

# CoreCivic's Decades of Abuse: Otay Mesa Detention Center

San Diego County, California



**ACLU** San Diego and  
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# CoreCivic's Decades of Abuse: Otay Mesa Detention Center

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## About the ACLU Foundation of San Diego & Imperial Counties

*The ACLU Foundation of San Diego & Imperial Counties (ACLUF-SDIC) is a prominent force in the Struggle to create a more equitable region. Our mission is to protect and expand fairness, equity, and freedom through community engagement, building power, policy advocacy, and impact litigation.*

*The ACLUF-SDIC has a proud history of protecting and asserting immigrants' rights. From our first days, we have steadfastly defended and expanded the civil liberties of immigrants and refugees in California's two southernmost counties. We work to ensure the fundamental rights of due process and equal protection embodied in our Constitution and Bill of Rights apply to every person, regardless of immigration status.*

# Table of Contents

## 2 Acknowledgments

## 4 Executive Summary

## 6 Introduction

## 9 Background

*The Rise of Immigration Detention and  
CoreCivic's History at Otay Mesa*

## 15 Decades of Abuse

*Abysmal Medical Care and Unsafe Conditions*

1. Failed Response to Communicable Diseases, Including COVID-19
2. Unreasonable Delays in Responding to Medical Concerns
3. Dangerous Building Conditions and Inadequate Food

*Culture of Abuse, Violence, and Sexual Assault*

1. Treatment of LGBTQIA+ People and People Living with HIV
2. Systemic Use of Solitary Confinement

*Retaliation for First Amendment Protected Activities*

1. Punishment for Speaking Out
2. Cutting Off Communication and Access to Accompaniment

*Unlawful Labor and Employment Practices*

1. Forced Labor
2. Toxic Employment Practices

## 41 Conclusion

# Executive Summary

Our country's over-reliance on mass systems of incarceration is rightfully under scrutiny. In the context of immigration detention, advocates have long asserted that it is inhumane to use prison-like facilities to lock up people who are pursuing lawful avenues to remain in the United States. Yet for 25 years, a seemingly punitive detention system has increasingly been imposed on individuals who are facing civil immigration proceedings. In 1994, the United States confined roughly 6,700 people per day in immigration detention. By 2019, that number had exploded to more than 50,000 per day. The confluence of such mass incarceration of immigrants, as well as other factors—mass criminalization of movement between borders and mass privatization of incarceration—has resulted in the proliferation of private prison companies that profit from imprisoning immigrants, while benefiting from lax federal oversight.<sup>1</sup>

This Issue Brief examines how these factors have played out at the Otay Mesa Detention Center, a facility near the international border in San Diego, California, owned and operated by the private prison corporation CoreCivic. The Brief describes how CoreCivic went from near financial ruin to a company that receives tens of millions of dollars annually to operate the Otay Mesa facility, reaping profits while inflicting misery on the people it detains, the staff it employs, and the community it occupies.

The authors reviewed lawsuits, complaints, media reports, academic and nonprofit research projects, and the government's own investigations of reported misconduct at the Otay Mesa facility, compiling them into a single resource that chronicles more than a decade of allegations and proven instances of abuse. Taken together, this information paints an alarming picture of ongoing systemic abuse at Otay Mesa. Recounting the many alleged harms and degradations as described by the victims and their advocates, the Brief identifies a consistent pattern of abuse falling into four major issue areas.

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<sup>1</sup> The DHS Office of the Inspector General filed a report looking at 2018 and 2019 inspection reviews of ICE detention facilities and found that ICE's monitoring systems "do not ensure adequate oversight or systemic improvements in detention conditions, with some deficiencies remaining unaddressed for years." DEP'T OF HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL, OIG-18-67, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, (June 26, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

First, there has been persistent failure to keep people detained at the Otay Mesa Detention Center safe. For example, the Brief details CoreCivic's lackluster efforts to prevent the spread of disease, including its anemic initial response to the COVID-19 pandemic. The Brief also chronicles decades of allegations of delayed and inadequate responses to medical needs, resulting in injury and death, as well as claims of unsafe food and structural conditions that have caused substantial harm.

Second, the record reveals a culture of verbal and physical abuse. According to the organization now known as Freedom for Immigrants, the Otay Mesa Detention Center was among the five worst private detention facilities in the country when it came to the volume of calls reporting sexual or physical assault. By the facility's own measures, there was more than one confirmed assault every month in 2019. In a pattern that goes back more than a decade, the abuse has often targeted the most vulnerable, including LGBTQIA+ individuals and people living with HIV. A systemic pattern of subjecting people to prolonged solitary confinement is also well documented.

Third, various reports indicate that CoreCivic has engaged in a pattern of attempting to thwart the First Amendment rights of people detained in its facility and the groups that advocate for them. For decades, the company has been consistently accused of retaliating against and punishing detained people who report abuse. CoreCivic has also frequently targeted organizations—including attempting to get advocates to sign non-disclosure agreements or preventing them from receiving phone calls—in an effort to limit their ability to speak out about the harms of detention.

Fourth, the Brief details a pattern of unlawful labor and employment practices. For years, CoreCivic has been in litigation over its forced labor program. The company relies on and profits from detained immigrants who provide labor for the facility for less than \$2 a day. CoreCivic has also mistreated its own employees, repeatedly violating labor laws and fighting unionization efforts. Unhappy staff have then perpetuated the culture of violence and abuse already prevalent in the facility.

By placing a microscope on the Otay Mesa facility, the Brief seeks to put a face on the harms inherent in immigration detention and private prisons generally. By amplifying the stories of people who have claimed abuse by CoreCivic, the Brief is also intended as a resource to support calls from currently and formerly detained persons, advocates, and lawmakers for an end to oppressive, unnecessary, and inhumane systems of incarceration. And by aggregating the complaints levied thus far against CoreCivic in Otay Mesa, the Brief aims to assist those demanding accountability for private prisons' treatment of immigrants in detention.



Finally, the Brief serves as another voice in a growing chorus calling on government to abandon the failed experiment of private, for-profit incarceration as a part of the larger movement toward the abolition of detention. The harms inflicted by CoreCivic highlighted in this Brief are but microcosms of deep-rooted problems with private incarceration and immigration detention. Addressing the concerns raised here will not fix the systems that allow thousands of individuals to be imprisoned at the Otay Mesa Detention Center every year. But permitting any of these injustices to persist without true accountability will ensure that CoreCivic and other private prison corporations can continue to evade responsibility while reaping massive profits from the suffering of people in facilities like the Otay Mesa Detention Center.

## Introduction

In recent years, there has been a concerted effort to push back against the use of civil detention as a tool of immigration enforcement, and a growing number of advocacy groups are calling for an end to the practice entirely. At the same time, opposition to profit-driven incarceration in any context has also grown, with states including California and some prominent elected officials committing to end the use of private prisons altogether.<sup>2</sup> Even the federal government appears poised to begin steering away from the private prison industry. In 2016, the U.S. Department of Justice announced that the Bureau of Prisons would begin phasing out the use of privately operated prisons, finding “[t]hey simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and ... they do not maintain the same level of safety and security” as Bureau-run facilities.<sup>3</sup> Ending for-profit incarceration of people in immigration proceedings appeared to be next on the horizon.

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<sup>2</sup> Heidi Altman and Marta Ascherio, *Policy Brief: 5 Reasons to End Immigrant Detention*, NATIONAL IMMIGRANT JUSTICE CENTER, Sept. 14, 2020, <https://immigrantjustice.org/research-items/policy-brief-5-reasons-end-immigrant-detention>; Catherine Kim, *Private Prisons Face an Uncertain Future as States Turn Their Backs on the Industry*, VOX, Dec. 1, 2019, <https://www.vox.com/policy-and-politics/2019/12/1/20989336/private-prisons-states-bans-california-nevada-colorado>.

<sup>3</sup> Sally Yates, Deputy Attorney General, *Memorandum for the Acting Director Federal Bureau of Prisons: Reducing Our Use of Private Prisons*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE DEPUTY ATTORNEY GENERAL, (“Yates Memo”), Aug. 18, 2016, <https://www.justice.gov/archives/opa/file/886311/download>.

But immediately after taking office in January 2017, the Trump administration abruptly reversed this progress by rescinding the 2016 memorandum.<sup>4</sup> Although the Biden administration promptly issued an order renewing the commitment to end the Department of Justice’s reliance on private prisons in federal criminal facilities, as of publication of this Brief, the administration has not said the same for the U.S. Department of Homeland Security (DHS), the agency that oversees federal immigration enforcement and detention. The glaring omission of private immigration detention centers has prompted advocates to say the administration’s order does not go far enough.<sup>5</sup>

Still, grassroots movements continue to successfully pressure institutions with political and financial power to divest from the private prison industry, citing patterns of human rights abuses.<sup>6</sup> And in 2019, California enacted Assembly Bill 32 (AB 32), which seeks to phase out the use of private detention facilities in the state entirely.<sup>7</sup>

Local, statewide, and national groups have paid particular attention to the Otay Mesa Detention Center (OMDC), due to the frequency of reports of abuses there. Located about 25 miles southeast of downtown San Diego, California, the facility is owned and operated by CoreCivic,<sup>8</sup> the for-profit prison company that contracts with the federal government to confine people in U.S. Immigration and Customs Enforcement (ICE) and U.S. Marshals Service (USMS) custody at OMDC.<sup>9</sup> In Spring 2020, OMDC became the site of one of the earliest and worst

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<sup>4</sup> Jefferson B. Sessions III, Attorney General, *Memorandum for the Acting Director Federal Bureau of Prisons: Rescission of Memorandum on Use of Private Prisons*, OFFICE OF THE ATTORNEY GENERAL, (“Sessions Memo”), Feb. 21, 2017, [https://www.bop.gov/resources/news/pdfs/20170224\\_doj\\_memo.pdf](https://www.bop.gov/resources/news/pdfs/20170224_doj_memo.pdf).

<sup>5</sup> Aamer Madhani, *Biden orders Justice Dept. to end use of private prisons*, ASSOCIATED PRESS, Jan. 26, 2021, <https://apnews.com/article/joe-biden-race-and-ethnicity-prisons-coronavirus-pandemic-c8c246f00695f37ef2afb1dd3a5f115e>.

<sup>6</sup> See Jason Song, *UC System Divests \$30 Million in Prison Holdings Amid Student Pressure*, L.A. TIMES, Dec. 26, 2015, <https://www.latimes.com/local/education/la-me-uc-divestment-prisons-20151226-story.html>; Michelle Chen, *Wall Street’s Ties to the Private Immigration-Detention Network*, THE NATION, July 24, 2018, <https://www.thenation.com/article/archive/wall-streets-ties-private-immigrant-detention-network/>.

<sup>7</sup> Assem. Bill 32, 2019-2020, ch. 739, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB32](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB32).

<sup>8</sup> CoreCivic was formerly Corrections Corporation of America, or “CCA.” This document refers to the corporation’s rebranded name, CoreCivic, regardless of the name the corporation used when the events referenced occurred.

<sup>9</sup> See Joshua Emerson Smith, *Hundreds Protest Outside of Otay Mesa Detention Center Calling for Release of Asylum Seekers*, SAN DIEGO UNION-TRIB., June 10, 2018, <https://www.sandiegouniontribune.com/news/immigration/sd-me-asylum-protesters-20180610-story.html>; Liz Robbins, *‘A Light for Me in the Darkness’: For Migrant Detainees, a Bond Forged by Letter*, N.Y. TIMES, Feb. 7, 2019, <https://www.nytimes.com/2019/02/07/us/immigrant-detainee-letters.html>; Kate Morrissey, *Advocates with Mask Donation Turned Away from San Diego Immigration Detention Center*, SAN DIEGO UNION-TRIB., Apr. 24, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-04-24/advocates-with-mask-donation-turned-away-from-san-diego-immigration-detention-center>.

COVID-19 outbreaks of any immigration detention center in the United States, and the first death due to the virus of someone in ICE custody.

In the wake of similar COVID-19 detention center outbreaks across California in 2020, the state legislature passed Assembly Bill 3228 (AB 3228), which seeks to increase accountability for private detention facilities that fail to preserve the health and safety of people in their custody.<sup>10</sup> The law, which took effect Jan. 2, 2021, allows individuals to sue in state courts for private detention operators' failure to adhere to minimum detention standards as agreed upon in their contracts to operate the facilities.<sup>11</sup>

AB 3228 presents new opportunities to advocate against the harm caused by private detention facilities. Since CoreCivic began operating in the San Diego region at the turn of the millennium, nonprofit organizations, government oversight bodies, and detained people themselves have sounded the alarm about abuses at OMDC and its predecessor, the San Diego Correctional Facility (SDCF). But without clear recourse in the courts, those warnings fell on deaf ears. Now, with the ability to use California's court system to remedy violations, the failures of private prison operators will face much needed judicial oversight.

This Issue Brief aims to identify the broad themes that have emerged from lawsuits, complaints, media reports, academic and nonprofit research projects, and the government's own investigations of misconduct at the CoreCivic facility. As a compilation of some of the most enduring and egregious allegations against CoreCivic's Otay Mesa facility over the years, the Brief should serve as a resource for detained people and their advocates, and as a road map for future investigations into the corporation's activities at OMDC and beyond. Finally, the Brief is one more exhibit in the case to eliminate private prisons as a step toward ending the use of detention as a means of immigration enforcement.<sup>12</sup>

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<sup>10</sup> IMMIGRANT DEFENSE ADVOCATES, *AB 3228 Fact Sheet*, <https://imadvocates.org/wp-content/uploads/2020/08/AB-3228-Bonta-Fact-Sheet-8.11.2020.pdf>, (last accessed Jan. 22, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> This Issue Brief does not seek to minimize the culpability shared by ICE and USMS for the suffering of the individuals in their custody. Nor should it imply that *non*-privatized immigration and pre-trial incarceration would remedy the deep-rooted injustices perpetrated by incarceration, whether civil or criminal in nature. Instead, this Issue Brief focuses on for-profit CoreCivic's specific role in perpetuating abuses in the San Diego border region.



# Background

## The Rise of Immigration Detention and CoreCivic's History at Otay Mesa

CoreCivic's role at the helm of the Otay Mesa facility stems from a confluence of structural factors and government policies over the past several decades, including an expanding civil immigration detention system, increased criminalization of movement across borders, and greater outsourcing of jail and prison operations to the private sector. As a result, corporations like CoreCivic now wield enormous power over the lives of people deprived of their liberty by the government.

## Mass Incarceration of Immigrants

Although the United States has a well-documented history of inflicting cruelty on immigrants,<sup>13</sup> mass incarceration as a tool of immigration enforcement is a relatively modern development.

First deployed in a systematic fashion during an uptick in immigration from Cuba, Haiti, and Central America in the 1980s, the immigration detention system continued to grow through the end of the 20th century as new legislation rendered increasing numbers of immigrants subject to detention.<sup>14</sup> Paralleling the racially disproportionate impact of the era's "tough on crime" policies, this expansion of immigration detention inordinately impacted Black and Latino immigrants.<sup>15</sup>

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<sup>13</sup> Jessica Ordaz, *Migrant Detention Centers Have a Long History of Medical Neglect and Abuse*, WASHINGTON POST, Sept. 18, 2020, <https://www.washingtonpost.com/outlook/2020/09/18/migrant-detention-centers-have-long-history-medical-neglect-abuse/>.

<sup>14</sup> See César Cuauhtémoc García Hernández, *Naturalizing Immigration Imprisonment*, 103 CAL. L. REV. 1449, 1495 (2015); Danielle C. Jefferis, *Constitutionally Unaccountable: Privatized Immigration Detention*, 95 IND. L.J. 145, 153 (2020).

<sup>15</sup> See García Hernández, *supra* n. 14, at 1491; Yolanda Vazquez, *Constructing Crimmigration: Latino Subordination in A "Post-Racial" World*, 76 OHIO ST. L.J. 599, 641 (2015); Emily Ryo & Ian Peacock, *The Landscape of Immigration Detention in the United States*, AMERICAN IMMIGRATION COUNCIL, at 8–9 (Dec. 2018).

Then, in 1996, the Anti-Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) set into motion an unprecedented expansion of immigration detention. By adding even minor offenses and misdemeanors under state law to the grounds for so-called “mandatory detention,”<sup>16</sup> the 1996 laws required the detention of far greater numbers of immigrants than ever before.<sup>17</sup>

Since that time, the United States’ immigration detention system has exploded from incarcerating roughly 6,700 people per day in 1994<sup>18</sup> to more than 50,000 per day in ICE facilities alone (e.g., not including Customs and Border Protection stations) in 2019.<sup>19</sup> Large-scale releases of people during the COVID-19 pandemic, some court ordered, resulted in a drop to fewer than 15,000 detained people at the start of 2021, demonstrating that such a massive immigration detention system is unnecessary.<sup>20</sup>

“... [T]he United States’ immigration detention system has exploded from incarcerating roughly **6,700 people per day** in 1994 to **more than 50,000 per day** in ICE facilities alone ... in 2019. Mass releases of people during the COVID-19 pandemic ... resulted in a drop to less than 15,000 detained people at the start of 2021, **demonstrating that a massive immigration detention system is unnecessary.**”

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<sup>16</sup> As ICE uses the term, “mandatory detention” means that incarceration is required, based not on an individualized assessment of a person’s flight risk or dangerousness but instead on pre-determined categories of criminal history.

<sup>17</sup> See Stephanie J. Silverman, *Immigration Detention in America: A History of its Expansion and a Study of its Significance*, CENTRE ON MIGRATION, POLICY AND SOCIETY, at 13 (2010); García Hernández, *supra* n. 14, at 1943; AEDPA, 110 Stat. 1214; IIRIRA, PL 104-208 Div. C, 110 Stat. 3009 (1996); Philip J. Torrey, *Rethinking Immigration’s Mandatory Detention Regime: Politics, Profit, and the Meaning of “Custody”*, 48 U. MICH. J. L. REFORM 879, 895–96 (2015).

<sup>18</sup> Ryo, *et. al.*, *supra* n.15, at 6.

<sup>19</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *ERO FY 2019 Achievements*, <https://www.ice.gov/features/ERO-2019> (last accessed Jan. 22, 2021).

<sup>20</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus#detStat> (last accessed Feb. 3, 2021).

## Mass Criminalization of Movement Between Borders

Although ICE detention is purportedly civil in nature, the federal criminal legal system's own trajectory of expansion has ensnared larger numbers of immigrants as well. Prosecuting immigration violations as criminal offenses, including through fast-track mass prosecution programs like Operation Streamline,<sup>21</sup> became a renewed priority of the Department of Justice in the last two decades.

In 2019, almost 30,000 people were convicted of immigration-related criminal offenses,<sup>22</sup> compared to just over 4,200 in 1996.<sup>23</sup> Over roughly the same period, the total number of people convicted of all federal crimes doubled, and the average daily population of people in USMS custody, which confines people in pre-trial federal criminal proceedings, grew from about 23,000 in 1996 to over 63,000 in 2011.<sup>24</sup> The correlation of these increases indicates that the rising number of people in federal criminal custody was in significant part due to increased prosecutions for the offense of crossing the border without authorization.

## Mass Privatization of Incarceration

Beginning in the 1980s, in the face of rising expenses as prison populations grew, immigration enforcement and penal authorities alike turned to private companies.<sup>25</sup> The decades that followed brought about a boom in private prison construction and privatization of immigration detention. By 2016, the number of people confined in private immigration detention facilities accounted for more than 70% of all people in ICE custody.<sup>26</sup> As private prison corporations have grown more profitable, the private prison industry has expended millions on

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<sup>21</sup> AMERICAN CIVIL LIBERTIES UNION, *Fact Sheet: Criminal Prosecutions for Unauthorized Border Crossing*, Dec. 14, 2015, [https://www.aclu.org/sites/default/files/field\\_document/15\\_12\\_14\\_aclu\\_1325\\_1326\\_recommendations\\_final2.pdf](https://www.aclu.org/sites/default/files/field_document/15_12_14_aclu_1325_1326_recommendations_final2.pdf).

<sup>22</sup> UNITED STATES SENTENCING COMMISSION ("USSC"), *2019 Sourcebook of Federal Sentencing Statistics*, tbl.4: *Change in Number of Federal Offenders by Type of Crime* (2019), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Table04.pdf>.

<sup>23</sup> USSC, *1996 Sourcebook of Federal Sentencing Statistics*, tbl.41: *Demographic and Offence Information by Immigration Guideline* (1996), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/1996/TAB-41\\_0.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/1996/TAB-41_0.pdf).

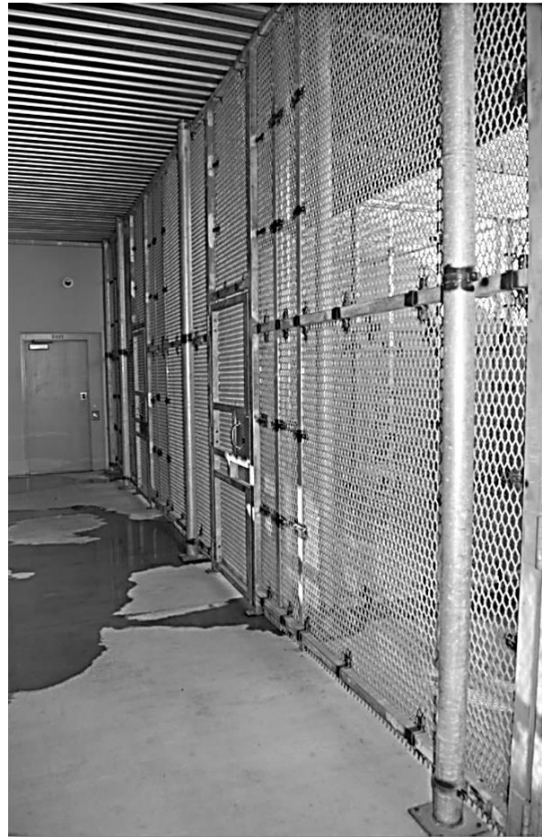
<sup>24</sup> USSC, *2019 Sourcebook*, *supra* n. 22, fig.3: *Number of Federal Offenders Over Time, FY 2010-2019*, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Figure03.pdf>; USSC, *1996 Sourcebook* tbl.41, *supra* n. 23; U.S. DEPARTMENT OF JUSTICE, *USMS 2020 Prisoner Fact Sheet*, <https://www.justice.gov/archive/odt/population.htm>

<sup>25</sup> Shane Bauer, *American Prison: A Reporter's Undercover Journey Into the Business of Punishment* 246 (2018).

<sup>26</sup> THE SENTENCING PROJECT, *Private Prisons in the United States*, Oct. 24, 2019, <https://www.sentencingproject.org/publications/private-prisons-united-states/>; AMERICAN CIVIL LIBERTIES UNION, *Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons*, at 9–10, <https://www.aclu.org/report/shutting-down-profiteers-why-and-how-department-homeland-security-should-stop-using-private>.

lobbying and campaign contributions,<sup>27</sup> aimed at growing political support for private detention as a tool of immigration enforcement.

The convergence of these factors breathed life into the private prison industry, which had over-extended after a period of rapid construction, predicated on a speculated increase in demand for jail and prison space that did not materialize.<sup>28</sup> These circumstances bailed out CoreCivic in particular. Before CoreCivic operated its current network of federal and state prisons, immigration detention centers, and juvenile facilities, which bring in billions in revenue per year,<sup>29</sup> its first venture was a Texas motel converted into a makeshift immigration detention facility, which immediately raised legal concerns when it opened in 1983.<sup>30</sup>



By the late 1990s, the corporation was in dire financial straits. In the third quarter of 2000, it reported hundreds of millions in losses.<sup>31</sup> But landing a contract to operate the first immigration detention facility in Otay Mesa, just north of the U.S.-Mexico border, helped resurrect CoreCivic's struggling business.<sup>32</sup>

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<sup>27</sup> Alan Zibel, *Detained for Profit: Spending Surges Under U.S. Immigration Crackdown*, PUBLIC CITIZEN, at 10, 17 (Sept. 18, 2019), <https://www.citizen.org/article/detained-for-profit-spending-surges-under-u-s-immigration-crackdown/>.

<sup>28</sup> Leslie Berestein, *Detention Dollars: Tougher Immigration Laws Turn the Ailing Private Prison Sector into a Revenue Maker*, SAN DIEGO UNION-TRIB, May 4, 2008; Lauren-Brooke Eisen, *Are Private Prisons in Trouble?*, BRENNAN CENTER FOR JUSTICE, Nov. 18, 2019, <https://www.brennancenter.org/our-work/research-reports/are-private-prisons-trouble>; Bauer, *American Prison*, *supra* n. 25, at 38.

<sup>29</sup> Zibel, *Detained for Profit*, *supra* n. 27, at 10–11; CORECIVIC, *CoreCivic Reports First Quarter 2020 Financial Results*, May 6, 2020, <http://ir.corecivic.com/news-releases/news-release-details/corecivic-reports-first-quarter-2020-financial-results>.

<sup>30</sup> Bauer, *American Prison*, *supra* n. 25, at 14; Wayne King, *Contracts for Detention Raise Legal Questions*, N.Y. TIMES, Mar. 6, 1984, <https://www.nytimes.com/1984/03/06/us/contracts-for-detention-raise-legal-questions.html>.

<sup>31</sup> Berestein, *Detention Dollars*, *supra* n. 28.

<sup>32</sup> *Id.*

Beginning in 1999, that facility, the San Diego Correctional Facility (SDCF), was owned and operated by CoreCivic on land leased from the San Diego County Sheriff's Department under contract with the U.S. Immigration and Naturalization Service (INS), the predecessor agency to ICE.<sup>33</sup> The San Diego Correctional Facility had capacity to incarcerate approximately 1,200 people for the immigration agencies and USMS,<sup>34</sup> though detained individuals alleged the facility was frequently at least 50% over capacity, with people forced to sleep on cell floors in so-called "boats"—plastic frames shaped like rafts.<sup>35</sup>

In late 2015, after its lease with the San Diego County Sheriff's Department ended, CoreCivic moved its ICE contract to OMD, which the corporation constructed on a nearby plot of land it purchased.<sup>36</sup>

The Otay Mesa Detention Center now has capacity to detain almost 2,000 people—about 1,200 in ICE custody and about 800 in USMS custody.<sup>37</sup> The population of the facility ranges from adults seeking asylum after presenting at a port of entry to long-time, lawful permanent residents in ICE custody, who are charged with being removable from the United States, in addition to immigrants and U.S. citizens in USMS custody who are charged criminally and awaiting trial or sentencing.<sup>38</sup>

DHS records indicate the federal government guarantees CoreCivic a minimum payment of \$154.24 per person detained in ICE custody per day for up to 600 beds, regardless of whether the bed space is occupied.<sup>39</sup> This means the government guarantees the corporation nearly \$34 million per year for ICE detention at OMD alone. For every person ICE detains beyond the guaranteed

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<sup>33</sup> Maya Srikrishnan, *How a Company Built the Only Immigrant Detention Center Able to Expand in California*, VOICE OF SAN DIEGO, Jan. 11, 2018, <https://www.voiceofsandiego.org/immigration/how-otay-mesa-became-the-last-detention-center-standing-in-california/>; CORRECTIONS CORPORATION OF AMERICA ("CCA"), *Annual Report: Form 2015 10-K for the Fiscal Year Ended December 31, 2015*, at F-53, <http://ir.corecivic.com/static-files/60284e8d-f98f-40d2-97c1-50d7f9d1afcb> (table on p. 149 indicates acquired in 1999).

<sup>34</sup> Leslie Berestein, *County Oks Mega-Prison for Immigrant Detainees*, SAN DIEGO UNION-TRIB., May 26, 2009, <https://www.sandiegouniontribune.com/sdut-1m26cca23931-county-oks-mega-prison-immigrant-deta-2009may26-htmlstory.html>; CCA "Annual Report," *supra* n. 33, at 119.

<sup>35</sup> Second Amended Complaint ¶ 61, ECF No. 57, *Kiniti v. Myers*, No. 3:05cv01013-DMS-PCL (S.D. Cal.) (Feb. 27, 2007).

<sup>36</sup> CCA, "Annual Report," *supra* n. 33, at 119.

<sup>37</sup> LaRose Decl. ¶ 9, ECF No. 26-1, ¶ 28, ECF No. 49-3, *Rodriguez Alcantara v. Archambeault*, No. 20cv0756-DMS-AHG (S.D. Cal.) (April 27, 2020); LaRose Decl., ECF No. 71-1, *Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG (S.D. Cal.) (May 28, 2020).

<sup>38</sup> Kate Morrissey, *Who's in ICE Custody at Otay Mesa Detention Center?*, SAN DIEGO UNION-TRIB., Oct. 15, 2018, <https://www.sandiegouniontribune.com/news/immigration/sd-me-immigration-detention-demographics-20181015-story.html>.

<sup>39</sup> DEPARTMENT OF HOMELAND SECURITY, U.S. *Immigration and Customs Enforcement Budget Overview: Fiscal Year 2021 Congressional Justification* at 137, [https://www.dhs.gov/sites/default/files/publications/7\\_u.s.\\_immigration\\_and\\_customs\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/7_u.s._immigration_and_customs_enforcement.pdf), (last accessed Jan. 23, 2021).



600, the agency pays another \$138.29 per day.<sup>40</sup> This profit-driven model incentivizes ICE to fill its detention centers by ensuring that the more beds filled, the lower the daily cost to detain each person.

In 2019, the average ICE daily population at OMDC was roughly 1,000,<sup>41</sup> meaning that ICE likely paid CoreCivic in excess of \$54 million to incarcerate immigrants at OMDC that year.<sup>42</sup> The money does not appear to have been well spent. A 2021 California Department of Justice report listed several deficiencies found during an inspection of the facility, including staffing shortages and insufficient physical space that negatively impact the standard of care at OMDC; substandard mental health services resulting in self-harm, psychiatric hospitalizations, and prolonged isolation of the “most vulnerable;” and a 284% increase in reports of sexual abuse and harassment between 2017 to 2019.<sup>43</sup>

Despite the passage of California’s AB 32 to phase out the use of private immigration detention centers and prisons in the state, CoreCivic will continue operating OMDC for years to come. In an apparent effort to skirt the new law, ICE rushed to lock in long-term contracts with existing private detention operators.<sup>44</sup> Just two weeks before the law was set to take effect, ICE approved a \$2.1 billion, five-year contract with CoreCivic.<sup>45</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> This is only the cost of providing a bed to people in ICE custody, and does not reflect the total cost of ICE detention, which also includes medical care, transportation, and other expenses not reflected in the mere housing costs.

<sup>43</sup> Cal. Dep’t. of Just., *Immigration Detention in California*, 98 (Jan. 2021), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2021.pdf>

<sup>44</sup> Rebecca Plevin, *ICE Signs Long-Term Contracts Worth Billions for Private Detention Centers, Dodging New State Law*, DESERT SUN, Dec. 20, 2019, <https://www.desertsun.com/story/news/2019/12/20/ice-signs-long-term-contracts-private-detention-centers-two-weeks-ahead-state-law/2713910001/>.

<sup>45</sup> *Id.*; Cal. Dep’t of Justice, *supra* n. 43, at 97.



## Decades of Abuse

In its 20-year history operating detention facilities in Otay Mesa, CoreCivic has consistently faced allegations of abusive practices and substandard conditions. These allegations have been made by attorneys, community organizations, academics, journalists, elected officials, CoreCivic employees, detained individuals, and even DHS internal investigators.

From its response to the COVID-19 pandemic to its treatment of its employees, the corporation has been criticized for a wide range of conduct spanning a spectrum of potential constitutional and legal violations. These allegations suggest that, at a minimum, CoreCivic's operation of OMDC warrants close scrutiny.

### Abysmal Medical Care and Unsafe Conditions

From 2002 until 2020, ICE Health Service Corps (IHSC) operated the in-house medical clinic at OMDC for individuals in the custody of both ICE and USMS.<sup>46</sup> The ICE Health Service Corps no longer provides medical care at OMDC after transferring the mammoth responsibility to CoreCivic in September 2020, in the middle of one of the deadliest pandemics and global health crises in modern history.

However, whether IHSC or CoreCivic medical staff run the clinic, CoreCivic guards have always been the daily points of contact for people in detention, managing both formal requests for medical assistance and informal observation of living conditions.<sup>47</sup> CoreCivic guards are responsible for facilitating requests for visits with a doctor, typically through a written system.<sup>48</sup> They are also

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<sup>46</sup> Complaint ¶¶ 49-50, *Woods v. Myers*, No. 3:07-cv-01078-DMS -PCL, (S.D. Cal.) (June 13, 2007), available at <https://www.clearinghouse.net/detail.php?id=9947> (Complaint references the Division of Immigrant Health Services, which was effectively the predecessor to ICE Health Service Corps); Fourth LaRose Decl. ¶¶ 32-33, ECF No. 123-2, *Rodriguez Alcantara v. Archambeault*, No. 20cv0756-DMS-AHG (S.D. Cal.) (Sept. 18, 2020).

<sup>47</sup> See IMMIGRATION AND CUSTOMS ENFORCEMENT, *Performance-Based National Detention Standards 2011*, 189 (rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf> at § 2.13. USMS details its medical standards in its sparse *Prisoner Health Care Standards*, [https://www.usmarshals.gov/foia/Reading\\_Room\\_Information/Publications/prisoner\\_health\\_care\\_standards.pdf](https://www.usmarshals.gov/foia/Reading_Room_Information/Publications/prisoner_health_care_standards.pdf) (last updated Nov. 2007). In it, USMS defines a condition requiring treatment to include “[a]ccidental or traumatic injuries incurred while in the custody of the USMS, that would likely lead to a significant loss of function or death.” *Id.* at 1. However, because individuals in USMS custody at OMDC also received healthcare through the ICE Health Service Corps through contact with CoreCivic guards, they often experienced similar issues as their counterparts in ICE custody.

<sup>48</sup> See Amended Complaint ¶ 95, *Morales-Alfaro v. U.S. Dep’t of Homeland Sec.*, No. 3:20-cv-00082-LAB-BGS (S.D. Cal.), (Jan. 16, 2020 ).

charged with responding to verbal requests and referrals based on observed health difficulties.<sup>49</sup> Indeed, pursuant to ICE national detention standards, contract detention facility staff at OMDC are responsible for ensuring that individuals inside have access to prompt medical attention.<sup>50</sup>

Even before the COVID-19 pandemic spread throughout OMDC, CoreCivic's operations in Otay Mesa have been among the deadliest in the country.<sup>51</sup> Since 2003, at least 12 individuals have died while in custody at OMDC or shortly after release.<sup>52</sup>

Experts have linked several of these deaths to negligent healthcare.<sup>53</sup> Because of CoreCivic's integral role in the provision of medical care at OMDC, even before the transfer of responsibility to the company, one court held CoreCivic was a proper defendant in an ongoing wrongful death lawsuit in San Diego, California.<sup>54</sup>

Even before the pandemic, CoreCivic's operations in Otay Mesa have been among the deadliest in the country. Since 2003, at least 12 individuals have died while in custody at OMDC or shortly after release.

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<sup>49</sup> Affidavit of Roger A. Clark at 10-12, *Estate of Cruz-Sanchez by & Through Rivera v. United States*, No. 17CR0569-AJB-NLS, 2018 WL 7287809 (S.D. Cal.), (June 8, 2018).

<sup>50</sup> ICE, *Performance-Based National Detention Standards 2011*, *supra* n. 47, at § 4.3.

<sup>51</sup> Data indicate that the Otay Mesa facility is tied for fifth highest number of deaths among U.S. immigration detention centers between October 2003 and May 2018, but its actual rank may be higher. The data analyzed did not include one death that occurred prior to October 2003, nor three deaths that occurred between May 2018 and May 2020 (*see* Appendix 1). It also did not include the deaths of two individuals who died shortly after their release. Comparative data was obtained from:

HUM. RIGHTS WATCH, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* at 66-73, June 2018, <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-06/Code%20Red-%20detention%20deaths%20report%20June%202018.pdf>;

U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, *Detainee Deaths - Oct. 2003 through Jun. 5, 2017*, ICE.GOV, 2017, <https://www.ice.gov/doclib/foia/reports/detaineedeaths-2003-2017.pdf> (last visited Jan. 23, 2021).

<sup>52</sup> *See* Appendix 1.

<sup>53</sup> HUM. RIGHTS WATCH, *Code Red*, *supra* n. 51.

<sup>54</sup> *Estate of Cruz-Sanchez by & through Rivera v. United States*, No. 17-CV-569-AJB-NLS, 2019 WL 4508571 (S.D. Cal. Sept. 17, 2019), *reconsideration denied*, No. 17-CV-569-AJB-NLS, 2020 WL 3868495 (S.D. Cal. July 9, 2020) (substantially denying Defendants' motion for summary judgment).

The company has been the subject of at least eight other lawsuits, several human rights investigations,<sup>55</sup> and hundreds of letters from detained individuals and advocacy groups<sup>56</sup>—all of which allege serious breaches of health and safety standards at OMD.

**Upon review of these complaints and grievances, three general categories of medical and safety issues emerged:**

1. CoreCivic is unacceptably slow to acknowledge and react to protect people in its custody from communicable disease, most recently in response to the COVID-19 pandemic.
2. CoreCivic's personnel and policies have contributed to perilous delays in accessing appropriate physical and mental healthcare.
3. CoreCivic's refusal to provide a safe living environment has endangered people detained at OMD.

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<sup>55</sup> See, e.g., HUM. RIGHTS WATCH, *Code Red*, *supra* n. 51.

<sup>56</sup> See, e.g., TRANSGENDER LAW CTR, ET AL., *Failure to Provide Adequate Medical and Mental Health Care to LGBTQ People and People Living with HIV in Immigration Detention Facilities*, Sept. 25, 2019, <http://transgenderlawcenter.org/wp-content/uploads/2019/09/Complaint-on-LGBTQ-PLHIV-DHS.pdf> (last visited Jan. 23, 2021);

DETAINEE ALLIES, *Testimony from Migrants and Refugees in the Otay Mesa Detention Center*, Jan. 2019, <https://drive.google.com/file/d/13jFd-JyPa7odT8aNYmJvG8e9pOOynk16/view> (last visited Feb. 2, 2021).

On May 6, 2020, Mr. Escobar Mejia became the first person in ICE custody to die from COVID-19, two weeks after contracting the virus at the Otay Mesa Detention Center.

## Failed Response to Communicable Diseases, Including COVID-19

The Otay Mesa Detention Center made national news when it became an epicenter for the COVID-19 pandemic.<sup>57</sup> In the span of four weeks in Spring 2020, more than 160 people confined in the facility tested positive for the virus. On May 6, 2020, Carlos Ernesto Escobar Mejia, a 57-year-old man from El Salvador detained at OMDC, died from COVID-19.<sup>58</sup> Nationwide, by June 30, 2020, more than 2,500 people held in CoreCivic-run facilities and more than 500 CoreCivic employees had reportedly tested positive for COVID-19.<sup>59</sup> Yet, amid the massive outbreak at OMDC and other CoreCivic facilities, the corporation reported \$25 million dollars in profit between April 2020 and May 2020.<sup>60</sup>

Though scientific knowledge about the virus has developed over the course of the pandemic, experts, including DHS whistleblowers, warned as early as February 2020 that the virus spreads rapidly in congregate environments and that social distancing is the most effective way to curb transmission.<sup>61</sup>

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<sup>57</sup> Ryan Devereaux, *ICE Detainee Who Died Of Covid-19 Suffered Horrifying Neglect*, THE INTERCEPT, May 24, 2020, <https://theintercept.com/2020/05/24/ice-detention-coronavirus-death/>; Alejandro Lazo and Zusha Elinson, *Inside the Largest Coronavirus Outbreak in Immigration Detention*, WALL STREET JOURNAL, Apr. 30, 2020, <https://www.wsj.com/articles/inside-the-largest-coronavirus-outbreak-in-immigration-detention-11588239002>.

<sup>58</sup> Jennifer Lothspeich, *1st COVID-19 related death of Otay Mesa Detention Center detainee confirmed*, CBS 8 (May 6, 2020), [www.cbs8.com/article/news/local/coronavirus-san-diego-covid-19-death-otay-mesa-detention-center-detainee/509-4c7c2f6d-abac-43a6-8811-a720c9af3661](http://www.cbs8.com/article/news/local/coronavirus-san-diego-covid-19-death-otay-mesa-detention-center-detainee/509-4c7c2f6d-abac-43a6-8811-a720c9af3661).

<sup>59</sup> Matt Blois, *CoreCivic Reports \$25M in Profits as COVID Infects 2,500+ Inmates*, NASHVILLE POST, June 30, 2020, <https://www.nashvillepost.com/business/prison-management/article/21138792/corecivic-reports-25m-in-profits-as-covid-infects-2500-inmates>; Ken Stone, *CoreCivic, Which Runs Otay Mesa Detention Center, Reports 500 COVID Positives*, TIMES OF SAN DIEGO (July 13, 2020), <https://timesofsandiego.com/politics/2020/07/13/corecivic-which-runs-otay-mesa-detention-center-tells-500-covid-positives/>.

<sup>60</sup> Matt Blois, *supra* n. 59.

<sup>61</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Coronavirus Disease 2019 (COVID-19) - Transmission*, (2020), Oct. 8, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>, (last visited Jan. 23, 2021); See, e.g., *Letter from Scott Allen and Josiah Rich to Congressional Committee Chairpersons and Ranking Members*, Mar. 19, 2020, <https://d279m997dpfwgl.cloudfront.net/wp/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf>.

Despite these warnings, CoreCivic failed to make meaningful changes to operations at OMDC until weeks after the first case of COVID-19 was detected.<sup>62</sup>

The first CoreCivic employee at OMDC tested positive for the virus on March 30, 2020,<sup>63</sup> and by April 3, 2020, another employee and a detained person had tested positive.<sup>64</sup> Four weeks later, there were close to 200 confirmed cases at OMDC, including 160 individuals held in the facility, eight medical staff, eight ICE employees, and 17 CoreCivic employees.<sup>65</sup> During those crucial weeks, individuals resided in large, congregate housing units near full capacity with shared toilets and showers, and many detained people reported they were unable to social distance.<sup>66</sup> On May 6, 2020 Mr. Escobar Mejia became the first person in ICE custody to die from COVID-19, two weeks after contracting the virus at OMDC.<sup>67</sup>

The assistant warden also reportedly told employees that they would not receive masks because the facility was “over budget,” and “if they provided masks for the officers, they would have to provide them to detainees/inmates.”

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<sup>62</sup> See *id.*

<sup>63</sup> Max Rivlin-Nadler, *Lawmakers Ask Newsom To Stop Transferring People From Prison To ICE Detention*, KPBS, July 6, 2020, <https://www.kpbs.org/news/2020/jul/06/lawmakers-ask-newsom-stop-transferring-people-/>; Dave Summers, *Employee Critical of Anti-Coronavirus Measures at Otay Mesa Detention Center*, NBC SAN DIEGO, Apr. 1, 2020, <https://www.nbcsandiego.com/news/local/employee-critical-of-anti-coronavirus-measures-at-otay-mesa-detention-center/2298001/>; Kate Morrissey, *Detainees at Otay Mesa Detention Center Were Offered Masks, But Only if They Signed Contracts*, SAN DIEGO UNION-TRIB., Apr. 10, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-04-10/otay-mesa-detention-center-gets-masks-but-asks-detainees-to-sign-contract-first>

<sup>64</sup> Kate Morrissey, *Immigrant Detainee, Second Employee at Otay Mesa Detention Center Test Positive for COVID-19*, SAN DIEGO UNION-TRIB., Apr. 3, 2020, [www.sandiegouniontribune.com/news/immigration/story/2020-04-03/immigrant-detainee-and-second-employee-at-otay-mesa-detention-center-test-positive-for-covid-19](http://www.sandiegouniontribune.com/news/immigration/story/2020-04-03/immigrant-detainee-and-second-employee-at-otay-mesa-detention-center-test-positive-for-covid-19)

<sup>65</sup> Jennifer Lothspeich, *1st COVID-19 Related Death of Otay Mesa Detention Center Detainee Confirmed*, CBS 8, May 6, 2020, [www.cbs8.com/article/news/local/coronavirus-san-diego-covid-19-death-otay-mesa-detention-center-detainee/509-4c7c2f6d-abac-43a6-8811-a720c9af3661](http://www.cbs8.com/article/news/local/coronavirus-san-diego-covid-19-death-otay-mesa-detention-center-detainee/509-4c7c2f6d-abac-43a6-8811-a720c9af3661).

<sup>66</sup> Complaint ¶ 23, *Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG (S.D. Cal.) (April 25, 2020). When individuals are placed into solitary confinement, two people are usually confined per cell and it is impossible to remain six feet apart. *Id.* ¶ 21.

<sup>67</sup> Kate Morrissey, *First ICE Detainee Dies from COVID-19 After Being Hospitalized from Otay Mesa Detention Center*, SAN DIEGO UNION-TRIB., May 6, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center>; Sam Levin, *He Lived in the US for 40 Years. Then He Became the First to Die From Covid-19 in Immigration Jail*, GUARDIAN, May 12, 2020, <https://www.theguardian.com/us-news/2020/may/12/first-ice-detainee-dies-coronavirus-immigration-carlos-ernesto-escobar-mejia>.

Staff members and vendors continued to cycle into the facility every day from the surrounding community, potentially bringing the virus in from their various communities or carrying it back out to their communities.<sup>68</sup>

According to a former employee, weeks after CoreCivic issued a March 12 “Medical Action Plan” stating “face masks are provided to all staff and those in our care,” and “[d]isposable gloves are readily available for staff conducting searches and handling property,” OMDC’s warden instructed employees not to wear masks for fear that the federal government would “shut us down.”<sup>69</sup>

The assistant warden also reportedly told employees that they would not receive masks because the facility was “over budget,” and “if they provided masks for the officers, they would have to provide them to detainees/inmates.”<sup>70</sup>

Individuals held at OMDC reported that CoreCivic did not provide masks until almost two weeks after the first case of COVID-19 at the facility was confirmed.<sup>71</sup> Prior to that, the people detained at OMDC reportedly had resorted to making their own masks out of items like cut-up shirts, socks, and towels.<sup>72</sup>

On April 10, 2020, a shipment of surgical masks arrived at OMDC. But rather than distributing the masks freely, CoreCivic staff initially required people to sign waivers releasing CoreCivic from liability, reportedly telling women in a housing pod that they would not be provided a mask unless they signed the waivers.<sup>73</sup> The waivers required detained persons to “hold harmless” CoreCivic, its agents, and employees, “from any and all claims... related directly to wearing the face mask.”<sup>74</sup> The women, wary of signing away their rights, demanded that they be

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<sup>68</sup> *Rodriguez Alcantara LaRose Decl.* ¶ 57, *supra* n. 37.

<sup>69</sup> Complaint ¶¶ 65, 103, *Arnold v. CoreCivic of Tennessee, LLC*, No. 20-CV-0809 W (MDD), 2020 WL 2085988 (S.D. Cal. April 29, 2020); Media Statement, CoreCivic, *CoreCivic Statement on COVID-19 Prevention* (March 12, 2020), <https://www.corecivic.com/en/corecivic-statement-on-covid-19-prevention>.

<sup>70</sup> Complaint ¶ 104, *Arnold v. CoreCivic of Tennessee, supra* n. 69.

<sup>71</sup> See Complaint ¶ 63, *Alvarez v. LaRose, supra* n. 66. CoreCivic has also been deficient in providing PPE at its other facilities. For example, according to a former CoreCivic employee at the Eloy detention facility in Arizona, CoreCivic provided its staff with “garbage bags with holes cut in them instead of protective gowns when entering isolation pods with detainees infected with the COVID-19 coronavirus.” See Daniel Gonzalez, *Former Eloy Correctional Officers Blame Negligence for Huge COVID-19 Outbreak*, AZ CENTRAL, July 1, 2020, <https://www.azcentral.com/story/news/politics/immigration/2020/07/01/two-ely-officers-detail-management-failures-enabling-covid-outbreak/3255079001/>.

<sup>72</sup> Morrissey, *Detainees at Otay Mesa, supra* n. 63; Decl. of Victor Lara Soto ¶ 28, ECF No. 1-9, *Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG (S.D. Cal.) (May 28, 2020).

<sup>73</sup> Lara Soto Decl. ¶ 17, *supra* n. 72.

<sup>74</sup> Morrissey, *Detainees at Otay Mesa, supra* n. 63 (Copy of waiver on file with authors). The waiver was only printed in English, despite the fact that many people held at OMDC are non-English speakers. CoreCivic reportedly used similar tactics in other locations, including its La Palma Correctional Center near Phoenix. See DEMOCRACY NOW, *Immigrant Prisoners in Arizona Must Sign Liability Waiver to Receive Face Masks*, Apr. 22, 2020, [https://www.democracynow.org/2020/4/22/headlines/immigrant\\_prisoners\\_in\\_arizona\\_must\\_sign\\_liability\\_waiver\\_to\\_receive\\_face\\_masks](https://www.democracynow.org/2020/4/22/headlines/immigrant_prisoners_in_arizona_must_sign_liability_waiver_to_receive_face_masks).



given the masks to protect themselves.<sup>75</sup> In response, CoreCivic staff reportedly threatened them, deployed pepper spray, and removed three women from the housing pod.<sup>76</sup> Hours later, CoreCivic staff changed course and distributed masks without requiring signed liability waivers.<sup>77</sup>

In the facility's early effort to group detained people who had been exposed to the virus but had not yet tested positive, also known as "cohorting," medically vulnerable people were placed in housing units with other people who had been exposed to the virus, despite significant risk of serious harm or death. This exposure persisted until a judge issued an order requiring the release of medically vulnerable people from the facility.<sup>78</sup> Mr. Escobar Mejia—the man who later died from COVID-19 in CoreCivic's custody—asked to see a doctor after he became sick, but was instead allegedly "cohorted" for days in a housing unit at OMDC.<sup>79</sup> In a recent lawsuit on behalf of Mr. Escobar Mejia's estate, CoreCivic is a named defendant for its role in Mr. Escobar Mejia's wrongful death.<sup>80</sup>

CoreCivic's response to COVID-19 is consistent with its history of failing to contain the spread of contagious diseases. According to a former employee, CoreCivic does not train its employees on how to address contagious diseases.<sup>81</sup> These claims are corroborated by past allegations that CoreCivic has mishandled communicable illness risks, resulting in the unnecessary exposure of people in its custody to measles, mumps, and tuberculosis.<sup>82</sup>

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<sup>75</sup> Morrissey, *Detainees at Otay Mesa*, *supra* n. 63.

<sup>76</sup> *Id.*

<sup>77</sup> Decl. of Noe Gonzalez-Soto ¶¶ 17-18, ECF No. 1-12, *Alvarez v. LaRose*, No. 3:20-cv-00782-DMS-AHG (S.D. Cal.) (Apr. 25, 2021). Not only did CoreCivic fail to supply PPE for people held in its custody, it also refused to accept donations of masks. After receiving reports that individuals held at OMDC were not receiving adequate PPE, California Assemblywoman Lorena Gonzalez (in partnership with immigrants' rights organizations) attempted to deliver 1,000 face masks to OMDC on April 24, 2020. Assemblywoman Gonzalez was not permitted to speak to any officials at OMDC and the masks were not accepted. *See* Kate Morrissey, *Otay Mesa Detention Center Blocks Detainees' Calls to a Group of Activists*, SAN DIEGO UNION-TRIB., June 15, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-06-15/otay-mesa-detention-calls>.

<sup>78</sup> Order Granting in Part Plaintiff's Motion for Class Certification and Granting Plaintiffs' Motion for Subclass-wide Emergency Temporary Restraining Order at 2, ECF No. 41, *Rodriguez Alcantara v. Archambeault*, Case No. 20cv0756 DMS (AHG) (S.D. Cal. May 1, 2020).

<sup>79</sup> Ryan Devereaux, *ICE Detainee Who Died of COVID-19 Suffered Horrifying Neglect*, THE INTERCEPT, May 24, 2020, <https://theintercept.com/2020/05/24/ice-detention-coronavirus-death/>.

<sup>80</sup> Complaint, *Estate of Escobar Mejia v. Archambeault*, No. 20-cv-2454-MMA-KSC (S.D. Cal.) (Dec. 16, 2020).

<sup>81</sup> Complaint ¶ 39, *Arnold v. CoreCivic of Tennessee*, *supra* n. 69.

<sup>82</sup> *Id.* ¶ 34 (describing "numerous incidents of detainees or inmates that arrived with measles or mumps, requiring entire housing units to be cohorted or quarantined"); *see also* J. David McSwane, *ICE Has Repeatedly Failed to Contain Contagious Diseases, Our Analysis Shows. It's a Danger to the Public*, PROPUBLICA, Mar. 20, 2020, <https://www.propublica.org/article/ice-has-repeatedly-failed-to-contain-contagious-diseases-our-analysis-shows-its-a-danger-to-the-public> (describing incident in which OMDC medical screeners found evidence of tuberculosis in a 62-year-old woman but OMDC staff placed her in close contact with other detainees for hours rather than before taking her to medical isolation); CALIFORNIA HEALTH ALERT NETWORK ("CAHAN"), *Health Advisory Update: Mumps and Acute Parotitis in San Diego*, July 19, 2019 (noting mumps outbreak at Otay

CoreCivic officers reportedly taunted Mr. Cruz-Sanchez for being “wimpy,” told him and his cellmate that Mr. Cruz-Sanchez would only be taken to the hospital if he were dead or dying, and yelled at Mr. Cruz-Sanchez for coughing up blood on a table.

## Unreasonable Delays in Responding to Medical Concerns

Long before the pandemic, it appears that CoreCivic did not adequately train its staff to uphold their duties of care to people confined at the Otay Mesa facility.

For example, Gerardo Cruz-Sanchez died of pneumonia in 2016 after CoreCivic officers allegedly dismissed his lawyer’s and his cellmate’s repeated requests for assistance on his behalf.<sup>83</sup> His cellmate said Mr. Cruz-Sanchez had not been able to eat anything for a week, was vomiting, and eventually coughed up so much blood it left stains on his bedding.<sup>84</sup>

CoreCivic officers reportedly taunted Mr. Cruz-Sanchez for being “wimpy,” told him and his cellmate that Mr. Cruz-Sanchez would only be taken to the hospital if he were dead or dying, and yelled at Mr. Cruz-Sanchez for coughing up blood on a table.<sup>85</sup>

Even when Mr. Cruz-Sanchez’s lawyer reached a facility supervisor, timely follow up was allegedly not provided.<sup>86</sup> When it was far too late, Mr. Cruz-Sanchez was rushed to a hospital, where he died from complications of pneumonia.<sup>87</sup>

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Mesa in 2019),

[https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/cahan/communications\\_documents/CAHAN\\_07-19-2019.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/cahan/communications_documents/CAHAN_07-19-2019.pdf).

<sup>83</sup> Affidavit of Roger A. Clark., *supra* n. 49, at 4-7.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 8; Kristina Davis, *Mexican Man’s Widow Sues Over Otay Mesa Jail Death, Says Pleas For Help Ignored*, SAN DIEGO UNION-TRIB., Mar. 23, 2017, <https://www.sandiegouniontribune.com/news/courts/sd-mc-detention-lawsuit-20170323-story.html>.

In the ensuing wrongful death suit, a CoreCivic guard at OMDC testified that he could not remember receiving any training on making medical referrals, despite records indicating that he completed a self-study computer module on the topic, or on how to recognize symptoms of chronic or mental illnesses or adverse reactions to medications.<sup>88</sup>

Mr. Cruz-Sanchez is not the only victim. According to multiple reports, health complaints often go ignored by CoreCivic officers, and sometimes, they are actively discouraged.<sup>89</sup>

- A January 2019 report by Human Rights First compiled several stories from individuals interviewed at OMDC between October 2018 and January 2019.<sup>90</sup> One woman named Roxana said she was repeatedly ignored by CoreCivic staff for two months while she complained of hemorrhaging.<sup>91</sup> Eventually, she said she fainted, was taken to the hospital, and had to have a blood transfusion in the hospital parking garage.<sup>92</sup> Another woman named Irene reported waiting at least two months to see a gynecologist for her uterine fibroids, which caused her to experience abdominal pain and vaginal bleeding, despite complaining about her symptoms to CoreCivic staff multiple times.<sup>93</sup> In another case, a 53-year-old woman said guards forced her to walk despite her complaining of severe back pain several times.<sup>94</sup> She eventually fell and injured herself so severely that she was confined to a wheelchair.<sup>95</sup>
- In 2018, Rubia Mabel Morales-Alfaro filed a lawsuit against CoreCivic after suffering a miscarriage while in ICE custody. Morales-Alfaro said she pleaded with OMDC staff every day for two weeks to see a doctor due to her pain and bleeding. When she was finally seen by hospital staff, she said she was told that the miscarriage likely could have been prevented had she received medical attention sooner.<sup>96</sup>
- In 2017, an immigration lawyer reported that after a legal visit, her pregnant client became light-headed while waiting for a CoreCivic guard to transport her back to her detention unit. The client eventually fainted

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<sup>88</sup> Affidavit of Roger A. Clark., *supra* n. 49, at 8, 9.

<sup>89</sup> *Id.* at 11; Complaint ¶¶ 49-50, *Woods v. Myers*, *supra* n. 46; DETAINEE ALLIES, *supra* n. 56, at 12; HUM. RIGHTS FIRST, *Prisons and Punishment: Immigration Detention in California*, 12, Jan. 2019,

[https://www.humanrightsfirst.org/sites/default/files/Prisons\\_and\\_Punishment.pdf](https://www.humanrightsfirst.org/sites/default/files/Prisons_and_Punishment.pdf) (last visited Feb. 2, 2021).

<sup>90</sup> HUM. RIGHTS FIRST, *Prisons and Punishment: Immigration Detention in California*, *supra* n. 89, at 2.

<sup>91</sup> *Id.* at 12.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 11.

<sup>94</sup> *Id.* at 12.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

and lost consciousness. She woke up hours later to find herself abandoned in the locked legal visitation room and had to pound on the door to get CoreCivic guards' attention to be released.<sup>97</sup>

- In 2008, a transgender woman held in segregation reported that guards would not provide her the forms necessary to request medical care, and that she was forced to take her HIV medication without food, causing nausea and making it difficult to keep the medicine down.<sup>98</sup>
- In 2008, Francisco Castañeda died of cancer after receiving grossly inadequate medical care when medical staff at OMDC refused to biopsy a penile lesion for months, resulting in having his penis amputated due to penile cancer that had long gone undiagnosed.<sup>99</sup> Although a subsequent lawsuit was filed against the government's employees rather than CoreCivic, a judge in that case explained: "Everyone knows that cancer is often deadly. .... Everyone knows that if you deny someone the opportunity for an early diagnosis and treatment, you may be—literally—killing the person." The judge wrote that the care provided to Castañeda "can be characterized by one word: nothing."
- In 2007, a class-action lawsuit against ICE and CoreCivic regarding substandard healthcare practices at the SDCF contained allegations regarding the death of Ignacio Sarabia Villaseñor, who collapsed at the SDCF in 2005 due to a heart attack. According to the complaint, CoreCivic correctional officers first imposed a lockdown of all nearby individuals, and then stood over Sarabia as his chest heaved. Reportedly, despite pleas from other detained individuals urging the guards to do something, no one began cardiopulmonary resuscitation until approximately 25 minutes after Sarabia collapsed, when he was already dead.

In another incident from 2003 described in the complaint, detained individuals allegedly had noticed that Bill Roy Kurt Marion had a large red mark on his anterior neck. His cellmate said he notified facility staff that Marion needed attention after showing signs of severe mental distress. According to the complaint, nothing was done. Marion later hanged himself with a bed sheet tied to the bunk bed.<sup>100</sup>

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<sup>97</sup> Letter from ACLU of San Diego & Imperial Counties to Acting Director of ICE Thomas Homan, Sept. 11, 2017. On file with authors.

<sup>98</sup> Decl. of Diana Santander Leyva ¶ 7, ECF No 7-1, *Santander Leyva v. Baker et al.*, No. 3:08cv01485-JAH-NLS (Aug. 22, 2008).

<sup>99</sup> AM. CIV. LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, *Francisco Castaneda's Treatment at the Corrections Corp of America's Otay Mesa Detention Center*, Mar. 13, 2008, <https://www.aclusandiego.org/francisco-castanedas-treatment-at-the-correction-corporations-of-americas-otay-mesa-detention-center-the-term-cruel-is-inadequate-judge-says/> (last visited Jan. 25, 2021).

<sup>100</sup> *Id.*

## Dangerous Building Conditions and Inadequate Food

In lawsuits and letters, detainees have accused CoreCivic of failing to maintain a safe living environment and not providing adequate nourishment and other necessities.<sup>101</sup> People have repeatedly expressed concerns over structurally unsafe living conditions at OMDC and contaminated, unsuitable, or insufficient food.

- In October 2019, 37-year-old Nebane Abienwi suffered a stroke while on his rail-less top bunk, causing him to fall to the ground. He subsequently died.<sup>102</sup> According to a CoreCivic guard, rails on the top bunks at OMDC were installed only after Mr. Abienwi's fall, despite "multiple instances of detainees falling off their top bunks."<sup>103</sup>
- In 2007, Eamma Jean Woods filed a lawsuit in which she described being assigned to a top bunk at the Otay Mesa facility despite having a seizure disorder, which went untreated for at least 11 months while she was detained.<sup>104</sup> She said this placed her at risk of falling and severely injuring herself.<sup>105</sup>
- In a 2006 lawsuit, Guadalupe Ignacio presented documentation of her medical need for a bottom bunk at the Otay Mesa facility but was nonetheless assigned to a top bunk without rails or a ladder, even after she was prescribed medication that could make the bunk assignment even more dangerous.<sup>106</sup> In January 2007, she experienced vertigo while on the medication and fell from her bunk—fracturing her nose; breaking and dislodging several teeth; and causing damage to her shoulder, back, and neck.<sup>107</sup>



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<sup>101</sup> See, e.g., DETAINEE ALLIES, *supra* n. 56; Robbins, *supra* n. 9.

<sup>102</sup> Joe Penney, *How Medical Negligence at the US Border Killed an Immigrant Father*, THE NATION, Feb. 25, 2020, <https://www.thenation.com/article/world/ice-death-negligence/> (last visited Jan. 25, 2021); Complaint ¶ 42, *Arnold v. CoreCivic of Tennessee*, *supra* n. 69.

<sup>103</sup> Complaint ¶ 42, *Arnold v. CoreCivic of Tennessee*, *supra* n. 69.

<sup>104</sup> Complaint ¶ 72, *Woods v. Myers*, *supra* n. 46.

<sup>105</sup> *Id.*

<sup>106</sup> Amended Complaint ¶ 17-21, *Ignacio v. Corr. Corp. of America*, No. 3:08-cv-00085-BEN-JMA, 2008 WL 527349 (S.D. Cal.) (May 27, 2009).

<sup>107</sup> *Id.*

As part of a correspondence project, a network of volunteers from the organization Detainee Allies and professors at San Diego State University collected letters from individuals detained at OMDC between 2018 and 2019.<sup>108</sup> The most common complaint expressed in these letters was inadequate food.<sup>109</sup> One detained individual wrote: “The meal schedule is irregular, and the food is not healthy. An officer said that it was food for dogs.”<sup>110</sup>

Other accounts described food as spoiled and often insufficient to satiate hunger.<sup>111</sup> In her 2018 lawsuit against CoreCivic, Rubia Mabel Morales-Alfaro, who was pregnant at the time she was detained, alleged that OMDC failed to provide her with an appropriate prenatal diet—instead, providing her food that was “nearly inedible and full of starch filler.”<sup>112</sup> Morales-Alfaro said she believed this contributed to her ultimate miscarriage.<sup>113</sup>

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<sup>108</sup> DETAINEE ALLIES, *supra* n. 56.

<sup>109</sup> *Id.* at 1.

<sup>110</sup> Robbins, *supra* n. 9.

<sup>111</sup> DETAINEE ALLIES, *supra* n. 56, at 13.

<sup>112</sup> *Morales-Alfaro Amended Complaint*, *supra* n. 48, at 30.

<sup>113</sup> *Id.*



Between October 2012 and March 2016, the Otay Mesa Detention Center was in the top five of all private detention facilities in terms of the volume of calls reporting sexual or physical assaults.

## Culture of Abuse, Violence, and Sexual Assault

Detained people consistently report systemic abuse by CoreCivic staff at OMDC.<sup>114</sup> The organization Freedom for Immigrants (“FFI”) found numerous reports of hate and bias-motivated abuse by private prison employees nationwide.<sup>115</sup> In 2019, over 70 detained people penned a letter to FFI decrying the culture of abuse and other problems they faced at OMDC.<sup>116</sup> Detained people have reported verbal abuse from CoreCivic staff ranging from racist slurs to mocking people with mental health problems about losing their immigration court cases.<sup>117</sup>

When FFI analyzed calls to ICE’s Detention Reporting and Information Line between October 2012 and March 2016, OMDC was in the top five of all private detention facilities in terms of the volume of calls reporting sexual or physical assaults.<sup>118</sup>

The Prison Rape Elimination Act (“PREA”) requires all ICE and USMS detention facilities to provide “multiple internal ways for inmates to privately report sexual abuse and sexual harassment,” at least one way to report externally to a public or private office outside the agency.<sup>119</sup> Standards also

<sup>114</sup> Cindy Knoebel, *Immigrants Detained in San Diego Immigrant Prison Report Intolerable Conditions*, IMMPRINT, Feb. 1, 2019, <https://imm-print.com/immigrants-detained-in-san-diego-immigrant-prison-report-intolerable-conditions/> (last visited on Jan. 26, 2021).

<sup>115</sup> FREEDOM FOR IMMIGRANTS, *Persecuted in U.S. Immigration Detention: A National Report on Abuse Motivated Hate*, 2018, <https://www.freedomforimmigrants.org/report-on-hate> (last visited on Jan. 25, 2021).

<sup>116</sup> Kate Morrissey, *More Than 70 Detainees Condemn Conditions in San Diego Immigration Facility*, SAN DIEGO UNION-TRIB, Feb. 11, 2019, <https://www.sandiegouniontribune.com/news/immigration/sd-me-otay-conditions-letter-20190211-story.html> (last visited on Jan. 25, 2021).

<sup>117</sup> Knoebel, *supra* n. 114; Kate Morrissey, *Grandmother With Mental Health Condition in ICE Solitary for 3 Months*, SAN DIEGO UNION-TRIB, Feb. 8, 2018, <https://www.sandiegouniontribune.com/news/immigration/sd-me-ice-mentalhealth-20180124-story.html> (last visited on Jan. 26, 2021).

<sup>118</sup> Complaint from Freedom for Immigrants (formerly Community Initiatives for Visiting Immigrants in Confinement) to Dep’t Homeland Security Office of Civil Rights and Civil Liberties, p. 7 (April 11, 2017) (“CIVIC Complaint”) <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9da297419202ab8bc09c92/1520280217559/SexualAssault+Complaint.pdf>.

<sup>119</sup> 42 U.S.C. § 15601.

require discipline for any staff caught violating a detained person's sexual or bodily autonomy, "with termination the presumptive discipline for staff engagement in sexual abuse."<sup>120</sup>

Despite these provisions, reports of physical and sexual abuse at OMDC persist. CoreCivic's own disclosures under PREA show that in 2019, there were 49 reported incidents of "inmate/detainee-on-inmate/detainee" sexual abuse and 19 reported incidents of "employee-on-inmate/detainee" sexual abuse, the most reported out of any CoreCivic facility in the country for either category.<sup>121</sup> CoreCivic did not substantiate any of the allegations against employees, which may reflect a broader issue with PREA reporting in which corrections officials "close ranks" around their colleagues.<sup>122</sup> However, CoreCivic substantiated an alarming 14 of the 49 complaints of sexual assault by fellow detained people, an average of more than one confirmed sexual assault per month.<sup>123</sup> The company also reported four complaints of sexual harassment by employees; one was substantiated, and the other three were not disproven.<sup>124</sup> Detained people also have reported facing obstacles when attempting to file complaints, including CoreCivic employees' ignoring or mistreating those trying to report harassment and assault.<sup>125</sup>

While the man was showering, one officer stared at him, and more than one officer referred to him over the radio as "my royal princess."

### Treatment of LGBTQIA+ People and People Living With HIV

The prevalence of documented abuses of Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual+ ("LGBTQIA+") individuals and people living with HIV in detention centers across the country demonstrates a widespread pattern of mistreatment causing physical, emotional, and psychological harm.

Reports suggest that this pattern is also evident at OMDC, where people living with HIV and LGBTQIA+ individuals have reported a range of abuses. Commonly reported abuses include the denial of HIV medication, hormone therapy, and

<sup>120</sup> *Id.*

<sup>121</sup> CORECIVIC, PREA Annual Report 2019, 2019, <https://www.corecivic.com/hubfs/files/PREA/2019-PREA%20AnnualReport.pdf> at 7-8 (last visited on Jan. 25, 2021).

<sup>122</sup> *Id.* at 8; see Alysia Santo, *Prison Rape Allegations Are on the Rise*, THE MARSHALL PROJECT, July 25, 2018, <https://www.themarshallproject.org/2018/07/25/prison-rape-allegations-are-on-the-rise>.

<sup>123</sup> CORECIVIC PREA Report, *supra* n. 121, at 7.

<sup>124</sup> *Id.* at 10.

<sup>125</sup> Maya Srikrishnan, *Sexual Assault Complaints at Otay Mesa Detention Center Have Surged*, VOICE OF SAN DIEGO, Sep. 4, 2019, <https://www.voiceofsandiego.org/topics/news/sexual-assault-complaints-at-otay-mesa-detention-center-have-surged/>.

other crucial treatment. Complaints regarding verbal, physical, and sexual violence, as well as housing issues, are also prevalent.

One individual described a harrowing period of detention at OMDC in 2014 during which he experienced consistent sexual harassment by CoreCivic guards. While the man was showering, one officer stared at him, and more than one officer referred to him over the radio as “my royal princess.” He was also threatened with deportation after witnessing a female officer kissing a detained person. His complaints about these incidents went unanswered by both ICE and CoreCivic.<sup>126</sup>

CoreCivic reportedly has placed transgender people in cell assignments inconsistent with their gender identities, which not only invalidates those identities, but also places the individuals at high risk of harassment and sexual assault.<sup>127</sup> This treatment repeats a familiar pattern for CoreCivic going back more than a decade. While it operated SDCF, CoreCivic routinely placed transgender people into housing units that did not match their gender identities or, worse, in segregation for prolonged periods.<sup>128</sup> Despite being acutely aware of the harms caused by these housing decisions, when it constructed its new facility at OMDC, CoreCivic appears to have taken no measures to create appropriate housing options for transgender people.

Predictably, these assignments have resulted in increased reports of sexual and physical abuse, by both CoreCivic correctional officers and other detained people.<sup>129</sup> While these accounts paint a disturbing picture, other abuses likely go unreported due to threats or bureaucratic roadblocks that make it difficult to file a report.<sup>130</sup> In 2017, the Transgender Law Center compiled numerous reports of abuses faced by LGBTQIA+ individuals and people living with HIV at OMDC.<sup>131</sup> In one case, CoreCivic reportedly housed a trans woman in a male housing unit, where she was harassed by two detained individuals and an officer. When she

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<sup>126</sup> *Id.*; CIVIC Complaint, *supra* n. 118, at 9; Mari Payton, *Advocacy Group: If You're Abused in Immigration Detention, the Government Doesn't Care*, VOICE OF SAN DIEGO, Apr. 27, 2017, <https://www.nbcsandiego.com/news/local/advocacy-group-if-youre-abused-in-immigration-detention-the-government-doesnt-care/13597/>.

<sup>127</sup> See Adam Frankel, “Do You See How Much I’m Suffering Here?”: Abuse Against Transgender Women in US Immigration Detention, HUMAN RIGHTS WATCH, Mar. 23, 2016, <https://www.hrw.org/report/2016/03/24/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us#> (discussing problem of housing transgender women with men in ICE detention generally).

<sup>128</sup> See, e.g., Santander Decl., *supra* n. 98.

<sup>129</sup> *Id.*

<sup>130</sup> Transgender Law Center et al., *Complaint on Failure to Provide Adequate Medical and Mental Health Care to LGBTQ People and People Living with HIV in Immigration Detention Facilities*, TRANSGENDER LAW CENTER, Sep. 25, 2019, <http://transgenderlawcenter.org/wp-content/uploads/2019/09/Complaint-on-LGBTQ-PLHIV-DHS.pdf>, (documenting systemic failure to provide adequate medical and mental health care to LGBTQ people and people living with HIV in immigration detention facilities).

<sup>131</sup> *Id.*

complained to the facility manager, her complaint was dismissed as “gossip.” She was also denied her HIV medication during her first month at OMDC and was refused treatment for injuries she suffered during a sexual assault in Mexico. This woman’s narrative and others collected by the Transgender Law Center depict a culture at OMDC in which LGBTQIA+ individuals and people living with HIV are neither valued nor respected.

Between Jan. 1, 2016 and May 4, 2018, CoreCivic placed 308 individuals held in ICE custody at OMDC into solitary confinement, representing the third highest number of people in solitary confinement of any ICE detention facility nationwide.

### Systemic Use of Solitary Confinement

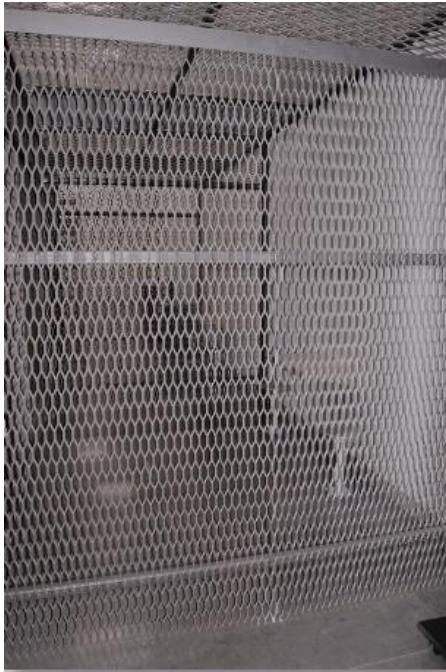
Numerous reports allege that CoreCivic frequently places individuals at OMDC, including those with physical and mental health conditions, in solitary confinement.<sup>132</sup> Solitary confinement is prevalent among people in segregated housing units (“SHU”). This practice includes disciplinary segregation, administrative segregation, or protective custody, as well as so-called “safety cells,” which are empty rooms equipped only with a hole in the ground to use as a toilet.<sup>133</sup> Because segregation often involves denial of access to programming or other opportunities for interaction with other people, people in custody commonly refer to solitary as “the hole.” Prolonged solitary confinement is commonplace in ICE detention, including at OMDC, where CoreCivic offers little to no programming at all.

A report by the Project on Government Oversight analyzing the use of solitary confinement in immigration detention centers found that, between Jan. 1, 2016 and May 4, 2018, CoreCivic placed 308 individuals held in ICE custody at OMDC into solitary confinement, representing the third highest number of people in

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<sup>132</sup> At OMDC, individuals held in ICE custody may be subjected to “administrative segregation” for reasons including the protection of the individual, staff, or other members of the general population, or subjected to “disciplinary segregation,” for violations of the facilities rules. *See* IMMIGRATION AND CUSTOMS ENFORCEMENT, *Performance-Based National Detention Standards*, *supra* n. 47; Individuals held in USMS custody may be subjected to “restrictive housing,” for either administrative or disciplinary purposes. *See Federal Performance-Based Detention Standards*, U.S. MARSHALS 41 (rev. Feb. 2011), <https://www.usmarshals.gov/prisoner/detention-standards.pdf>.

<sup>133</sup> Veronica Vendur and Dana Salvano-Dunn, *Memorandum Regarding Otay Mesa Detention Center Recommendations*, U.S. DEPARTMENT OF HOMELAND SECURITY at 4, Apr. 25, 2018, <https://www.dhs.gov/sites/default/files/publications/otay-mesa-expert-memo-04-25-18.pdf>.



solitary confinement of any ICE detention facility nationwide, despite the fact that the facility holds the seventh-largest number of individuals in its custody.<sup>134</sup>

The data also suggests that CoreCivic confines people in solitary confinement for unreasonably lengthy periods of time. During the period covered by the Project on Government Oversight report, 24 individuals at OMDC were placed in solitary for more than 75 days.<sup>135</sup> In two additional cases documented by the ACLU of San Diego & Imperial Counties, CoreCivic held individuals in segregation at OMDC for at least five months and seven months respectively.<sup>136</sup>

When CoreCivic places individuals held at OMDC into segregation, they may be blocked from resources such as the commissary or the law library, as well as certain activities.<sup>137</sup> People in segregation at OMDC are also confined to their cells for nearly their entire day, without regular access to common areas.

The negative physical and mental health consequences of solitary are well documented. Solitary confinement can cause or exacerbate hypertension, impaired eyesight, weight loss, memory loss, chronic asthma, severe insomnia, and memory loss.<sup>138</sup> It can also worsen existing mental health conditions. The use of solitary confinement for 10 days or longer has been shown to cause a rapid deterioration of a person's mental health, exacerbating depression and anxiety, making hallucinations and paranoia more likely, and increasing the risk of self-

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<sup>134</sup> See PROJECT ON GOV'T OVERSIGHT, *Isolated: ICE Confines Some Detainees with Mental Illness in Solitary for Months*, Aug. 14, 2019, <https://www.pogo.org/investigation/2019/08/isolated-ice-confines-some-detainees-with-mental-illness-in-solitary-for-months/>. Notably, CoreCivic also operates the facility holding the second-highest number of people in solitary confinement in its Stewart Detention Center in Georgia. *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> ACLUF-SDIC interview, on file with authors.

<sup>137</sup> See DEMOCRACY NOW, *Death Trap Jail: Pepper-Sprayed, Otay Mesa Detainees Demand Release as COVID-19 Spreads Inside*, Apr. 21, 2020,

[https://www.democracynow.org/2020/4/21/otay\\_mesa\\_immigrant\\_detention\\_center\\_coronavirus](https://www.democracynow.org/2020/4/21/otay_mesa_immigrant_detention_center_coronavirus)

(describing a situation in which a trans woman held in ICE custody was placed in solitary confinement where she had no access to commissary and the law library and only limited access to the phone).

<sup>138</sup> AMNESTY INT'L, *USA: The Edge of Endurance: Prison Conditions in California's Security Housing Units*, 2012, <https://www.amnestyusa.org/files/edgeofendurancecaliforniareport.pdf> (describing various studies, examinations, and reports from individuals held in solitary confinement at various facilities located in California, Louisiana, and the United Kingdom).



harm and suicide.<sup>139</sup> Furthermore, because correctional officers are not qualified to respond appropriately to mental health crises, solitary confinement is often used as punishment for people with mental illness who instead need treatment.<sup>140</sup> Human rights experts consider the use of solitary confinement for more than 15 days, or on vulnerable populations like those with mental illness, to be a form of torture.<sup>141</sup>

According to news media reports, some individuals subjected to solitary confinement at OMDC had documented mental and physical health conditions.

- In 2017, the San Diego Union-Tribune reported that a 48-year-old woman with documented mental health conditions, who was detained at OMDC, attempted suicide after a CoreCivic officer mocked her “about her condition soon after an immigration judge denied her request for bond.”<sup>142</sup> In response, CoreCivic placed the woman into solitary confinement.<sup>143</sup> After about two weeks in solitary confinement, ICE reviewed her case and determined that her “placement remain[ed] valid,” despite the fact that “she did not pose a threat to herself or to others and that she was not unwilling or unable to live in the general population.”<sup>144</sup> She remained in solitary confinement for at least three months.
- In 2017, The Atlantic reported that CoreCivic held a pregnant woman in solitary confinement and then released her into the general population, where she “experienced acute anxiety and took pills in an apparent suicide attempt, which caused a miscarriage.”<sup>145</sup> CoreCivic then reportedly returned the woman “to solitary confinement, where she was kept naked, despite still bleeding from the miscarriage.”<sup>146</sup>

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<sup>139</sup> See AM. CIVIL LIBERTIES UNION, *Still Worse Than Second Class*, 8, 2019, [https://www.aclu.org/sites/default/files/field\\_document/062419-sj-solitaryreportcover.pdf](https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf).

<sup>140</sup> *Id.*; see also Jennifer M. Reingle Gonzalez and Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 AM. JOURNAL OF PUB. HEALTH 12 at 2328 (Dec. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232131/pdf/AJPH.2014.302043.pdf>, (last visited on Jan. 25, 2021).

<sup>141</sup> AM. CIVIL LIBERTIES UNION, *Still Worse Than Second Class*, *supra* n. 139, at 4.

<sup>142</sup> Morrissey, *Grandmother with Mental Health Condition*, *supra* n. 117.

<sup>143</sup> While ICE claimed that this individual requested to be put in “administrative segregation,” which CoreCivic uses “to isolate detainees who, for a variety of reasons, cannot safely live in general population at the facility,” records reportedly showed that she was placed in “disciplinary segregation,” which is used “to punish detainees who violate facility rules.” *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Ian Urbina, *The Capricious Use of Solitary Confinement Against Detained Immigrants*, THE ATLANTIC, Sept. 6, 2019, <https://www.theatlantic.com/politics/archive/2019/09/ice-uses-solitary-confinement-among-detained-immigrants/597433/>.

<sup>146</sup> *Id.*



- In 2019, The Guardian reported that a 27-year-old man detained at OMDC was placed in solitary confinement while experiencing immense pain and occasional loss of consciousness from a previous gunshot wound to the head.<sup>147</sup> Initially, CoreCivic staff only provided him ibuprofen for the pain and passed him meals through a small slat. “I didn’t even know what was night and what was day,” he recalled, according to The Guardian report. “I was sick already, but I was starting to get worse.”<sup>148</sup>

CoreCivic has reportedly relied on questionable justifications to place vulnerable individuals in segregation. For example, a trans woman reported to Human Rights First that she was held in ICE custody in the male housing units at OMDC and was placed into “disciplinary segregation” for one week without an opportunity to appeal, based on a false accusation by another detained person.<sup>149</sup> And, according to a former CoreCivic employee, facility staff may have even encouraged threats against individuals whom staff did not want in general population to justify their solitary confinement.<sup>150</sup> In one example, when CoreCivic staff deemed an individual who had previously been housed in the mental health unit “unsanitary and unsafe,” a supervisor said that if the individual was threatened by another person in the general population, he “would be able to remove the unsanitary detainee from the housing unit.”<sup>151</sup>

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<sup>147</sup> See Sam Levin, *This Asylum Seeker was Shot in the Head. Ice Jailed Him and Gave Him Ibuprofen*, THE GUARDIAN, Oct. 9, 2019, <https://www.theguardian.com/us-news/2019/oct/08/us-immigration-ice-asylum-seeker-detention-rolando>.

<sup>148</sup> *Id.*

<sup>149</sup> HUM. RIGHTS FIRST, *Prisons and Punishment: Immigration Detention in California*, *supra* n. 89, at 13.

<sup>150</sup> Complaint ¶ 104, *Arnold v. CoreCivic of Tennessee*, *supra* n. 69, at 11.

<sup>151</sup> *Id.*

## Retaliation for First Amendment Protected Activities

For over a decade, there have been widespread reports of instances when CoreCivic employees retaliated against people detained at OMDC for exercising their First Amendment rights. Similarly, there have been multiple documented instances of CoreCivic attempts to cut off or silence external organizations that accompany and advocate for individuals held at OMDC.

## Punishment for Speaking Out

Detained people have repeatedly reported retaliation from CoreCivic employees for their participation in lawsuits or protests against the corporation. In May 2020, several women detained at OMDC submitted sworn declarations about conditions in the facility for a lawsuit arising out of the COVID-19 outbreak.

According to one woman, on the same day her declaration was filed, CoreCivic staff took her into “medical isolation,” while specifically mentioning the lawsuit.<sup>152</sup> She was kept in “medical isolation” for two weeks and said she believed that was retaliation for participating in the suit.<sup>153</sup>

Another woman, identified by a pseudonym, stated, “I feel like whenever I complain about the conditions and ask for things I need, I get retaliated against by the guards. I feel scared of retaliation like verbal abuse from the guards and being put into solitary.”<sup>154</sup>

An attorney of one detained person corroborated this account, stating that CoreCivic placed “those who were nosier or more assertive ... in isolation to pressure them to stop what they’re doing.”<sup>155</sup>

“I feel like whenever I complain about the conditions and ask for things I need, I get retaliated against by the guards. I feel scared of retaliation like verbal abuse from the guards and being put into solitary.”

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<sup>152</sup> Decl. of Kendra Drysdale ¶ 7, ECF No. 77-4, *Alvarez v. LaRose*, *supra* n. 37.

<sup>153</sup> *Id.*

<sup>154</sup> Decl. of Jane Roe ¶ 12, ECF No. 77-6, *Alvarez v. LaRose*, *supra* n. 37.

<sup>155</sup> Rivlin-Nadler, *supra* n. 63. One of the men put into segregation for participating in the hunger strike was Carlos Ernesto Escobar Mejia, the first person to die from COVID-19 in ICE custody. Mr. Escobar Mejia died on May 6, 2020. Kate Morrissey, *San Diego Detainee is First in ICE Custody to Die of COVID-19*, LOS ANGELES TIMES, May 6, 2020, <https://www.latimes.com/california/story/2020-05-06/first-ice-detainee-dies-coronavirus-otay-mesa-detention-center>.

In 2019, two individuals held at OMDC told a reporter for the Voice of San Diego that they had attempted to report sexual assaults while in CoreCivic custody and were retaliated against for reporting the incidents.<sup>156</sup>

These reports are recent examples of alleged retaliation, but together with other allegations going back more than a decade they suggest a systemic pattern of retaliation against detained people for exercising freedom of expression. In September 2006, CoreCivic sought to expand a practice known as triple-celling, or placing three individuals into cells built for two people, and a group of individuals held at the facility attempted to speak to an ICE official about these plans.<sup>157</sup> The staff at the facility allegedly responded by sending its Special Operations Response Team, dressed in full riot gear, to release pepper spray throughout three housing pods.<sup>158</sup> Some detained individuals then reportedly threw items and broke a window.<sup>159</sup> Officers allegedly fired pepper balls at the group, and “[a]t least one detainee was shot in the head with a rubber bullet and injured, and other detainees were pepper sprayed and later beaten while sitting peacefully inside of their cells.”<sup>160</sup> Facility officers then placed dozens of detainees in disciplinary segregation, accusing them of participating in a “riot.”<sup>161</sup>

In February 2008, ACLU of San Diego & Imperial Counties lawyers interviewed 18 women at SDCF.<sup>162</sup> These women shared information about the mistreatment they had experienced and the poor conditions at the facility.<sup>163</sup> At the time, the facility was the subject of at least two ongoing lawsuits.<sup>164</sup> The day after the interviews took place, CoreCivic employees reportedly questioned the women, searched their cells, and put their units on lockdown.<sup>165</sup>

Fear of CoreCivic retaliation is so pervasive that some detained people avoid speaking out. In 2018, a man who contacted the advocacy group Pueblos Sin

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<sup>156</sup> Maya Srikrishnan, *What We Know About the Otay Mesa Detention Center – and Its Future*, VOICE OF SAN DIEGO, Oct. 7, 2019, <https://www.voiceofsandiego.org/topics/government/what-we-know-about-the-otay-mesa-detention-center-and-its-future/>.

<sup>157</sup> Second Amended Complaint, ¶¶ 98-103, *Kiniti*, *supra* n. 35 (the Complaint refers to “Corrections Corporation of America” or “CCA,” the previous name under which CoreCivic operated).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Greg Moran, *Privately Run Jail Faces New Complaint: Detainees Say They Were Mistreated*, SAN DIEGO UNION-TRIB., Feb. 24, 2008, available at <https://web.archive.org/web/20130707114221/http://legacy.utsandiego.com/news/metro/20080224-9999-1m24jail.html> (last visited Feb. 2, 2021).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

Fronteras to complain about OMDC's broken air conditioning system during a heat wave told reporters that "other detainees were scared to speak out, fearing retaliation from the facility's employees."<sup>166</sup> Similarly, during the 2020 COVID-19 outbreak at OMDC, one detained individual stated that "[p]eople ... are scared about speaking up because they fear [retaliation] by the staff."<sup>167</sup>

## Cutting Off Communication and Access to Accompaniment

CoreCivic has not only punished detained people for attempting to advocate for themselves, but also has sought to limit their contact with others outside OMDC. By controlling detained people's ability to communicate what is going on inside OMDC with the outside world, CoreCivic has attempted to limit support for detained persons and block public scrutiny of its practices.

In 2013, members of a volunteer group that visits people detained at OMDC, Souls Offering Loving and Compassionate Ears ("SOLACE"), raised concerns with ICE about sexual assault, harassment, and neglect at the facility.<sup>168</sup> Soon after, media reported that the volunteers were required to sign a non-disclosure agreement if they wanted to continue their visits.<sup>169</sup> It took prolonged advocacy and media reporting for volunteers to finally be allowed to resume visiting OMDC without signing the form.<sup>170</sup> Then in 2018, CoreCivic and ICE again tried to force members of SOLACE to sign a form that contained a non-disclosure agreement and a clause that said the volunteers "represent" CoreCivic. The agency stopped requiring the non-disclosure agreement only after the ACLU of San Diego & Imperial Counties threatened litigation.<sup>171</sup>

In June 2020, during the COVID-19 outbreak at OMDC, CoreCivic blocked the telephone numbers of two advocacy organizations, Otay Mesa Detention Resistance and Pueblo Sin Fronteras.<sup>172</sup> CoreCivic admitted to blocking the numbers, stating that it did so "at the direction of" ICE. ICE claimed that one of the numbers was blocked for "safety concerns" because "calls to this number

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<sup>166</sup> Maya Srikrishnan, *After the Caravan*, VOICE OF SAN DIEGO, Oct. 15, 2018, <https://www.voiceofsandiego.org/topics/news/after-the-caravan/>.

<sup>167</sup> Decl. of Michael Jamil Smith ¶ 27, ECF No. 1-10, *Alvarez v. LaRose*, *supra* n. 37 (original declaration states "relation," which the authors treat as a typo for "retaliation").

<sup>168</sup> Erika Eichelberger, *Watchdog: Feds Are Muzzling Us for Reporting Alleged Immigrant Detainee Sex Abuse*, MOTHER JONES, Mar. 19, 2014, <https://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight/>.

<sup>169</sup> *Id.*

<sup>170</sup> Kate Morrissey, *ICE Aims to Silence Detainees' Visitors*, LOS ANGELES TIMES, Nov. 4, 2018, [https://enewspaper.latimes.com/infinity/article\\_share.aspx?guid=a5a9c15d-7117-46e8-a370-c48372faf85b](https://enewspaper.latimes.com/infinity/article_share.aspx?guid=a5a9c15d-7117-46e8-a370-c48372faf85b).

<sup>171</sup> *Id.*

<sup>172</sup> Kate Morrissey, *Otay Mesa Detention Center Blocks Detainees Calls to a Group of Activists*, SAN DIEGO UNION-TRIB., June 15, 2020, <https://www.sandiegouniontribune.com/news/immigration/story/2020-06-15/otay-mesa-detention-calls>.

resulted in detainees exhibiting highly disruptive behavior, threatening the health and security of other detainees and employees at the facility.”<sup>173</sup> However, no details regarding the alleged behavior or incidents were provided, and neither ICE nor CoreCivic provided an explanation for why the other number was blocked.<sup>174</sup> After public outcry and advocacy by the ACLU of San Diego & Imperial Counties, CoreCivic relented and unblocked the numbers.<sup>175</sup>

## Unlawful Labor and Employment Practices

### Forced Labor

CoreCivic relies on detained people to perform essential labor at OMD. The company’s use of a prison labor system in its supposedly “civil” immigration detention facility has resulted in allegations of abusive labor practices.<sup>176</sup> CoreCivic is the subject of an ongoing, class-action lawsuit alleging that the corporation uses forced labor at OMD.<sup>177</sup>

Under CoreCivic’s “Voluntary Work Program,”<sup>178</sup> detained workers are paid just \$1 to \$1.75 per day to perform sanitation, laundry, food service, commissary, and landscaping jobs within OMD.<sup>179</sup> Moreover, workers report that they can only use their earnings from the program at the detention center’s commissary, which they say is the sole source of quality and necessary hygiene items, such as shampoo, toothpaste, lotion, and clean clothing, as well as additional food to supplement the inadequate diet provided by CoreCivic.<sup>180</sup> Refusal to do the work is reportedly met with the threat of punishment and solitary confinement.<sup>181</sup> Some work is reportedly unpaid entirely, such as cleaning living areas and common areas in the facility. As one detained individual stated in July 2018 in a letter to a volunteer: “All of us detainees work in the janitorial department, yet we never

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> @ResistDetention, TWITTER (June 22, 2020, 1:24PM), <https://twitter.com/ResistDetention/status/1275162700008620032?s=20>; [https://www.aclusandiego.org/wp-content/uploads/2020/06/2020-06-16-Ltr-re-OMDC-phone-blockages-FINAL\\_Redacted-1.pdf](https://www.aclusandiego.org/wp-content/uploads/2020/06/2020-06-16-Ltr-re-OMDC-phone-blockages-FINAL_Redacted-1.pdf).

<sup>176</sup> *See, e.g.*, First Amended Complaint, *Owino v. CoreCivic, Inc.*, No. 17-CV-01112-JLS-NLS (S.D. Cal.) (Oct. 12, 2018), available at <https://www.clearinghouse.net/detail.php?id=17271>.

<sup>177</sup> *Id.* at 1.

<sup>178</sup> Reply Brief in Support of Plaintiffs’ Motion for Class Certification, ECF No. 127, *Owino*, *supra* n. 176, at 2.

<sup>179</sup> Defendants’ Answer to Remaining Claims in the Complaint, ECF No. 66, *Canino Castellar v. McAleenan*, No. 17-cv-00491-BAS-BGS (S.D. Cal.) (July 15, 2019).

<sup>180</sup> Reply Brief in Support of Plaintiffs’ Motion for Class Certification, *Owino*, *supra* n. 176, at 5; Robbins, *supra* n. 9.

<sup>181</sup> Amended Complaint, *Owino*, *supra* n. 176, at 4-5; Kate Morrissey, *Class-action Lawsuit Alleges Immigrants are Forced to Labor in Detention*, LOS ANGELES TIMES, Dec. 30, 2017, <https://www.latimes.com/local/lanow/la-me-ln-sd-detention-center-20171230-story.html>.

receive our \$1/day salary. They just make us do the cleaning.”<sup>182</sup> Other detained people have reported that they were not paid because CoreCivic failed to track their work hours properly or provide sign-in sheets necessary to document the work performed.<sup>183</sup>

CoreCivic was also accused of subjecting its detained labor force to dangerous working conditions. The plaintiff in the forced labor class action stated that CoreCivic required him to clean OMDC’s on-site medical facility without personal protective equipment, increasing his chances of exposure to disease and of spreading disease.<sup>184</sup> Other reports of unsafe working conditions abound. Between 2018 and 2019, the volunteer correspondence project coordinated by Detainee Allies and San Diego State University received at least 12 letters describing unsafe working conditions at OMDC.<sup>185</sup> In November 2017, several women had reportedly signed up to polish floors after midnight in advance of a facility inspection.<sup>186</sup> But a chemical spill forced the evacuation of all 118 women in the unit and resulted in at least 20 women fainting or vomiting.<sup>187</sup> In August 2009, a detained woman working in the kitchen lost her vision in one eye after it was burned by hot oil that splattered from a pot.<sup>188</sup>

## Toxic Employment Practices

The allegations against CoreCivic are not limited to its treatment of detained people. In fact, since early in the corporation’s history at Otay Mesa, it has been accused of—and found liable for—violations of California and federal labor laws, including anti-union efforts.<sup>189</sup>

In 2006, the U.S. Department of Labor issued the company a \$710,347 penalty for wage and hour violations, as well as a \$58,483 penalty for unfair labor practices.<sup>190</sup> In the latter case, the National Labor Relations Board (NLRB) found that CoreCivic violated federal labor law when it initiated a drive to decertify its employees’ union, and then coerced its employees to support the drive by telling

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<sup>182</sup> DETAINEE ALLIES, *supra* n. 56, at 12.

<sup>183</sup> Interview on file with authors.

<sup>184</sup> First Amended Complaint, *Owino v. CoreCivic*, *supra* n. 176, at 8.

<sup>185</sup> DETAINEE ALLIES, *supra* n. 56, at 1.

<sup>186</sup> Kate Morrissey, *Women Temporarily Evacuated After Exposure to Noxious Chemical in Immigration Detention*, SAN DIEGO UNION-TRIB., Nov. 15, 2017, <https://www.sandiegouniontribune.com/news/immigration/sd-me-otay-chemicals-20171115-story.html>

<sup>187</sup> *Id.*

<sup>188</sup> Complaint at 4, *Santana v. Corr. Corp. of America*, No. 3:11-cv-00138-JLS-CAB, 2011 WL 12671746 (S.D. Cal.) (Aug. 16, 2011).

<sup>189</sup> *Corr. Corp. of America*, 347 N.L.R.B. 632 (2006); See also GOOD JOBS FIRST, *Violation Tracker Parent Company Summary - CoreCivic*, <https://violationtracker.goodjobsfirst.org/parent/corecivic> (noting violations by CoreCivic nationally, including wage-and-hour violations in California in 2013 for \$8,071,861)(last visited Feb. 2, 2021).

<sup>190</sup> *Id.*



them it would know who did and did not support the initiative.<sup>191</sup> The NLRB also ruled that CoreCivic unlawfully transferred the vice president of its employees' union to a less desirable position, and unlawfully discharged the union's president because of his union activities, including his attempt to represent an employee during a misconduct investigation.<sup>192</sup>

More recently, in 2017, a former CoreCivic employee at OMDL filed a class-action lawsuit alleging the company failed to allow or pay for meal and rest periods as required by California's Labor Code.<sup>193</sup> The case was later combined with a similar action brought in the Eastern District of California and settled with a class-action settlement fund of \$3.2 billion, which was preliminarily approved in March 2020.<sup>194</sup>

From 2008 to 2014, CoreCivic faced at least four lawsuits alleging workplace harassment, employment discrimination, and wrongful termination at SDC. In one case, an assistant warden alleged his supervisor, the warden, harassed him based on his age, and that the warden repeatedly forced him to touch his protruding hernia.<sup>195</sup> The warden then allegedly fired the assistant warden after he had expressed concerns about the behavior.<sup>196</sup> In another case, a human resources manager claimed she was harassed after voicing concerns of improper business practices at CoreCivic, including tampering with time cards to avoid overtime compensation, manufacturing false allegations to create documentation as a pretext for dismissal, and continual and pervasive sexually tinged conversations and activity in the workplace.<sup>197</sup>

More recently, former CoreCivic employees filed lawsuits alleging that CoreCivic's careless response to the pandemic put them at risk of contracting COVID-19, causing their constructive termination, or resignation due to intolerable working conditions.<sup>198</sup> These complaints are consistent with reports from people detained at OMDL alleging that CoreCivic treats its employees poorly.<sup>199</sup> Advocates for detained people say the toxic work culture at OMDL has

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<sup>191</sup> *Corr. Corp. of America*, *supra* n. 189.

<sup>192</sup> *Id.*

<sup>193</sup> *Richards v. CoreCivic of Tenn., LLC*, No. 1:17-CV-1094-LJO-JLT, 2018 WL 784257, at \*1 (E.D. Cal. Feb. 8, 2018).

<sup>194</sup> *Gonzalez v. CoreCivic of Tenn., LLC*, No. 116CV01891DADJLT, 2020 WL 1475991, at \*10 (E.D. Cal. Mar. 26, 2020).

<sup>195</sup> *Schoenfelder v. Corr. Corp. of Am.*, No. 14CV1275-WQH-NLS, 2014 WL 4273272, at \*2 (S.D. Cal. Aug. 28, 2014).

<sup>196</sup> *Id.*

<sup>197</sup> Amended Complaint ¶ 10, *Michtell v. Corr. Corp. of America*, No. 3:09-cv-01554-LAB -JMA, 2010 WL 2127255 (S.D. Cal. filed Mar. 1, 2010).

<sup>198</sup> Complaint ¶ 104, *Arnold v. CoreCivic of Tennessee*, *supra* n. 69.

<sup>199</sup> DETAINEE ALLIES, *supra* n. 56, at 13.

dire repercussions for those in custody, because mistreated employees “consequently direct their anger and agitation at detainees.”<sup>200</sup>

CoreCivic employees and detained individuals alike have also complained that OMDC is consistently understaffed, jeopardizing the safety of both detained people and employees.<sup>201</sup> In the 2018 case regarding the death of Mr. Cruz-Sanchez, a CoreCivic guard testified that OMDC was so understaffed that officers were severely impeded in identifying and providing proper treatment to detained people requiring medical care and a referral to the medical unit.<sup>202</sup> This officer also claimed to have been retaliated against for complaining about persistent understaffing.<sup>203</sup> For CoreCivic employees, understaffing can create a more hostile work environment, which advocates allege creates more aggression toward people in custody.<sup>204</sup> And, as Mr. Cruz-Sanchez’s case demonstrates, understaffing can be deadly for detained individuals.

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<sup>200</sup> *Id.*

<sup>201</sup> CoreCivic has been accused of understaffing detention facilities nationwide. *See* Bauer, *American Prison*, *supra* n. 25, at 160, 234, 286.

<sup>202</sup> Order on Joint Motion for Determination of Discovery Dispute No. 2, ECF No. 67, *Estate of Gerardo Cruz-Sanchez et al. v. United States of America et al.*, No. 17-cv-569-BEN-NLS, 2018 WL 2193415 (S.D. Cal, May 14, 2018).

<sup>203</sup> *Id.*; Affidavit of Roger A. Clark, *supra* n. 49, at 9.

<sup>204</sup> Brian Sonenstein, *All 50 States Report Prison Understaffing*, SHADOWPROOF (Feb. 12, 2020) <https://shadowproof.com/2020/02/12/all-50-states-report-prison-understaffing/>.

## Conclusion

Since CoreCivic's earliest years of operation in the San Diego region, numerous reports document the company's gross dereliction of duty to people in its custody. Yet CoreCivic's lucrative operations in Otay Mesa have only expanded, consistent with the national trend toward increasing reliance on immigration detention. As individuals detained at the Otay Mesa Detention Center fight to seek justice because of abuse and neglect suffered there, CoreCivic continues to reap growing profits.

CoreCivic's unbroken decades-long track record of abuse and harm necessitates persistent scrutiny from local, state, and federal oversight bodies. But oversight and accountability will only bandage one wound in this country's broken system of for-profit immigration detention.

Private corporations and detention facilities have no business in immigration enforcement. Laws like California's AB 32 and AB 3228 provide a good start to the end of this regrettable chapter in immigration policy in California, and serve as a reminder that state governments, detained people, and advocates, in addition to the federal government, play a critical role in ensuring that the use of private prisons and immigration detention comes to an end once and for all.