2020.

Cal DOJ requested that facilities provide documentation indicating the total number of immigration detainees held at each facility by month since January 1, 2020. Only Imperial, Otay Mesa, and Yuba provided documentation responsive to this request.<sup>76</sup> **Figure 1** shows the number of detainees held at the three facilities on the first day of each quarter from January 2020 to October 2021.

<sup>75</sup> The date of arrival for one detainee from Golden State Annex was not available.

<sup>76</sup> The type of documentation provided by facilities varied, with some providing daily counts and others providing snapshots of each quarter for the 2020 and 2021 calendar years. Adelanto, Desert View, Mesa Verde, and Golden State indicated such documentation was not available and noted they have maintained compliance with CDC and PRR guidance at all relevant times. However, in the document production shared with the Cal DOJ team, Adelanto specified what their total detainee population was on September 7 of each year between 2019 and 2021, noting there were 1,653 detainees in 2019, 805 detainees in 2020, and 86 detainees in 2021.

Figure 1. Number of Detainees Held in Immigration Detention on the First Day of Each Quarter from January 2020 to October 2021, Imperial, Otay Mesa, and Yuba.<sup>77</sup>



As illustrated in **Figure 1**, the detainee population at the three facilities saw a decline between January 2020 and April 2020, with the largest decline experienced at Otay Mesa (a 60% decrease from 1,885 to 759).<sup>78</sup> Imperial and Yuba experienced their largest declines between April 2020 and July 2020, with decreases of 53% and 70%, respectively. These declines coincide with the issuance of initial COVID-19 guidance from ICE ERO, including the publication of the first version of its COVID-19 PRR, which recommended that facilities make efforts to reduce the population to approximately 75 percent of capacity.<sup>79</sup>

Detainee numbers showed a steady decline for Yuba through October 2021, with the facility housing only two detainees on October 1, 2021. Although Imperial and Otay Mesa saw a steady decline in their detainee populations from January 2020 to October 2021, both saw sharp increases from April 2021 to July 2021 (increases of 92% and 64%, respectively). This increase remained steady for Otay Mesa through October 2021.<sup>80</sup>

77 Data from October 1, 2021 is not available for Imperial.

78 The percentage provided represents the percent change between the two values. Percent change is used to report the degree of change over time and is calculated by dividing the difference of values by the initial value.

79 ICE PRR 1.0, *supra*, fn. 26 at p. 13.

80 Although data for October 1, 2021 is not available for Imperial, on the day of the Cal DOJ site visit (October 5, 2021), there were 576 detainees housed at the facility, indicating the detainee population continued to increase from July 2021 to October 2021.



# FACILITY COVID-19 TRANSMISSION PREVENTION MEASURES

A key component to preventing the introduction and spread of COVID-19 from the outside community to the detention facilities is the use and enforcement of infection-control practices such as the use of PPE, hand hygiene, surface sanitation, and social distancing. Cal DOJ reviewed the following infection control practices at each facility: symptom screening, informational signage, sanitation practices, issuance and availability of PPE, mask wearing, hand hygiene, social distancing, and laundry precautions. Most facilities employ these types of infection-control practices; however, each facility implements them differently as described further below.

## 1. ENTRY SCREENING OF STAFF AND VISITORS

At the time of Cal DOJ’s visits, all seven facilities conducted a COVID-19 screening and temperature check of staff and any outside visitors prior to entry. Cal DOJ experienced these screenings firsthand and, at most facilities, witnessed facility staff being screened as well. In addition to conducting verbal screenings of potential COVID-19 symptoms, all facilities except Yuba required visitors to show proof of vaccination or negative COVID-19 test results to enter the secure area. Specifically, at the GEO Group facilities (Adelanto, Desert View Annex, Mesa Verde, and Golden State Annex), staff and visitors were required to fill out and carry on their person at all times a “certification of vaccination” form. At Imperial, staff and visitors are also required to either wash their hands or use hand sanitizer upon completing the check-in process, prior to walking into the secured area. The screening at Yuba occurred in two places: a verbal screening was conducted at the courthouse entry, and a temperature check was done outside of the administrative offices. While the facilities made verbal representations that these processes are followed daily, Cal DOJ can only confirm what took place during our visit.

## 2. INFORMATIONAL SIGNAGE

Each facility, except Yuba, had numerous postings regarding COVID-19 and how to “Stop the Spread.” The CDC created most of these signs but some of the signs were facility-specific. There was signage in the lobby area for visitors, the detainee housing units, the medical areas, the intake units, and most other spaces used by detainees like the multipurpose rooms or dining halls. Signage in the detainee housing units explained the symptoms of COVID-19, informed detainees about the availability of vaccination against COVID-19, and reminded people to wash their hands and to socially distance six feet from one another. The inclusion of informational signs in multiple languages varied by facility.

While signage at most of the facilities was informative and some detainees pointed to these signs as their only source of information on COVID-19 during interviews, signage at one facility was notably less effective. At Yuba, in at least one housing unit the signage near handwashing stations was not a CDC or official facility sign; instead, there were several handwritten signs made with a black marker and white pieces of paper reminding people to wash their hands, to clean after themselves, and where to urinate (see **Figure 2**).

*Figure 2. Photo of Handmade Signs, Yuba.*



### 3. SURFACE SANITATION PRACTICES

At the time of Cal DOJ's visits, most of the facilities had implemented a mandatory, documented sanitation regimen to ensure high-touch surfaces were cleaned between uses or on a regular basis throughout the day. The sanitation regimes varied by facility, as follows:

**Adelanto.** As reported in Cal DOJ's [January 2021 report](#), the facility used a chemical agent, known as HDQ Neutral, to sanitize surfaces which many detainees reported was so toxic they experienced headaches, nausea, nosebleeds, fainting, eye irritation, skin irritation, and breathing issues.<sup>81</sup> The modified preliminary injunction in *Roman* prohibited the further use of HDQ neutral.<sup>82</sup> Facility records indicate that, since October 2020, Adelanto has purchased, and continues to purchase, a quaternary ammonium disinfectant called Halt. This cleaning solution, along with a few others, is available in the facility for sanitation purposes. However, not just anyone is permitted to use these cleaning supplies. Any detainee who uses those cleaning supplies must complete a two-hour training program and pass a test with a score of 80 or more. This training and test are also a requirement to work as a porter through the voluntary work program. Cal DOJ did not identify when this training mandate was put in place or whether the training is available in multiple languages. Some detainees interviewed by Cal DOJ shared that, if they did not complete the training, then they could not use the disinfectant and instead resorted to using soap and shampoo to clean their personal spaces. The facility has instituted a sanitation regimen that includes housing unit staff disinfecting high-touch surfaces every hour and a repurposed group of GEO Group staff who rotate through housing units to clean them. Cal DOJ observed this cleaning crew during their tour of the facility. However, when inspecting logs on which housing unit staff are supposed to note their hourly cleaning requirements, the logs inspected did not have any notations. A couple detainees shared with Cal DOJ that they feel the staff do a poor job of cleaning.

**Desert View Annex.** As the annex to Adelanto, Desert View Annex has a nearly identical sanitation regimen and training requirement for detainees to use cleaning chemicals. Housing unit staff are required to sanitize the units five times a day, which amounts to once during every count. Interviews with detainees confirmed this sanitation practice was happening at the time of Cal DOJ's visit in December 2021. The cleaning chemicals used at this facility include Halt as described above and another chemical, which is not a disinfectant, called XCelentae.

**Mesa Verde.** Although Mesa Verde is also a GEO Group facility, the facility does not share the same sanitation protocols or training requirements as Adelanto and Desert View Annex. Detainees at Mesa Verde reported that they are primarily responsible for the sanitation in the unit with staff occasionally assisting; the sanitation regimen requires them to do this twice a day. The facility provides detainees with cleaning supplies such as cleaning chemicals, mops, brooms, rags, and towels. Detainees are also provided with gloves to wear during cleaning. None of the detainees Cal DOJ interviewed mentioned needing to complete a training or take a test in order to use the cleaning chemicals. Two detainees expressed concerns about the cleaning chemicals being insufficient to clean the showers because they had both developed fungal infections. While staff may not clean in the housing units, the recreation officer is tasked with wiping down surfaces and equipment after each cohort use. Additionally, despite all the facilities reporting that they sanitized vehicles between uses, Mesa Verde was also the only facility to place a placard on the visor of the front window of its vehicles to clearly display whether it had been sanitized (green placard) or not sanitized (red placard).

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81 See also U.S. Environmental Protection Agency, Inspection Report (July 28, 2020) p. 2 <[https://earthjustice.org/sites/default/files/files/final\\_inspection\\_report\\_1.pdf](https://earthjustice.org/sites/default/files/files/final_inspection_report_1.pdf)> (as of May 19, 2022) (report arising from "for cause" inspection at Adelanto "to investigate allegations that GEO Group employees were applying HDQ Neutral . . . in a manner that was making detainees experience illness symptoms . . .").

82 *Roman v. Wolf* (C.D. Cal., Sept. 29, 2020, No. EDCV2000768TJHPVCX) 2020 WL 5797918, aff'd in part, vacated in part, remanded (9th Cir. 2020) 977 F.3d 935.

**Golden State Annex.** The sanitation practices at Golden State Annex differ from Mesa Verde despite being an annex to it. At this facility, staff are responsible for daily sanitation of high-touch surfaces; this must be completed every hour and must be logged. The logs are supposed to be kept at the detention officer station. However, during Cal DOJ’s tour, the facility staff were not able to locate the hourly log for the unit the team entered. In addition to staff, detainees are also permitted to clean and sanitize the units as well. The facility provides detainees with the necessary cleaning supplies and does not require any training or testing for them to use these items. Similar to detainees at Mesa Verde, a few detainees at Golden State Annex expressed concerns about the quality of the cleaning chemicals, noting that they are heavily diluted and do not remove mold from the showers.

**Imperial.** Staff at Imperial are required to sanitize high-touch surfaces three times per shift. The facility uses a cleaning chemical called CorrectPac. The sanitation must be documented by staff in their unit log books in red ink and on a separate log sheet that gets collected. Cal DOJ confirmed the cleaning log was current in at least one unit. Although the sanitation regimen requires staff to do the cleaning, detainees continue to clean as well. Detainees noted they clean the bathrooms, floors, and wipe down high-touch surfaces—such as the tables, telephones, and microwaves—as well.

**Otay Mesa.** It is unclear who is responsible for the sanitation regimen at Otay Mesa. On the one hand, the facility reported that it requires unit management staff to sanitize all high-touch surfaces every hour. Yet, none of the detainees interviewed reported staff doing any cleaning of the high-touch surfaces such as phones, tables, kiosks, or hand rails. Instead, detainees reported that they do the hourly sanitation. Moreover, the logs to document this hourly cleaning reviewed during Cal DOJ’s tour were not completed hourly.

**Yuba.** A floor officer informed Cal DOJ that their sanitation regimen consists of sanitizing the floors in the housing units with water and bleach twice a day and cleaning phones between each use. They also reported that detainees are provided with chemicals, a cleaning cart, gloves, and a mask to do sanitation. The sanitation cart Cal DOJ observed in the unit did not appear clean. Cal DOJ was unable to verify whether this sanitation occurs, given the lack of documentation and absence of immigration detainees to interview at the time of our visit.

#### **4. ISSUANCE, AVAILABILITY, AND USE OF PPE**

A first line of defense against the spread of COVID-19 is the use of PPE, especially in congregate settings like immigration detention facilities, where individuals are in close and constant contact with one another. While mask mandates across the State and the nation have varied over the past two years, the CDC maintains that wearing a mask can lower the probability of contracting the virus. Under the PRR, ICE requires the facilities to ensure there is a sufficient stock of PPE and to provide masks to detainees.<sup>83</sup> It is well understood that different masks provide different levels of protection. Indeed, the CDC says “[l]oosely woven cloth products provide the least protection; layered finely woven products offer more protection; well-fitting disposable procedure masks and KN95s offer even more protection, and well-fitting NIOSH-approved respirators (including N95s) offer the highest level of protection.”<sup>84</sup> Masks are only one form of PPE; other forms of PPE include gloves, goggles, gowns, and face shields.

##### **A. Detainees**

The availability, issuance, and enforcement of PPE available to detainees at the time of Cal DOJ’s site visits varied within and across facilities, as shown in **Table 5**. A checkmark denotes PPE that was available and an “x” denotes PPE that was not available to them.

<sup>83</sup> ICE PRR 7.0, *supra*, fn. 31 at p. 30-31; ICE PRR 6.0, *supra*, fn. 13 at p. 27-28.

<sup>84</sup> CDC, *supra*, note fn. 12.

Table 5. Overview of Detainee Personal Protective Equipment Use in the Facilities.

Facility	Cloth Masks	Surgical Masks	Gloves for Sanitation	Mask Enforcement in Housing Units	Mask Enforcement Outside Housing Units
Adelanto	x	✓	✓	x	✓
Desert View Annex	x	✓	✓	x	✓
Mesa Verde	x	✓	✓	x	✓
Golden State Annex	x	✓	✓	x	✓
Imperial	✓	✓	x	x	✓
Otay Mesa	✓	✓	✓	x	✓
Yuba	✓	x	✓	x	✓

**Facial Coverings.** Detainees at every facility are provided with a mask. However, at all of the facilities it is optional for detainees to wear masks within their housing units, despite the CDC’s recommendation that facilities require “all residents, staff, visitors, vendors, volunteers, and any other persons in the facility to wear a well-fitting mask or respirator while indoors.”<sup>85</sup> Some facility administrators expressed that they felt they could not force detainees to wear masks in their units. Yet, at all facilities, the facility administrators believe that they have the authority to require detainees to wear masks outside of their units. The Cal DOJ team observed most detainees not wearing masks in the housing units across all facilities. However, during Cal DOJ’s tour of Imperial, there was one housing unit where all of the detainees put on their masks when the team entered the unit. Cal DOJ observed detainees walking around the facility outside of the housing units wearing masks. Moreover, at every facility except Golden State Annex and Yuba, detainees arrived at interviews wearing masks.<sup>86</sup> Cal DOJ’s medical expert found the lack of mask enforcement in open bay dorms did not adequately protect individuals in the facility from airborne transmission.

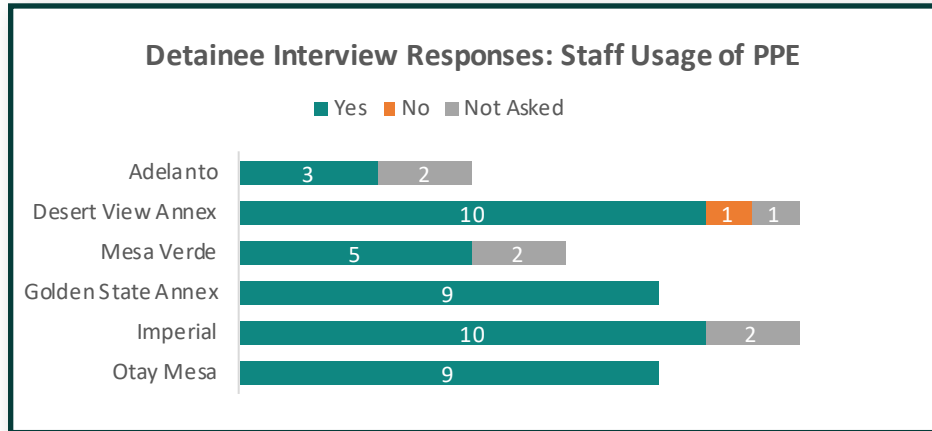
### B. Custody Staff

The level of PPE custody staff are required to wear while on duty varies by facility and may depend on the level of potential exposure to COVID-19 they will face according to a PPE matrix generated by the CDC. For example, staff may work in one of several environments: a) housing units that are currently clear of COVID-19; b) housing units in quarantine because of an exposure to someone who tested positive; c) housing units in quarantine because there are asymptomatic positive detainees; or d) housing units that are in isolation because a detainee tested positive and is symptomatic.

<sup>85</sup> CDC, *supra*, note fn. 12.

<sup>86</sup> Interviews of detainees at Golden State Annex took place remotely therefore Cal DOJ staff did not observe them. There were no detainees to interview at Yuba.

Figure 3. Detainee Reports of Staff Usage of Personal Protective Equipment by Facility.



**Face Coverings.** All facilities require custody staff to wear face coverings while on duty. Cal DOJ did not confirm whether the facilities provide custody staff with masks to wear during their daily shifts or if they are required to provide their own. While custody staff at Yuba wore their masks in the secured area, they were not required to wear a mask in the administrative areas. Nearly all custody staff at every facility wore a face covering while on duty in areas frequented by detainees. Most staff wore disposable surgical masks, but Cal DOJ observed a few staff at Imperial and Otay Mesa who wore other types of facial coverings such as cloth masks or neck gaiters. Interviews with detainees confirmed that custody staff wear facial coverings on a daily basis (Figure 3.). There were, however, a few detainees at some facilities who recalled instances of staff pulling down their masks to sneeze, staff who do not cover their noses, or staff who take off their masks.

**Gloves.** Staff at some facilities use gloves in non-quarantine and non-isolation housing units. Detainees reported staff sometimes wore gloves in those types of units at Adelanto, Desert View Annex, Mesa Verde, Golden State Annex, Otay Mesa, and Imperial. Specifically, a few detainees at Mesa Verde expressed concern over staff’s use of gloves during pat-down searches that were performed any time a detainee enters or leaves the housing unit. In addition to disliking the pat down searches because of how intrusive they can be by certain staff, detainees shared that staff do not switch their gloves between pat-down of different detainees.

At Adelanto, the Cal DOJ team was asked to wear gloves throughout the tour and during non-contact detainee interviews. Facility administrators reported this was also required of custody staff within the facility. GEO Group provides these gloves at the entrance to their facility. At no point did the Cal DOJ team see custody staff switch out their gloves. Cal DOJ’s medical expert found that this is not an effective practice of infection prevention given the lack of glove changes after contacting surfaces, knobs, etc. The gloves can be contaminated through the course of the workday and do not substitute for hand hygiene.

**Quarantine and Isolation Units.** Where there is a higher risk of COVID-19 exposure, staff are required to wear more PPE. Facilities generally require staff to use N-95 masks, gloves, protective eyewear, and a gown. The facilities provide these items to staff. Only a few of the detainees Cal DOJ interviewed were asked about staff PPE in these units. Of those who were asked this question, most reported that staff wore masks and gloves on these units but that the use of gowns and goggles was inconsistent. Two detainees from Adelanto reported staff wore masks, gloves, and gowns. One detainee from Mesa Verde reported staff wore masks and gloves. Two detainees from Otay Mesa reported staff wore masks and gowns and one reported they wore masks only. Four detainees from Imperial reported



staff wore masks and gowns; one reported they also wore gloves; and one noted they also wore goggles.

## 5. HAND HYGIENE AND SOCIAL DISTANCING

In addition to practicing surface sanitation and using PPE, two other critical infection control practices include hand hygiene and social distancing. Availability of hand hygiene items varied across and sometimes within facilities. At some facilities, this was also true of social distancing practices. The differences are described further below:

### A. Hand Hygiene

With respect to hand hygiene, the PRR calls on the facilities to maintain a sufficient stock of hygiene items and to “require all persons within the facility maintain good hand hygiene by regularly washing their hands with soap and water; provide detainees and staff no-cost, unlimited access to supplies for hand cleansing, including liquid soap or foam soap...; provide alcohol-based hand sanitizer with at least 60 percent alcohol.”<sup>87</sup> Table 6 shows the type of hand hygiene items available to detainees at the time of the Cal DOJ site visits with a checkmark denoting what was available and an “x” denoting what was not available.

Table 6. Hand Hygiene Items Available to Detainees by Facility.

Facility	Hand Sanitizer	Soap	Paper Towels
Adelanto	x <sup>88</sup>	✓	✓
Desert View Annex	✓	✓	✓
Mesa Verde	✓ <sup>89</sup>	✓	✓
Golden State Annex	✓	✓	✓
Imperial	✓ <sup>90</sup>	✓	✓
Otay Mesa	x	✓	✓
Yuba	x <sup>91</sup>	✓	x

### B. Social Distancing

Social distancing by a minimum of six feet can be difficult to accomplish in congregate settings. For this reason, the PRR calls on facilities to reduce the population to approximately 75 percent of their capacity.<sup>92</sup> Due to litigation, some facilities had to reduce the population far below this level to provide meaningful opportunity for social distancing. Even with a population reduction, the PRR recommends

87 ICE PRR 7.0, *supra*, fn. 31 at p. 31; ICE PRR 6.0, *supra*, fn. 13 at p. 29.

88 Hand sanitizer was specified as a hygiene item required by a modified preliminary injunction in the *Roman v. Wolf* case. (Modified Preliminary Injunction and Additional Findings of Fact, *Roman v. Wolf* (C.D. Cal., Sept. 29, 2020, No. EDCV2000768TJHPVCX) 2020 WL 5797918, *aff'd in part, vacated in part, remanded* (9th Cir. 2020) 977 F.3d 935.)

89 There was hand sanitizer in the housing units except in restricted housing and a dispenser by the door detainees take to go out to and come in from recreation. Mesa Verde was the only facility Cal DOJ toured where detainees had access to 60% alcohol hand sanitizer.

90 The facility had several hand sanitizer dispensers attached to the wall in the main corridor of the facility but not inside the housing units. Cal DOJ did not observe detainees use it and do not believe they practically can or do given that they must walk through the corridor with their hands behind their backs. Indeed, only one detainee shared they have used it.

91 Facility staff reported they did not offer alcohol-based hand sanitizer because of security concerns.

92 ICE PRR 7.0, *supra*, fn. 31 at p. 38; ICE PRR 6.0, *supra*, fn. 13 at p. 35.

that facilities “[e]xtend recreation, law library, and meal hours and stagger detainee access to the same in order to limit the number of interactions between detainees from other housing units.”<sup>93</sup> Moreover, ICE suggests that beds in the housing units be rearranged to allow for six feet of distance between detainee faces where practicable.<sup>94</sup> Cal DOJ observed that, although every facility had signs reminding individuals to observe six feet of social distance and some facilities cordoned off sinks or phones, there was a general lack of enforcement of social distancing.

**Staff Break Rooms.** Although the facilities prohibit detainees from different housing units from comingling as a precaution against COVID-19, staff who work in these different units are permitted to come together. These interactions—opportunities for exposure—can especially occur in staff breakrooms. Cal DOJ’s medical expert observed that staff at Imperial, Yuba, and Adelanto were unmasked, eating and talking in close proximity with one another. In contrast, Cal DOJ’s expert observed that staff breakrooms at Golden State Annex and Mesa Verde had single chairs at each table and staff were not congregating in those areas.<sup>95</sup> Additionally, similar social distancing measures were observed in the clinical staff breakroom at Imperial. Staff breakrooms were also where shift briefings frequently occurred. In facilities where social distancing measures were in place, the shift briefings were suspended and the information was disseminated by other means.

**Programming Areas.** Several areas, such as the multipurpose rooms, classrooms, or dining halls, had signs regarding their reduced capacity. For example, the dining room at Mesa Verde was repurposed for programming and had a capacity reduced from 80 detainees to 20. The tables in this room had markings designating where a detainee could sit to ensure social distancing. Additionally, Cal DOJ observed one classroom in use at Desert View Annex that had a label describing the reduced capacity of that space. In that classroom the students were distanced from each other, and the instructor was distanced from the students. The classroom at Imperial did not have signage indicating the reduced capacity, but the facility reported, and detainees confirmed, only 10 detainees were permitted in the class at one time.

**Housing Units.** Each facility’s population varies significantly from what it was prior to the pandemic as described above in the “Changes in the Detainee Population Since January 1, 2020” section. It was only once the reduction in population occurred that the facilities were able to provide an opportunity for detainees to socially distance. Due to preliminary injunctions put into place by *Roman* and *Zepeda Rivas*, Adelanto, Mesa Verde, and Yuba had to reduce their population below 75 percent capacity.<sup>96</sup> As of Cal DOJ’s visit in November 2021, the population at Adelanto was less than five percent. Cal DOJ’s expert found that at Adelanto social distancing is generally accomplished within the facility because of this significant reduction. This population change at Adelanto means the facility no longer uses the East building and there are certain housing units where detainees are housed by themselves. Similarly, at Mesa Verde, the population was reduced to roughly 11 percent of its physical capacity at the time of Cal DOJ’s visit in November 2021. With this reduction, Cal DOJ’s medical expert found there was an improved opportunity for social distancing. In practice, this reduction in the population can look like individual people being housed in a 14-day quarantine unit by themselves. Indeed, Cal DOJ observed this at Mesa Verde. At Desert View Annex—where as of December 2021, the population was roughly 13 percent of the facility’s physical capacity—Cal DOJ’s medical expert found that social distancing occurs to some extent. However, this did not apply to the housing unit used for COVID-19 intake quarantine, where detainees are supposed to spend 14 days quarantining prior to

93 ICE PRR 7.0, *supra*, fn. 31 at p. 38; ICE PRR 6.0, *supra*, fn. 13 at p. 35.

94 ICE PRR 7.0, *supra*, fn. 31 at p. 39; ICE PRR 6.0, *supra*, fn. 13 at p. 35.

95 Cal DOJ’s expert did not observe the staff breakroom at Otay.

96 Adelanto was required to reduce the detainee population by at least 50 detainees each day until the detainee population was at or below 475. (Amended Adelanto Population Reduction Order, *Roman v. Wolf*, *supra*, (C.D. Cal, Jan. 11, 2021, No. 5:20-cv-00768-TJH-PVC) at p. 8 (ECF No. 914)). A housing cap of 26 detainees per housing except in the COVID-positive dorm was put in place at Mesa Verde. (Order Granting Motion for Second Preliminary Injunction, *Zepeda Rivas v. Jennings*, *supra*, 504 F. Supp. 3d at p. 1074). In addition, ICE was not permitted to detain additional individuals at Yuba for the “duration of the outbreak.” (Order Granting Motion for TRO, *Zepeda Rivas v. Jennings*, *supra*, (N.D. Cal. Dec. 23, 2020, No. 20-CV-02731-VC) 2020 WL 9066082, at \*1).

being housed in general population. This housing unit had the highest number of detainees, making it more difficult to socially distance.<sup>97</sup> Lastly, as of December 2021, the population at Golden State Annex was reduced to 20 percent of its capacity. Cal DOJ's medical expert found that this allows for a better possibility of social distancing. Reduced capacity alone does not ensure individuals will social distance, but it creates the opportunity for social distancing.

Social distancing in the open bay dorm housing units also requires sufficient spacing between detainees during sleep. Where the facilities cannot move the beds or space detainees out throughout the housing unit, the PRR recommends for individuals to sleep head-to-foot.<sup>98</sup> Cal DOJ did not observe detainees asleep at night, but the team did witness detainees lying or sitting on their beds during the tours. Generally, at all the facilities with open bay dorms, none of the beds were marked off for detainees not to use. However, there were some practices in place to space out which beds detainees could use. Yuba represented that it measured six feet between beds. Mesa Verde limited the use of top bunks so that all detainees only use the bottom bunks, but the detainees slept in adjacent beds. Golden State Annex was the only facility that enforced detainee bed spacing, by requiring that detainees sleep at least one bed away from each other. At Otay Mesa and Imperial, where four detainees sleep in one nook, there was no reported change in spacing except that the detainees are required to sleep head to foot. Imperial reported that the lower population count allowed the facility to house fewer detainees in each housing unit.

### **C. Laundry Practices**

Attention to laundry handling practices is recommended to reduce COVID-19 transmission risks. The PRR reiterates CDC recommendations to avoid shaking out dirty laundry, and washing it at the highest appropriate water temperature.<sup>99</sup> PPE, including gloves, a mask, and a gown, must be worn if doing laundry would require contact with the handler's clothing. The CDC suggests bag liners as an option for handling, and some institutions use dissolvable rice bags to aid infection prevention.

At Adelanto, laundry from isolation and quarantine areas is double-bagged in dissolvable bags and biohazard bags, as opposed to the mesh laundry sacks used for general population. No laundry handling modifications were detailed by staff at Desert View Annex. At Otay Mesa, the facility reported that it separates COVID-positive detainees' laundry from that of general population. At Imperial, laundry belonging to detainees housed in quarantined housing units is washed separately from the laundry of non-quarantined detainees.

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97 This housing unit had the highest number of detainees because instead of releasing each intake cohort after their 14-day quarantine period, the facility introduces new quarantine cohorts into the housing unit which restarts the 14-day quarantine period for all detainees in that unit. At the time of Cal DOJ's December 2021 tour, this unit housed detainees who arrived between September and December 2021.

98 ICE PRR 7.0, *supra*, fn. 31 at p. 38; ICE PRR 6.0, *supra*, fn. 13 at p. 35.

99 ICE PRR 7.0, *supra*, fn. 31 at p. 35; ICE PRR 6.0, *supra*, fn. 13 at p. 32.

# COVID-19 SCREENING, TESTING, AND VACCINATION

As discussed above, immigration detention centers present unique challenges for managing the spread of COVID-19. Screening detainees and staff for COVID-19 on a regular basis and offering and promoting vaccination are important tools in controlling the spread and severity of COVID-19. Accordingly, Cal DOJ reviewed the facilities' testing, screening, and vaccination practices for detainees and staff.

## 1. DETAINEE TESTING, SYMPTOM SCREENING, AND VACCINATION

In order to effectively limit the spread of COVID-19 and manage the impact of the pandemic on the most vulnerable detainees, it is critical that facilities: (1) employ measures to effectively screen and test detainees at intake and during COVID-19 outbreaks for COVID-19; (2) identify detainees who may be at high risk of severe COVID-19 and employ extra precautions to protect them; and (3) achieve high rates of vaccination.

### A. Detainee Screening, Testing, and Quarantine

Cal DOJ reviewed facilities' testing practices at intake, during detention, and upon release from detention. The CDC stated that "maintaining a robust testing program can help prevent or reduce transmission in congregate settings[.]"<sup>100</sup> This includes screening and testing individuals without symptoms or exposures, which can detect cases of COVID-19 associated with no or mild symptoms.<sup>101</sup> Except for the required testing upon a detainee's arrival at a facility, practices varied significantly across facilities.<sup>102</sup> Some facilities administer an additional test during or at the end of the detainees' initial 14-day quarantine, while others release new detainees into general population without a further test. Some facilities employ whole facility or "saturation" testing (i.e. testing of the whole population or a random sample of a certain percentage of the population) as required by court orders, while others test detainees after initial intake only if they exhibit symptoms of COVID-19.

#### i. Screening, Testing, and Quarantine of Detainees Upon Intake

The PRR requires that facilities conduct a temperature screening and a verbal screening for symptoms of COVID-19 and contacts with COVID-19 cases.<sup>103</sup> Per the PRR, the verbal screening for symptoms of COVID-19 must include asking about the following symptoms, based on the CDC's guidance: fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body ache, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea, vomiting, or diarrhea.<sup>104</sup> Additionally, all detainees must be asked if they had close contact<sup>105</sup> with a person infected with COVID-19 when they were not wearing PPE.<sup>106</sup>

All the facilities reportedly screen for COVID-19 at intake. Several facilities, including Desert View Annex, Imperial, Mesa Verde, and Otay Mesa conduct the verbal and temperature screening outside before the detainee is brought into the building. However, the screening tool at Yuba excluded some of the symptoms required by the PRR. Additionally, Cal DOJ's expert's review of medical charts at Desert

<sup>100</sup> CDC, *supra*, fn. 12.

<sup>101</sup> See CDC, *supra*, fn. 12.

<sup>102</sup> Yuba, which did not have any immigration detainees at the time of Cal DOJ's visit, was testing only symptomatic new arrivals into Yuba County custody, but reported that the facility was in the process of developing a testing protocol for all newly admitted immigration detainees.

<sup>103</sup> ICE PRR 7.0, *supra*, fn. 31 at pp. 19-20; ICE PRR 6.0, *supra*, fn. 13 at pp. 32-33.

<sup>104</sup> ICE PRR 7.0, *supra*, fn. 31 at pp. 19-20; ICE PRR 6.0, *supra*, fn. 13 at pp. 32-33 (both PRRs reference the CDC guidance, *supra*, fn. 12).

<sup>105</sup> Close contact is defined as being within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.

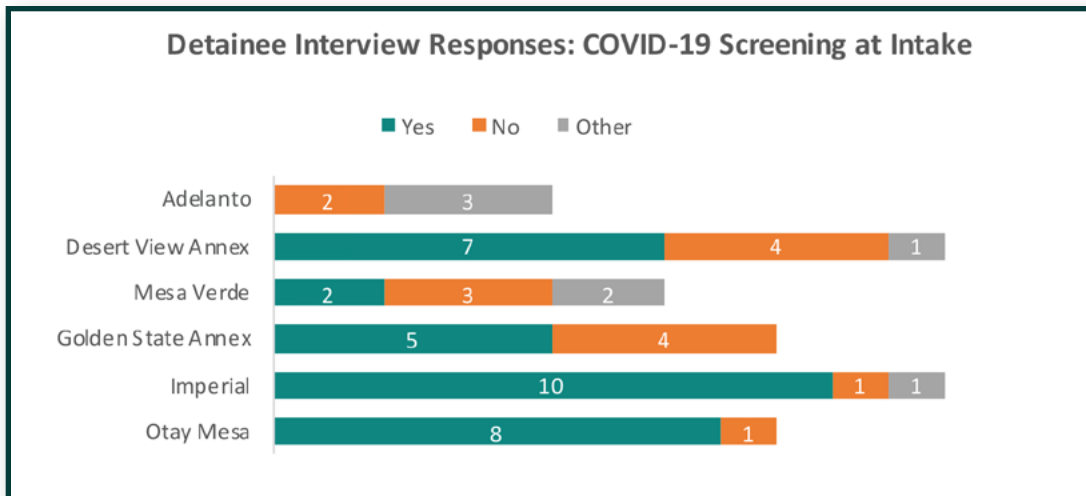
<sup>106</sup> ICE PRR 7.0, *supra*, fn. 31 at p. 20; ICE PRR 6.0, *supra*, fn. 13 at p. 33.

View Annex indicated that there may be a delay in screening new detainees.

As Adelanto has not had any new intakes since September 29, 2020, under the court’s order in *Roman*,<sup>107</sup> Cal DOJ could not verify its screening practices. However, GEO Group’s Interim Reference Sheet mandates symptom screening be done outside of the facility.

Detainees’ reports of screening for COVID-19 symptoms at intake, however, were inconsistent across facilities as shown in **Figure 4**.

Figure 4. Detainee Reports of COVID-19 Screening During Intake by Facility.<sup>108</sup>



ICE guidelines require only initial COVID-19 testing within 12 hours (or up to 24 hours) of arrival, and advise that housing new arrivals individually or in cohorts while awaiting results can help reduce transmission risk.<sup>109</sup> CDC advises (but does not require) retesting individuals quarantined in cohorts every 3-7 days to reduce risk of secondary clusters of cases.<sup>110</sup> Given these requirements and guidelines, facility practices varied.

- **Systematic Retesting.** Multiple facilities placed detainees in quarantine cohorts for 14 days before placing them in general population. Facilities varied in terms of retesting new detainees after the initial intake test. Imperial retests all new intakes in the cohort after fourteen days, and in May and June 2021, retested new intakes at the seventh day. Otay Mesa retests new intakes every third and seventh day. However, at Desert View Annex and Golden State Annex, there is no retesting of individuals placed in intake cohorts before they are released to general population. While the PRR only requires testing 12 hours after arrival, failing to retest new intakes may risk introducing positive COVID-19 cases to the cohort and to general population. For example, an individual might test positive after testing negative earlier.
- **Delayed Results.** The facilities mostly appeared to provide prompt testing to new intakes. However, chart review at Desert View Annex showed delays in conducting a rapid test or receiving Polymerase Chain Reaction (PCR) test results. Two individuals Cal DOJ interviewed

107 Modified Preliminary Injunction and Additional Findings of Fact *Roman v. Wolf* (C.D. Cal., Sept. 29, 2020, No. EDCV2000768TJH-PVCX) 2020 WL 5797918, at \*6, *aff'd in part, vacated in part, remanded* (9th Cir. 2020) 977 F.3d 935).

108 Please note, the ‘Other’ category for Adelanto and Mesa Verde represents detainees who arrived prior to January 2020 and for whom this question would not be applicable. For Desert View Annex, it represents a detainee who was unsure whether they received a screening or not, and for Imperial, it represents a detainee who was not asked this question.

109 ICE PRR 7.0, *supra*, fn. 31 at p. 18; ICE PRR 6.0, *supra* fn. 13 at p. 39.

110 CDC, *supra*, fn. 12.

at that facility described a patient in an intake cohort who appeared symptomatic for over a day before being removed to isolation. Delayed tests or results for detainees in the intake quarantine cohort creates a risk of transmitting undetected COVID-19 to others.

Each facilities' testing and quarantine practices are described in more detail below:

### ***Adelanto***

- Pursuant to the court's order in *Roman*,<sup>111</sup> as of November 15, 2021, Adelanto had not had any intakes since September 29, 2020.

### ***Desert View Annex***

- **Testing.** As of December 14, 2021, new intakes and transfers were all screened and tested for COVID-19. The nurse conducted a rapid antigen test; if the result was positive the patient was escorted directly to medical for assessment or isolated housing. However, our medical expert's medical chart review revealed delays beyond 24 hours for results of PCR tests or in conducting rapid tests.
- **Quarantine.** Detainees who tested negative were taken to an intake quarantine pod and assigned to dispersed bunk beds in a dorm setting for 14 days before they were released to general population. During this time, there was no systematic retesting.

### ***Imperial***

- **Testing.** As of October 5, 2021, the facility reported that all new arrivals were given rapid tests within hours of arrival, and positive rapid test results were confirmed with a PCR test.
- **Quarantine.** Detainees who test negative are quarantined for fifteen days in a celled dorm designated for that purpose, before being reassigned to another housing unit. The facility also tests at the 14-day mark after intake quarantine, and in April and May 2021, it also tested at the seventh day mark, which was well suited to identifying and controlling the spread of infection from entering detainees.

### ***Mesa Verde***

- **Testing.** As of November 16, 2021, Mesa Verde reported that it was only receiving transfer detainees who had already been screened, tested, and completed a 14-day quarantine at Golden State Annex. Staff reported that such transfers were also tested with a rapid antigen test upon arrival at Mesa Verde, but no records were provided to confirm this. If the detainee was symptomatic upon arrival, they were to be taken directly into one of the two negative pressure isolation rooms.
- **Quarantine.** New detainees were assigned to a general population (non-quarantine) dorm, having been through the intake process at Golden State Annex.

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111 *Roman, supra*, fn. 107.



### **Golden State Annex**

- **Testing.** As of December 15, 2021, the facility reported that new detainees were verbally screened for symptoms (though this process is not documented) and tested with a rapid antigen test. Those with positive test or screen were taken directly into the exam room from the holding cell. Two observation rooms are available to serve as isolation cells when needed.
- **Quarantine.** New arrivals with negative tests are placed in an intake cohort for 14 days (with new arrivals added during the week), and they were not retested again before joining general population unless they had symptoms.

### **Otay Mesa**

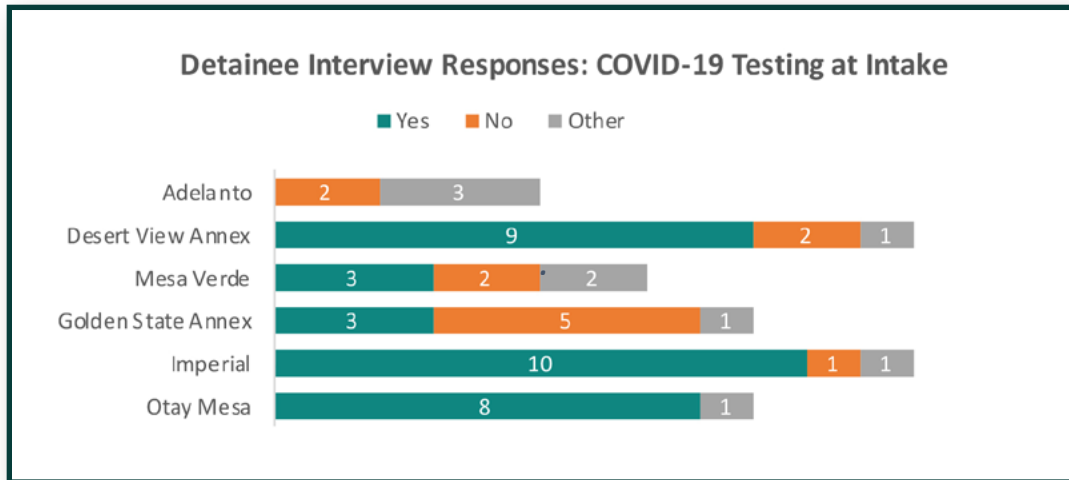
- **Testing.** As of October 4, 2021, the facility reported conducting rapid testing for COVID-19 on all new arrivals. Positive cases then received a confirmatory PCR test and were placed in a cohort with others who were symptomatic or positive per the rapid test.
- **Quarantine.** Detainees who test negative are placed in a cohort for intake quarantine for 14 days, and then tested every third and seventh day. Intake quarantine cohorts are large, and at times housed in open bay pods, which present an increased risk of exposure. If a detainee in a quarantine cohort tests positive, the 14-day period of quarantine begins again, leading to extended quarantine periods.

### **Yuba**

- **Testing.** As of November 2, 2021, the facility had not received new detainees for nine months. It was not fully confirmed whether all new intakes were tested as there were different accounts from staff, including a leadership report that Yuba is “moving towards” a policy of testing all detainees at intake in collaboration with ICE.
- **Quarantine.** All detainees undergo a 14-day quarantine after arrival, except those who rapid test or screen positive for COVID-19 upon arrival, who are either isolated individually in “medical” cells or declined intake to be sent to the hospital. Occupants of intake quarantine rooms were taken to a shower in another area based on gender and occupancy levels.

Despite ICE’s testing requirements and facilities’ reports of consistent COVID-19 testing, detainees’ reports regarding testing at intake varied across facilities as illustrated in **Figure 5** below.

Figure 5. Detainee Reports of COVID-19 Testing During Intake by Facility.<sup>112</sup>



**ii. Facility-Wide Periodic Testing**

Some facilities, such as Adelanto and Mesa Verde, used facility-wide or whole facility testing because they are required to do so by court orders. Other facilities employ whole facility testing based on other benchmarks, such as a certain number of positive cases, or due to outbreaks. See **Table 7** for further details by facility.

Table 7. Facility-wide COVID-19 Periodic Testing by Facility.

Facility	Facility-wide Testing Practices
<b>Adelanto</b>	Since September of 2020, under the court’s orders in <i>Roman</i> , Adelanto has been required to conduct weekly testing for all consenting detainees, or, if the number of positive tests falls below a certain threshold, to conduct testing on a random sampling of 20% of the detainee population. <sup>113</sup> Adelanto reported that it has been conducting tests on a sampling of 20% detainees and staff if fewer than three individuals tested positive over the course of a month. If three or more persons test positive, the facility reverts to whole facility testing.
<b>Desert View Annex</b>	As of December 14, 2021, weekly PCR testing of the whole facility was completed if there were three or more COVID-19 positive staff or detainees; otherwise a sampling of 20% of staff and detainees were tested.
<b>Mesa Verde</b>	Pursuant to the court’s December 3, 2020 order in <i>Zepeda Rivas</i> <sup>114</sup> the facility was required to conduct saturation testing of all staff and detainees or a percentage of staff and detainees, based on the number of infections in the facility. Cal DOJ could not verify whether this requirement was met based on the information provided during the November 16, 2021 site visit.

112 The ‘Other’ category for Adelanto and Mesa Verde represents detainees who arrived prior to January 2020 and for whom this question would not be applicable. For Desert View Annex, Golden State Annex, and Otay Mesa, it represents detainees who were unsure whether they received a test or not, and for Imperial, it represents a detainee who was not asked this question.

113 Order, *Roman v. Wolf*, supra, (C.D. Cal. Dec. 21, 2020, No. 5:20-cv-00768) at p. 2-5 (discussing saturation and sampling testing requirements).

114 Order Granting Second Preliminary Injunction, *Zepeda Rivas v. Jennings*, supra, 504 F. Supp. 3d 1060.

<b>Golden State Annex</b>	As of December 15, 2021, Golden State Annex did not employ whole-facility or saturation testing of detainees.
<b>Imperial</b>	In response to a high number of infections at the facility, in March 2021, Imperial conducted testing of the whole facility. Documents provided by the facility indicated that there were 25 cases of COVID-19 infections within general population that month.
<b>Otay Mesa</b>	As of October 4, 2021, Otay Mesa did not employ a whole-facility testing plan. Instead, the facility reported that all detainees underwent once daily temperature checks and verbal symptom checks.
<b>Yuba</b>	As of November 2, 2021, there was no regular facility-wide or saturation testing. However, it has been conducted in response to certain circumstances and court orders, including: on occasion due to the inability to track exposures within the open bay pods where detainees resided; in response to the December 23, 2020 court order in <i>Zepeda Rivas</i> <sup>115</sup> ordering that all detainees and staff be tested at least once per week until at least two weeks had passed with zero positive tests among staff or the population in custody; and in response to a public health directive dated August 28, 2021, following a large outbreak at the facility (over 20 cases).

### iii. Testing Prior to Release

**Table 8** summarizes the facilities’ practices with respect to testing detainees before releasing them from detention.

*Table 8. Detainee COVID-19 Testing Prior to Release by Facility.*

<b>Facility</b>	<b>Policy to test prior to release?</b>	<b>Document review supports finding of pre-release COVID-19 testing?</b>
<b>Adelanto</b>	Yes	Yes
<b>Desert View Annex</b>	Yes	No (in one case reviewed)
<b>Mesa Verde</b>	Yes	Yes
<b>Golden State Annex</b>	Yes	Yes in one case; documents inconclusive in another case
<b>Imperial</b>	Yes	Yes, and noted modification of release plan based on positive test
<b>Otay Mesa</b>	Yes	Unable to verify
<b>Yuba</b>	Yes	Yes

115 Order Granting Motion for TRO, *Zepeda Rivas v. Jennings, supra*, WL 9066082 at \*1.

## B. Testing and Screening for High Risk Detainees

Pursuant to *Fraihat*,<sup>116</sup> detainees at high risk for severe progression of COVID-19 must be identified and considered for release. For Adelanto, Desert View Annex, and Mesa Verde, GEO Group provided a legal notice to detainees regarding the right to seek review of their detention by ICE for detainees who are over 55, pregnant, or have medical or mental health conditions. If detainees who meet those criteria are not released, they must be monitored twice daily with temperature and symptom screenings.<sup>117</sup> While the facilities appeared to comply with these requirements for the most part, Cal DOJ could not verify compliance at all facilities.

### i. Rates and Screening of High Risk Detainees

**Table 9** summarizes the number of high-risk *Fraihat* detainees the facilities were housing at the time of Cal DOJ's visit.

*Table 9. Number and Percentage of High Risk Fraihat Detainees by Facility.*

Facility	No. of High Risk Detainees Compared to Population at Time of Cal DOJ visit
Adelanto	72 out of 79 detainees (91%) on Nov. 15, 2021
Desert View Annex	56 out of the 95 detainees (59%) on Dec. 14, 2021
Mesa Verde	45 out of 45 detainees (100%) on Nov. 16, 2021
Golden State Annex	An unknown percent of the detainees at Golden State Annex were classified as at high risk of progression to severe COVID-19 if infected (145 total detainees) on Dec. 16, 2021. Of the 15 medical charts Cal DOJ's expert reviewed, 13 were classified as high risk.
Imperial	At least 140 out of 576 detainees (24%) on Oct. 5, 2021 <sup>118</sup>
Otay Mesa	443 out of 815 total detainees on Oct. 4, 2021

Cal DOJ reviewed each facility's practices with regard to screening for conditions that would put a detainee at higher risk for severe COVID-19 infections and processes for complying with required daily temperature and symptoms checks of high-risk detainees.

**Adelanto.** The facility had not conducted any new intakes since September 29, 2020. Record review and detainee interviews indicated that, as of November 15, 2021, there was not full compliance with twice-daily temperature and symptom checks of high-risk detainees.

**Desert View Annex.** The document that described intake screening and testing, the GEO Group Interim Reference Sheet, did not specify assessments for risk factors for severe COVID-19. While it described the necessity of considering these comorbid conditions during a medical encounter with a symptomatic patient, it did not discuss this requirement for new intakes or transfers. Interviews

<sup>116</sup> Order Granting Plaintiffs' Motion for Preliminary Injunction, *Fraihat v. U.S. Immigration and Customs Enforcement*, *supra*, 445 F. Supp. 3d at 751.

<sup>117</sup> Order Granting In Part and Denying In Part Plaintiffs' Motion to Enforce April 20, 2020 Preliminary Injunction, *Fraihat v. U.S. Immigration and Customs Enforcement*, *supra*, (C.D. Cal. Oct. 7, 2020, No. EDCV 19-1546 JGB) 2020 WL 6541994 at p. 8 (ECF. 172). This figure is based on a spreadsheet provided by the facility that appears to undercount individuals at high-risk for serious COVID-19 infection. Healthcare services staff reported that the facility conducts daily screening of *all* detainees due to the high rates of high-risk individuals in the population.

<sup>118</sup> This figure is based on a spreadsheet provided by the facility that appears to undercount individuals at high-risk for serious COVID-19 infection. Healthcare services staff reported that the facility conducts daily screening of all detainees due to the high rates of high-risk individuals in the population.

with three individuals at high risk for COVID-19 indicated that the facility was completing twice-daily temperature and symptom checks. However, medical records for high-risk detainees did not include record of this monitoring.

**Mesa Verde.** The facility health services administrator performed chart reviews at the time of the *Fraihat* order to identify patients with qualifying conditions, which was reflected in charts reviewed on site. All detainees were monitored twice daily for temperature and symptoms. However, the form used for these checks excluded certain symptoms of COVID-19 listed by the CDC such as fatigue, congestion, runny nose, nausea, vomiting, and diarrhea.

**Golden State Annex.** The facility screened detainees for chronic health conditions at intake and referred detainees with chronic health conditions for a next day assessment with the physician as appropriate. Cal DOJ reviewed multiple charts for high-risk individuals that confirmed that the facility conducted temperature and symptom screening two to three times per day. These checks were entered both in the *Fraihat* compliance tool and in the medical record.

**Imperial.** Chronic conditions were identified at intake and referred to the physician, who scheduled assessments for such patients within two days and logged their status as meeting either *Fraihat* or CDC conditions for high risk of severe COVID-19. Imperial conducted temperature and symptoms checks twice-daily for *all* detainees not otherwise being monitored for active COVID-19.

**Otay Mesa.** Based on interviews with health services staff, the site is compliant with identification, testing, and screening of populations at high risk for severe COVID-19. The staff reported that individuals identified as high risk are monitored for twice-daily temperature and verbal symptoms screening. Due to logistical barriers outside the control of the facility, Cal DOJ was not able to conduct a chart review to verify documentation of these practices.

**Yuba.** At the time of the *Fraihat* order, a nurse practitioner performed medical chart review of the detainees already in custody to capture and report individuals with high risk of serious COVID-19. Going forward, the risk determination was incorporated into the intake process, in which a nurse completed a 17-page questionnaire, which was not provided to Cal DOJ. Rather than include notations in the medical charts of individuals requiring *Fraihat* monitoring, the facility reported that staff would know which detainees were high risk because they were assigned specific housing. However, this might not be a reliable way to conduct monitoring, as detainees were frequently moved. Staff reported performing twice-daily verbal COVID-19 screening and temperature check of these detainees.

### C. Detainee Vaccination

Increased vaccine coverage has been linked to declines in community COVID-19 rates.<sup>119</sup> A study reported by the CDC demonstrated that, in a federal prison with high vaccination coverage (79%), COVID-19 rates, hospitalizations and deaths were lower for vaccinated individuals. However, one study showed that there was still high transmission of the COVID-19 Delta variant among vaccinated (70% infection rate) and unvaccinated (93% infection rate) incarcerated persons alike.<sup>120</sup> This reinforces the necessity to combine high vaccination coverage with other strategies to prevent outbreaks in immigration detention facilities.

119 Haas, MD, et. al, *Impact And Effectiveness Of Mrna BNT162b2 Vaccine Against SARS-Cov-2 Infections And COVID-19 Cases, Hospitalisations, and Deaths Following a Nationwide Vaccination Campaign In Israel: An Observational Study Using National Surveillance Data*, The Lancet (May 15, 2021) <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00947-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00947-8/fulltext)>.

120 Hagan LM, et al., *Outbreak of SARS-CoV-2 B.1.617.2 (Delta) Variant Infections Among Incarcerated Persons in a Federal Prison — Texas, July–August 2021*, Morb Mortal Wkly Rep. (Sept. 24, 2021) <[https://www.cdc.gov/mmwr/volumes/70/wr/mm7038e3.htm?%20s\\_cid=mm7038e3\\_x#suggestedcitation](https://www.cdc.gov/mmwr/volumes/70/wr/mm7038e3.htm?%20s_cid=mm7038e3_x#suggestedcitation)>.

Vaccines at the facilities were first administered around January 2021 (Otay Mesa), February 2021 (Adelanto), and March 2021 (Mesa Verde, Yuba, Imperial). At the time of Cal DOJ’s site visits, only the Desert View Annex facility had administered boosters, despite interest expressed by detainees at some of the other facilities. Vaccination rates varied across facilities, which may be due, in part, to the detainees’ length of stay at each facility. For example, Adelanto and Mesa Verde had higher vaccination rates but they also had the highest average length of stay with 719 and 268 days, respectively. See **Table 10** for further details.

*Table 10. Detainee Reported COVID-19 Vaccination Practices and Vaccination Rates by Facility.*<sup>121</sup>

Facility	Reported Vaccination Practices	Reported Vaccination Rates
<b>Adelanto</b>	Due to its low population count and the fact that it had not received new detainees since September 2020, at the time of Cal DOJ’s site visit Adelanto had high rates of initial and second vaccination. Documents reviewed also demonstrated that detainees had been approached repeatedly to consent for vaccine if they declined initially.	72% fully vaccinated (not including booster)  25.31% unvaccinated
<b>Desert View Annex</b>	At the time of Cal DOJ’s visit, vaccination was offered during intake and during other encounters at the facility. According to health services staff, medical staff sometimes “go around with sign ups.” Documents confirmed that booster doses of COVID-19 vaccine had been given on December 6, 2021, to December 10, 2021.	62% vaccinated (not including booster);  38% unvaccinated. These numbers may not reflect detainees who were vaccinated prior to intake.
<b>Imperial</b>	Nurses reportedly tell new arrivals they can sign up for vaccination in the housing unit once they are cleared from the 14-day intake quarantine. Detainees receive information about vaccination and a vaccine consent form upon intake. Seven vaccine clinics had been held from March 30, 2021, to the date of our visit.	Staff reported detainee vaccination rate to be at “36 or 37 percent.”
<b>Mesa Verde</b>	Mesa Verde reported that it offers counseling to detainees hesitant to receive the vaccine. For example, one detainee relayed being counseled by the physician regarding his risks for severe COVID-19 and the benefits of vaccination. Additionally, the facility requires that any new transfers must be vaccinated prior to arrival at Mesa Verde. The facility verifies new detainees’ vaccine status and offers the vaccine when needed during the initial intake assessment. Any new detainee who desires vaccination would have it administered within 14 days of arrival.	96% vaccinated (not including booster);  4% unvaccinated amounting to two detainees. However, one of the unvaccinated detainees accepted the vaccine after physician counseling and that was to be scheduled.

<sup>121</sup> The variability in detainee vaccination rate may be attributable to the static and lower population at some facilities (i.e. Adelanto) as compared to the higher and more transitory population at others (i.e. Imperial). Additionally, the detainee vaccination rate may have been underreported based on vaccination prior to detention.



Golden State Annex	<p>Vaccines are discussed at intake, and Cal DOJ reviewed signed vaccination refusal forms. Otherwise, vaccination is reportedly discussed informally by staff. There was no documentation of individual counseling offered to high-risk patients who had declined the vaccine.</p> <p>The facility explained that booster clinics had not moved forward despite detainee interest due to lack of medical personnel and pending a directive from the GEO Group leadership.</p>	<p>75% vaccinated (not including booster);</p> <p>25% of the detainee population remained unvaccinated</p>
Otay Mesa	<p>Otay Mesa does not offer immediate opportunistic vaccination (i.e., providing it at intake), or provide clinical counsel to detainees who are hesitant about the vaccine. Instead, detainees must express interest in the vaccine affirmatively, following their initial 14-day quarantine period.</p>	<p>32% vaccinated (not including booster);</p> <p>68% unvaccinated.</p> <p>However, staff reported that “most have had the vaccine but don’t have proof.”</p>
Yuba	<p>New arrivals are to be counseled about the vaccination and there are postings about the vaccine in the reception and phone areas. The physician reported counseling patients opportunistically to encourage vaccination.</p>	<p>Yuba did not have detainees at the time of Cal DOJ’s visit.</p>

## 2. STAFF TESTING, SYMPTOM SCREENING, AND VACCINATIONS

### A. Staff Testing and Screening

The PRR directs that all staff be screened for symptoms of COVID-19 before entering the facility or upon entry, and not be allowed to access the facility if they are exhibiting symptoms.<sup>122</sup> The CDC recommends staff be tested following an exposure<sup>123</sup> and notes that routine testing of both residents and staff, regardless of vaccination status, “can help identify increasing case trends early and can contribute to long-term COVID-19 prevention plans.”<sup>124</sup> Additionally, the California Department of Public Health also requires that unvaccinated staff in high-risk congregate settings, such as detention centers, undergo weekly COVID-19 testing.<sup>125</sup>

All facilities screen employees for COVID-19 symptoms before entry, but COVID-19 testing practices for staff varied significantly across facilities.

**Screening.** While all facilities screen staff for symptoms, the symptoms screened for were not consistent. For example, Adelanto and Imperial did not include all of the major symptoms in their screening tools. Specifically, Adelanto’s screening tool did not include fatigue, muscle or body ache,

122 ICE PRR 7.0, *supra*, fn. 31 at pp. 35-36; ICE PRR 6.0, *supra*, fn. 13 at pp. 32-33.

123 CDC, *COVID-19 Vaccine FAQs in Correctional and Detention Centers* (June 2021) <<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html>>.

124 CDC, *supra*, fn. 12.

125 Cal. Dep’t of Public Health, *Order of the State Public Health Officer Regarding Unvaccinated Workers In High Risk Settings* (July 26, 2021) <<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>>.

headache, sore throat, congestion or runny nose, nausea, vomiting or diarrhea, as PRR and some CDC guidance list as symptoms. Imperial did not require employees to report nausea, vomiting, or diarrhea as recommended by the PRR and CDC guidance. The omission of potential symptoms risks insufficient ability to detect symptomatic contagious workers entering for duty.

**Testing.** All facilities conduct some type of regular testing of unvaccinated employees, with some conducting regular testing of all employees regardless of vaccination status. **Table 11** summarizes the facilities’ staff testing practices as of the date of Cal DOJ’s visits.

*Table 11. Staff COVID-19 Testing Practices by Facility.*

Facility	Staff COVID 19 Testing Practices
Adelanto	The facility reported that, as of the date of Cal DOJ’s visit, staff testing consisted of random testing for 20% of all staff and testing every 72 hours for unvaccinated staff.
Desert View Annex	Staff who are not vaccinated are rapid tested for COVID-19 every 72 hours before going to shift post.
Imperial	Unvaccinated healthcare and detention staff are tested weekly. Human resources return-to-work documents indicate required testing for return to work seven days after exposure and retest for return to work 14 days after infection.
Mesa Verde	Unvaccinated staff members are rapid tested 72 hours prior to entering the facility for a duty shift. Vaccinated staff are tested weekly through a PCR test. No additional testing after exposure is required. Staff testing results did not appear within the document production.
Golden State Annex	Unvaccinated staff underwent a rapid antigen test every three days in the conference room prior to duty. It appears that all staff have been subject to once weekly saturation or all-staff testing starting August 26, 2021. However, the percentage of staff tested each week varied.
Otay Mesa	Unvaccinated staff are tested weekly before entering for their duty shift. There does not appear to be a requirement for vaccinated staff members.
Yuba	Unvaccinated staff are reportedly tested on a weekly basis. However, ongoing compliance was not confirmed. In response to an August 2021 outbreak, there was twice-weekly all-staff testing, which was to be ongoing until every result was negative for a period of two weeks. There were no more recent records.

**B. Staff Vaccination**

At the time of Cal DOJ’s site visits, staff vaccination rates varied across facilities. **Table 12** summarizes the information facilities provided to Cal DOJ about staff vaccination.

Table 12. Staff COVID-19 Vaccination Rates by Facility.

Facility	Staff COVID-19 Vaccination Rates
<b>Adelanto</b>	The facility reported that 70% of its employees were vaccinated and 30% were unvaccinated. Staff are “encouraged” to get vaccinated, and a January 2022 mandate was pending.
<b>Desert View Annex</b>	The facility reported that 80% of staff were fully vaccinated. However, documents provided showed this rate was 77%. Thus, 33% of staff were unvaccinated. Staff are “encouraged” to get vaccinated, and a January 2022 mandate was pending.
<b>Imperial</b>	The facility reported that 57% of staff were vaccinated as of August 25, 2021, and 43% were unvaccinated. Healthcare staff were 100% vaccinated except for two with exemptions, who were tested weekly.
<b>Mesa Verde</b>	The facility reported that 76% of staff were vaccinated and 24% were unvaccinated. Twenty-three of 24 health services staff were at least partially vaccinated.
<b>Golden State Annex</b>	The facility reported that 90% of staff were vaccinated and 10% unvaccinated. According to facility staff, 100% of clinical staff were vaccinated.
<b>Otay Mesa</b>	The vaccination rate for the staff was not produced and does not appear to be tracked. However, a spreadsheet of vaccination logs provided by the facility indicated that approximately 76%, or 367 out of 482 staff members were vaccinated.
<b>Yuba</b>	The facility reported that 57% of custody staff and 97% of healthcare staff were vaccinated as of early September 2021.

## RESPONSE TO COVID-19 INFECTION AND EXPOSURE: QUARANTINE, ISOLATION, AND STAFF LEAVE POLICIES

Cal DOJ reviewed the facilities' responses to potential and confirmed COVID-19 cases among detainees and staff, including but not limited to reviewing quarantine and isolation practices for detainees and staff leave policies.

### 1. RESPONSE TO COVID-19 POSITIVE TEST, SYMPTOMS, AND EXPOSURE FOR DETAINEES

Cal DOJ assessed the facilities' quarantine and isolation policies for confirmed, symptomatic, and potential COVID-19 cases. Generally, facilities engaged in proper isolation and quarantine practices. However, there were some delays in removing potential cases from the detainee population, highlighted below.

#### A. Response to a Positive Test

All of the facilities isolated or quarantined individuals who tested positive for COVID-19 or who were symptomatic. With the exception of Mesa Verde, which is comprised primarily of four large dorms with limited individually celled housing, the facilities' quarantine practices appeared adequate across the facilities. Protocols for release from quarantine varied, but it appeared that the facilities observed adequate precautions. At Otay Mesa, detainees were assessed to determine whether quarantine beyond 10 days was required. At Yuba, detainees were isolated for 14 days, released from isolation after a confirmatory negative test, and after 24 hours of resolution of symptoms.

Cal DOJ's review revealed a few instances where there was a delay in isolation between an individual presenting with symptoms or a positive rapid test and being removed from the detainee population, or where detainees pending results were combined with symptomatic detainees.

**Mesa Verde.** Medical chart review showed one patient who had a positive rapid test and was not removed to the isolation dorm. Two days later, once a positive PCR test was received, the facility isolated the detainee. This means that for at least two days, the detainee was positive for COVID-19, but residing with other detainees, potentially transmitting the illness.

**Desert View Annex.** Review of medical charts and detainee interviews indicated that there may have been delays in removing symptomatic individuals from the population promptly.

**Otay Mesa.** Individuals who had COVID-19 symptoms or a positive rapid-test result were placed together in isolation cohorts while awaiting confirmatory PCR testing. This practice risked infecting individuals who had cold-like symptoms, but were not COVID-19 positive, or individuals who received false positive rapid-test results.

#### B. Response to Known Exposure

Although practices regarding contact tracing varied among facilities, detainees who were identified as having been exposed to COVID-19 were generally subjected to a 14-day quarantine with their cohort and monitored with temperature and symptom screenings. **Table 13** summarizes the facilities' practices for testing detainees after known exposure, as of Cal DOJ's site visits.

Table 13. Response after Detainee COVID-19 Exposure by Facility.

Facility	Response After Detainee COVID-19 Exposure
Adelanto	The facility had no specified testing requirement for asymptomatic individuals exposed to COVID-19. Rather, detainees were tested via the facility-wide weekly saturation testing along with the others. If no symptoms developed during the 14-day quarantine, detainees were released into general population without a confirmatory test, which is contrary to CDC recommendations.
Desert View Annex	Detainees were tested if symptoms developed. The facility reported that any quarantine cohort from which a positive case had developed would all be tested weekly by PCR test but no other re-testing of quarantine cohorts.
Mesa Verde	Facility used contact tracing and quarantined exposed detainees based on availability of (one of five available) isolation rooms. Quarantine of exposed detainees would be subject to harm reduction decisions according to CDC guidance if the five isolated rooms were unavailable. During Cal DOJ’s visit, three individuals were quarantined individually after contact with a COVID-19 positive staff member. Medical record review indicated that Mesa Verde tested individuals who have been exposed to COVID-19.
Golden State Annex	The facility quarantined vaccinated detainees who were exposed to infection, beyond what was required by the PRR at the time of Cal DOJ’s review. Chart review showed at least one instance of an individual being subject to a rapid test after exposure.
Imperial	The facility tested all close contacts immediately and again every seven days until they had two weeks with no positive cases.
Otay Mesa	The facility reported serial testing of close contacts the fourth day and tenth day after exposure.
Yuba	Medical chart review showed that serial testing was performed in response to identification of a close contact of a detainee with a COVID-19 positive individual.

**C. Response to Manifestation of Symptoms**

Facilities’ responses to detainees presenting possible COVID-19 symptoms varied and did not consistently include immediate isolation and testing. **Table 14** provides a summary of the facilities’ practices as of the date of Cal DOJ’s site visits. While some of the information was independently confirmed, Cal DOJ could not independently verify some information provided by facility personnel:

Table 14. Response to Detainees' COVID-19 Symptoms by Facility.

Facility	Response to Detainees' COVID-19 Symptoms
Adelanto	If COVID-19 symptoms were present, the facility administered a rapid test. Information was conflicting on whether a patient with COVID-19 symptoms who obtained a negative rapid test result would be isolated.
Desert View Annex	<p>Symptomatic individuals may be walked over to the clinic for assessment or seen first by a nurse in a private area in a dorm. Depending on symptoms noted during preliminary assessment, a rapid antigen test may be performed for the individual and others in their housing pod. Individuals with symptoms, who are not yet confirmed positive, might be taken to the clinic by detention staff who “can’t force” anyone to mask, according to interviews with health services staff.</p> <p>Cal DOJ’s medical chart review revealed two individuals with COVID-like symptoms who did not have evidence of prompt testing for COVID-19.</p>
Imperial	Symptomatic detainees may be referred immediately to medical staff or instructed to make a sick call request. They are not instructed to mask or isolate within the housing unit before they are taken to the clinic for assessment. Symptomatic patients with a negative rapid test may be returned to general population or observed in the medical unit, and they may be retested, depending on clinical judgment. Symptomatic patients who test positive are held in an isolation unit or medical, and are tested on day 10. If the result is positive, they remain in isolation another 14 days.
Mesa Verde	According to staff and as directed by the GEO Group Interim Reference Sheet, symptomatic individuals were tested with rapid antigen and confirmatory tests based upon clinician orders.
Golden State Annex	Health services staff reported that any symptomatic individual should be masked immediately and then taken to the clinic for assessment of any potential COVID-19 symptoms. The facility also reported that nurses pulled symptomatic patients out of the housing pod into the hallway area for a triage assessment of COVID-19 symptoms. The satellite exam room was found on inspection not to contain any PPE.
Yuba	Medical staff reported that detainees who developed COVID-like symptoms would receive an assessment. However, the medical record for a patient showing COVID-like symptoms in October of 2020 indicated that they were not tested promptly.



## 2. RESPONSE TO COVID-19 POSITIVE TEST, SYMPTOMS, AND EXPOSURE FOR STAFF

Starting on September 9, 2020, and for most of the time through the present, California law has provided for paid leave for certain employee absences related to COVID-19. California adopted measures mandating COVID-19 related leave between September 9, 2020, and December 31, 2020, and between January 1, 2021, and September 30, 2021.<sup>126</sup> From January 1, 2022, through September 30, 2022, California law requires that employers provide up to 80 hours COVID-19 related paid leave, with up to 40 of those hours available only when an employee or family member tests positive for COVID-19.<sup>127</sup> At the time of Cal DOJ's visits, when California's leave requirements had lapsed, all facilities reported providing COVID-19 related leave.

When Cal DOJ visited the facilities, the facilities reported that they did not require the exclusion from duty of staff members who were exposed to COVID-19 but had not tested positive or were not exhibiting symptoms. Across all facilities, vaccinated staff members who were exposed were not excluded.<sup>128</sup> At some facilities, such as Adelanto, unvaccinated staff members would be excluded unless there were operational pressures, such as staffing shortages. However, at others, such as Desert View Annex, Mesa Verde, and Golden State Annex, unvaccinated staff were generally not excluded so long as they wore PPE. These staff members would still be subject to regular COVID-19 testing.

While these practice did not violate the PRR guidance, CDC recommendations suggested facilities "should consider requiring asymptomatic staff who have been identified as close contacts of a confirmed COVID-19 case to home quarantine to the maximum extent possible." Excluding them from the worksite would provide an extra measure of safety to detainees.

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126 Lab. Code, §§ 248.1, 248.2.

127 Lab. Code, § 248.6; California Dept. of Industrial Relations, 2022 COVID-19 Supplemental Paid Sick Leave Effective Feb. 19, 2022, <<https://www.dir.ca.gov/dlse/COVID19resources/2022-COVID-19-SPSL-Poster.pdf>> (as of May 13, 2022).

128 Yuba asks staff members to identify if there have been close contacts with COVID-19 positive persons, and Yuba leadership reported that they consult with public health officials for further guidance regarding staff exposure.

## MEDICAL ATTENTION TO COVID-19 PATIENTS

Cal DOJ assessed medical attention to COVID-19 patients, analyzing treatment for mild and moderate cases and the options for treating potentially severe COVID-19 cases through monoclonal antibodies, antiviral medicine, and referral to hospitalization.

Facilities generally transferred patients with serious COVID-19 infections to a hospital off-site. Criteria for hospital referral were generally based on lower oxygen levels. Some facilities, like Otay Mesa, offered more onsite treatment options, reducing the need to refer patients to the hospital. Others, such as Mesa Verde, did not offer onsite oxygen and referred any patients with those requirements.

While facilities reported prompt medical attention for COVID-19 patients with mild or no symptoms, at some facilities, medical chart review contradicted these representations. **Table 15** summarizes the facility practices of monitoring patients who were diagnosed with COVID-19 and were asymptomatic or only experiencing mild symptoms.

*Table 15. Monitoring of COVID-19 Patients with No or Mild Symptoms by Facility.*

Facility	Facilities' Monitoring of COVID-19 Patients with No or Mild Symptoms
Adelanto	Asymptomatic patients with COVID-19 were assessed three times daily by nurses and seen face-to-face daily by medical staff, with frequency increased if symptoms developed.
Desert View Annex	The facility reported that all patients infected with COVID-19 were assessed by an advanced practice provider or physician within 24 hours of diagnosis, and then daily. A nurse then monitored vital signs and oxygen saturation "at least twice a day" if no symptoms were noted.  The sample of medical records reviewed did not confirm prompt assessment for COVID-19, even among high-risk individuals. The medical chart for one high-risk patient showed that the patient was not visited by a physician until six days after testing positive. An average risk patient was assessed by a physician 48 hours after presenting with symptoms, though vital signs and monitoring documentation was not able to be produced for review.
Mesa Verde	The clinical director reported that she was notified any time there was a positive COVID-19 test and that nurses conduct twice-daily temperature and symptoms checks on all detainees, including COVID-19 patients.
Golden State Annex	The facility reported that nurses visited quarantine areas for twice-daily temperature and symptoms checks; no records for patients diagnosed with COVID-19 were found for review.

<p><b>Imperial</b></p>	<p>Symptomatic detainees who tested positive were housed in one of six negative pressure rooms in the medical unit and underwent twice-daily vital sign checks, including pulse oxygenation measurement, with “abnormal” findings reported promptly to the physician. Detainees who tested positive but were asymptomatic were housed with other detainees who also tested positive in a housing unit designated for this purpose. Symptomatic detainees who tested negative either remained in the medical unit for observation or returned to the housing unit, depending on other circumstances.</p> <p>From Cal DOJ’s review of medical charts, it was unable to verify reliable medical assessment and management of patients at high risk of progression to serious coronavirus, but documentation did confirm that individuals with COVID-19 appeared to be reliably monitored by nursing checks during the course of infection.</p>
<p><b>Otay Mesa</b></p>	<p>Appropriate monitoring of patients during infection with COVID-19 could not be verified directly.</p>
<p><b>Yuba</b></p>	<p>Healthcare staff reported that personnel would “follow the protocol” to assess patients diagnosed with COVID-19. COVID-19 patients were assessed by the nurse practitioner prior to isolation, if possible, while they were on duty.</p> <p>A review of past medical records did not indicate reliable assessment and monitoring of patients with COVID-19. These patients could have been at risk of not being identified early if their condition began to deteriorate or if they are at high risk of progression to serious COVID-19. For example, a review of patient records indicated that individuals with high risk conditions may not receive proper assessments for symptoms after diagnosis for COVID-19. One individual with high risk conditions did not see a physician or nurse practitioner after the diagnosis, which occurred in December 2020. However, they did receive screenings from a nurse, and only ever experienced mild symptoms. In the medical records for two other high risk persons who tested positive in December of 2020, it appeared that there were missing monitoring or vital checks.</p>

## 1. MONOCLONAL ANTIBODIES

The National Institutes of Health (NIH) has recommended the use of monoclonal antibodies for post-exposure mitigation of symptoms in certain cases, particularly for non-hospitalized individuals presenting mild to moderate COVID-19 symptoms but who are at high risk of progression to severe disease.<sup>129</sup> The PRR was updated on October 19, 2021, to recommend that each detainee newly diagnosed with COVID-19 be assessed for possible monoclonal antibody treatment, but facilities generally have not referred individuals for monoclonal antibody treatment.<sup>130</sup> The facilities varied in terms of whether they would consider such treatment and refer patients. In response to questions regarding the use of monoclonal antibody treatment, several facilities stated that they had not had any patients for whom the treatment had been indicated or that such treatment was not available (Adelanto, Mesa Verde, Imperial, Otay Mesa). Some facilities stated that the treatment would be available or that a patient would be transferred to a hospital for such treatment (Desert View Annex, Golden State Annex, Imperial, Yuba).

129 National Institute of Health, *Therapeutic Management of Nonhospitalized Adults With COVID-19*, <<https://www.covid19treatment-guidelines.nih.gov/management/clinical-management/nonhospitalized-adults--therapeutic-management/>> (as of May 13, 2022).

130 ICE PRR 7.0, *supra*, fn. 31 at pp. 4, 25.

## 2. ANTIVIRAL MEDICATIONS

NIH treatment guidelines since December 2020 have included guidance on patients who should be considered for antiviral medication.<sup>131</sup> No facilities had antiviral medication readily available, and information about this treatment option was not included in the COVID-19 management documents provided. However, Imperial indicated that if called for, the facility would have access to this treatment.

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131 See National Institute of Health, *Antiviral Drugs That Are Approved, Authorized, or Under Evaluation for the Treatment of COVID-19*, <<https://www.covid19treatmentguidelines.nih.gov/therapies/antiviral-therapy/summary-recommendations/#:~:text=Remdesivir%20is%20the%20only%20drug,the%20treatment%20of%20COVID%2D19>> (as of May 13, 2022).

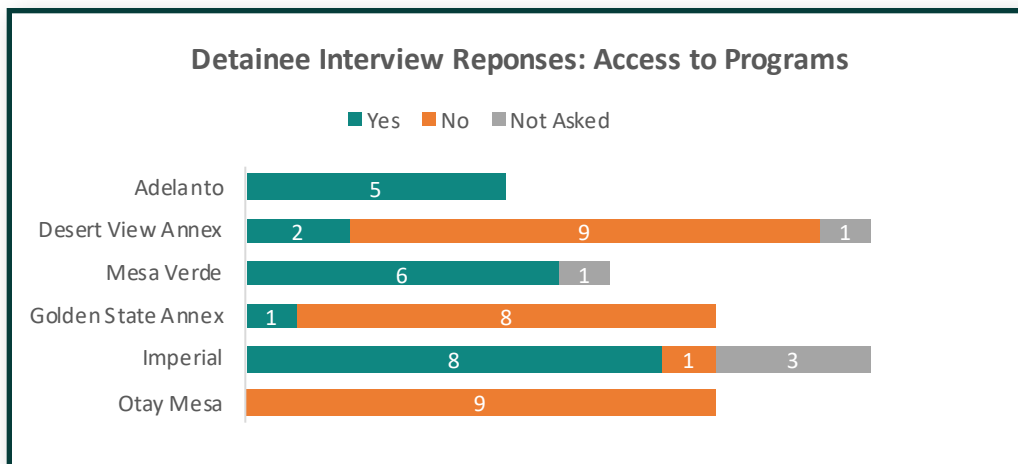
## PROGRAMMING, RECREATION, RELIGIOUS SERVICES, AND FOOD SERVICE

Facility-wide prevention measures put in place for staff and detainee safety against COVID-19 also changed other areas of detention life such as programming, recreation, religious services, and food service. The PRR warns that “[i]f group activities are discontinued, it is important to identify alternative forms of activity to support the mental health of detainees.”<sup>132</sup> At some facilities conditions changed dramatically, but at others the change was much less noticeable.

### 1. PROGRAMMING

Access to programming varied significantly across facilities prior to the pandemic. As shown in **Figure 6**, a majority of the detainees Cal DOJ interviewed at several facilities reported not receiving programming at their facility. It is unclear why this was the case at some of the facilities. A description of the programs offered to detainees at each facility is provided below:

*Figure 6. Detainee Reports of Access to Programs by Facility.*



**Adelanto.** Although all detainees whom Cal DOJ interviewed reported there was programming at the facility, only two provided details on the type of programming offered. One detainee shared about a mental health group that meets once a week for one to two hours. Another detainee shared that the facility provided various activities, including art, music, and yoga.

**Desert View Annex.** The facility shared that it has been chosen for a pilot program offered by ICE to provide classes to detainees. The facility provided sparse information on what that program is, when it takes place, and what classes were offered. One detainee Cal DOJ interviewed indicated the facility offered an anger management class, but they had not yet participated in this class because they had been wait-listed for three months.

**Mesa Verde.** Detainees reported the facility offers them arts and crafts twice a week. This program is held in the dining hall where there is sufficient space to social distance. Cal DOJ did not observe this program in action.

<sup>132</sup> ICE PRR 7.0, *supra*, fn. 31 at p. 39; ICE PRR 6.0, *supra*, fn. 31 at p. 35.

**Golden State Annex.** Most detainees reported there is no programming at the facility. However, they shared that they do get to watch movies and play video games through an Xbox console in their unit. It was also reported that the game console is rotated among dorms and therefore was not always available.

**Imperial.** This facility is known for its programming; during Cal DOJ’s 2019 visit it observed that the facility offered courses such as General Educational Development (GED), Instituto Nacional para la Educación de los Adultos (INEA), health and wellness, English as a Second Language (ESL), and Reading Horizons among others prior to the pandemic. Staff reported that they tried their best to continue offering these classes when the pandemic first began. They did halt in-person classes but provided classes via streaming on the housing unit televisions. The facility attempted to have tutors in each housing unit to help detainees who were taking the classes. Sometime between July and September 2021, the facility returned to providing in-person classes. The 30-minute classes were taught to individual housing units with a maximum of 10 people per class. The instructor was also required to sanitize the classroom in between classes for which there is a built-in 15-minute period. Detainee interviews confirmed the in-person classes were being held. Facility staff indicated that detainees in the quarantine units also had access to programming through streaming on the housing unit television, but a detainee Cal DOJ interviewed was not aware of these classes.

**Otay Mesa.** Staff at this facility reported they increased the number of days detainees could watch movies during the week; hosted a monthly bingo session for smaller groups; offered individual activities such as free throws, corn hole, and pushups that were previously offered as competitions; and offered Uno cards, word search puzzles, and drawing and painting materials. Detainees confirmed these activities were occurring, but it was unclear how widespread and consistent these were. Prior to the pandemic, unit staff led classes for the detainees, but as of October 4, 2021, they offered only packets of the class materials for individual study. The unavailability of these classes may be a reason why all detainees Cal DOJ interviewed reported they were not receiving programs.

**Yuba.** According to facility staff, there are tablets available in the housing units on which detainees can participate in programs. Some of these programs reportedly include substance abuse counseling, anger management, “offender” responsibility, and reentry classes, such as on how to use social media. These tablet programs are only available in English and there are only two to three per housing pod. Staff also indicated that detainees could get games and books by request to the recreation officer. Because there were no detainees at Yuba when Cal DOJ conducted its review, it was not possible to confirm detainees’ experience of programming at the facility.

## 2. RECREATION

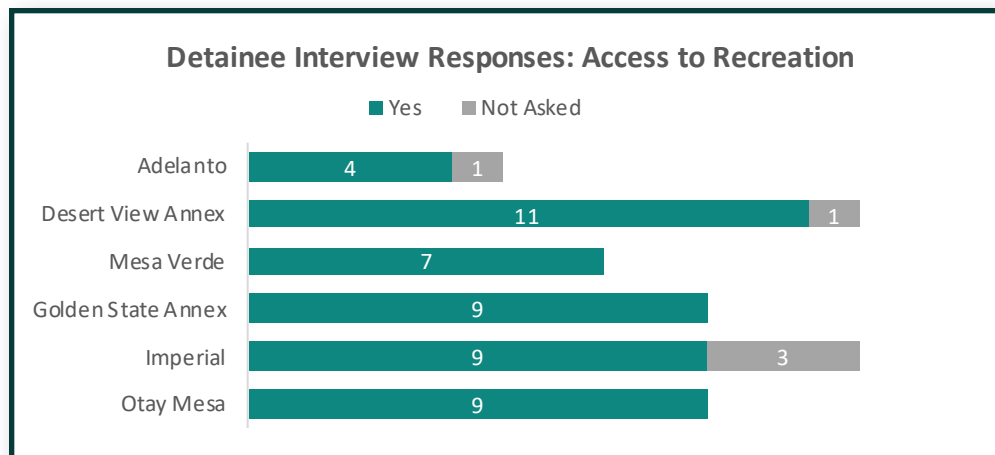
PBNDs requires that detainees in general population receive a minimum of one hour a day, seven days a week of outdoor recreation; optimal levels of compliance with PBNDs would have detainees receiving at least four hours of outdoor recreation a day.<sup>133</sup> For the most part, access to recreation for those in general population remained the same at most facilities (Figure 7). However, access to recreation looked very different for detainees in isolation or quarantine at certain facilities.

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133 ICE, PBNDs 2011, Part 5.4 Recreation, pp. 370-71.



Figure 7. Detainee Reports of Access to Recreation by Facility.



### A. General Population

Detainees at Adelanto, Imperial, and Otay Mesa have access to a small recreation yard adjacent to their housing units. As summarized in **Table 16**, the amount of time they can access that yard varies by facility.

Table 16. Access to Recreation (Small Yard), Adelanto, Imperial, and Otay Mesa.

Facility	Recreation Access
<b>Adelanto</b>	The small yard is shared between two housing units. Therefore, detainees can only access that yard for half the day, which is the same as what they were offered before the pandemic. Detainees in general population at Adelanto also used to have access to a large recreation yard. But, according to detainee interviews, it seems either that they do not continue to have access to that yard or only the female detainees do, for an hour at a time.
<b>Imperial</b>	There are both small yards adjacent to the housing units and a large yard. Detainees reported that they have access to both. The small yard is accessible from seven in the morning to seven in the evening. The large yard is available to them twice a week for one to two hours.
<b>Otay Mesa</b>	Detainees may access the small yard anytime throughout the day except during count, meals, or cleaning time. Detainees may check out balls to use outdoors.

Desert View Annex, Mesa Verde, Golden State Annex, and Yuba do not have small and large yards. These facilities only have one main yard. Detainee access to those yards is summarized in **Table 17**.

Table 17. Access to Recreation (Main Yard), Desert View Annex, Mesa Verde, Golden State Annex, and Yuba.

Facility	Recreation Access
Desert View Annex	According to detainee interviews, they access the yard for somewhere between 30 minutes to one hour a day. Usually, they have access to exercise equipment and balls to play soccer, volleyball, and handball.
Mesa Verde	The main yard is accessed twice a day for two hours. This facility also has an indoor recreation space full of workout machinery, but it does not seem to be used.
Golden State Annex	Most detainees reported they go outside twice a day for two hours, but one detainee reported it was only once a day for two hours. Here, detainees have access to soccer balls, handballs, and basketballs. Golden State Annex also has an indoor recreation area. Some detainees reported they have access to this twice a week for three to four hours. One detainee explained that this room has more than just exercise equipment and can be used for other activities such as playing board games, video games, or arts and crafts.
Yuba	Facility staff reported that detainees are offered one hour of yard time seven days per week during a set time between five in the morning and eleven at night, as well as more limited access to an indoor recreation room. Detainees have access to basketball, volleyball, body resistance equipment, a ping pong table, and a stationary bike.

### B. Quarantine

The location or type of housing unit where quarantine takes place can effect detainee access to outdoor recreation. Detainees who experienced quarantine at Desert View Annex confirmed they still received outdoor recreation during that time. Detainees at Otay Mesa provided conflicting reports, with one detainee indicating they did and another reporting they did not.

### C. Segregation

Access to recreation for this population has not changed due to COVID-19 restrictions. That is because these individuals were already isolated from the other detainees in their housing units. Because they are so isolated from the others, they generally recreate alone. One detainee with whom Cal DOJ spoke to and who was housed in segregation at Mesa Verde confirmed that they received outdoor recreation for one hour a day. In most facilities, the segregation units have their own separate outdoor recreation space—often individual cages adjacent to the segregation housing unit. At Golden State Annex, there is no dedicated outdoor recreation area for detainees in segregation, and there is no plan to create such an area. Instead, detainees in segregation are taken to the outdoor sally port, which is adjacent to the Intake/Segregation units. This outdoor space is paved and has no shade. The facility reported that detainees are provided a plastic chair, and extremely limited recreational equipment is provided upon request.

In a June 2021 report, DHS OIG observed that detainees in segregated housing at Otay Mesa did not receive the services and privileges to which they were entitled.<sup>134</sup> Specifically, 86% of detainees “were not always provided with required recreation time outside their cell,” and 100% of detainees “were not always provided with required access to legal calls, laundry services for used bedding and clothing, mail, legal materials, and law library.”<sup>135</sup>

134 DHS OIG, *supra*, fn. 65 at p. 9.

135 *Ibid.*

### 3. RELIGIOUS SERVICES

The COVID-19 pandemic has significantly impaired detainees’ ability to access religious services. PBNDS has several requirements with respect to detainee religious practices, but this report will only focus on three. First, the facility administrator is required to “designate a staff member, contractor, or volunteer, to manage and coordinate religious activities.”<sup>136</sup> Second, facilities must provide regular opportunities for detainees “to participate in practices of their religious faiths, limited only by a documented threat to the safety of persons involved in such activity itself or disruption of order in the facility.”<sup>137</sup> Third, facilities must “designate adequate space for religious activities.”<sup>138</sup>

Religious services at the facilities were previously provided in-person by a chaplain or volunteers coordinated by the chaplain. Because social visitation was completely suspended at the facilities due to the COVID-19 pandemic, outside volunteers have been unable to provide religious services. Offerings vary by facility, with some being provided by a facility chaplain either in-person or by video on the housing unit televisions. It was unclear why the facility chaplains at all facilities could not host in-person religious services while observing social distancing measures such as congregating no more than 10 detainees from a single housing unit at a time. See **Table 18** for further details on the religious services offered by facility.

*Table 18. Religious Services Offered by Facility.*

Facility	Religious Services Offered
Adelanto	Among detainees interviewed, only one shared that there were religious services provided. They specified that a service had taken place three weeks prior and only five detainees were permitted to participate.
Desert View Annex	According to one detainee, the facility offered religious services and specified a chaplain would lead them. A staff member at the facility confirmed that a chaplain does visit every housing unit to offer services. There were no further details about when or how often this occurred. While GEO reported that mats are available to all detainees, a detainee reported that Muslim detainees are not provided with prayer mats and have to use blankets as an alternative. Moreover, they shared that there is no space for them to pray.
Mesa Verde	The facility reported that the chaplain provides mainly Christian and Catholic services, once per dorm every week on Mondays and Wednesdays for 50 minutes to one hour. All but one detainee interviewed confirmed that religious services are provided both in person and on the housing unit television. The religious services provided on the television also occur once a week and are provided in Spanish.
Golden State Annex	At the time of Cal DOJ’s visit, this facility did not offer religious services. One detainee stated it had been three months since they were last offered religious services. Another detainee claimed their chaplain was moved to Mesa Verde and that is why they are not receiving religious services. This same detainee expressed a desire for faith-based services.

136 ICE, PBNDS 2011, Part 5.5 Religious Practices, Part V, §C, p. 377.

137 *Id.* at, p. 375.

138 *Id.* at, p. 378.

<b>Imperial</b>	Half of the detainees Cal DOJ interviewed said they were provided with religious services by a chaplain. One of the detainees expressed this was only offered to them once since their arrival, but this individual had only been at the facility for one month. Another detainee, who was from India, noted not having access to services for their religion. In addition to religious services offered by the facility, detainees are permitted to lead their own prayer groups and are provided space to conduct those.
<b>Otay Mesa</b>	The facility chaplain provides English and Spanish religious services through a DVD, which is played on the housing unit televisions. It is unclear how often these videos are played or for which denominations they were provided. Most detainees reported that they host their own religious services. One detainee specified that the facility only permitted the detainee-led religious services to be held in a small room rather than in the recreation area or the common area of the housing unit. The detainee indicated they would prefer if these services could take place in these areas to facilitate social distancing between detainees, since it was difficult to maintain a distance of six feet apart when large groups of approximately 10-12 detainees attended the services.
<b>Yuba</b>	The facility reported there are no religious services provided.

#### 4. FOOD SERVICE

Prior to the pandemic, all facilities except Imperial and the East Building at Adelanto served meals to detainees in large dining halls. At the time of Cal DOJ’s site visits, all facilities except Golden State Annex provided “satellite meals”—meaning food is served in the housing units instead of a dining hall—to general population. **Table 19** summarizes the reported areas where detainees ate their meals at the time of Cal DOJ’s site visits.

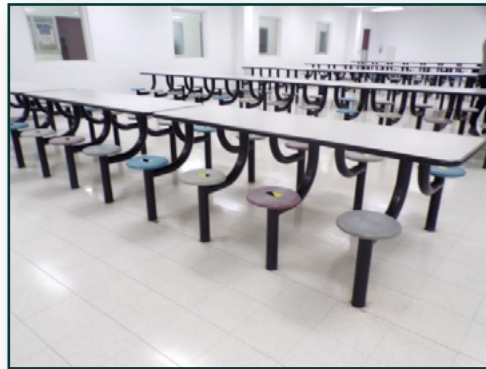
*Table 19. Reported Areas where Detainees Eat by Facility.*

Facility	Tables (Housing Unit)	Bunks, Cells, Other (Housing Unit)	Tables (Dining Hall)
Adelanto	•	•	
Desert View Annex	•	•	
Mesa Verde <sup>139</sup>	•	•	
Golden State Annex	•		•
Imperial	•	•	
Otay Mesa	•	•	

139 Note, one detainee from Otay Mesa reported being able to eat on the sofas available in the housing unit dayroom. This was categorized as ‘Other.’ Yuba is not included on this list because there were no detainees at the facility at the time of Cal DOJ’s site visit.

The dining room at Golden State Annex had markings to ensure spacing between detainees during meals as shown in **Figure 8**. Detainee interviews confirmed that staff did enforce social distancing in this area of the facility. However, enforcement of social distancing during meal times in the housing units generally did not happen except for at Desert View Annex.

*Figure 8. Dining Room at Golden State Annex, Marked for Social Distancing.*



Despite labels being placed on the seats on the tables within the housing units at Adelanto and Mesa Verde to encourage social distancing, detainees reported that the maximum number of seats available at a table were often filled, and staff do not direct them not to sit together. Several of the detainees Cal DOJ staff spoke with reported that because there are often too many people at the tables, they tended to eat their meals on their bunks. Indeed, at Yuba, staff reported encouraging detainees to eat on their bunks. At Desert View Annex, there were folding tables in the housing unit, which were reportedly used during meal times to allow for social distancing. While Cal DOJ did not observe mealtime to confirm, two detainees specified that their four-person tables regularly only seat two, indicating that detainees observe the markings shown in **Figure 9**.

*Figure 9. Housing Unit Table at Desert View Annex, Marked for Social Distancing.*

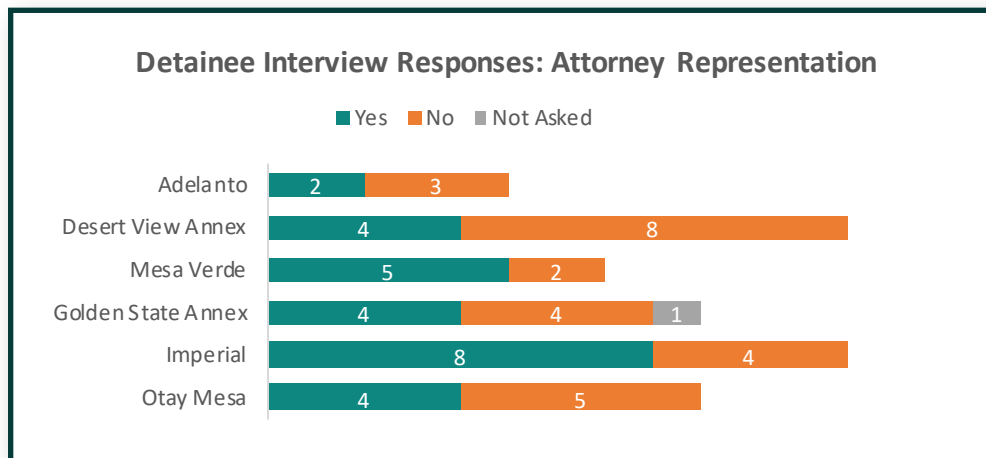


At all facilities, detainees in isolation or quarantine eat meals in their housing units, including at Golden State Annex. For detainees on quarantine at Desert View Annex and Golden State Annex, meals are served on non-disposable trays like those used in general population. For detainees in isolation at Desert View Annex, meals are served on disposable trays. At Adelanto, Imperial, and Yuba, meals are served in disposable Styrofoam for both quarantine and isolation units.

## ACCESS TO LIBRARIES AND LEGAL RESOURCES

Detained individuals generally do not have a right to appointed counsel and face several challenges to obtaining counsel or accessing resources to adequately represent themselves in immigration court. As reported in Cal DOJ’s February 2019 and January 2021 reports, these challenges existed prior to the pandemic.<sup>140</sup> During the COVID-19 pandemic, court closures, visitation suspensions, and other barriers arising out of the global health crises only exacerbated these challenges. Of the detainees Cal DOJ interviewed, just over half were represented by an attorney, as shown in **Figure 10**. This is a higher rate of representation than detained individuals generally experience and may not reflect the rate of representation among the statewide population generally.<sup>141</sup>

Figure 10. Detainee Reports of Attorney Representation by Facility.



Detainees who do not have counsel must conduct their own legal research, gather evidence, prepare legal documents for filing, and ultimately represent themselves in court with only what they can access while in the facility. Prior to the pandemic, some of the resources at their disposal included legal research computers available in the housing units and in the facility libraries; computers to type up filings; access to copying; legal orientation programs; Know Your Rights videos; and access to telephones. While access to some of these resources has remained the same, at most facilities, access to several important resources has been significantly reduced for nearly two years.

### 1. ACCESS TO LIBRARIES

PBNDs requires detainees receive at least five hours per week of access to the law library (electronic legal research) and other legal materials (paper publications).<sup>142</sup> Each of the facilities provides legal materials through a computer-based legal research library called Lexis-Nexis. This program is the sole means for detainees to conduct legal research, as they do not have access to the internet. At most facilities, computers with these materials are available in facility libraries, and each housing unit also contains one or more computer kiosks with access to these materials.

Facility libraries can be used for both leisure and legal research purposes. Prior to the pandemic, most facilities provided library time throughout the week by allowing detainees from each housing unit to

140 *Immigration Detention in California*, *supra*, fn. 8 & fn. 9.

141 See, e.g., Eagley and Shafer, *Access to Counsel in Immigration Court*, American Immigration Council (Sept. 2016) p. 4 <[https://www.americanimmigrationcouncil.org/sites/default/files/research/access\\_to\\_counsel\\_in\\_immigration\\_court.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf)> (as of May 16, 2022) (nationwide study of immigration representation from 2007 to 2012 showed 14 percent representation rate for detained noncitizens).

142 ICE, PBNDs 2011, Part 6.3 Detainee Handbook, Part II & Part V, §C, pp. 421, 423.



access the library during designated times. This practice allowed housing units to remain in separate cohorts while maximizing how many detainees could use the legal research computers. Most facilities curtailed library visits in response to the pandemic, though two or three had reinstated library visitation by the time Cal DOJ conducted its review. During Cal DOJ interviews, detainees at Imperial and Golden State Annex expressed that they have the opportunity to go to their facilities' libraries. Golden State Annex allows detainees to visit the library one to two times a week. Documents from Adelanto and staff at Mesa Verde indicated detainees at those facilities are currently permitted to use the library on a daily or weekly basis, respectively, but none of the detainees Cal DOJ interviewed at either of the facilities confirmed this.

Detainees who are not allowed to go to the physical library must use law library computers in the unit and make requests from the librarian for books or copies. The law library computers at Yuba consist of two laptops rather than desktop computers, which detainees must request to use. Library staff at Otay Mesa are required to make daily rounds to the housing units to collect requests. There is a similar procedure for the detainees at Desert View Annex. When detainees are in quarantine at Golden State Annex, the librarian goes to the quarantined unit on a daily basis to pick up requests.

## 2. LEGAL ORIENTATION MATERIALS

Understanding the U.S. Immigration system is difficult for anyone. It can be especially challenging to understand if you are new to this country, do not speak or read English — as legal materials are not translated into other languages — and are dealing with the stress of being forcibly detained. The American Bar Association created a “Know Your Rights” video to provide detainees with some amount of orientation and foundational knowledge. This video is available in several languages, but it most commonly played in English and Spanish. Detainees may also receive some guidance on their immigration cases through the Executive Office of Immigration Review’s Legal Orientation Program (LOP).<sup>143</sup> LOP works with legal services organizations to provide comprehensive explanations about immigration court and basic legal information to groups of detained individuals.

**Know Your Rights.** Staff at Desert View Annex reported that the “Know Your Rights” video was played every morning in English and Spanish on the housing unit televisions. Similarly, this video is played at six in the morning in English with closed captioning for detainees at Golden State Annex. The facility reported that it also provided detainees with a tablet during intake to allow them to watch this video.

**Legal Orientation Program.** Prior to the pandemic, LOP was provided at Adelanto and Otay Mesa. The Esperanza Immigrant Rights Project previously conducted LOP at Adelanto three times a week in English and Spanish. Adelanto reported that Esperanza was not able to provide its much-needed services due to the suspension of visitation. The American Civil Liberties Union (ACLU) previously offered legal presentations once a month in rotating housing units at Imperial. Documentation from Imperial indicated that the ACLU provided presentations in September and October 2021. The American Bar Association Legal Justice Project of San Diego previously provided the LOP in-person four days a week at Otay Mesa. During the pandemic, it moved to individual telephonic orientations in April 2020 and then Sykpe orientations four times a week beginning in June 2020. It is unclear why these in-person services were suspended to begin with or for so long. ICE ERO’s March 2020 notice to the facilities regarding its temporary social visitation suspension indicated that LOP was an exception to the suspension.<sup>144</sup> Moreover, ICE’s website states that LOP is “currently operat[ing] at a limited number of detention sites and may continue to conduct detainee presentations.”<sup>145</sup> Under ICE

143 U.S. Dept. of Justice, Executive Office of Immigration Review, Legal Orientation Program, <<https://www.justice.gov/eoir/legal-orientation-program>> (as of May 16, 2022).

144 Acting ERO Director for Custody Management, E-mail to Field Office Directors and Deputy Field Office Directors (Mar. 13, 2020) <[https://www.dhs.gov/sites/default/files/publications/aic\\_august\\_release\\_records.pdf](https://www.dhs.gov/sites/default/files/publications/aic_august_release_records.pdf)> (as of May 16, 2020).

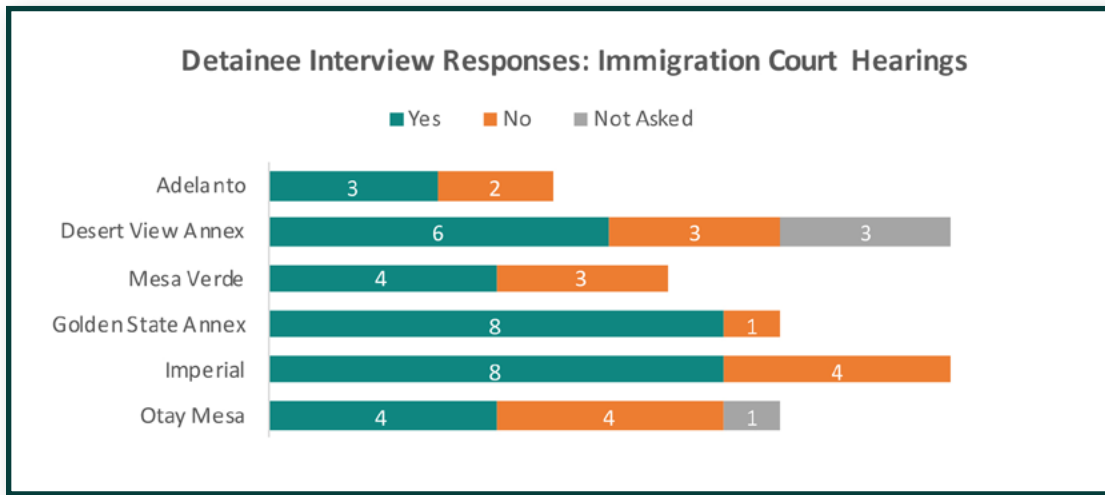
145 ICE, ICE Guidance on COVID-19, Frequently Asked Questions <<https://www.ice.gov/coronavirus>> (as of May 16, 2022).

guidance, facilities can offer LOP so long as “no more than four LOP presenters be allowed in the facility at any one time.”<sup>146</sup>

### 3. ACCESS TO COURT PROCEEDINGS

Most detainees with whom Cal DOJ spoke to – 66 percent – had attended an immigration court hearing since the beginning of their detention, as shown in **Figure 11**. Although they may have been limited in the type of legal research, evidence gathering, or other case preparation they could do, their cases were still moving forward, and they were expected to be prepared.

Figure 11. Detainee Reports of Access to Immigration Court Hearings by Facility.



Across facilities, the majority of detainees who reported they had attended an immigration court hearing also reported their court hearing had not been cancelled due to COVID-19 (24 out of 29).<sup>147</sup> However, one detainee from Adelanto specifically noted that their court hearing was cancelled and had to be rescheduled because they were in quarantine when they first arrived to the facility.<sup>148</sup> Another detainee from Desert View Annex reported they were told their hearing was delayed due to COVID-19. Although not directly related to COVID-19, a detainee at Mesa Verde indicated they had a hearing rescheduled during their transfer from Golden State Annex to Mesa Verde.

<sup>146</sup> Ibid.

<sup>147</sup> Four detainees who reported having attended an immigration court hearing while at the facility were not asked whether they had a hearing cancelled due to COVID as reflected in Figure 11.

<sup>148</sup> In its 2021 report on Immigration Detention in California, Cal DOJ observed that a failure to adequately prepare for communicable disease outbreaks at Imperial led to delays in court proceedings due to unnecessary quarantine practices. (*Immigration Detention in California, supra*, fn. 9 at p. 87.)

## ACCESS TO OUTSIDE COMMUNICATION

A detained individual’s access to communication with the outside world is critical for both their immigration case preparation and their mental health. Prior to the COVID-19 pandemic, methods of communication available to detainees included mail, telephonic communications, and in-person visitation. Access to phone calls and in-person visitation changed due to the pandemic. Obstacles to communication during the pandemic have more severely constrained detainees’ ability to stay connected with their loved ones, as compared to their ability to communicate with legal counsel, as shown in **Figures 12 and 13**. However, detainees at GEO Group facilities who were interviewed by Cal DOJ experienced difficulties communicating with both attorneys and family and friends. At all facilities except Yuba (which does not use ICE’s telephone service provider), Talton provided 130 minutes of additional free telephone service per detainee per week to attempt to address increased obstacles to communication during the pandemic.

Figure 12. Detainee Reports of Difficulties Communicating with Family and Friends by Facility.<sup>149</sup>

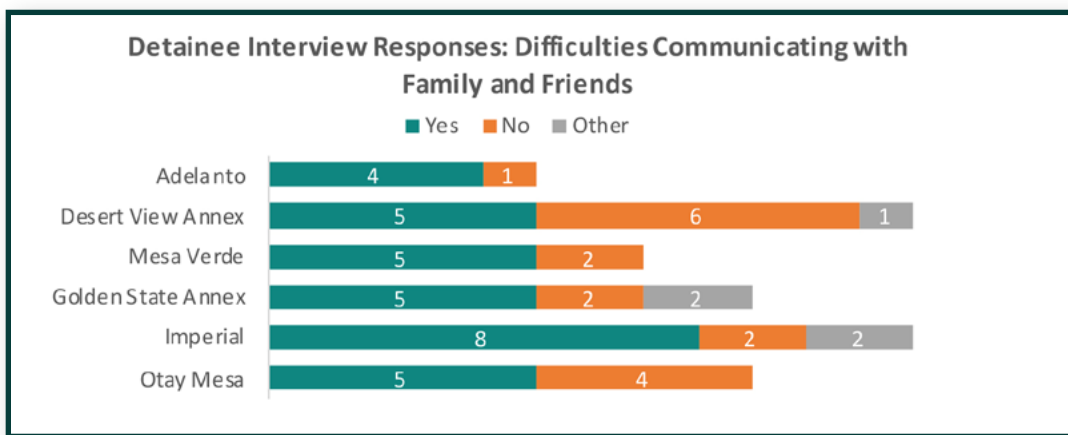
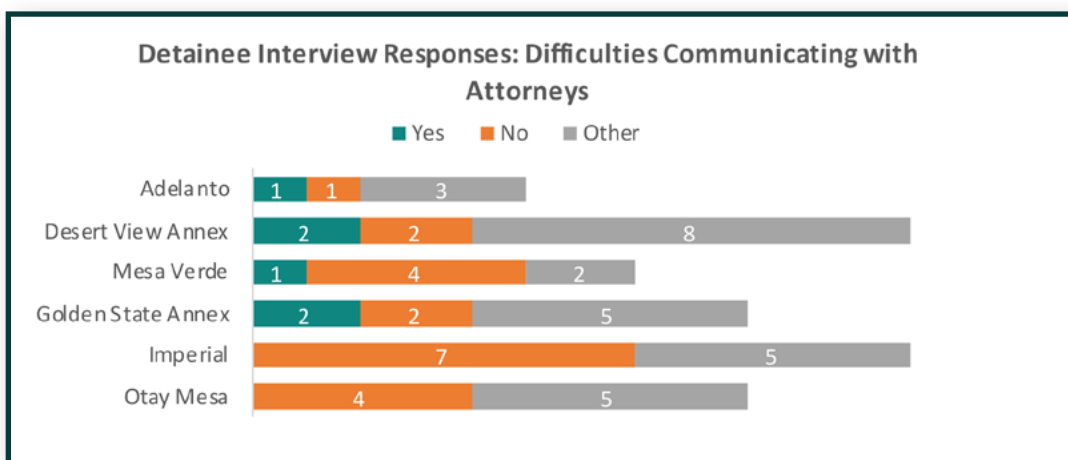


Figure 13. Detainee Reports of Difficulties Communicating with Attorneys by Facility.<sup>150</sup>



149 The ‘Other’ category represents detainees who were not asked the question or for whom the question was not applicable.

150 The ‘Other’ category represents detainees for whom this question was not applicable since they had indicated they were not currently represented by an attorney and also includes one detainee from Imperial who was not asked the follow up question.

## 1. VISITATION

**Social Visitation.** At all facilities except Yuba, in-person social visitation—including non-contact visitation (e.g., with a plexiglass partition)—was halted in March 2020, and had not resumed when Cal DOJ inspected the facilities.<sup>151</sup> As of Cal DOJ’s site visits in Fall 2021—a year and a half since the blanket suspension—none of the six privately-operated facilities had reinstated in-person social visitation, including non-contact visitation. In lieu of in-person visitation, detained individuals were supposed to be offered video visitation options. However, the video visitation options available at all facilities except Yuba required payment.<sup>152</sup> This meant that instead of being able to see their loved ones for free in-person, detainees had to pay to see them through a video call placed through a tablet. Tablets are used at every facility except Yuba. The tablets have multiple functions, including the ability to make video calls for 20 cents per minute. There are generally not enough tablets for each person in the housing units, and a few detainees expressed it can be hard to access a tablet if they do not secure one early enough in the day. Additionally, while some detainees had no issues with the video call function, there were several detainees who described barriers to its use such as poor video quality, poor connection resulting in dropped video calls, and most of all, the cost. Golden State Annex staff reported to Cal DOJ that in December 2021, it was offering free video visits for detainees due to the holiday season. Detainees reported to Cal DOJ that the free video visits were difficult to schedule and not offered to everyone.

While video visits can be a helpful alternative for families who cannot travel to the facility, there is no substitute for in-person visitation. Several detainees expressed frustration over the social visitation suspension that no longer felt temporary or necessary given the advent of vaccinations both in and outside of the facility. Indeed, some facilities, like Golden State Annex, have an outdoor visitation space they could use for visitation, and all seven facilities have non-contact visitation spaces. The social visitation suspension has been difficult for many detainees’ mental health as it caused them to miss time with their families they will never get back. Moreover, the suspension on visitation was a stark contrast for some detainees being held by ICE after release from California state prisons, where in-person visits resumed in 2021.

**Legal Visitation.** Unlike social visitation, legal visitation was permitted. ICE ERO’s March 2020 directive provided that facilities could continue to allow in-person legal visitation and encouraged non-contact visits to limit COVID-19 exposure, unless a contact visit was necessary.<sup>153</sup> As described in Cal DOJ’s January [2021 report](#), attorneys surveyed by Cal DOJ confirmed that Adelanto, Imperial, Mesa Verde, Otay Mesa, and Yuba continued in-person and mostly non-contact attorney visits during 2020. At the time of Cal DOJ’s visits between October and December 2021, Imperial, Golden State Annex, and Otay Mesa offered both in-person and video attorney visits. Desert View Annex, Mesa Verde, and Yuba continued to permit in-person attorney visitation. A detainee at Desert View Annex expressed that they received a non-contact in-person visit with their attorney, but they found the non-contact space inconvenient for the conversation. Cal DOJ experienced this first hand while conducting detainee interviews; the plexiglass made it difficult to hear the person on the other side, which necessitated speaking louder and consequently hindered privacy.

## 2. TELEPHONE ACCESS

Throughout the pandemic, the telephone became an even greater lifeline for detained individuals, as it was the main source of outside communications. In January 2021, the telephone provider, Talton, began offering each detained individual free calls every week at all facilities it services in California, which does not include Yuba. These free calls could be used to make social or legal calls. Signage about the free calls for detainees was posted at all the facilities, and detainees at every facility confirmed

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151 Yuba halted its in-person visitation in December 2020 and restarted it in February 2021; it was paused again in August 2021 and resumed in September 2021. At the time of Cal DOJ’s visit in November 2021, non-contact social visits were available.

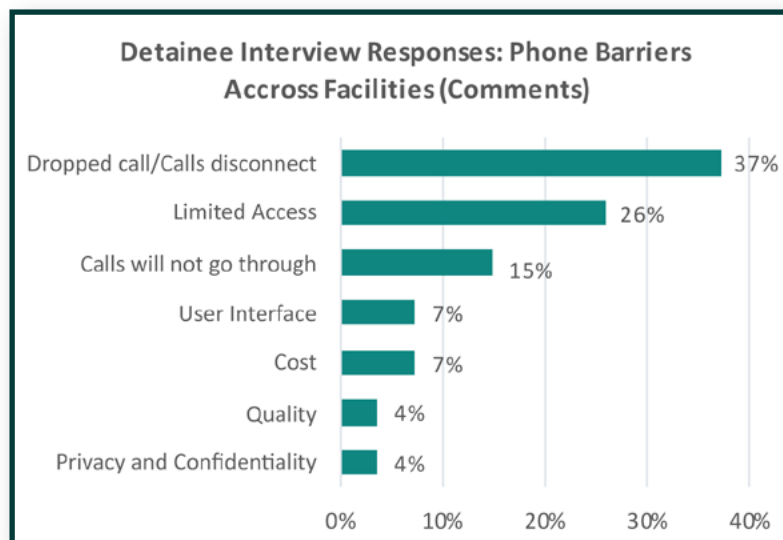
152 Yuba does not offer video visitation.

153 ERO E-mail, *supra*, fn. 144.

they were receiving free calls. However, not every detainee was informed of the number of free calls or how to access them. For example, at Imperial, a memo was posted about Talton’s free calls provided to detainees and detailed information on how to obtain the calls, when they expired, and when they reset. This notice was only provided in English and Spanish. The signage about these calls at GEO Group facilities was posted in four languages, but only provided information on the number of calls. Detainees at all facilities contracted with Talton are supposed to receive 13 free 10-minute calls a week, but some detainees expressed they received fewer. Detainees at Yuba, which contracts with GTL, only received two five-minute free telephone calls per week.

Providing some free calls to the detained population can mitigate some of the barriers they face to preparing their immigration cases and to remaining connected to their families. However, detainees continue to face barriers in phone access similar to what Cal DOJ described in its [2021 Report](#). See **Figure 14**.<sup>154</sup> For example, detainees reported to Cal DOJ that although detainees receive 13 free calls a week, if the call does not go through or is dropped, they will lose out on any remaining minutes left on that 10-minute call.

Figure 14. Detainee Reports of Communication Barriers Across Facilities (Phones).



Detainees can always make non-confidential calls to their attorneys using the monitored phones in their housing units, but access to confidential legal calls varies by facility. At Yuba, detainees have access to confidential non-monitored lines through the *Lyon* settlement.<sup>155</sup> Due to the COVID-19 pandemic, ICE required the facilities to expand communication opportunities for attorneys and their detained clients. For example, the PRR requires the facilities to create a process and facilitate free scheduled phone call appointments.<sup>156</sup> Surveyed attorneys confirmed that this process took place in 2020, as described in Cal DOJ’s January 2021 report.

154 Figure 14 shows all categories derived from the 27 comments provided by the 23 detainees across facilities who indicated there were barriers to communicating by phone.

155 See *Lyon v. ICE* (N.D. Cal. June 13, 2016, No. 3:13-cv-05878) ECF No. 262-4. As a result of the *Lyon* settlement, Yuba is required to provide phone booths in housing units for additional privacy, expanded options for free, direct, and unmonitored calls to attorneys and government agencies, and prompt access to a phone room for other legal calls upon request, among other requirements, to immigration detainees.

156 See ICE PRR 7.0, *supra*, fn. 31 at p. 37.

# DETAINEE SECURITY CLASSIFICATION

## 1. OVERVIEW

ICE requires each facility to implement a formal detainee classification system based on verifiable and documented information. Detainees are classified at admission, and they must be reclassified 60 to 90 days after the initial classification and 90 to 120 days thereafter, or sooner if the detainee is placed in restrictive housing (for disciplinary or administrative reasons). Under PBNDS Section 2.2 *Custody Classification System*, facilities may classify detainees based on a standardized ICE Custody Classification Worksheet (Form 2.2A) or other similar established system approved by ICE/ERO.<sup>157</sup> The classification must be reviewed and approved by a facility supervisor, as this classification will determine the detainee's housing assignment and access to activities and work in the facility.<sup>158</sup> The classification process must take into account any special vulnerabilities a detainee may have, including the risk for victimization or perpetration of sexual abuse or assault.<sup>159</sup>

PBNDS sets out three classification levels—low, medium, and high. Low custody detainees may be people with no criminal history, with minor criminal histories, or with non-felony charges and convictions. They cannot be comingled with high custody detainees. Medium custody detainees may be individuals with minor criminal histories or those who do not have a history of assaultive behavior. Medium custody detainees are not generally allowed to comeingle with low or high custody unless “it becomes necessary” to house detainees of different classification levels in the same housing unit.”<sup>160</sup> When that is the case, medium custody is split into medium-low and medium-high. This split allows facilities to house low and medium-low custody detainees together and medium-high and high custody detainees together, and all facilities reviewed follow this approach. Higher custody detainees may be people who are considered “high-risk,” “require medium-to-maximum-security,” and must always be “monitored and escorted.” Regardless of a detainee's classification, PBNDS requires that they be assigned “to the least restrictive housing unit consistent with facility safety and security.”<sup>161</sup>

Cal DOJ's January [2021 report](#) documented several overarching issues with the Detainee Security Classification System, namely concerns that both the structure of the classification system itself and its implementation in specific facilities has led to a tendency toward higher classifications far too easily.<sup>162</sup> These concerns continue and will likely not be resolved absent a significant revision of the PBNDS and NDS, in combination with rigorous oversight by ICE. At individual facilities, intake officers and classification staff caused further concern by making determinations—most notably concerning gang affiliation—based on personal opinions or assessments unsupported by objective evidence. A determination of gang affiliation could, by itself, cause a detainee to be placed in high classification.

157 ICE, PBNDS 2011, Part 2.2 Custody Classification System, Part V, §A, p. 61. NDS 2019 does not include a standard worksheet. (See ICE, NDS 2019, Part 2.2 Custody Classification System, pp. 21-23.)

158 ICE, PBNDS 2011, Part 2.2 Custody Classification System, Part V, §A, p. 62; ICE, NDS 2019, Standard 2.2 Custody Classification System, Part II, § A, p. 21.

159 The Special Vulnerabilities and Management Concerns section of the ICE Custody Classification Worksheet (PBNDS Form 2.2A) allows for consideration of the following factors when classifying a detainee: serious physical illness; serious mental illness; disability; elderly; pregnancy; nursing; sole caretaking responsibility; risk based on sexual orientation/gender identity; victim of persecution/torture; victim of sexual abuse or violent crime; victim of human trafficking. The NDS requires consideration of similar factors. (See ICE, NDS 2019, Standard 2.2 Custody Classification System, Part II, §E, pp. 22-23 [“Detainees with special vulnerabilities include those who are elderly, pregnant, or nursing; those with serious physical or mental illness, or other disability; those who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; and those who have been victims of sexual assault, torture, trafficking, or abuse.”].)

160 ICE, PBNDS 2011, Part 2.2 Custody Classification System, Part V, §G p. 65. NDS requires that “facilities shall ensure detainees are housed according to their classification level.” (ICE, NDS 2019, Standard 2.2 Custody Classification System, Part II, § D, p. 22.)

161 ICE, PBNDS 2011, Part 2.2 Custody Classification System, Part V, §F, p. 65; ICE, NDS 2019, Standard 2.2 Custody Classification System, Part II, § D, p. 22.

162 *Immigration Detention in California, supra*, fn. 9 at pp. 17-24.



## 2. 2021 REVIEW OF CLASSIFICATION PRACTICES

In general, classification distributions at the reviewed facilities skewed slightly higher, as ICE’s effort to reduce the number of detained individuals resulted in a relatively greater number of lower-classified and relatively fewer higher-classified detainees being released from detention. See **Table 20**.

*Table 20. Custody Classifications by Facility, Federal Fiscal Year 2021, Department of Homeland Security.<sup>163</sup>*

	Adelanto	Desert View Annex	Imperial	Mesa Verde	Golden State Annex	Otay Mesa	Yuba
Low	27 (12%)	5 (10%)	316 (86%)	0	2 (2%)	326 (70%)	0
Low-Medium	14 (6%)	4 (8%)	8 (2%)	4 (11%)	5 (5%)	39 (8%)	1 (8%)
Medium-High	58 (25%)	15 (31%)	13 (3%)	13 (37%)	25 (25%)	33 (7%)	2 (15%)
High	129 (57%)	24 (50)	32 (9%)	18 (51%)	67 (68%)	67 (15%)	10 (77%)
Total	228	48	369	35	99	465	13

Cal DOJ’s corrections expert noted the following concerns relating to the facilities’ security classification practices:

- Failure to Identify Special Vulnerability and Management Concerns at Adelanto, Desert View Annex, Mesa Verde, and Yuba.** Based upon a review of detainee files, Cal DOJ’s corrections expert concluded that GEO Group failed to comply with ICE policies intended to facilitate the identification of detainees with specified vulnerabilities and conditions. For example, of the custody classification files reviewed, none indicated whether detainees had a special vulnerability or management concern. Cal DOJ’s corrections expert, as a result, observed that a significant number of detainees at Adelanto, Desert View Annex, and Mesa Verde who should have been considered for release under court order or CDC guidelines were denied this opportunity. Yuba’s classification system does not include means for identifying any detainees with special vulnerabilities and management concerns—information directly relevant to determining whether detainees must be considered for release consistent with ICE’s policy and practice, as authorized under a range of statutory and regulatory provisions,<sup>164</sup> including for detainees subject to mandatory detention.<sup>165</sup> These criteria are required to be identified under both the NDS and PBNDS.<sup>166</sup>
- Departures from ICE Procedures at Mesa Verde and Golden State Annex.** Contrary to ICE requirements, Mesa Verde and its Golden State Annex have ceased conducting a full review when reclassifying detainees and no longer calculate a new classification score as part of the reclassification process. Rather, staff assign a classification (e.g., low, medium-low, medium-high, or high) without completing a new scoring worksheet, significantly increasing the likelihood of error and making it nearly impossible to catch such an error upon review. (In some instances, Golden State Annex staff added annotations to the existing worksheet, which was a helpful—if

<sup>163</sup> Data available at ICE, *Detention Management* <<https://www.ice.gov/detain/detention-management>> (as of May 16, 2022).

<sup>164</sup> See 8 U.S.C. §§ 1182(d)(5), 1225(b), 1226, 1231; 8 C.F.R. §§ 212.5, 235.3, 236, 1001.1(q).

<sup>165</sup> See 8 U.S.C. § 1226(c).

<sup>166</sup> ICE, NDS 2019, Standard 2.2 Custody Classification System, Part II, § E, pp. 22-23; ICE, PBNDS 2011, Appendix 2.2B: Instructions for Completing the ICE Custody Classification Worksheet, pp. 70-71.

inadequate—practice.) Mesa Verde and Golden State Annex employ a modified version of Form 2.2 A that includes extra signature lines at the end, permitting staff to sign off on the same classification worksheet multiple times.

At Mesa Verde, detainees with histories of violent crime or high classification scores were routinely approved for the Voluntary Work Program, in violation of ICE standards.

- ***Gang-Related Classifications Based on Unsubstantiated Information.*** Cal DOJ’s corrections expert observed classification decisions based on questionable findings of gang affiliation, such as determinations based on personal belief or unsubstantiated information at Adelanto, Desert View Annex, Mesa Verde, and Yuba. Such decisions often result in a score increase significant enough to raise a detainee’s classification from low custody to high custody, leading to increased stigma and liberty restrictions in detention. Moreover, such elevated classifications are consequential in immigration court proceedings, where a high classification detainee must appear in a red jumpsuit (maximum security) instead of one that is either blue (minimum security) or orange (medium security). The NDS and PBNS specify that gang affiliation can only be demonstrated through objective, verified forms of information.<sup>167</sup>
- ***Errors in Tabulation of Classification Scores.*** Errors were apparent in both the grading and tabulation of detainees’ classification scores at Adelanto. Cal DOJ’s corrections expert also noted considerable inconsistencies in classifications assignments at Desert View Annex. Yuba’s classification forms showed numerous scoring errors, mischaracterizations of criminal charges, and unsubstantiated claims of gang affiliations.

The concerns identified with facilities’ classification practices increase the risk faced by vulnerable detainees. The failure to assess and identify every detainee with a Special Vulnerability or Management Concern, the misidentification of a non-affiliated detainee as a gang member, or the misclassification of a lower custody detainee as higher custody impedes the right of a detainee to be considered for release under court order or CDC guidelines.

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<sup>167</sup> See ICE, PBNS 2011, Part 2.2 Custody Classification System, Part V, §C, p. 62; ICE, NDS, Part 2.2 Custody Classification System, Part II, §C p. 22.

## CONCLUSION

At the time of Cal DOJ's visits, the facilities had improved their COVID-19 protocols compared to the beginning of the pandemic. However, despite improved COVID-19 numbers and access to vaccines, there is a concern about the limitations on detainees' access to religious services and programming, particularly because two years passed before ICE announced that it would start phasing in in-person social visitation. Given the snapshot in time that Cal DOJ's review covers, there is also a concern that—if COVID-19 cases increase or new variants arise in conjunction with an increase in the detained population numbers due to ICE enforcement or rescission of court orders—the risk to detainees will increase to levels seen earlier in the pandemic.

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