

**Violations of ICE
Detention Standards
at Otay Mesa Detention
Center**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 14, 2021

MEMORANDUM FOR: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V CUFFARI**
Inspector General

SUBJECT: *Violations of ICE Detention Standards at Otay Mesa Detention Center*

Digitally signed by
JOSEPH V CUFFARI
Date: 2021.09.13
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Attached for your information is our final report, *Violations of ICE Detention Standards at Otay Mesa Detention Center*. We incorporated the formal comments from U.S. Immigration and Customs Enforcement in the final report.

The report contains seven recommendations aimed at improving care of detainees at Otay Mesa Detention Center. Your office concurred with six of the seven recommendations. Based on information provided in your response to the draft report, we consider recommendation 1 resolved and closed, recommendations 2 through 6 resolved and open, and recommendation 7 unresolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts. Please send your response or closure request to OIGISPFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Thomas Kait, Deputy Inspector General for Inspections and Evaluations, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

Violations of ICE Detention Standards at Otay Mesa Detention Center

September 14, 2021

Why We Did This Inspection

In accordance with the *Consolidated Appropriations Act, 2021*, we conduct unannounced inspections of U.S. Immigration and Customs Enforcement (ICE) detention facilities to ensure compliance with detention standards. Between February 2021 and April 2021, we conducted a remote inspection of the Otay Mesa Detention Center (Otay Mesa) to evaluate compliance with ICE detention standards and COVID-19 requirements.

What We Recommend

We made seven recommendations to improve ICE's oversight of detention facility management and operations at Otay Mesa.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

During our unannounced inspection of Otay Mesa in San Diego, California, we identified violations of ICE detention standards that compromised the health, safety, and rights of detainees. Otay Mesa complied with standards for classification and provided sufficient medical care to detainees. In addressing COVID-19, Otay Mesa did not consistently enforce use of facial coverings and social distancing. While facility staff initially required detainees to sign documents releasing the facility from liability for all claims related to mask wearing to obtain masks, Otay Mesa reversed this decision the same day and provided detainees masks without the waiver. In February 2021, Otay Mesa began providing COVID-19 vaccinations to detainees through partnerships with local governments.

Overall, we found that Otay Mesa did not meet standards for grievances, segregation, or staff-detainee communications. Specifically, Otay Mesa did not respond timely to detainee grievances and did not forward staff misconduct grievances to ICE as required. In addition, Otay Mesa was not consistently providing required services for detainees in segregation, including access to recreation, legal calls, laundry, linen exchange, mail, legal materials, commissary, and law library. Further, ICE did not consistently respond to detainee requests timely and did not specify times for visits with detainees. Finally, we determined the declining detainee population at Otay Mesa caused ICE to pay more than \$22 million for unused bed space under a guaranteed minimum contract.

ICE Response

ICE concurred with six of the seven recommendations. We included a copy of ICE's response in Appendix B.



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Abbreviations

CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
Otay Mesa	Otay Mesa Detention Center
PBNDS	Performance-Based National Detention Standards
PRR	<i>Pandemic Response Requirements</i>



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Introduction

U.S. Immigration and Customs Enforcement (ICE) houses detainees at roughly 200 facilities nationwide, and the conditions and practices at those facilities can vary greatly. ICE is required to comply with detention standards and establish an environment that protects the health, safety, and rights of detainees. Our program of unannounced inspections of ICE detention facilities has identified and helped correct *2011 Performance-Based National Detention Standards* (2011 PBNDS) violations at facilities across the country. From February 2021 to April 2021, we conducted an unannounced remote inspection of the Otay Mesa Detention Center (Otay Mesa) in San Diego, California, and identified concerns regarding detainee care and treatment.

Background

ICE apprehends, detains, and removes non-citizens who are in the United States unlawfully. ICE Enforcement and Removal Operations (ERO) oversees the detention facilities it manages in conjunction with private contractors or state or local governments. Owned and operated by CoreCivic, Otay Mesa began housing detainees in 2015 and in fiscal year 2020, had an average daily population of 730 detainees with a maximum capacity of 1,142. The Otay Mesa facility also houses inmates for the U.S. Marshals Service. However, these inmates are housed separately from ICE detainees.

ICE's intergovernmental service agreement with Otay Mesa requires the facility to comply with 2011 PBNDS, as revised in December 2016. According to ICE, the 2011 PBNDS establish consistent conditions of detention, program operations, and management expectations within ICE's detention system. These standards set requirements for areas such as:

- environmental health and safety, including cleanliness, sanitation, security, detainee searches, segregation,¹ and disciplinary systems;

¹ ICE, *Performance-Based National Detention Standards, 2011*, Section 2.12 *Special Management Units* (Revised Dec. 2016). Segregation is the process of separating certain detainees from the general population for administrative or disciplinary reasons. Detainees in segregation at Otay Mesa are placed in individual cells. Detainees in disciplinary segregation can be held for no more than 30 days per incident, except in extraordinary circumstances. Detainees in disciplinary segregation are allowed out of their cells for 1 hour of recreation time at least 5 days a week. Detainees in administrative segregation are separated from the general population to ensure the safety of all detainees and can be held in segregation until their safety, and the safety of others, is no longer a concern. Detainees in administrative segregation are allowed out of their cells for up to 2 hours of recreation time and day room access at least 7 days a week. Detainees in both disciplinary and administrative segregation are also allowed time out of their cells for showers, phone calls, law library, visitation, and religious services when those are offered.



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- detainee care, e.g., food service, medical care, and personal hygiene;
- activities, including visitation and recreation; and
- grievance systems.

As mandated by Congress,² we conduct unannounced inspections of ICE detention facilities to ensure compliance with detention standards. From February 2021 to April 2021, we made an unannounced, remote inspection of Otay Mesa to determine whether it complied with ICE's 2011 PBNDS. We also conducted a limited review of the facility's Coronavirus Disease 2019 (COVID-19) pandemic preparedness measures and its response to outbreaks of COVID-19 across the detainee population.³ In addition, we responded to a congressional request⁴ seeking information about an April 2020 incident in which Otay Mesa staff required detainees to sign a release of liability to receive masks, and allegedly threatened detainees who refused to sign the release with pepper spray. We incorporated information provided by the Office of Inspector General's (OIG) contracted medical experts into our findings. At the start of the inspection, Otay Mesa housed 345 ICE detainees in different housing units within the facility. During our virtual inspection, we directed one livestream video walk-through of the facility where we inspected Otay Mesa facilities, including detainee housing units, medical units, and indoor and outdoor recreation areas. We viewed surveillance video from areas within the facility, including housing units, and three use-of-force incidents involving detainees. We also interviewed ICE personnel, Otay Mesa officials, and detainees by telephone and video conferencing.

Results of Inspection

During our unannounced inspection of Otay Mesa in San Diego, California, we identified violations of ICE detention standards that compromised the health, safety, and rights of detainees. Otay Mesa complied with standards for classification and provided sufficient medical care to detainees. In addressing COVID-19, Otay Mesa did not consistently enforce use of facial coverings and social distancing. While facility staff initially required detainees to sign documents releasing the facility from liability for all claims related to mask wearing to obtain masks, Otay Mesa reversed this decision the same day and provided detainees masks without the waiver. In February 2021, Otay Mesa

² *Consolidated Appropriations Act, 2021*, Pub. L. No. 116-260, Division F, *Department of Homeland Security Appropriations Act, 2021*; H.R. Rep. No. 116-458, (2021).

³ OIG is also conducting a separate, in-depth evaluation of ICE's handling of COVID-19 in its detention facilities.

⁴ On April 15, 2020, OIG received a request from Senator Kamala Harris, Senator Barbara Feinstein, and Hon. Juan Vargas to report on the allegations of release requirement to receive a mask and threats of force.



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began providing COVID-19 vaccinations to detainees through partnerships with local governments.

Overall, we reviewed eight key areas⁵ in detention standards and found that Otay Mesa did not meet standards for grievances, segregation, or staff-detainee communications. Specifically, Otay Mesa did not respond timely to detainee grievances and did not forward staff misconduct grievances to ICE as required. In addition, Otay Mesa was not consistently providing required services for detainees in segregation including access to recreation, legal calls, laundry, linen exchange, mail, legal materials, commissary, and law library. Further, ICE did not consistently respond to detainee requests timely and did not specify times for staff to visit detainees. Finally, we determined the declining detainee population at Otay Mesa caused ICE to pay more than \$22 million for unused bed space for a 1-year period under a guaranteed minimum contract.

Otay Mesa Complied with Standards for Detainee Classification

According to the 2011 PBNDS,⁶ facilities must classify detainees according to risk level to assign housing with others of similar background and criminal history and ensure separation of high custody and low custody detainees. Our review of Otay Mesa's policies, guidance, and classification records showed Otay Mesa complied with the detainee classification standard. Analysis of detainee housing and classification records showed that Otay Mesa properly classified detainees according to the standard. Further, our review of housing records did not reveal comingling of low or medium-low custody detainees with medium-high or high custody detainees.

Otay Mesa Provided Sufficient Medical Care to Detainees

We found that Otay Mesa met the 2011 PBNDS standards of medical care⁷ for those areas we evaluated. Otay Mesa provided sufficient access to and quality of medical care to meet the general needs of the detainee population. The facility has 24-hour nursing coverage, on-call physician coverage, and an on-call mental health provider. Sick call is provided daily, and patients receive medical appointments in a timely manner. We reviewed 13 detainee health records and found the facility health services personnel provided appropriate care. In cases where Otay Mesa could not handle the patient's medical needs, the facility made appropriate referrals to specialty care providers.

⁵ The eight key areas in detention standards we review include communication, grievances, segregation, medical, classification, voluntary work program, attorney access, and conditions of detention.

⁶ 2011 PBNDS, Section 2.2, *Custody Classification System* (Revised Dec. 2016).

⁷ 2011 PBNDS, Section 4.3, *Medical Care* (Revised Dec. 2016).



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Otay Mesa Took Some Measures to Prevent the Spread of COVID-19, but Did Not Consistently Enforce Some Guidelines

In March 2020, ICE directed all detention facilities, including Otay Mesa, to restrict several activities in response to the COVID-19 pandemic.⁸ This included limiting visitation and serving meals in the housing units. ICE released additional pandemic response requirements⁹ for detention facilities and, as of March 2021, the restrictions on detainee activities due to the pandemic remained in place. We conducted a limited review of Otay Mesa's response to COVID-19 and identified areas for improvement. Since March 2020, 386 detainees¹⁰ at Otay Mesa have tested positive for COVID-19 and one detainee died due to complications of the virus. Otay Mesa provided detainees with masks, but initially required detainees to sign paperwork relieving the facility of any liability stemming from wearing masks and allegedly threatened detainees who refused to sign the release with pepper spray. Further, facility officials did not enforce mask wearing or social distancing in detainee housing areas. However, we did find that the facility began vaccinating detainees.

Otay Mesa Restricted Services and Social Activities in Response to COVID-19

In March 2020, ICE directed all detention facilities, including Otay Mesa, to restrict several activities in response to the COVID-19 pandemic.¹¹ This included halting in-person social visitation, but still allowing visits from legal representatives. In response, Otay Mesa provided each detainee with 520 free telephone minutes per month to compensate for the lost visitation. Otay Mesa suspended library services and, instead, delivered reading materials to detainees in the housing units. The facility also limited detainee usage of the dining hall, opting to deliver meals to detainees in their housing units. In September and October 2020, ICE released additional pandemic response requirements¹² for detention facilities and, as of May 2021, the restrictions on detainee activities due to the pandemic remained in place.

⁸ ICE Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1, March 27, 2020.

⁹ ICE ERO COVID-19 Pandemic Response Requirements (Version 4.0), September 4, 2020; ICE ERO COVID-19 Pandemic Response Requirements (Version 5.0), October 27, 2020.

¹⁰ ICE number of reported COVID-19 cases as of June 8, 2021.

¹¹ ICE Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1, March 27, 2020.

¹² ICE ERO COVID-19 Pandemic Response Requirements (Version 4.0), September 4, 2020; ICE ERO COVID-19 Pandemic Response Requirements (Version 5.0), October 27, 2020.



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Otay Mesa Initially Required Detainees to Sign a Liability Release to Receive a Mask

ICE ERO issued the first version of its *Pandemic Response Requirements* (PRR) on April 10, 2020, which stated detainees should wear cloth facemasks to help slow the spread of COVID-19. The same day the PRR was released, Otay Mesa provided masks to detainees for the first time, but required detainees to sign a form that they “release and hold CoreCivic ... harmless from any and all claims ... related directly to ... wearing the face mask” to receive a mask. One detainee who initially signed the form estimated half of the detainees in his dormitory refused to sign the form and did not receive masks. In one female dormitory, detainees alleged facility staff threatened them with pepper spray when they objected to the form, and three detainees were briefly removed from the dormitory for being disruptive. One female detainee alleged an Otay Mesa staff member pepper-sprayed a crowd of female detainees who were objecting to the form. Otay Mesa denied threatening detainees with pepper spray and recorded no uses of force or uses of pepper spray during this initial distribution of masks. We requested video of this incident, but the facility stated that it did not keep video from the previous year.

The facility reported that later on April 10, 2020, the same day it began requiring detainees to sign the forms, it discontinued its use of the forms, distributed masks to all detainees, and returned the three female detainees who were disruptive to their dormitory. An Otay Mesa staff member explained the form was intended to advise detainees wearing the mask would not fully safeguard them against contracting COVID-19.

Otay Mesa Did Not Consistently Ensure Detainees Wore Facial Coverings or Practiced Social Distancing

The PRR Version 5, dated October 27, 2020, states detainees and staff should wear cloth facemasks, and whenever possible, all staff and detainees should maintain a distance of 6 feet from one another to help slow the spread of COVID-19. During our February 2021 livestream walkthrough across multiple housing units, we observed numerous detainees within 6 feet of each other throughout the facility, not wearing masks. We also reviewed facility surveillance video footage from January and February 2021 and observed detainees in housing units gathered in groups not wearing masks or practicing social distancing, as shown in Figure 1 and Figure 2.



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Figure 1. Otay Mesa detainees in their housing units not wearing masks and not practicing social distancing on February 14, 2021.

Source: Video surveillance footage provided by Otay Mesa staff



Figure 2. Otay Mesa detainees in their housing units not wearing masks and not practicing social distancing on February 20, 2021.

Source: Video surveillance footage provided by Otay Mesa staff

Staff told us detainees are required to wear masks outside housing areas, and although they encourage detainees to wear their masks within housing areas, detainees often choose not to wear their masks. The October 2020 ICE guidance makes no distinction between the need for mask-wearing inside or outside housing areas. The facility risks additional COVID-19 spread by not ensuring detainees wear their masks and practice social distancing within the housing area.



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Otay Mesa Has Begun Vaccinating Detainees

According to facility officials, Otay Mesa has collaborated with the local government to vaccinate ICE detainees and U.S. Marshals Service inmates housed in the facility. As of March 10, 2021, 183 detainees and inmates had received the first round of COVID-19 vaccines, and 153 had received the second dose and were fully vaccinated.¹³ During our follow-up with Otay Mesa on May 4, 2021, officials reported a total of 248 detainees and inmates had received the first dose of the vaccines and 165 had received the second since vaccination efforts began. Because of the required wait time between doses, some detainees and inmates were unable to receive the second dose before they were released.

Otay Mesa Did Not Respond to Detainee Grievances in a Timely Manner or Forward Staff Misconduct Allegations to ICE

The 2011 PBNDS establish procedures for detainees to file grievances regarding any aspect of their detention.¹⁴ The standards require the facility to respond to detainee grievances and grievance appeals within 5 days. If detainees do not agree with the initial decision, they can file an appeal through multiple levels of facility and ICE staff. The grievance process aims to protect detainee rights and ensure all detainees are treated fairly. Between August 21, 2020 and February 21, 2021, detainees filed 88 electronic grievances on tablets and 159 on paper. Of those 247 grievances, Otay Mesa did not respond to 53 (21 percent) within the required 5 days, of which 20 were filed on tablets and 33 were filed on paper. The grievance coordinator does not necessarily close out those grievances via tablets, as this is done by the facility staff member assigned the complaint. The grievance process at Otay Mesa relies on the various responsible parties to address the grievances in a timely manner. The facility has not established a proper tracking system to ensure a timely response to detainees. Not responding to detainee issues can result in escalation and missed opportunities to avoid additional appeals.

Further, the Otay Mesa grievance coordinator is not properly managing complaints regarding staff misconduct. The 2011 PBNDS¹⁵ require facility staff to forward grievances alleging staff misconduct to a higher-level official in the chain of command and to ICE ERO in a timely manner. Nonetheless, an ICE official reported that Otay Mesa only forwards staff misconduct grievances to ICE when the detainee appeals the decision made by the facility, and not when

¹³ These numbers include both ICE detainees and U.S. Marshals Service inmates as the facility did not count these populations separately for the purposes of vaccinations.

¹⁴ 2011 PBNDS, Section 6.2, *Grievance System* (Revised Dec. 2016).

¹⁵ *Id.*



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the grievance is first submitted. The absence of oversight could potentially result in increased retaliation by officers if ICE ERO is not aware of and able to manage staff misconduct allegations.

Otay Mesa Did Not Provide Required Services and Privileges to Detainees in Segregation

ICE's 2011 PBNDS require all detainees in segregation receive access to recreation, legal calls, laundry services for used bedding and clothing, mail, legal materials, and law library.¹⁶ Administratively segregated detainees should receive access to the same privileges as those in the general population, including access to the commissary. During our inspection, we reviewed Otay Mesa's records and logs related to detainee care while held in segregation. We reviewed housing records for the seven detainees in segregation as of February 22, 2021, including six detainees in administrative segregation and one detainee in disciplinary segregation. We found segregated detainees were not consistently being provided these required services and privileges. For example, records showed:

- Six detainees (86 percent) in segregation were not always provided with required recreation time outside their cell.
- The seven detainees (100 percent) in segregation were not always provided with required access to legal calls, laundry services for used bedding and clothing, mail, legal materials, and law library.
- The six detainees (100 percent) in administrative segregation did not have required access to the commissary.

Facilities must demonstrate they are following standards and providing proper care to detainees in segregation by recording all required activity in segregation logs.

Detainee Communication Practices Were Deficient

ICE's 2011 PBNDS establish procedures for contact among staff and detainees, including written communication and observation of living conditions.¹⁷ Although required, we found that Otay Mesa did not provide a secure drop-box for detainees to submit requests on paper directly to ICE management. Instead, facility staff collected detainee paper form requests and submitted them to ICE, which may have negatively affected ICE's ability to meet response timelines. Further, Otay Mesa did not maintain a log tracking detainee

¹⁶ 2011 PBNDS, Section 2.12, *Special Management Units* (Revised Dec. 2016).

¹⁷ 2011 PBNDS, Section 2.13, *Staff-Detainee Communication* (Revised Dec. 2016).



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requests to the facility, as required, and thus was unable to ensure adequate and timely responses.

According to the 2011 PBNDS, ICE staff must visit detainees at the facility and post a schedule with the days and hours ICE will visit.¹⁸ The ICE visitation schedule must be posted in housing units and be included in the detainee handbook. However, ICE did not provide sufficient communication to detainees at Otay Mesa on the times deportation officers would be available on scheduled visitation days to address their concerns.

Otay Mesa Did Not Properly Handle Detainee Requests, Negatively Affecting the Ability to Ensure Timely and Adequate Responses

The 2011 PBNDS require detention facilities to provide a secure drop-box for ICE detainees to correspond directly with ICE management, to which only ICE personnel have access.¹⁹ At Otay Mesa, detainees may submit a request to ICE using either electronic tablets available in their housing area or via a paper form. When a request is made via the electronic tablet, ICE receives the request electronically and responds to the detainee electronically, which can only be seen by the detainee using the electronic tablet. When a request is made on the paper form, the detainees should be able to submit their request using a secure drop-box (a locked box only opened by ICE), located in their housing area. However, the facility does not have a secure drop-box in the housing units for detainees to submit their requests. When submitting a request in hard copy, the detainees provide their paper form to unit management who then provide the request to ICE.

Otay Mesa's current process of receiving detainee communication addressed to ICE does not comply with the standard and prevents detainees from corresponding directly with ICE, which can result in communication delays. ICE is required to respond to detainee requests within 3 business days.²⁰ Our review of ICE communication logs from August 2020 through February 2021 indicated ICE received a total of 4,502 detainee requests. ICE did not receive approximately 34 percent (1,537) of the paper requests until 2 days or more after the detainees submitted the request. Consequently, ICE did not respond to 23 percent (1,025) of requests until 4 or more days after the detainee submitted the request. Further, without direct access to a secure ICE drop-box, detainees may be hesitant to submit requests or grievances to ICE for fear

¹⁸ *Id.*

¹⁹ 2011 PBNDS, Section 2.13, *Staff-Detainee Communication* (Revised Dec. 2016).

²⁰ *Id.*



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that facility staff may tamper with the message or punish detainees for submitting requests or grievances.

In addition, Otay Mesa does not keep a log tracking detainee requests to the facility, as required by the 2011 PBNDS.²¹ Detainees can submit requests to the facility using the electronic tablets or paper forms. The facility retains the email traffic between detainees and staff members in its electronic systems but does not maintain a separate log of detainee electronic or written paper requests to facility staff. Thus, the facility is unable to track whether staff are adequately and timely responding to detainee requests.

ICE Did Not Provide Detainees Sufficient Contact with Deportation Officers

The 2011 PBNDS mandates ICE post scheduled days and hours when ICE staff will be visiting housing units, and also include this information in the facility detainee handbook.²² Though ICE staff must visit detainees in their housing units, ICE did not provide sufficient detail to detainees about when visits would occur in each housing unit. ICE posted its visitation schedule and contact information, but it did not specify the exact times when ICE staff would be available for in-person visits with detainees in the housing units.

Additionally, we reviewed ICE weekly visitation reports from January through March 2021 and identified 49 missed scheduled visitations to various housing units. The weekly report also indicated multiple housing units had only one ICE staff member assigned. Consequently, these housing units have only one weekly scheduled visit. For these housing units, if the assigned ICE staff member misses the scheduled visit and does not conduct any unscheduled visits, detainees do not meet with ICE staff for the week. Detainees need to know what specific times they can contact ICE staff so they can plan their days accordingly and not risk missing their ICE visit because they attended activities such as recreation or religious services. Neglecting to properly inform detainees of ICE visits violates 2011 PBNDS for staff-detainee communication.

Declining Detainee Population and ‘Guaranteed Minimum’ Contract with Otay Mesa Caused ICE to Pay for Unused Bed Space

ICE’s contract with Otay Mesa required ICE pay the facility for space for a guaranteed minimum of 750 detainees at a daily rate of \$174.53 per detainee for most of 2020, with that daily rate increasing to \$178.87 at the end of

²¹ *Id.*

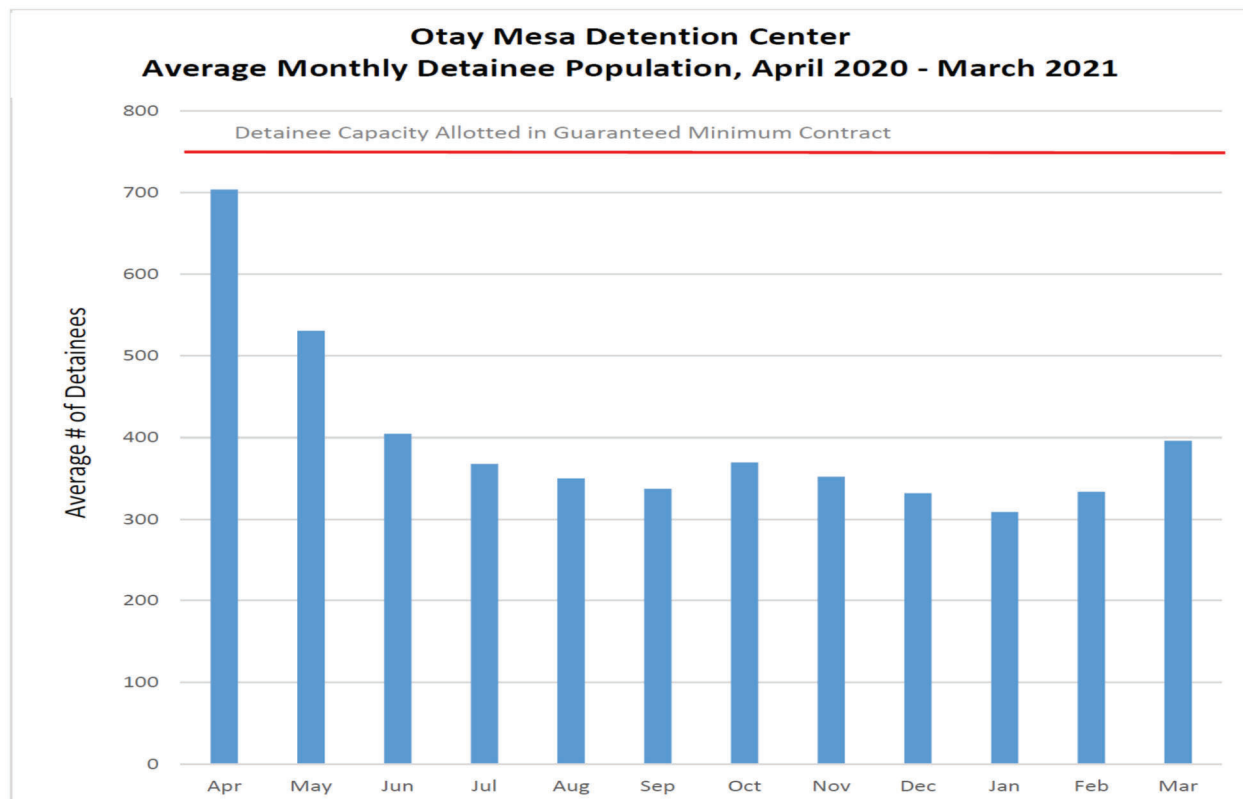
²² *Id.*



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2020.²³ When the facility's ICE population exceeded 750 detainees, ICE paid Otay Mesa an additional \$129.36 per day for each detainee exceeding 750 under the terms of the contract.²⁴ As shown in Figure 3, Otay Mesa's average daily detainee population fell from a peak in April 2020 near the 750 guaranteed minimum to a population less than the minimum threshold allowed by the contract.

Figure 3. Detainee Population at Otay Mesa from April 2020 – March 2021



Source: DHS OIG analysis of data provided by Otay Mesa

From April 2020 to March 2021, 47 percent of the guaranteed bed space at Otay Mesa went unused, and the detainee population only surpassed 750 for 2 days in early April 2020. We determined ICE paid more than \$22 million for unused bed space for a 1-year period under the guaranteed minimum

²³ ICE's contract with Otay Mesa set the guaranteed minimum daily payment of \$174.53 per detainee for December 20, 2019 – December 19, 2020, with the payment increasing to \$178.87 for December 20, 2020 – December 19, 2021.

²⁴ This reflects the rate above the guaranteed minimum rate in the contract for December 20, 2019 – December 19, 2020, the only time period Otay Mesa's ICE population exceeded 750 during the inspection review period.



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contract.²⁵ As detainee populations continue to stay at less than 750 per day, the monthly and daily costs for ICE to house each detainee increases as demonstrated in Table 1, which details the average costs ICE paid to house each detainee.

Table 1. Average Cost to ICE Per Detainee at Otay Mesa, April 2020 – March 2021

	Average Daily Population	Monthly Cost per Detainee	Average Daily Cost per Detainee
April 2020	704	\$5,594.43	\$186.48
May 2020	531	\$7,732.26	\$249.43
June 2020	405	\$9,731.06	\$324.37
July 2020	368	\$11,030.95	\$355.84
August 2020	350	\$11,602.10	\$374.26
September 2020	337	\$11,682.21	\$389.41
October 2020	370	\$11,023.92	\$355.61
November 2020	352	\$11,173.22	\$372.44
December 2020	332	\$12,396.62	\$399.89
January 2021	309	\$13,466.60	\$434.41
February 2021	334	\$11,269.52	\$402.48
March 2021	396	\$10,533.62	\$339.79

Source: DHS OIG analysis of data provided by Otay Mesa

Because ICE was not using all its contracted beds, Otay Mesa had the ability to place fewer people in each unit to allow for appropriate social distancing. However, Otay Mesa did not space detainees out in the housing units with the unused space, rather it closed multiple units in the facility to consolidate space. In consolidating space, Otay Mesa did not allow for appropriate social distancing.

Although ICE must acquire and maintain enough bed space to satisfy demand for detainee population surges, it must also strive for balance to avoid wasting funds on empty beds. If the detainee population remains less than the 750-detainee threshold provided in the guaranteed minimum contract, Otay Mesa will continue to receive full payment from ICE for housing fewer detainees.

²⁵ ICE also has the ability to exceed the 750 guaranteed minimum if it needs additional capacity to hold detainees. The facility receives an additional amount for each detainee exceeding the guaranteed minimum.



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Recommendations

We recommend the Executive Associate Director of Enforcement and Removal Operations direct the San Diego Enforcement and Removal Field Office responsible for Otay Mesa to:

Recommendation 1: Ensure Otay Mesa meets ICE's COVID-19 requirements for wearing masks and social distancing.

Recommendation 2: Establish a grievance tracking system to ensure timely responses to all grievances filed at Otay Mesa.

Recommendation 3: Ensure Otay Mesa forwards all staff misconduct complaints to ICE ERO, as required.

Recommendation 4: Provide detainees in segregation access to laundry, legal materials, mail, required recreation time outside their cell, and the commissary (for those in administrative segregation).

Recommendation 5: Provide detainees full access to a secure drop-box for ICE requests and verify that ICE responds timely to such requests.

Recommendation 6: Ensure detainees have consistent and appropriate access to ICE ERO deportation officers including identifying time, duration, and location of ICE facility visits.

Recommendation 7: Update ICE's contract with Otay Mesa to better identify housing requirements and determine if guaranteed minimums are necessary.

Management Comments and OIG Analysis

ICE concurred with 6 of the 7 recommendations. ICE described corrective actions to address the issues identified in this report. Appendix B contains ICE management comments in their entirety. We also received technical comments to the draft report and revised the report as appropriate. We consider one recommendation closed, five recommendations resolved and open, and one recommendation unresolved and open. A summary of ICE's response and our analysis follows.

Recommendation 1: Ensure Otay Mesa meets ICE's COVID-19 requirements for wearing masks and social distancing.

Response: Concur. ICE ERO at Otay Mesa adhered to the ICE ERO PRR (Version 6.0, dated March 16, 2021), as well as the "Centers for Disease



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Control and Prevention (CDC) Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities,” updated June 9, 2021, to continuously protect detainees at the lowest practicable risk of exposure to COVID-19.

Moreover, the facility is continuously adapting and making timely changes to operating procedures to mitigate the spread of the COVID-19 virus. For example, all newly arrived detainees are tested and cohorted under intake protocols created from the CDC and PRR guidance, and all detainees must be medically cleared from these protocols before being moved to living areas (or pods) of the same classification level. Those detainees who test positive for the virus are quarantined in the same pod until the detainee completes a 14-day quarantine, per CDC guidance, and no longer shows signs or symptoms of the virus. This strategy has, and continues to, help mitigate the spread of the virus among the detainee population.

Furthermore, at the beginning of the pandemic in April 2020, CoreCivic, which owns and operates Otay Mesa, posted “CDC approved” signs in all detainee living areas emphasizing the importance of mask wearing, social distancing, and proper hygiene, such as an explanation of proper handwashing techniques, to help reduce the spread of COVID-19. This signage continues to be updated on a frequent, as-needed basis, as new information becomes available. CoreCivic also began broadcasting COVID-19 information on the televisions inside each of the living areas, and regularly updates available educational materials. In addition, the facility sanitizes on an hourly basis to mitigate the spread of the virus.

It is also important to note that, in February 2021, CoreCivic began providing COVID-19 vaccinations to high-risk detainees through partnerships with local governments. While initial vaccinations were offered to the highest-risk population (based on medical evaluation and known medical conditions), CoreCivic has since obtained enough vaccines to provide the COVID-19 vaccine to the current and projected future detained population, which are also offered to the current population on an ongoing basis. All new detainees are offered a COVID-19 vaccine at multiple stages of their custody, including but not limited to: (1) intake; (2) while in quarantine housing; and (3) upon request from the detainee at any time via the COVID-19 vaccine sign-up sheets that are posted in all housing units. As of August 11, 2021, the medical staff at Otay Mesa administered more than 750 doses of COVID-19 vaccines to ICE detainees at the facility.

ICE ERO is committed to the safety and security of all persons detained at Otay Mesa already and provides up-to-date information on the COVID-19 virus, as well as educational resources, in both English and Spanish, on the importance



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of proper hygiene, social distancing, and the important role of masks in preventing the spread of COVID-19 that align with ICE's COVID-19 requirements. ICE requests that the OIG consider this recommendation resolved and closed, as implemented.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and closed. ICE provided documentation showing that the facility began offering vaccines to detainees in February of 2021 and now offers all detainees access to vaccines. It also outlined additional measures Otay Mesa added to help address COVID 19 transmission.

Recommendation 2: Establish a grievance tracking system to ensure timely responses to all grievances filed at Otay Mesa.

Response: Concur. CoreCivic already has a grievance tracking system to log all grievances filed at Otay Mesa. On July 28, 2021, ICE ERO conducted an internal review, which determined that the established tracking system is adequate, but advised CoreCivic to improve the staffing to handle such matters in a timely manner. CoreCivic will provide ICE ERO an approved plan no later than August 31, 2021, addressing proper staff coverage and training for the grievance tracking system to ensure grievances are logged, tracked, and forwarded in a timely manner in accordance with 2011 PBNDS. To ensure oversight, CoreCivic will email the grievance log each week to ICE ERO at the OMDC Compliance email address, which is monitored by an ICE ERO Compliance supervisor.

Additionally, on May 28, 2021, ICE ERO revised its internal tracking mechanism to track all grievance submissions, and ICE ERO implemented an oversight process to verify that CoreCivic's system of tracking grievances adheres to 2011 PBNDS. ICE ERO continues to collect the weekly grievance logs and will provide copies to OIG for 30 days to resolve this recommendation and demonstrate compliance with 2011 PBNDS.

Estimated Completion Date (ECD): November 30, 2021.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. ICE provided documentation showing that the facility and ICE initiated a tracking system and oversight mechanism to ensure grievances are tracked and responded to within the required timeframe. We will close this recommendation once ICE provides documentation showing that these new processes have been implemented and grievances are tracked and responded to as required.



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Recommendation 3: Ensure Otay Mesa forwards all staff misconduct complaints to ICE ERO, as required.

Response: Concur. ICE takes all staff misconduct grievances seriously. The following corrective actions were taken to achieve compliance with 2011 PBNDS:

- On May 28, 2021, ICE ERO reminded CoreCivic that, upon receipt of all allegations of staff misconduct, the grievance coordinator must forward notifications to a higher-level official in the chain of command, and that a copy must also be forwarded to ICE ERO in a timely manner.
- Each week, CoreCivic will email the grievance log for all grievances to ICE ERO at the OMDC Compliance email address, which is monitored by an ICE ERO Compliance supervisor.
- ICE ERO continues to collect the weekly grievance logs and will provide the OIG with copies for 30 days to resolve this recommendation and demonstrate compliance with the 2011 PBNDS.

ECD: November 30, 2021.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. ICE provided documentation showing that the facility initiated corrective actions to ensure grievances related to staff misconduct are sent to ICE timely. We will close this recommendation once ICE provides documentation showing that the revised grievance process for staff misconduct has been implemented and misconduct grievances are being timely sent to ICE for review.

Recommendation 4: Provide detainees in segregation access to laundry, legal materials, mail, required recreation time outside their cell, and the commissary (for those in administrative segregation).

Response: Concur. On July 28, 2021, ICE ERO conducted an extensive record check of the confinement activity records [CARs] audited by the OIG, including both administrative and disciplinary cases, and found that OMDC was in compliance with 2011 PBNDS Section 2.12, Special Management Unit, and that all cases accurately notated whether the detainee was offered and received the services or whether they refused services.

Each day, all detainees housed in Otay Mesa's Special Management Unit are offered daily recreation, meals, showers, telephone and library access in accordance with 2011 PBNDS. It is not uncommon for detainees to either refuse services such as recreation, or to return to their cell early from a service they have accepted, and it is important to note that the option of attending



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recreation or utilizing other services is the detainee's decision. Otay Mesa will continue to encourage all detainees to participate in recreation and other out-of-cell activities, and the facility also continues to search for ways to improve detainee recreation, programming, and socializing.

To ensure services remain accessible, CoreCivic adopted new processes ensuring that detainees continue to have access to satellite law libraries within their pods, utilizing both the standalone LexisNexis and LexisNexis on the Talton electronic tablets. Laundry services and linen exchange availability were also increased, and detainees can request assistance from the legal clerk Monday through Friday, from 5:20 a.m. to 9:30 p.m. Otay Mesa uses the Confinement Activity Record to record the Special Management Unit detainees' weekly fundamental and basic needs, and the record is updated daily as is part of the detainee's detention file record, per the 2011 PBNDS Section 2.12 Special Management Unit (V)(D) requirement, "A permanent log shall be maintained to record all activities concerning Special Management Unit detainees (e.g., meals served recreational time, visitors, etc.)." Ultimately, these records show whether a detainee accepts, declines, or refuses services that are required to be offered, as well as other services accessed during the day. Furthermore, unless specifically restricted, all items on the Confinement Activity Record are available to the detainees according to the appropriate schedule. On July 30, 2021, ICE ERO advised CoreCivic to continue to mark "N" for instances when a detainee does not utilize the services, "Y" for instances when a detainee uses the services, and "R" for instances when detainees refuse to utilize services.

Although ICE ERO's review determined that Otay Mesa's current process for documenting services complies with 2011 PBNDS, ICE ERO and the facility take documentation seriously. Therefore, on July 30, 2021, ICE ERO also reminded CoreCivic about the importance of accurately documenting the outcome of the services provided to detainees while in segregation. ICE ERO will collect completed CAR sheets for 30 days and provide copies to the OIG to demonstrate compliance with 2011 PBNDS.

ECD: November 30, 2021.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. ICE must ensure that the facility documents detainees' daily access to required services in segregation. Without marking that the detainee refused the services, there is no way to independently verify whether such services were offered. We will close this recommendation once ICE provides documentation from Special Management Unit logs showing that detainees were offered required services daily and accepted or refused such services.



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Recommendation 5: Provide detainees full access to a secure drop-box for ICE requests and verify that ICE responds timely to such requests.

Response: Concur. In response to the unprecedented global pandemic and the various unknowns that accompanied it, ICE ERO made the decision to temporarily adjust the way staff-detainee communications were handled. In April 2020, for example, ICE ERO directed Otay Mesa to have all paper Immigration Detainee Requests and other correspondence intended for ICE ERO placed in a plain white envelope labeled “ICE Communication” and delivered by CoreCivic to the ICE ERO mailbox on site. This process provided ICE ERO the ability to continue to meet the 2011 PBNDS 2011 Section 2.13 Staff Communication, (V)(B), “The facility shall provide a secure drop-box for ICE detainees to correspond directly with ICE management. Only ICE personnel shall have access to the drop-box.” This process also allowed ICE ERO to communicate with detainees privately while minimizing its physical footprint in each housing unit, thus helping mitigate potential spread of the virus.

ICE ERO remains committed to following 2011 PBNDS. On June 4, 2021, ICE ERO instructed Otay Mesa to install secured drop-boxes in each of the housing units, to include medical and detainee segregation, and on June 30, 2021, OMDC completed installation.

In addition, the drop-boxes are also available to detainees to have a secure location for “all correspondence.” Further, in June 2021, ICE ERO resumed in-person retrieval of correspondence from the designated ICE ERO drop-boxes in all housing units Monday through Friday, excluding holidays. ICE ERO staff will provide records to OIG for 30 days to show timely retrieval and responses to IDRs to resolve the recommendation and compliance with 2011 PBNDS.

ECD: November 30, 2021.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. ICE outlined its process to install drop-boxes in housing units to accommodate the facility changes due to the pandemic. We will close this recommendation once we receive documentation showing that ICE has completed its process of picking up requests from the detention facility.

Recommendation 6: Ensure detainees have consistent and appropriate access to ICE ERO deportation officers, including identifying time, duration, and location of ICE facility visits.



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Response: Concur. ICE ERO acknowledges that some scheduled pod visits did not occur according to the posted schedule due to the COVID-19 pandemic, due to temporary procedures put in place to limit exposure between COVID-positive and/or exposed detainees and ICE ERO staff. During the height of COVID-19-positive cases at Otay Mesa, and to best protect both the detainee population and the ICE ERO staff assigned to Otay Mesa, ICE ERO opted to limit the physical footprint inside each of the housing units to help further mitigate the spread of COVID-19. However, it is important to note that communication continued via paper and electronic requests, some in-person visits, and by telephonic communication, as needed. This process was proven effective by the reduction of in-house positive COVID-19 cases down to zero by June 2020, with the only new positive cases coming into the facility with new arrivals.

With increased vaccinations, personal protective equipment, and continuous testing, ICE ERO returned to in-person pod visitations beginning on June 7, 2021, in accordance with posted schedules and in compliance with 2011 PBNDS. When conducting pod visits, scheduled or unscheduled, ICE ERO Officers are required to sign into a logbook in each pod. ICE ERO officers are available to answer requests, respond through the Talton electronic communication system, and are available in-person on the posted visitation days. Detainees are also reminded of the availability of ICE ERO staff via the detainee handbook and signs posted throughout the housing units.

In addition to the weekly required scheduled visits, ICE ERO Officers visit the pods and detainees regularly for various reasons related to individual cases. Otay Mesa detainees are never limited as to when they can contact their ICE officer and, per 2011 PBNDS, ICE ERO has 72 hours to respond to these contacts, excluding weekends and holidays. If, for whatever reason, a detainee is unable to speak to the ICE officer in-person during scheduled pod visits, he or she can always request, via paper or electronic requests, an in-person visit.

The ICE ERO compliance program will continue to confirm pod visitations are completed in accordance with 2011 PBNDS by verifying officers sign into the logbook held in each housing unit. ICE ERO staff will provide records to OIG for 30 days to document compliance with 2011 PBNDS.

ECD: November 30, 2021.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. We will close this recommendation when we receive documentation showing that ICE has addressed the timely response of both electronic and paper detainee requests.



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Recommendation 7: Update ICE's contract with Otay Mesa to better identify housing requirements and determine if guaranteed minimums are necessary.

Response: Non-concur. ICE ERO and Otay Mesa are still operating amid the COVID-19 pandemic and are required to follow the PRR and CDC interim guidance. ICE ERO undertook a reduction in detainee population early in the pandemic as a purposeful way to help address PRR and CDC guidance while taking into consideration the health and welfare of ICE ERO, contract, and detainee population to allow for better social distancing and mitigate the spread of COVID-19. ICE ERO remains committed to ensuring the continued safety of all persons being detained at OMDC and, as such, will continue to utilize all available space to help increase social distancing, while maintaining separation based on classification levels and gender under the 2011 PBNDS and quarantine requirements.

Per the PRR, ICE ERO evaluates each new intake group and designates them into one of three categories for housing purposes: (a) COVID-19-positive; (b) COVID-19-exposed; or (c) those not considered exposed with a negative test but who are still required to quarantine. Individuals are then housed based upon the appropriate categorization.

Regardless of designation, each unit will remain quarantined after intake for a minimum of 14 days, or until otherwise medically cleared, and any additional beds in those units will go unused until such time as the housing unit is cleared for general population. Once a housing unit comes off quarantine and is cleared for general population, the remaining beds will become available for use by non-quarantined detainees. During the pandemic, the process of maintaining physical separation and social distancing required the use of additional facility space not normally utilized to properly quarantine and cohort detainees, and ICE ERO works closely with CoreCivic to ensure the best use of available space while adhering to these requirements.

The PRR and CDC interim guidance are set in place to help prevent further spread of COVID-19 and have proven effective in helping slow the spread and keep the detainee population safe. Although currently not at the guaranteed minimum rate, ICE ERO continues to find ways to best utilize the bed space available at Otay Mesa, along with satisfying the demand of surges and the Southwest Border influx, while considering the cost of housing detainees. ICE ERO continues to see an upward trend in detainee population and, as of August 13, 2021, are housing more than 700 detainees in ICE ERO custody at Otay Mesa.

ICE requests the OIG consider the recommendation resolved and closed.



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OIG Analysis: We do not consider these actions responsive to the recommendation, which is unresolved and open. Otay Mesa fell well under the COVID-19 population protocols with its daily populations less than half of the guaranteed minimum that ICE pays for daily. We will close this recommendation when we receive documentation showing that ICE has developed and implemented a revised housing plan to better address social distancing to reduce health risks related to exposure to and transmission of COVID-19. ICE should also review contracting options if populations continue to remain well under the guaranteed minimums outlined in the contract.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

DHS OIG initiated this inspection at Congress' direction. Prior to conducting an unannounced inspection, we review and analyze concerns raised by immigrant rights groups and complaints to the DHS OIG Hotline about conditions for detainees in ICE custody. We generally limited our scope to the 2011 PBNDS for health, safety, medical care, mental health care, grievances, classification and searches, use of segregation, use of force, language access, and staff training. We also conducted a limited review of facility compliance with COVID-19 requirements.

We conducted the inspection remotely, given the inherent risks associated with on-site inspections during the COVID-19 pandemic. We focused on elements of these standards that could be observed and evaluated remotely.

Prior to our inspection, we reviewed relevant background information, including:

- OIG Hotline complaints
- ICE 2011 PBNDS
- ICE Office of Detention Oversight reports
- Information from nongovernmental organizations
- Information provided in congressional requests

We conducted our unannounced remote inspection of Otay Mesa from February 22, 2021 to April 30, 2021. During the inspection we:

- Directed the locations within the facility we would observe during a live video walkthrough. We viewed areas used by detainees including intake processing areas; medical facilities; residential areas, including sleeping, showering, and toilet facilities; legal services areas, including law libraries; and recreational facilities.
- Reviewed select video surveillance footage of detainee housing areas from February 2021 and use of force incidents from August 2020 to February 2021.
- Reviewed the facility's compliance with key health, safety, and welfare requirements of the 2011 PBNDS for classification and searches,



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segregation, access to medical care and mental health care, and medical and nonmedical grievances.

- Reviewed the facility's pandemic response to COVID-19, including standards modified and whether ICE was notified about and approved any changes that affected facility compliance with applicable standards.
- Interviewed ICE and detention facility staff members, including key ICE operational and detention facility oversight staff, detention facility medical, segregation, classification, grievance, and compliance officers.
- Interviewed detainees held at the detention facility to evaluate compliance with 2011 PBNDS grievance procedures and grievance resolution.
- Reviewed documentary evidence, including medical files, and grievance and communication logs and files.

We contracted with a team of qualified medical professionals to conduct a comprehensive evaluation of detainee medical care at the Otay Mesa facility. We incorporated information provided by the medical contractors into our findings.

We conducted this review under the authority of the *Inspector General Act of 1978, as amended*, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.



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Appendix B
ICE Comments to the Draft Report

Office of the Chief Financial Officer


U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



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

August 23, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Stephen A. Roncone 
Chief Financial Officer and
Senior Component Accountable Official

SUBJECT: Management Response to Draft Report: "Violations of ICE
Detention Standards at Otay Mesa Detention Center"
(Project No. 21-004-SRE-ICE(c))

Thank you for the opportunity to comment on this draft report. U.S. Immigration and Customs Enforcement (ICE) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

ICE is pleased to note OIG's positive recognition of Otay Mesa Detention Center's (OMDC) compliance with ICE's 2011 Performance-Based National Detention Standards, dated December 2016 (2011 PBNDS) regarding classification of detainees and overall medical care. The OIG also acknowledged our partnership with local governments in providing vaccinations against coronavirus disease 2019 (COVID-19). ICE remains committed to continuously enhancing civil detention operations to promote a safe and secure environment for detainees and staff.

The draft report contained seven recommendations, including six with which ICE concurs (Recommendations one through six) and one with which ICE non-concurs (Recommendation seven). Attached find our detailed response to each recommendation. ICE previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Attachment

www.ice.gov



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Management Response to Draft Report: “Violations of ICE Detention Standards at Otay Mesa Detention Center” (Project No. 21-004-SRE-ICE(c))

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**Attachment: Management Response for Recommendations
Contained in 20-004-SRE-ICE(c)**

OIG recommended that the ICE Enforcement and Removal Operations (ERO) Executive Associate Director direct the San Diego Field Office responsible for OMDC:

Recommendation 1: Ensure Otay Mesa meets ICE’s COVID-19 requirements for wearing masks and social distancing.

Response: Concur. ICE ERO at the OMDC adhered to the ICE ERO Pandemic Response Requirements (PRR) (Version 6.0, dated March 16, 2021), as well as the Centers for Disease Control and Prevention (CDC) Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities,” updated June 9, 2021, to continuously protect detainees at the lowest practicable risk of exposure to COVID-19. Moreover, the facility is continuously adapting and making timely changes to operating procedures to mitigate the spread of the COVID-19 virus.

For example, all newly arrived detainees are tested and cohorted under intake protocols created from the CDC and PRR guidance, and all detainees must be medically cleared from these protocols before being moved to living areas (or pods) of the same classification level. Those detainees who test positive for the virus are quarantined in the same pod until the detainee completes a 14-day quarantine, per CDC guidance, and no longer show signs or symptoms of the virus. This strategy has, and continues to, help mitigate the spread of the virus among the detainee population.

Furthermore, at the beginning of the pandemic in April 2020, CoreCivic, which owns and operates OMDC, posted “CDC approved” signs in all detainee living areas emphasizing the importance of mask wearing, social distancing, and proper hygiene, such as an explanation of proper handwashing techniques to help reduce the spread of COVID-19. This signage continues to be updated on a frequent, as-needed basis, as new information becomes available. CoreCivic also began broadcasting COVID-19 information on the televisions inside each of the living areas, and regularly updates available educational materials. In addition, the facility sanitizes on an hourly basis to mitigate the spread of the virus.

It is also important to note that, in February 2021, CoreCivic began providing COVID-19 vaccinations to high-risk detainees through partnerships with local governments. While initial vaccinations were offered to the highest-risk population (based on medical evaluation and known medical conditions), CoreCivic has since obtained enough vaccines to provide the COVID-19 vaccine to the current and projected future detained



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population, which are also offered to the current population on an ongoing basis. All new detainees are offered a COVID-19 vaccine at multiple stages of their custody, including but not limited to: (1) intake; (2) while in quarantine housing; and (3) upon request from the detainee at any time via the COVID-19 vaccine sign-up sheets that are posted in all housing units. As of August 11, 2021, the medical staff at OMDC administered more than 750 doses of COVID-19 vaccines to ICE detainees at the facility.

ICE ERO is committed to the safety and security of all persons detained at OMDC, already and provides up-to-date information on the COVID-19 virus, as well as educational resources, in both English and Spanish, on the importance of proper hygiene, social distancing, and the important role of masks in preventing the spread of COVID-19 that align with ICE’s COVID-19 requirements.

ICE requests that the OIG consider this recommendation resolved and closed, as implemented.

Recommendation 2: Establish a grievance tracking system to ensure timely responses to all grievances filed at Otay Mesa.

Response: Concur. Per ICE’s 2011 PBNDS Section 6.2 Grievance System (V)(D), “Each facility shall maintain a detainee grievance log that shall be subject to regular inspection by the Field Office Director and ICE headquarters staff.” Accordingly, CoreCivic already has a grievance tracking system to log all grievances filed at OMDC. On July 28, 2021, ICE ERO conducted an internal review, which determined that the established tracking system is adequate, but advised CoreCivic to improve the staffing to handle such matters in a timely manner. CoreCivic will provide ICE ERO an approved plan no later than August 31, 2021, addressing proper staff coverage and training for the grievance tracking system to ensure grievances are logged, tracked, and forwarded in a timely manner in accordance with 2011 PBNDS. To ensure oversight, CoreCivic will email the grievance log each week to ICE ERO at the OMDC Compliance email address which is monitored by an ICE ERO Compliance supervisor.

Additionally, on May 28, 2021, ICE ERO revised its internal tracking mechanism to track all grievance submissions and ICE ERO implemented an oversight process to verify that CoreCivic’s system of tracking grievances adheres to 2011 PBNDS. ICE ERO continues to collect the weekly grievance logs and will provide copies of grievance logs to OIG for 30 days to resolve this recommendation and demonstrate compliance with 2011 PBNDS. Estimated Completion Date (ECD): November 30, 2021.

Recommendation 3: Ensure Otay Mesa forwards all staff misconduct complaints to ICE ERO, as required.



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Response: Concur. ICE takes all staff misconduct grievances seriously. Per 2011 PBNDS Section 6.2 Grievance System (V)(F),

“Upon receipt, facility staff must forward all detainee grievances containing allegations of staff misconduct to a supervisor or higher-level official in the chain of command. While such grievances are to be processed through the facility’s established grievance system, CDFs [Contract Detention Facilities] and IGSA [Intergovernmental Service Agreement] facilities must also forward a copy of any grievances alleging staff misconduct to ICE/ERO in a timely manner with a copy going to ICE’s Office of Professional Responsibility (OPR) Joint Intake Center and/or local OPR office for appropriate action. Facilities shall send all grievances related to sexual abuse and assault and the facility’s decisions with respect to such grievances to the appropriate Field Office Director at the end of the grievance process.”

The following corrective actions were taken to achieve compliance with 2011 PBNDS:

- On May 28, 2021, ICE ERO reminded CoreCivic that, upon receipt of all allegations of staff misconduct, the grievance coordinator must forward notifications to a higher-level official in the chain of command, and that a copy must also be forwarded to ICE ERO in a timely manner.
- Each week, CoreCivic will email the grievance log for all grievances to ICE ERO at the OMD C Compliance email address, which is monitored by an ICE ERO Compliance supervisor.
- ICE ERO continues to collect the weekly grievance logs, and will provide the OIG with copies of grievance logs for 30 days to resolve this recommendation and demonstrate compliance with the 2011 PBNDS.

ECD: November 30, 2021.

Recommendation 4: Provide detainees in segregation access to laundry, legal materials, mail, required recreation time outside their cell, and the commissary (for those in administrative segregation).

Response: Concur. On July 28, 2021, ICE ERO conducted an extensive record check of the confinement activity records [CARs] audited by the OIG, including both administrative and disciplinary cases, and found that OMD C was in compliance with 2011 PBNDS Section 2.12, Special Management Unit, and that all cases accurately notated whether the detainee was offered and received the services or whether they refused services.



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Per 2011 PBNDS Section 2.12 Special Management Unit (V)(R):

“In accordance with standard “4.5 Personal Hygiene,” detainees in SMU [Special Management Unit] may shave and shower at least three times weekly and receive other basic services such as laundry, hair care, barbering, clothing, bedding, and linen equivalent to general population detainees and consistent with safety and security of the facility.”

Further, per 2011 PBNDS Section 2.12 Special Management Unit (V)(Z):

“Recreation for detainees housed in the SMU shall be separate from the general population. Facilities are encouraged to maximize opportunities for group participation during recreation and other activities, consistent with safety and security considerations. Recreation for certain individuals shall occur separate from all other detainees when necessary or advisable to prevent assaults and to reduce management problems.”

Each day, all detainees housed within OMDC’s SMU are offered daily recreation, meals, showers, telephone and library access in accordance with 2011 PBNDS. It is not uncommon for detainees to either refuse services such as recreation, or to return to their cell early from a service they have accepted, and it is important to note that the option of attending recreation or utilizing other services is the detainee’s decision. OMDC will continue to encourage all detainees to participate in recreation and other out-of-cell activities, and the facility also continues to search for ways to improve detainee recreation, programming, and socializing.

To ensure services remain accessible, CoreCivic adopted new processes ensuring that detainees continue to have access to satellite law libraries within their pods, utilizing both the standalone LexisNexis and LexisNexis on the Talton electronic tablets. Laundry services and linen exchange availability were also increased, and detainees can request assistance from the legal clerk Monday through Friday, from 5:20 a.m. to 9:30 p.m.

OMDC uses the CAR to record the SMU detainees’ weekly fundamental and basic needs, and the CAR is updated daily as is part of the detainee’s detention file record, per the 2011 PBNDS Section 2.12 Special Management Unit (V)(D) requirement, “A permanent log shall be maintained in the SMU to record all activities concerning SMU detainees (e.g., meals served recreational time, visitors, etc.).” Ultimately, the CAR records whether a detainee accepts, declines, or refuses services that are required to be offered, as well as other services accessed during the day. Furthermore, unless specifically restricted, all items on the CAR are available to the detainees according to the appropriate schedule. On July 30, 2021, ICE ERO advised CoreCivic to continue to mark “N” for



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instances when a detainee does not utilize the services, “Y” for instances when a detainee uses the services, and “R” for instances when detainee refuse to utilize services.

Although ICE ERO’s review determined that OMDC’s current process for documenting SMU services complies with 2011 PBNDS, ICE ERO and the facility take documentation seriously. Therefore, on July 30, 2021, ICE ERO also reminded CoreCivic about the importance of accurately documenting the outcome of the services provided to detainees while in segregation. ICE ERO will collect completed CAR sheets for 30 days and provide copies to the OIG to demonstrate compliance with 2011 PBNDS.

ECD: November 30, 2021.

Recommendation 5: Provide detainees full access to a secure drop-box for ICE requests and verify that ICE responds timely to such requests.

Response: Concur. In response to the unprecedented global pandemic and the various unknowns that accompanied it, ICE ERO made the decision to temporarily adjust the way staff-detainee communications were handled. In April 2020, for example, ICE ERO directed OMDC to have all paper Immigration Detainee Requests (IDR) and other correspondence intended for ICE ERO be placed in a plain white envelope labeled “ICE Communication” and delivered by CoreCivic to the ICE ERO mailbox on site. This process provided ICE ERO the ability to continue to meet the 2011 PBNDS 2011 Section 2.13 Staff Communication, (V)(B), “The facility shall provide a secure drop-box for ICE detainees to correspond directly with ICE management. Only ICE personnel shall have access to the drop-box.” This process also allowed ICE ERO to communicate with detainees privately while minimizing our physical footprint in each housing unit, thus helping mitigate potential spread of the virus.

ICE ERO remains committed to following 2011 PBNDS. On June 4, 2021, ICE ERO instructed OMDC to install secured drop-boxes in each of the housing units, to include medical and detainee segregation, and on June 30, 2021 OMDC completed installation. In addition, the drop-boxes are also available to detainees to have a secure location for “all correspondence.” Further, in June 2021, ICE ERO resumed in-person retrieval of IDRs from the designated ICE ERO drop-boxes in all housing units Monday through Friday, excluding holidays. ICE ERO staff will provide records to OIG for 30 days to show timely retrieval and responses to IDRs to resolve the recommendation and compliance with 2011 PBNDS. ECD: November 30, 2021.

Recommendation 6: Ensure detainees have consistent and appropriate access to ICE ERO deportation officers including identifying time, duration, and location of ICE facility visits.



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Management Response to Draft Report: “Violations of ICE Detention Standards at Otay Mesa Detention Center” (Project No. 21-004-SRE-ICE(c))

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Response: Concur. ICE ERO acknowledges that some scheduled pod visits did not occur according to the posted schedule due to the COVID-19 pandemic, due to temporary procedures put in place to limit exposure between COVID-positive and/or exposed detainees and ICE ERO staff. During the height of COVID-19-positive cases at OMDC, and to best protect both the detainee population and the ICE ERO staff assigned to OMDC, ICE ERO opted to limit the physical footprint inside each of the housing units to help further mitigate the spread of COVID-19. However, it is important to note that communication continued via paper IDRs, electronic IDRs, some in-person visits, and by telephonic communication, as needed. This process was proven effective by the reduction of the number of in-house positive COVID-19 cases down to zero by June 2020, with only new positive cases coming into the facility resulting from new arrivals to the facility. Per 2011 PBNDS, Section 2.13 (V)(A) Staff-Detainee Communication:

“ICE ERO detainees shall not be restricted from having frequent informal access to and interaction with key facility staff members, as well as key ICE ERO staff, in a language they can understand. ICE ERO staff members shall announce their presence when entering a housing unit. The local supplement to the detainee handbook shall include contact information for the ICE ERO Field Office and the scheduled hours and days that ICE ERO staff is available to be contacted by detainees at the facility. The same information shall be posted in the living areas (or pods) of the facilities. Posted contact information shall be updated quarterly or more frequently as necessary to reflect changes in ICE ERO personnel.”

With increased vaccinations, personal protective equipment, and continuous testing, ICE ERO returned to in-person pod visitations beginning on June 7, 2021, in accordance with posted schedules and in compliance with 2011 PBNDS. When conducting pod visits, scheduled or unscheduled, ICE ERO Officers are required to sign into a logbook in each pod. ICE ERO officers are available to answer IDRs, respond through the Talton electronic communication system, and are available in-person on the posted visitation days. Detainees are also reminded of the availability of ICE ERO staff via the detainee handbook, and signs posted throughout the housing units.

In addition to the weekly required scheduled visits, ICE ERO Officers visit the pods and detainees regularly for various reasons related to individual cases. OMDC detainees are never limited as to when they can contact their ICE officer and, per 2011 PBNDS, ICE ERO has 72 hours to respond to these contacts, excluding weekends and holidays. If, for whatever reason, a detainee is unable to speak to the ICE officer in-person during scheduled pod visits, he or she can always request, via paper or electronic IDR, an in-person visit.

The ICE ERO compliance program will continue to confirm pod visitations are completed in accordance with 2011 PBNDS by verifying officers sign into the logbook



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held in each housing unit. ICE ERO staff will provide records to OIG for 30 days to document compliance with 2011 PBNDS. ECD: November 30, 2021.

Recommendation 7: Update ICE’s contract with Otay Mesa to better identify housing requirements and determine if guaranteed minimums are necessary.

Response: Non-concur. ICE ERO and OMDC are still operating amid the COVID-19 pandemic and are required to follow the PRR and CDC interim guidance. ICE ERO undertook a reduction in detainee population early in the pandemic as a purposeful way to help address PRR and CDC guidance all while taking into consideration the health and welfare of ICE ERO, contract, and detainee population to allow for better social distancing and mitigate the spread of COVID-19. ICE ERO remains committed to ensuring the continued safety of all persons being detained at OMDC and, as such, will continue to utilize all available space to help increase social distancing, while maintaining separation based on classification levels and gender under the 2011 PBNDS and quarantine requirements.

Per the PRR, ICE ERO evaluates each new intake group, and designates them into one of three categories for housing purposes: (a) COVID-19-positive; (b) COVID-19-exposed; or (c) those not considered exposed with a negative test but who are still required to quarantine. Individuals are then housed based upon the appropriate categorization. Regardless of designation, each unit will remain quarantined after intake for a minimum of 14 days, or until otherwise medically cleared, and any additional beds in those units will go unused until such time as the housing unit is cleared for general population. Once a housing unit comes off quarantine and is cleared for general population, the remaining beds will become available for use by non-quarantined detainees. During the pandemic, the process of maintaining physical separation and social distancing required the use of additional facility space not normally utilized to properly quarantine and cohort detainees, and ICE ERO works closely with CoreCivic to ensure the best use of available space while adhering to these requirements.

The PRR and CDC interim guidance are set in place to help prevent further spread of COVID-19, and have proven effective in helping slow the spread and keep the detainee population safe. Although currently not at the guaranteed minimum rate, ICE ERO continues to find ways to best utilize the bed space available at OMDC, along with satisfying the demand of surges and the Southwest Border influx, all while considering the cost of housing detainees. ICE ERO continues to see an upward trend in detainee population and, as of August 13, 2021, are housing just over 700 detainees in ICE ERO custody at OMDC.

ICE requests the OIG consider the recommendation resolved and closed.



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Appendix C
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Appendix D
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