



Northern
California

December 10, 2021

Via Email & Certified Mail, Return Receipt Requested

Sheriff Wendell Anderson
Yuba County Jail
215 Fifth Street
Marysville, CA 95901

Chair Gary Bradford
Yuba County Board of Supervisors
915 8th Street, Suite 109
Marysville, CA 95901

Re: Potential violations of Cal. Penal Code § 4002 (prohibiting the co-mingling of people detained for civil process and people detained or incarcerated for criminal process) and other unlawful conditions of detention at Yuba County Jail

Dear Sheriff Anderson and Board of Supervisors Chair Gary Bradford:

I am writing on behalf of the ACLU of Northern California to bring your attention to past systemic violations of California Penal Code § 4002(a) at Yuba County Jail (“YJC”) in connection with housing of individuals detained in U.S. Immigration and Customs Enforcement (“ICE”) custody. If YJC begins re-detaining individuals for ICE and § 4002 violations resume, we are prepared to pursue all remedies available under the law, including litigation. We urge your office to avoid further potential liability related to the rights of individuals detained for ICE and **terminate the ICE contract as soon as possible.**

Since 1994, ICE has confined people for immigration purposes in Yuba County Jail, which is operated by the Yuba County Sheriff’s Office (“YCSO”). As explained in detail below, YCSO has long violated state law by routinely housing certain individuals detained by ICE with individuals being held in criminal custody. But California Penal Code § 4002 mandates that people being detained for civil process—including individuals being held for ICE—must not be housed with people being detained or incarcerated for criminal purposes. There are *no* exceptions allowing mixed housing assignments, and no justification for YCSO’s disregard for this law.

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In addition to violating Cal. Penal Code § 4002, YCSO has consistently subjected individuals in ICE custody to dangerous and unlawful treatment, including a lack of acceptable medical care, spoiled food, unhygienic conditions, and unnecessary use of administrative segregation. People in ICE custody in Yuba County have repeatedly protested these appalling conditions through hunger strikes in recent years. An August 26, 2021 complaint¹ filed with the Department of Homeland Security’s Office of Civil Rights and Civil Liberties details some allegations of unconstitutional retaliation from Yuba County Jail staff toward detained hunger strikers.

The only certain way to resolve the problems that have historically plagued Yuba County Jail’s treatment of the people in its care is for Yuba County to terminate its contract with ICE. Due to the *Zepeda Rivas v. Jennings* litigation² and related advocacy efforts, YCSO currently detains *no one* for ICE. Reopening YCSO’s doors to a new influx of persons will increase the risk that people confined at YCJ will be infected by COVID-19 because of constant flow of staff and inmates that cycle in and out of the facility, especially as the Omicron variant sweeps through the United States. Repopulating YCJ for ICE purposes will also almost certainly result in a return to substandard conditions for those detained by ICE, including inadequate medical care, unacceptable food, inappropriate use of administrative segregation, obstacles to programming, unsanitary housing conditions, and other unlawful conditions of detention that have come to the public’s attention thanks to detained leaders’ protests, hunger strikes, complaints, and grievances in recent years.

Yuba County should end its relationship with ICE and cease continually exposing itself to liability for its treatment of people in ICE custody.

I. Yuba County Jail violates state law by confining people in ICE custody in the same housing “pods” as people in County custody

YCSO’s longstanding practice of assigning some individuals in ICE custody to the same “pods” as individuals in County custody violates state law. As detained persons and advocates have long observed, YCSO has frequently classified some individuals in ICE custody as “higher security”—sometimes based on outdated, incorrect, and later disproven information—and

¹ Complaint filed by California Collaborative for Immigrant Justice, Centro Legal de La Raza, ACLU Foundation of Northern California, ACLU Foundation of San Diego & Imperial Counties, and ACLU Foundation of Southern California to Office of Civil Rights and Civil Liberties of U.S Dep’t of Homeland Security (Aug. 26, 2021), available at https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf.

² See *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC (filed N.D. Cal. Apr. 20, 2020).

assigned them to the same housing “pods” as people in criminal custody. This violates Penal Code § 4002. Further, to the extent that security classifications rely on old information from California Department of Corrections and Rehabilitation (“CDCR”), including gang allegations, due process requires notice and an opportunity to challenge those classifications.

A. Cal. Penal Code § 4002 requires that persons in ICE custody be assigned to separate housing units from persons in County custody

California Penal Code § 4002(a)³ provides in relevant part:

Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, shall not be kept or put in the same room, nor shall male and female prisoners, except spouses, sleep, dress or undress, bathe, or perform eliminatory functions in the same room. However, persons committed on criminal process and detained for trial may be kept or put in the same room with persons convicted and under sentence for the purpose of participating in supervised activities and for the purpose of housing, provided, that the housing occurs as a result of a classification procedure that is based upon objective criteria, including consideration of criminal sophistication, seriousness of crime charged, presence or absence of assaultive behavior, age, and other criteria that will provide for the safety of the prisoners and staff.

The statute discusses three specific classes of people in jail custody:

1. persons “committed on criminal process and detained for trial,” or in other words, those being held in pre-trial detention;
2. persons “convicted and under sentence”; and
3. persons “committed upon civil process.”

People detained at YCJ pursuant to Yuba County’s contract with ICE fall into the third category—people detained for the purpose of civil immigration proceedings.

The statute prohibits the co-mingling of these three classes of detained persons, stating that they “*shall not* be kept or put in the same room.”⁴ It carves out one exception: individuals in pre-trial detention and those serving criminal sentences “may be kept or put in the same room” for supervised activities and, under certain circumstances, “for the purpose of housing.”⁵ There is

³ All following references to statutory provisions are to the Penal Code, unless otherwise indicated.

⁴ § 4002(a) (emphasis added).

⁵ *Id.*

no analogous exception for co-mingling individuals committed under *civil* process with any other category of detained or incarcerated persons.

Thus, as persons detained for the civil immigration process, people held in ICE custody at YCJ must not be housed together with people in criminal custody, at risk of violating § 4002 and exposing the jail and the County to liability.

Importantly, § 4002 prohibits YCJ from housing people in ICE custody in the same “pods” as anyone who is *not* in ICE custody. In other words, YCJ cannot simply assign people in ICE custody and those in County custody to different cells within the same “pod” to attempt to satisfy the requirements of § 4002. Co-mingling unavoidably occurs whenever people are assigned to the same “pod,” even if they do not share a cell. People in different cells who share a “pod” regularly exit their cells and—as described below—share larger common areas during mealtimes, recreation time, and other periods. Thus, to avoid violating § 4002, YCSO must ensure that anyone in ICE custody at YCJ is housed only with others also in ICE custody, in “ICE-custody-only” pods.

B. Systematic violations of § 4002 harm persons detained by ICE and subject co-mingled individuals to worse conditions than their non-co-mingled counterparts

People formerly confined in ICE custody at YCJ have reported and described to us the many deleterious consequences of co-mingling in violation of § 4002. Co-mingled individuals face significantly worse conditions of confinement than their counterparts in non-co-mingled housing pods, and face greater difficulties meeting with pro bono legal services providers and contacting their attorneys if they have one.

People reported that in co-mingled pods, persons held by ICE and those held by the County unavoidably ended up in the same room every day. They described how the jail divided the ICE and County populations across the pod’s top and bottom tiers, such that the bottom tier contained half of the persons detained for ICE and half of the persons detained for the County; while the top tier contained the other half of the persons detained for ICE and the other half of the persons detained for the County. Recreation was scheduled tier-by-tier, so people celled in the bottom tier would be allowed out from their cells to have recreation together; separately, people celled in the top tier would have their recreation together. Likewise, the meal distribution was organized tier-by-tier. So, for example, the top tier would come out of their cells at the same time to receive their meal trays and return to their cells, and after they returned to their cells, the bottom tier would be released at once to get their meal trays. During these times, co-mingling in the same room of persons detained for ICE and persons detained for the County was inevitable.

One individual reported that for one part of his immigration detention, he was assigned to the *same cell* with a person detained under criminal process, after the guards asked him to provide mentorship and guidance to the younger person detained by the County. He recalled directly observing mixed cell assignments other than his own on a few occasions.

Co-mingled individuals face worse conditions of confinement: Individuals reported that being co-mingled subjected them to significantly worse conditions of confinement than their non-co-mingled counterparts in ICE-only pods. County inmates' movements were constrained by stricter rules than those that ordinarily applied to persons detained by ICE, but because they were mixed in the same housing pods, everyone in the pod was subjected to the more restrictive County rules. As one example, because of rules imposed on people detained by the *County*, everyone in the co-mingled pods, including those detained for ICE, spent the great majority of the day—reportedly 19 hours, or more—locked inside their cells, with only limited periods of time for recreation, showers, phone calls, and other activities outside their cells. Because of the limited time co-mingled individuals had outside their cells, their phone access was restricted to only a few hours per day, and they often had difficulty reaching their attorneys. In some instances, they were forced to choose between showering and having a legal call during their limited day room time.

Co-mingled individuals struggle to receive equitable access to pro bono resources: A few formerly detained persons shared their impression that they had less frequent access to pro bono legal services providers than those held in ICE-only pods as a direct consequence of being co-mingled. They recalled seeing attorneys and law students whom they believed were associated with pro bono immigration legal clinics being escorted by sheriff deputies past their pod without stopping, ostensibly on their way to an ICE-only pod. One person shared that a sheriff once told him that his co-mingled pod didn't receive visits from pro bono legal service providers because "You're all criminals."

Co-mingled individuals are denied equitable access to programming, services, and recreational activities: Individuals in ICE custody who were co-mingled reported being denied the same access to programming or religious services as enjoyed by people in ICE-only pods. They reported not being permitted to leave the pod for classes, programs, and religious services, in accordance with the general restrictions placed on their County-detained counterparts. These religious services and programs—including classes on parenting, sobriety, substance abuse prevention and treatment, anger management, and vocational skills—are a meaningful form of education and activity. Attendance in and completion of these programs are often crucial to demonstrating rehabilitation and character development in attendees' immigration removal proceedings and bond hearings that could lead to their release. Depriving co-mingled individuals

of these opportunities has a significant effect on their merits cases and bond applications in immigration court.

Relatedly, co-mingling deprives people in ICE custody from receiving the same access to recreational activities as their counterparts in ICE-only pods. One individual reported that when he and others in his pod requested a ping pong table, a sergeant denied the request because the jail could not provide the people detained by ICE with a ping pong table without also making it available to those held by the County, and, the sergeant reportedly said, “County inmates are here to be punished, not rewarded with ping pong tables.” The lack of adequate recreational activities made the television—one of the few sources of entertainment in the co-mingled pod—a source of tension as people in ICE custody often expressed different language preferences for the television programming than people in criminal custody.

* * *

People in ICE custody who were co-mingled were able to confirm that the conditions of their confinement were significantly worse than those of people in ICE-only pods during their transportation together to immigration court. The people in ICE-only pods could move in and out of their cells freely throughout the day into the day room for recreation, phone calls with attorneys, showers, and other activities. They had a ping pong table in their pod, were permitted to have radios in their cells, and had tablets for conducting video calls with loved ones. They were able to go to church more often. People in ICE-only pods reported having more frequent visits from pro bono attorneys than the co-mingled detained persons had, and correspondingly higher rates of success of securing pro bono legal representation. The co-mingled detained persons felt frustrated, upset, and saddened upon realizing they were treated differently from other groups of individuals detained by ICE, even though everyone was detained for the same reason: civil immigration proceedings.

We remind you that pursuant to ICE’s 2019 National Detention Standards, with which YCJ is contractually obligated to comply, the jail must provide persons detained for ICE with “access to recreational programs and activities,” defined to include “law and leisure libraries, religious services, educational or vocational classes, work programs, and recreation.”⁶ All detained persons “shall have the opportunity to engage in practices of their religious faith,” and religious activities must “be open to the entire detainee population.”⁷ Those in administrative segregation “shall be permitted to participate in religious practices, limited only by a documented

⁶ ICE, 2019 National Detention Standards (“NDS”) 5.2(I); NDS 4.7(2)(A)(4).

⁷ NDS 5.3(II)(A).

threat to safety, security, and orderly operation of the facility.”⁸ Likewise, “[f]acilities are encouraged to maximize opportunities for group participation in recreation and other activities” for administratively segregated individuals, consistent with any safety and security considerations.”⁹ Failure to provide meaningful opportunities for persons detained by ICE to engage in classes, services, programming, recreation, and other activities jeopardizes YCJ’s compliance with the ICE contract.

Each formerly detained person to whom we spoke about their experiences was eventually transferred from YCJ to other detention facilities in California that were dedicated to civil immigration detention only. Each described YCJ as particularly chaotic and stressful compared to those immigration-only facilities. Their day-to-day experience of detention was no longer subject to the punitive and excessive restrictions imposed by YCJ on those held in mixed pods. As one interviewee stated, when he was at YCJ and housed in co-mingled pod, “I felt like I got caught up in another crime,” even though his detention was purportedly civil. The formerly detained persons independently characterized their time at YCJ as the “worst” of the facilities they experienced, compared to various CDCR state prisons, Mesa Verde ICE Processing Facility, and Adelanto ICE Processing Center; and identified the restrictive and harsh conditions imposed by YCJ when they were confined in mixed pods as a major source of their deeply negative experiences at YCJ.

C. Yuba County Jail must ensure that people in ICE custody are afforded the same access to programming and privileges as those in County custody

While persons in ICE custody at YCJ must be provided separate housing pods from their counterparts in County custody, they must nevertheless be afforded the same *opportunities* as those in County custody receive to engage in jobs, classes, and other programming. Due process demands no less.

Because people being detained for immigration purposes are “detained under civil—rather than criminal—process, [they are] entitled to ‘more considerate treatment’ than [their] criminally detained counterparts.”¹⁰ In other words, YCJ must ensure that the conditions of confinement provided to people in ICE custody are *no worse in any respect* than those provided to individuals held in County custody. This requirement, grounded in the Due Process Clause, pertains to all conditions of confinement, including, but not limited to, conditions of detention;

⁸ NDS 5.3(II)(M).

⁹ NDS 5.2(II)(D).

¹⁰ *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982)).

access to programming, religious services, employment opportunities, libraries, and medical care; visiting and telephone privileges; and recreational opportunities.

In practical effect, this means that if persons detained for the County have opportunities to—for example—work in the library or participate in Bible study groups, those same opportunities must be made available to persons detained for ICE, as well. Indeed, we encourage YCJ to provide as many opportunities as possible for people detained by ICE to participate in employment, programming, classes, and other productive avenues for engagement outside of their cells. This would be consistent not only with ICE’s National Detention Standards, but also with the spirit and purpose of confinement that is non-punitive in nature.

II. People Detained at Yuba County Jail Face Abysmal Conditions

YCSO has long failed to provide safe, sanitary, and adequate conditions for people detained in ICE custody at YCJ. In 2018, 2019, and 2020, people held at YCJ engaged in hunger strikes to protest the inhumane treatment they received from YCSO staff and ICE officers. In April 2021, ICE’s Office of Detention Oversight conducted an inspection at YCJ to assess the jail’s compliance with ICE’s 2019 National Detention Standards. It found that the jail was in compliance with only half of the 18 NDS 2019 standards inspected, with 31 deficiencies found in the remaining 9 standards. Nearly a quarter of the deficiencies were reported in the category “Medical Care”.¹¹

A. History of broken sanitation, inadequate hygiene, and other hazards to health & safety

Although Yuba County Jail has been under a court-ordered consent decree since 1979, conditions of detention at the jail have long failed to meet minimum standards for health and safety. These conditions have shown little evidence of improvement during the COVID-19 pandemic, despite clear guidance from the Centers for Disease Control and Prevention that correctional and detention facilities should implement enhanced cleaning, disinfecting, and hygiene practices to mitigate the spread of the virus.¹²

¹¹ U.S. Dep’t of Homeland Sec., U.S. Immigration and Customs Enf’t, Office of Professional Responsibility, Inspection and Detention Oversight Division, Office of Detention Oversight, *Compliance Inspection of the Yuba County Jail*, p. 6 (Apr. 2021) (“Apr. 2021 Compliance Inspection”).

¹² Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (last updated June 9, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

A recently as January 2021—a year into the COVID-19 pandemic—some individuals detained for ICE reported being placed in “squalid” cells, with filthy toilets, moldy walls, and beds covered in dust and other people’s hair.¹³ In 2019, detained individuals reported that some cells lacked water and working lights and were infested with cockroaches.¹⁴ These and similarly subpar conditions have long been present at YCJ.

For years, detained persons and advocates have brought to the County’s attention persistent problems such as clogged sinks, lack of hot water, showers infested with flies and gnats, and toilets that cannot be flushed properly and that are clogged with raw sewage. Detained persons have reported lights that are broken for extended periods of time, limiting the light that can pass through honeycomb holes in the metal doors to certain cells and making it difficult for detained persons to read legal documents and other materials. YCJ officials have confirmed many of these conditions themselves. In a “Weekly report” dated September 13, 2018 and released in response to a Public Records Act (“PRA”) request from our office, an unnamed jail official or guard confirms many of these conditions, noting, among other things: late clothing exchanges in numerous pods, failure to change undergarments daily, “no hot water” in one sink and “[n]o cold water” in other sinks, toilets that do not “flush all the way,” “broken” and “flicker[ing]” lights, and water that “smells like a sewer.” In the past, YCJ has sometimes delayed fixing similar issues for weeks or months.

When the government “takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility . . . to provide for his basic human needs—e.g., food, clothing shelter, medical care, and reasonable safety.”¹⁵ Inadequate lighting; infestation of vermin; and ongoing unsanitary conditions, such as broken toilets and stagnant, dirty pools of water may violate the Constitution.¹⁶

Further, YCSO is contractually required to comply with ICE’s National Detention Standards. Those Standards provide that “[p]ests and vermin will be controlled and eliminated”; “[f]acility cleanliness and sanitation shall be maintained”; “[a]ll surfaces, fixtures, and equipment shall be kept clean and in good repair”; and “[a] ready supply of hot water” shall be

¹³ Farida Jhabvala Romero, *‘They Didn’t Listen to Us’: ICE Detainee Who Waged Hunger Strikes for COVID-19 Protections Gets Virus*, KQED, Jan. 26, 2021, <https://www.kqed.org/news/11856995/they-didnt-listen-to-us-ice-detainee-who-waged-hunger-strikes-for-covid-19-protections-gets-virus>.

¹⁴ Elliot Wailoo, *Immigrant detainees begin hunger strike in Yuba County jail for improved conditions*, Sacramento Bee, July 17, 2019, <https://www.sacbee.com/article232261867.html>.

¹⁵ *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

¹⁶ See *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985); *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005).

provided.”¹⁷ Moreover, during the unabating COVID-19 pandemic, ICE has released heightened standards for sanitation, hygiene, and personal protective equipment facilities must have available to mitigate the potential spread of COVID-19 among detained persons and staff.¹⁸

B. Difficulty accessing timely and adequate medical care

People detained for ICE have frequently experienced unacceptably delayed and inadequate medical care while confined at YCJ. Even during the nationwide surge of COVID-19 cases in summer 2020, persons detained by ICE reported facing waits of a week or longer to see a doctor or nurse when sick.¹⁹ One person detained by ICE at Yuba for nearly a year before being released in July 2020 reported, “If you are lucky, you’ll get to see a nurse within seven days . . . If there’s a[] [COVID-19] outbreak [inside YCJ], by the time they see the doctor, he [will have] already infected the rest of the pod for seven days.”²⁰

These facts reflect problems that long precede the COVID-19 pandemic. We have alerted the jail in the past to reports sent to us of individuals failing to receive responses to medical request slips and having to submit numerous slips to access medical care for a given issue, including for urgent medical complaints. In fact, ICE’s own medical providers have raised concerns to YCJ staff about the adequacy of medical care provided to persons detained for ICE. In a July 2018 email released in response to a PRA request from our office, an ICE Field Medical Coordinator characterized YCJ’s transfer of a person diagnosed with diabetes who was released from the jail with insulin but no insulin syringes as “patient neglect,” “incompetence,” and “**UNACCEPTABLE.**” And in a March 2018 email also released in response to a PRA request from our office, an Acting Deputy Field Office Director for ICE contacted a YCSO official to express her concern that “[i]n general it does seem to take Yuba medical a while to respond [to ICE’s questions],” and further stating, “I know they are not used to working with such a demanding agency and we have been understanding of that but it seems to be a continual issue.”

These problems persist. ICE’s April 2021 compliance inspection found ongoing deficiencies in medical care at YCJ. In one instance described in ICE’s compliance report, a detained person reported that he had not been informed about the results of medical tests

¹⁷ NDS 1.1(II)(E), (II)(I)(2); NDS 4.1(II)(I)(5).

¹⁸ See U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *COVID-19 Pandemic Response Requirements* pp. 30–35 (7th ed. Oct. 19, 2021).

¹⁹ Farida Jhabvala Romero, *ICE Detainees at Yuba Jail Press for COVID-19 Protections*, KQED, Aug. 28, 2020, <https://www.kqed.org/news/11835611/ice-detainees-at-yuba-jail-press-for-covid-19-protections>.

²⁰ *Id.*

conducted months earlier; though the nurse practitioner insisted otherwise, ICE’s Office of Detention Oversight (“ODO”) found there was no documentation indicating the results had been communicated to the detained person.²¹ YCJ medical staff also failed to inform a detained person about the results of his April 2020 and August 2020 electrocardiogram tests until April 6, 2021—apparently prompted by the ODO’s inspection, which had commenced the day before.²² Further, the jail failed to complete health and/or dental assessments for a quarter of the population detained for ICE within 14 days of their arrival, as required.²³ Additionally, ODO found that some credential files of medical staff “did not contain primary source verification to confirm valid professional licensure,” as required; and that the jail’s refusal to provide ODO with requested training records for one nurse prevented ODO from verifying the nurse had completed required training, which the ODO described as “a repeat deficiency.”²⁴ ODO also found that the jail’s mental health providers fail to conduct welfare checks of persons “in a suicide resistant cell” or “on close observation status” as frequently as the standards require.²⁵

Consistent with these findings, on October 26, 2021, the court-appointed monitors in *Hedrick v. Grant* reported alarming examples of persistent non-compliance with the consent decree that governs Yuba County Jail’s operations, particularly with regard to inadequate medical care.²⁶ The monitors reported that one person died in a holding cell at Yuba County Jail after “Jail staff failed to adhere to several policies and protocols during the three days [the deceased individual] spent at the Jail before his death,” including the failure to have him examined by a healthcare practitioner or sent to the emergency room for evaluation.²⁷ The monitors further found that YCJ regularly and inappropriately places individuals with serious mental illness in administrative segregation; fails to provide *any* inpatient mental health care, inadequately staffs medical and mental health care services, denies disability accommodations based on inappropriate blanket rules and without due process, and unreasonably delays in providing specialty care.²⁸

²¹ Apr. 2021 Compliance Inspection at 7.

²² *Id.*

²³ *Id.* at 12–13; *see* NDS 4.3(II)(E), (H).

²⁴ Apr. 2021 Compliance Inspection at 12; *see* NDS 4.3(II)(C), (E).

²⁵ Apr. 2021 Compliance Inspection at 13–14; *see* NDS 4.5(II)(F).

²⁶ *See* Monitoring Report – Yuba County Jail, First and Second Quarters – 2021, *Hedrick v. Grant*, E.D. Cal. No. 2:76-cv-00162-EFB (Oct. 26, 2021), available at <https://rbgg.com/wp-content/uploads/REDACTED-DRAFT-public-version-of-Pls-Q1-Q2-2021-Monitoring-Report-10-26-21.pdf> (“Oct. 2021 *Hedrick* Monitoring Report”).

²⁷ Oct. 2021 *Hedrick* Monitoring Report at 3.

²⁸ *Id.* at 4–13.

These deficiencies cause YCSO to fall short of its contractual obligations with ICE and its obligations to the *Hedrick* court, and most importantly may violate the constitutional rights of the individuals for whom YCSO is responsible.

The Constitution requires YCJ to provide adequate medical care to those it imprisons.²⁹ As numerous courts have found, the failure to provide timely medical care to detained persons who repeatedly request attention for their medical needs may constitute deliberate indifference.³⁰ ICE’s NDS specify that facilities shall provide detained persons with “appropriate medical, dental, and mental health care and pharmaceutical services,” including “24-hour emergency medical and mental health care;” and notes that facilities are expected to provide “[t]imely responses to medical complaints.”³¹

* * * * *

To avoid liability for repeated violations of § 4002, YCJ must ensure that individuals held for ICE are assigned to different housing “pods” from individuals detained or incarcerated at the jail under criminal process. This is because persons assigned to the same housing “pods” inevitably co-mingle throughout the day, and co-mingling of persons detained by ICE with persons detained by the County violates § 4002.

But compliance with § 4002 alone cannot cure every unlawful condition of detention to which YCSO has long subjected individuals detained for ICE. For that reason, we urge Yuba County and Yuba County Jail to resolve the issues summarized in this letter by terminating the contract with ICE.

For nearly 30 years, YCSO has detained noncitizen community members for ICE at YCJ. The result has been countless deprivations of legal and constitutional rights of the persons under

²⁹ See *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976).

³⁰ See *Gould v. California Dep’t of Corr. & Rehab.*, No. 2:18-cv-1981-JAM-EFB-P, 2020 WL 704000, at *2–*3 (E.D. Cal. Feb. 12, 2020) (imprisoned plaintiff’s allegation that defendant ignored his repeated requests for medication stated a claim of deliberate indifference); *Saddozai v. Spencer*, No. 18-04511 BLF (PR), 2019 WL 3082940, at *1 (N.D. Cal. July 11, 2019) (imprisoned plaintiff’s allegation that defendants “continual[ly] delay[ed] . . . treatment presents a cognizable claim of deliberate indifference to serious medical needs”); *Escalera v. Corizon Health Inc.*, No. CV 19-04934-PHX-MTL (JFM), 2020 WL 5593848, at *5 (D. Ariz. Sept. 18, 2020) (imprisoned plaintiff’s allegation that defendants’ nearly year-long delay in providing him with medical care repeatedly recommended by medical providers stated a claim of deliberate indifference); *Beitman v. Correct Care Sols.*, No. CV 17-08229-PCT-JAT (DMF), 2020 WL 1911425, at *7 (D. Ariz. Apr. 20, 2020) (imprisoned plaintiff’s allegation that defendants repeatedly failed to respond to a medical need raised “serious questions” that defendants were deliberately indifferent).

³¹ NDS 4.3(II)(A), (II)(J).

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your care. We urge Yuba County and YCSO to put an end to this troubled legacy, stop exposing the County to unnecessary liability, and terminate ICE's relationship with Yuba County Jail.

Please contact us at mcho@aclunc.org and vtalla@aclunc.org if you have any questions.

Sincerely,



Minju Cho
Staff Attorney
ACLU Foundation of Northern California



Vasudha Talla
Immigrants' Rights Program Director
ACLU Foundation of Northern California

cc: Michael Ciccozzi, County Counsel

cc by email only: Randy Fletcher, Vice Chair of the Board of Supervisors
Andy Vasquez Jr., Supervisor
Don Blaser, Supervisor
Seth Fuhrer, Supervisor
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