

Congress of the United States
Washington, DC 20515

April 15, 2020

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
Office of Inspector General/MAIL STOP 0305
245 Murray Lane SW
Washington, D.C. 20528-0305

Dear Inspector General Cuffari:

We write to you today regarding alarming reports of conduct by staff at U.S. Immigration and Customs Enforcement's (ICE) Otay Mesa Detention Center in San Diego, California. According to public reports, contractor personnel allegedly threatened the use of force and required execution of certain forms in connection with the distribution of protective equipment to detained individuals. We request an immediate and thorough investigation into these allegations, related policies and procedures, and the sufficiency of those policies and procedures in protecting the health and safety of individuals in U.S. custody, particularly in light of the ongoing public health crisis.

On April 12, 2020, the *San Diego Union-Tribune* published a detailed account of a reported incident on Friday, April 10, 2020 at the Otay Mesa Detention Center in San Diego, California. Reportedly, contractor personnel informed detained individuals that they were required to sign documentation in English, purportedly containing a liability waiver, before receiving protective masks. Detained individuals and their representatives have reported that contractor personnel did not fully translate or interpret the contents of the form and threatened to utilize pepper spray during the incident. In response, ICE's contractor has stated that there was no use of force during the incident, alleged that detained persons were disruptive during the incident, and that—moving forward—no signed documentation will be required to receive protective masks.¹

The Otay Mesa Detention Center has publicly reported that at least 15 individuals in ICE custody and at least one DHS employee have tested positive for COVID-19—the highest number of confirmed cases at an ICE detention facility nationwide.² People are fearful during this time, particularly those in U.S. custody who are especially vulnerable to infection but face limited access to information about how to protect themselves, limited ability to observe protective measures like social distancing, and limited language access services. It is critical to understand the facts of the alleged incident, how contractor personnel communicated information about

¹ See Kate Morissey, San Diego Union-Tribune, *As coronavirus spreads in federal detention center, calls for widescale release grow* (Apr. 12, 2020), available at <https://www.sandiegouniontribune.com/news/immigration/story/2020-04-12/coronavirus-spread-in-otay-mesa-detention-center>; Brenda Gregorio-Nieto, NBC News San Diego, *3 Cited During COVID-19 Protest Outside Otay Mesa Detention Center* (Apr. 12, 2020), available at <https://www.nbcsandiego.com/news/local/3-cited-during-covid-19-protest-outside-otay-mesa-detention-center/304368/>.

² ICE, *ICE Guidance on COVID-19* (Apr. 14, 2020), available at <https://www.ice.gov/coronavirus>.

protective equipment to individuals in custody, ICE's applicable policies and procedures, and whether those policies and procedures are adequate to protect the health and safety of detained persons, facility personnel, and the public.

These allegations are all the more troubling in light of your office's consistent findings during the course of over two years that ICE has failed to adequately protect the health and safety of individuals in its custody. On December 11, 2017, your office published a report concluding that certain detention facilities "undermine(d) the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment."³ On September 27, 2018, your office found severe health and safety violations that "pose(d) significant health and safety risks" to individuals detained at a privately-run detention facility.⁴ On January 29, 2019, your office concluded that "[i]nstead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards."⁵ On June 3, 2019, your office found "immediate risks or egregious violations of detention standards" at ICE detention facilities, including inadequate medical care.⁶ These failures risk the health, safety, and lives of thousands of human beings in ICE's custody, their representatives, facility and court personnel, and the public. During the ongoing public health crisis, the risks are all the more acute. Such failures expose people to infection and the risk of preventable deaths due to COVID-19.

Given ICE's extensive use of private contractors to detain individuals, its policies and procedures vis-à-vis private contractors are essential to protecting the health and safety of detained persons during the ongoing public health crisis. Accordingly, we ask that you immediately and thoroughly investigate these allegations. We request that your report include the following information:

1. Did DHS or contractor personnel at Otay Mesa Detention Center engage in the use of force or threaten to use force during the alleged incident, including but not limited to the use of pepper spray?
 - a. Did DHS or contractor personnel remove or isolate detained individuals during or after the incident?
 - b. How do ICE policies and procedures applicable to the alleged incident at Otay Mesa Detention Center protect the health and safety of detained persons, guard against the risk of abuse by DHS and contractor personnel, and ensure sufficient accountability in the event of violations?

³ Office of Inspector General, DHS, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), available at <https://www.oversight.gov/sites/default/files/oig-reports/OIG-18-32-Dec17.pdf>.

⁴ Office of Inspector General, DHS, *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (Sept. 27, 2018), available at <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

⁵ Office of Inspector General, DHS, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

⁶ Office of Inspector General, DHS, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* (June 3, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

- c. How did facility personnel communicate with detained persons in written and verbal form during the incident regarding the availability of protective equipment, including provisions made for the use of language access services?
 - d. Did DHS or contractor personnel at Otay Mesa Detention Center state or otherwise suggest in any way, at any point during the alleged incident, that detained persons must sign documentation (including but not limited to a liability waiver)? If so, please include copies of the documentation in all languages in which it was made available to detained persons as well as the content and language of the relevant statements made by facility personnel regarding those forms in your report.
2. In light of conflicting reports regarding the facts and circumstances surrounding the alleged incident, we request that your office take immediate steps to preserve evidence that is relevant to this investigation, including:
 - a. Conducting interviews with key witnesses, including facility personnel and detained individuals involved with the incident.
 - b. Reviewing and preserving security camera footage from the Otay Mesa Detention Center, including footage from April 9 through April 11, 2020.
 - c. Reviewing and preserving records relating to the incident, including but not limited to any incident reports or other documentation, grievances filed by detained individuals, medical assistance requested or received due to the incident, and documentation of any equipment, including pepper spray or an equivalent substance, carried or utilized by facility personnel during the incident.
3. What measures has ICE taken in response to the ongoing public health crisis to communicate to detained persons the protective measures recommended by public health experts, notify them of confirmed cases within their detention facilities, and ensure that they understand any actions taken by ICE or its contractor personnel in response, including ensuring that the relevant information is provided in non-English languages?
4. ICE is reportedly not including confirmed cases among contractor personnel in its published statistics regarding confirmed cases at ICE detention facilities. What policies and procedures has ICE implemented to monitor confirmed cases among contractor personnel, assess the risk of the spread of infection within various facilities, and notify non-detained individuals likely to come into contact with detained individuals regarding confirmed cases at ICE detention facilities, including at Otay Mesa Detention Center?
5. What contractual mechanisms are available to ICE to hold contractors responsible in the event that its contractors fail to adequately protect the health and safety of detained persons, including but not limited to monitoring and reporting mechanisms, the use of terminations for convenience or default, the issuance of contractor discrepancy reports, and suspension or debarment of contractors?
 - a. What recommendations do you make to ICE to ensure that it adequately utilizes its contractual authorities to protect the health and safety of detained persons during the ongoing public health crisis?

Thank you for your attention to this important matter. We look forward to your timely response within 7 days notifying us that the investigation has been opened and confirming whether the information we have requested will be included in the report.

Sincerely,



Kamala D. Harris
United States Senator



Dianne Feinstein
United States Senator



Juan Vargas
Member of Congress