



# *City and County Contracts With U.S. Immigration and Customs Enforcement*

Local Governments Must Improve Oversight  
to Address Health and Safety Concerns and  
Cost Overruns

*February 2019*

**REPORT 2018-117**





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February 26, 2019  
**2018-117**

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As the Joint Legislative Audit Committee requested, the California State Auditor presents this audit report regarding cities and counties in California that contract with federal entities to house individuals who have been detained for reasons related to immigration (detainees). From July 2013 through June 2018, three cities and four counties had contracts with U.S. Immigration and Customs Enforcement (ICE) to house detainees. Additionally, Yolo County has an agreement with the federal Office of Refugee Resettlement (Refugee Resettlement) to house in its juvenile detention facility individuals under 18 years old who have no lawful immigration status in the United States and no parent or guardian in the country to provide care and physical custody (unaccompanied children).

This report concludes that local governments must improve their oversight of such contracts to address cost overruns and serious health and safety concerns at contracted detention facilities. We found that three cities—Adelanto, McFarland, and Holtville—subcontracted to private operators nearly all of their responsibilities under their ICE contracts, including providing detainees with housing, safekeeping, subsistence, and medical services. The cities provide little or no oversight of the private operators and simply passed federal payments from ICE to these subcontractors despite the fact that federal inspections have found serious health and safety problems at these private detention facilities. For example, a recent federal inspection of the Adelanto Detention Facility reported one suicide and three suicide attempts, inadequate dental care, and cursory medical assessments.

The counties that contract with ICE failed to ensure that ICE fully paid their costs for housing detainees. Although some counties have taken action to resolve these revenue shortfalls, others, such as Orange County, have not. Orange County's costs for housing detainees exceeded ICE detainee housing payments by about \$1.7 million in fiscal year 2017–18, and it may have had to pay those excess costs with county funds. Yolo County's May 2018 budget proposal indicates that its past budgets did not include all costs for housing unaccompanied children and that it has substantially subsidized segments of the program.

As our recommendations in this report indicate, California's cities must provide better oversight of subcontractors to ensure detainees' health and safety, and counties should take steps to ensure all allowable costs are paid for by federal entities.

Respectfully submitted,

A handwritten signature in black ink that reads 'Elaine M. Howle'.

ELAINE M. HOWLE, CPA  
California State Auditor



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## SUMMARY

Several cities and counties in California have contracted with U.S. Immigration and Customs Enforcement (ICE) to house individuals who have been detained for immigration-related reasons (detainees). In addition, one county has an agreement with the federal government to house children under 18 years old in its juvenile detention facility who have no lawful immigration status in the United States and no parent or guardian in the country available to provide care and physical custody (unaccompanied children). The Legislature has expressed concerns about the transparency and accountability of California's involvement in housing these detainees. The State lacks complete information about how much it costs and what conditions the detainees face. Also unclear are how many detainees are being held throughout California, where they are being held, and for how long. We found that from July 2013 through June 2018 three cities in California had contracts with ICE (ICE contracts) to house detainees: Adelanto, McFarland, and Holtville. Although these cities have subcontracted with private entities that manage and operate detention facilities (private operators) to house detainees, they have not exercised appropriate oversight. We also found that the four counties with ICE contracts that we reviewed have not adequately monitored contract costs.

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### **Cities Have Not Ensured That Their Private Operators Are Providing for the Health and Safety of Detainees**

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Federal inspections of the three private detention facilities that house detainees on the cities' behalf have revealed serious issues that represent significant threats to the health, safety, and rights of detainees. For example, a recent inspection of the Adelanto Detention Facility reported at least one suicide and three suicide attempts, inadequate dental care, and cursory medical assessments. However, each of the three cities has subcontracted nearly all of their obligations under their ICE contracts to private operators. The cities simply pass federal payments from ICE to these subcontractors, without performing any meaningful oversight. For example, during our audit period from fiscal years 2013–14 through 2017–18, the cities did not review quality control plans, complaints, or inspection reports that would help ensure that their private operators are adequately performing their responsibilities. It is imperative that the cities ensure that their subcontractors are consistently meeting their contract obligations and are promptly addressing significant issues that inspections identify.

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### **Counties Incurred Costs for Housing Detainees or Unaccompanied Children That Exceeded Federal Payments**

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None of the four counties that we reviewed ensured that ICE fully paid for the cost of housing detainees each year during our audit period, although three of the four took some action. Orange County's costs for housing detainees in fiscal year 2017–18 exceeded

the revenue it received for doing so by roughly \$1.7 million, yet it did not renegotiate its contract payment rate with ICE to ensure that ICE pays for all allowable detainee costs. Unlike Orange County, Contra Costa County estimated in 2018 that the revenue from ICE exceeded its budgeted expenditures; however, its estimate did not include significant costs such as costs of providing medical care to detainees. Thus, it cannot know for certain that its payments from ICE in fact covered its costs. Additionally, Yolo County, which has a contract with the federal Office of Refugee Resettlement (Refugee Resettlement) to house unaccompanied children, did not include in its budgets all of the actual costs of running the Refugee Resettlement program. Specifically, we estimate that Yolo County might have spent approximately \$700,000 more than it received from Refugee Resettlement in fiscal year 2017–18 to pay for some of the program's costs.

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## Summary of Recommendations

### *Legislature*

To ensure that significant health and safety issues for detainees are addressed promptly, the Legislature should consider urgency legislation amending state law to require cities that contract with ICE to house detainees to implement adequate oversight policies and practices. These policies and practices should ensure that private operators develop timely corrective actions for any noncompliance identified in federal inspection reports.

### *Cities*

To ensure that significant health and safety issues are addressed in a timely manner, by May 1, 2019, the cities that contract with ICE to house detainees should implement oversight policies and practices to ensure that their private operators develop timely corrective actions for any noncompliance identified in federal inspection reports.

### *Counties*

To ensure that it does not unnecessarily spend county funds to house ICE detainees, Orange County officials should renegotiate the per-diem rate in its contract with ICE as soon as possible to arrive at an amount that covers all of the county's allowable costs for housing ICE detainees.

To ensure that it receives funding to fully pay for the costs of housing unaccompanied children for Refugee Resettlement, Yolo County should identify all allowable costs and include them in its future budget requests to Refugee Resettlement.

### **Agency Comments**

Orange County and the city of Adelanto agreed with our recommendations, but disagreed with some of our conclusions. Yolo County and Community Corrections agreed with our recommendations. We did not receive a response from the city of Holtville.

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## INTRODUCTION

### Background

The federal government has broad power over the subject of immigration and exercises this authority by regulating immigration throughout the United States, including California. Specifically, federal law charges the U.S. Department of Homeland Security (Homeland Security) with administering and enforcing laws related to immigration. It is the mission of U.S. Immigration and Customs Enforcement (ICE), a component of Homeland Security, to enforce the full range of immigration and customs laws within the interior of the United States. Federal law authorizes the federal government to detain certain noncitizens who are seeking admission into the country or who are already in the country, pending the outcome of immigration removal proceedings. ICE performs the functions of the detention and removal program, and it may enter into contracts with local governments to provide detention services for detainees. ICE has entered into such contracts with certain local governments in California; thus, California has an interest in this process. Nonetheless, immigration is a federal responsibility.

Federal law and a 1997 settlement agreement referred to as the Flores Settlement Agreement, govern the care and placement of unaccompanied children.<sup>1</sup> For example, federal law generally requires ICE to transfer an unaccompanied child in its custody to the U.S. Department of Health and Human Services (Health and Human Services) within 72 hours after determining that the child is unaccompanied. Health and Human Services' Office of Refugee Resettlement (Refugee Resettlement) is responsible for coordinating and implementing the care and placement of unaccompanied children.

Once an unaccompanied child is in Refugee Resettlement's custody, Refugee Resettlement must promptly place the child in the least restrictive setting that is in the best interest of the child. In accordance with the Flores Settlement Agreement, Refugee Resettlement releases unaccompanied children to *sponsors*—parents, legal guardians, or other suitable adults—if possible. If a sponsor is unavailable, then Refugee Resettlement generally places these unaccompanied children in a state-licensed program that provides services for dependent children, such as a foster family home. In certain other cases, such as when unaccompanied children pose a risk to themselves or others or have been charged

<sup>1</sup> In a 2001 modification to the Flores Settlement Agreement, the parties stipulated that the agreement would terminate 45 days after the federal government publishes final regulations implementing the terms of the agreement. In September 2018, Homeland Security and Health and Human Services proposed regulations to parallel the substantive terms of the agreement.

with a criminal offense, they are placed in a juvenile detention facility. If Refugee Resettlement determines that an unaccompanied child no longer poses a risk to himself or herself or others, it may transfer that child to a less secure facility, such as a group home. If an unaccompanied child turns 18 years old while in Refugee Resettlement's custody, that person is transferred to the custody of Homeland Security.

On April 6, 2018, the U.S. Attorney General directed each U.S. Attorney's Office along the southwest border to adopt a "zero-tolerance policy" for prosecuting certain offenses related to improper entry into the United States. The Flores Settlement Agreement requires that unaccompanied children be placed in the least restrictive setting that is appropriate to each child's age and special needs. In 2016 the Ninth Circuit Court of Appeals expanded

this requirement to children arriving in the United States with their parents. Consequently, in 2018 when the federal government took custody of parents under the U.S. Attorney General's policy, it separated families. The children from those families effectively became unaccompanied and were transferred to Refugee Resettlement for placement. The federal policy has since changed so that families are no longer separated. Instead, families are required to be detained together where appropriate and consistent with law and available resources.<sup>2</sup> However, although the total number of children separated by immigration authorities is unknown, the Office of the Inspector General for Health and Human Services reported that as of December 2018, 159 children were still in Refugee Resettlement's care nationwide, as the text box shows.

**Number and Status of Unaccompanied Children Initially Identified as Having Been Separated From Their Parents and Still in the Care of Refugee Resettlement as of December 2018**

- 8—Pursuing reunification with parents
- 95—Parents declined reunification
- 28—Parent unfit or poses danger to child
- 28—Subsequently determined not separated from parent (for example, entered the country unaccompanied or were separated from non-parent relative)

Source: Health and Human Services' Office of the Inspector General's report *Separated Children Placed in Office of Refugee Resettlement Care*, OEI-BL-18-00511.

Finally, in September 2018 the United States Senate introduced a bill to clarify responsibilities related to unaccompanied children and to provide additional protections and mechanisms for tracking them. For example, the bill would amend federal law to require Health and Human Services to notify the California Department of Social Services (Social Services) of the unaccompanied child's location within the State before releasing that child to a sponsor. As of February 13, 2019, the bill was still pending.

<sup>2</sup> According to the U.S. Government Accountability Office's April 2018 report *Immigration Detention: Opportunities Exist to Improve Cost Estimates*, ICE has three family facilities—two in Texas and one in Pennsylvania. The facilities in California we reviewed did not house families.

## Immigration Detention Contracts

During our audit period from July 2013 through June 2018, ICE had contracts with three cities, four counties, and one private entity to house detainees in nine detention facilities within California.<sup>3</sup> Also during this time, Refugee Resettlement had a cooperative agreement with Yolo County to house unaccompanied children at the Yolo County Juvenile Detention Facility (Yolo Juvenile Facility). As of August 15, 2018, the Yolo Juvenile Facility was one of only two secure care facilities in the country—facilities that provide the strictest level of supervision among institutions that house unaccompanied children. Figure 1 on the following page shows the locations of the 10 detention facilities and the city or county that held the contract related to these facilities during our audit period. We present in Appendix B some demographic information on the individuals housed in those detention facilities from July 1, 2013, through June 30, 2018.

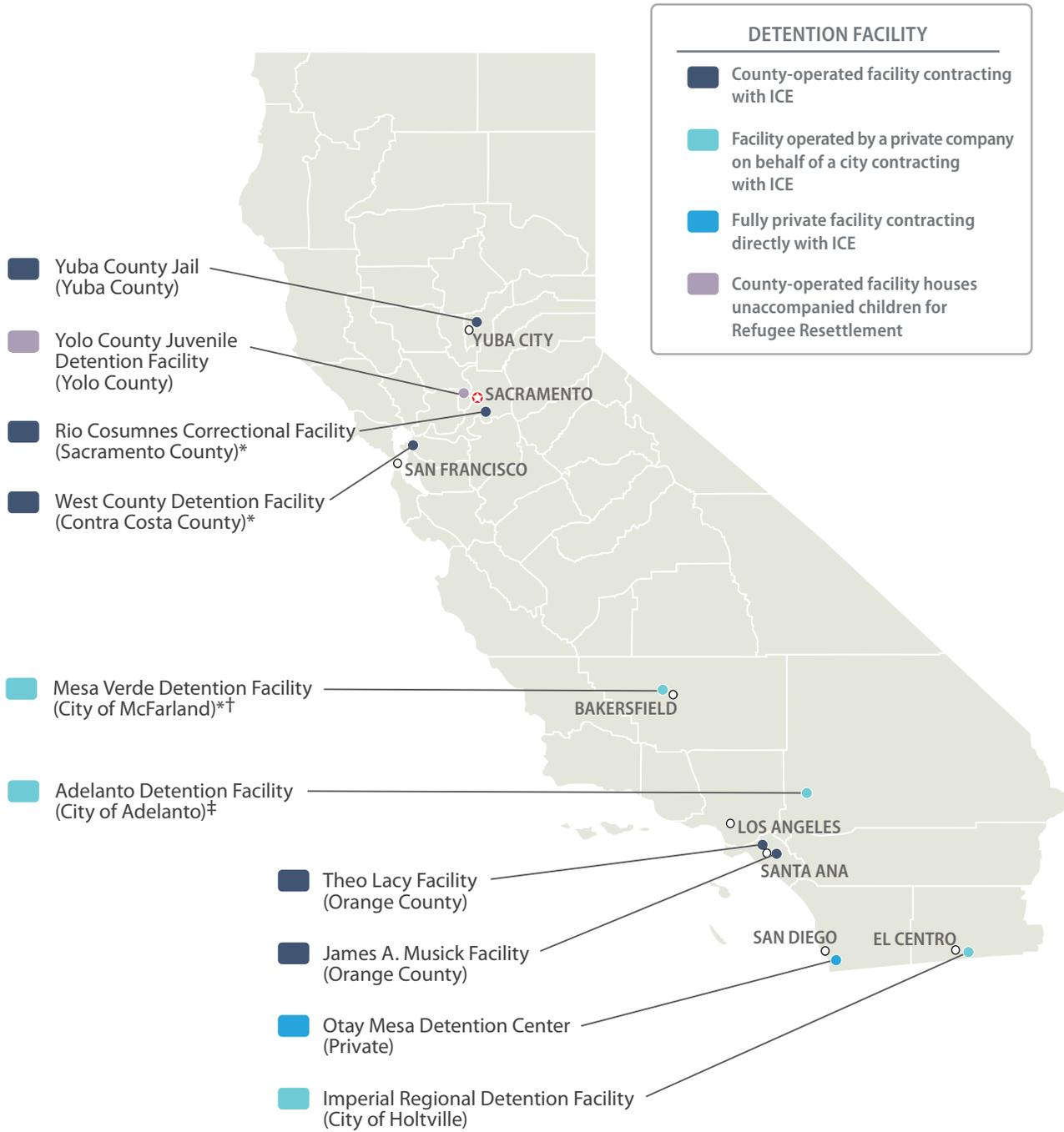
Since June 2018, two of the counties and one of the cities have ended their contracts with ICE. In June 2018, the Sacramento County Board of Supervisors voted against extending the term of the county's existing ICE contract, which expired on June 30, 2018. In Contra Costa County, the Office of the Sheriff informed ICE in July 2018 that it was terminating Contra Costa County's agreement to house ICE detainees effective November 7, 2018. In December 2018, the city manager of McFarland notified ICE that the city intended to terminate its contract in 90 days.

ICE's contracts establish an amount per day that ICE will pay for each detainee that a facility houses. This rate varies among the facilities. Unlike ICE's contracts, Refugee Resettlement's agreement with Yolo County requires the county to submit a program budget for federal approval. The approved budget includes categories of costs instead of a per-day payment rate, and Yolo County tracks its costs according to those categories.

ICE uses two entities to inspect conditions in California detention facilities. It contracts with a private company, the Nakamoto Group, Inc. (Nakamoto), to inspect facilities that hold ICE detainees to determine whether these facilities are complying with ICE's performance-based national detention standards (detention standards). Additionally, ICE's Office of Detention Oversight (Detention Oversight) periodically inspects facilities to determine compliance with standards that directly affect detainee health, safety, and/or well-being.

<sup>3</sup> Santa Ana City Jail had a contract with ICE during the period, but ICE had removed all detainees by June 30, 2017, so we did not include it in our review.

**Figure 1**  
Ten Detention Facilities in California Housed Detainees or Unaccompanied Children  
From Fiscal Years 2013–14 Through 2017–18



Source: ICE Facility Database, Google maps, ICE contracts and other documents, and federal reports.

Note: Santa Ana City Jail ended its contract with ICE during the audit period, and ICE had removed all detainees by June 30, 2017, so we did not include it in our review.

\* Facility either ended or did not renew its contract with ICE after we began our audit.

† The Mesa Verde Detention Facility is also called the Mesa Verde ICE Processing Center.

‡ The Adelanto Detention Facility is also called the Adelanto ICE Processing Center.

Furthermore, Homeland Security's Office of the Inspector General (Inspector General) began performing unannounced inspections of ICE detention facilities in March 2016, in response to concerns regarding conditions for detainees in ICE custody. The unannounced inspections are designed to monitor compliance with official government health, safety, and detention standards. Finally, Refugee Resettlement conducts monitoring visits of Yolo County's program at the Yolo Juvenile Facility to examine the services provided to unaccompanied children.

### **State Action Limits Involvement in Immigration Detention**

The Legislature has restricted local government involvement in housing detainees while increasing state monitoring of this practice. Legislation passed in September 2016 found that recent immigration enforcement programs sponsored by ICE have suffered from a lack of transparency and accountability. As of June 2017, state law prohibits cities, counties, and local law enforcement agencies from entering into new contracts with the federal government to house detainees or unaccompanied children in locked detention facilities. State law also prohibits cities, counties, and local law enforcement agencies with existing contracts to house detainees or unaccompanied children from modifying or renewing those contracts in a way that expands the number of beds for such individuals.

Furthermore, as of June 2017 and until July 2027, state law authorizes the California Attorney General (Attorney General) to review local or private locked detention facilities in California in which adult or child noncitizens are being housed or detained for purposes of civil immigration proceedings or who are being held pursuant to a contract with Refugee Resettlement. The Attorney General is required to review, at a minimum, conditions of confinement, the standard of care and due process provided to individuals, and the circumstances around their apprehension and transfer to the facility. The Attorney General is to report his findings to the Legislature and the Governor, and to post the report on the Attorney General's website by March 1, 2019. However, the law providing the Attorney General with authority to review facilities is being challenged by the U.S. Department of Justice.

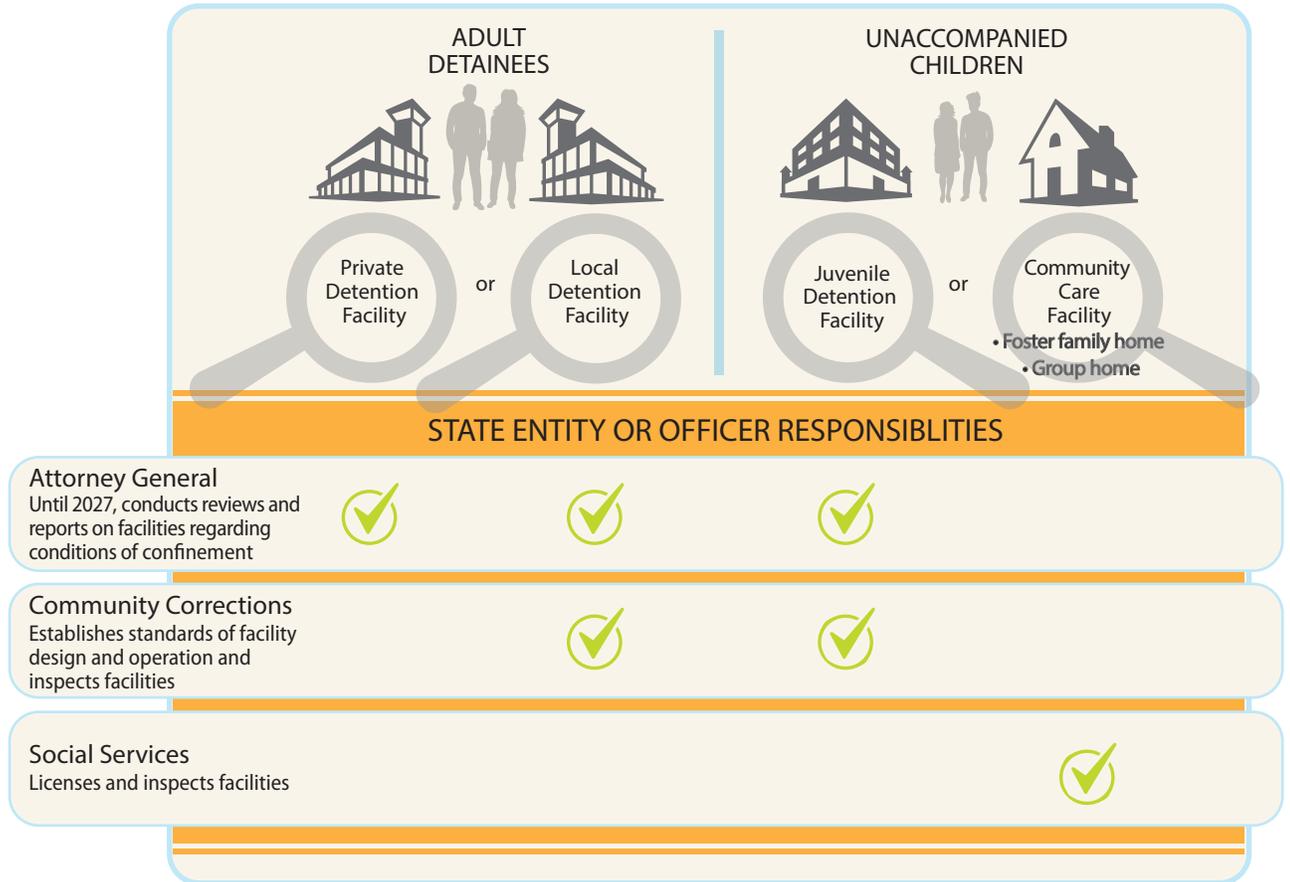
Two other state entities also have responsibilities related to reviewing facilities that can house detainees and unaccompanied children. The Board of State and Community Corrections (Community Corrections) is responsible for establishing minimum standards for the design and operation of local adult and juvenile detention facilities. At least once every two years, Community Corrections also inspects whether those facilities

are complying with those minimum standards, which relate to staff training, inmate programs and services, medical services, and other aspects of facility design and operation. Through its inspections, Community Corrections reports a facility's actual population as well as its rated capacity—the number of inmates it was designed to hold in conformity with standards such as square footage per inmate and the number of occupants per cell. Rated capacity is not an enforceable standard, so detention facilities can house populations in excess of that number. However, state law established procedures for the potential early release of inmates whenever a local detention facility's population exceeds its actual bed capacity, and Community Corrections collects early release data from counties. Community Corrections also awards funding for the construction of local adult and juvenile detention facilities, including funding allocated by state legislation.

Social Services is responsible for licensing community care facilities, such as foster family homes and group homes, some of which hold agreements with Refugee Resettlement to house unaccompanied children. Social Services must inspect these facilities at least once every two years to ensure that they comply with licensing standards, such as standards that dictate that facility personnel are competent to provide services and that facility buildings and grounds are clean, safe, sanitary, and in good repair. Social Services also has the authority to take any action it deems necessary to ensure the safety of children placed in any facility.

Figure 2 shows which state entity or officer has responsibilities related to each type of facility that can house detainees or unaccompanied children. As the figure depicts, both the Attorney General and Community Corrections review or inspect local detention facilities and juvenile detention facilities. However, state oversight of the other types of facilities is unique to a particular entity: only the Attorney General reviews private detention facilities, and only Social Services inspects community care facilities.

**Figure 2**  
State Entities and Officers That Have Responsibilities Related to Facilities That Can House Detainees or Unaccompanied Children



Source: State law and information from entities.

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## Cities Have Not Ensured That Their Private Operators Are Providing for the Health and Safety of Detainees

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### Key Points

- Cities have not exercised appropriate oversight of their contracts with private operators to house detainees.
- Federal inspectors have found serious health and safety problems at private facilities that additional contract management efforts by cities may help address.

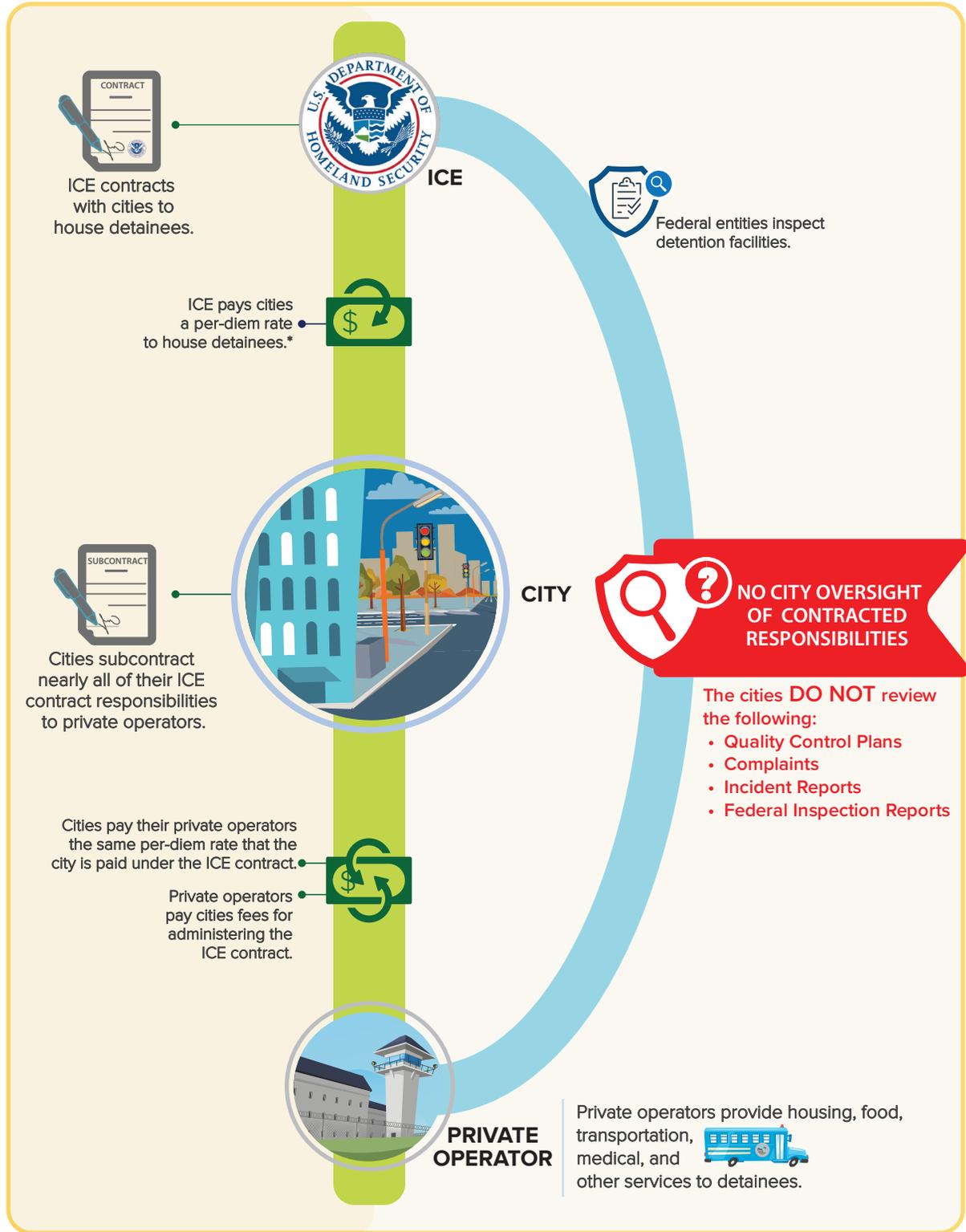
### Cities Have Not Exercised Appropriate Contract Oversight of Private Operators

The cities of Adelanto, McFarland, and Holtville entered into contracts with ICE to house detainees (ICE contracts). Specifically, these cities agreed to provide detainees with housing, safekeeping, subsistence, and medical and other services on behalf of ICE. Each of these three cities subcontracted with private operators that manage and operate private detention facilities to fulfill nearly all of the cities' obligations under the ICE contracts (detention subcontracts). However, Adelanto, McFarland, and Holtville perform little or no oversight of their private operators' efforts to fulfill those obligations to ICE. Essentially, the cities act as pass-through entities between ICE and the private operators by paying the same amount to the private operators as the cities receive from ICE, as we depict in Figure 3 on the following page. This lack of oversight is of concern given the serious health and safety issues reported in federal inspections, which we discuss later.

The ICE contracts require that the three private detention facilities are used exclusively to house ICE detainees. Adelanto and McFarland subcontract with the GEO Group, Inc. (GEO), which manages and operates both the Adelanto Detention Facility and the Mesa Verde Detention Facility.<sup>4</sup> However, in December 2018, the McFarland city manager notified both ICE and GEO that the city intended to terminate its contract with ICE and its detention subcontract with GEO in 90 days. The city of Holtville has subcontracted with Imperial Valley Gateway Center, LLC (IVGC), which constructed the Imperial Regional Detention Facility and subcontracted with another private entity—Management & Training Corporation (MTC)—to manage and operate that detention facility.

<sup>4</sup> The Adelanto Detention Facility is also called the Adelanto ICE Processing Center, and the Mesa Verde Detention Facility is also called the Mesa Verde ICE Processing Center.

**Figure 3**  
Cities Do Not Adequately Oversee Their Private Operators Housing ICE Detainees



Source: Cities' ICE contracts, detention subcontracts, national detention standards, and federal inspection reports.

\* ICE may also pay cities for related services such as detainee transportation, guard services, and a work program.

The three cities' ICE contracts are intergovernmental service agreements, or contracts between government entities. Federal law allows ICE to enter into these types of agreements with states, counties, or cities for the provision of detention services without competitive bidding. However, if ICE contracted directly with the private operators, ICE would have to comply with federal procurement rules that generally require full and open competition unless a statutory exception to the competitive process applies. ICE has asserted that federal law does not require it or the government entity that has entered into an intergovernmental service agreement with ICE to competitively award any related subcontracts. This would include the cities' detention subcontracts with private operators.

City council documents show how the private operators worked with two of the cities to secure or amend the intergovernmental service agreements with ICE. For example, in a January 2015 memo to the city council, McFarland's city manager explained how GEO sought out the city to enter into the contract with ICE. The memo states:

"GEO would like to enter into an Intergovernmental Service Agreement contract with the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) for the detention and care of aliens at its Mesa Verde facility in Bakersfield. GEO cannot enter into an [intergovernmental service agreement] with a federal government on its own. An [intergovernmental service agreement] can only be entered into with another government authority. Mesa Verde is located on South Union, in the City of Bakersfield. Since the prison is in the City of Bakersfield, GEO first approached the City of Bakersfield to partner with them on [the intergovernmental service agreement]. The City of Bakersfield declined to be a partner. GEO then asked the City of McFarland to partner with them."

A similar situation occurred in Adelanto. In a May 2014 memo to the city council, the Adelanto city manager at the time explained that GEO negotiated with ICE to amend Adelanto's ICE contract to house additional detainees at the Adelanto Detention Facility.

Under the terms of the detention subcontracts, each of the cities passed millions of dollars of federal payments through to the private operators, as we show in Table 1 on the following page. The ICE contracts establish a fixed *bed-day rate*—a per-diem payment rate that is based on the costs associated with the ICE contracts. The ICE contracts state that ICE will only make payments to the cities and that ICE will not accept invoices from, or make payments to, a subcontractor such as the private operators. According to the detention subcontracts, each city agreed to pay the private operator the same per-diem payment rate that the city is paid under the terms of the ICE contract—essentially passing through all of the payments to the private operators, as we illustrate in Figure 3.

**Table 1**  
ICE Payments the Cities Received and Pass Through to Private Operators in the Past Five Fiscal Years

|  | FISCAL YEAR                           |                                  |              |              |              | TOTALS               |
|--|---------------------------------------|----------------------------------|--------------|--------------|--------------|----------------------|
|  | 2013-14                               | 2014-15                          | 2015-16      | 2016-17      | 2017-18      |                      |
| <b>City of Adelanto—<br/>Adelanto Detention Facility</b>           | \$46,188,427                          | \$40,837,353                     | \$60,233,519 | \$68,247,621 | \$71,326,750 | <b>\$286,833,670</b> |
| <b>City of McFarland—<br/>Mesa Verde Detention Facility</b>        | NA<br>Contract in<br>January 2015     | NA<br>First invoice<br>July 2015 | 16,257,604   | 16,496,127   | 17,035,980   | <b>49,789,711</b>    |
| <b>City of Holtville—<br/>Imperial Regional Detention Facility</b> | NA<br>First invoice<br>September 2014 | 28,826,395                       | 38,501,062   | 37,977,654   | 38,522,801   | <b>143,827,912</b>   |

Source: Invoices of private operators to cities, and cities to ICE.

NA = Not applicable.

For administering the ICE contracts, the private operators agreed to pay the cities various fees. Since fiscal year 2016-17, Adelanto has received about \$1 million annually from GEO, which includes an administrative fee of \$50,000 as well as a fee of \$1 per contracted bed per day, regardless of whether the bed is occupied by a detainee or not, and approximately \$339,000 annually for additional police officers to handle detention facility-related issues within the city. According to McFarland's detention subcontract, GEO pays the city a monthly fee of about \$2,900, or about \$35,000 annually, for administering the ICE contract and detention subcontract, which can be adjusted if the ICE per-diem payment rate is adjusted. Similarly, according to Holtville's detention subcontract, IVGC pays the city 75 cents for each detainee the city houses per day, which can amount to more than \$157,000 annually.

However, the cities do not ensure that their private operators fulfill the cities' obligations under the ICE contracts. The ICE contracts require that detainees are housed according to ICE's detention standards, related to medical care, suicide prevention and intervention; access to law libraries and legal material; and telephone access. We provide examples of those standards in

the text box. According to the detention subcontracts, the private operators assumed full responsibility for meeting those standards when they subcontracted with the cities. The cities have only been minimally involved in the ICE contracts. For example, the Adelanto city manager stated that the only involvement the city has with ICE or GEO is to sign monthly invoices from GEO and then to transfer to GEO the federal funds the city receives when ICE pays the invoices.

In fact, the cities do not perform contract management tasks that would help ensure that their private operators are fulfilling the terms of the ICE contracts. As we discuss in the next section, federal inspectors found significant problems at the private operators' detention facilities, which highlights the importance of the cities improving their contract management. The *California State Contracting Manual* (state contracting manual) provides policies, procedures, and guidelines that cities can, but are not required to, use as best practices to promote sound business decisions and practices when contracting for services. The state contracting manual states that a contract manager, such as the city in this instance, is responsible for maintaining contract documentation and monitoring the contract to ensure compliance with all contract provisions. Yet Holtville lacked final, signed versions of its ICE contract and its contract with IVGC, and did not have a copy of IVGC's contract with MTC—the entity actually operating the detention facility on the city's behalf—making it difficult for the city to monitor compliance with the contracts. Additionally, according to Adelanto city staff, Adelanto generally has not kept the supporting documents that GEO provided with each invoice. Furthermore, when we attempted to gather basic information from the cities, such as the duration of detainees' detention, demographic information of detainees housed, or information about detainees who have died while in custody, the cities did not have it.

### Examples of Detention Standards Required by the Cities' ICE Contracts

#### Care and Activities

- **Food Service**—ensures that detainees are provided a nutritionally balanced diet that is prepared and presented in a sanitary and hygienic food service operation.
- **Medical Care**—ensures that detainees have access to appropriate and necessary medical, dental, and mental health care, including emergency services.
- **Suicide Prevention and Intervention**—protects the health and well-being of ICE detainees through a comprehensive Significant Self-Harm and Suicide Prevention and Intervention Program that minimizes risk.
- **Telephone Access**—ensures that detainees may maintain ties with their families and others in the community, legal representatives, consulates, courts, and government agencies by providing them reasonable and equitable access to telephone services.

#### Safety and Security

- **Custody Classification System**—requires a formal classification process for managing and separating detainees by threat risk and special vulnerabilities or special management concerns.
- **Sexual Abuse and Assault Prevention and Intervention**—requires that facilities act affirmatively to prevent sexual abuse and assault. It also requires facilities to provide intervention and treatment for victims; and to control, discipline, and prosecute the perpetrators of sexual abuse and assault.

#### Justice and Order

- **Grievance System**—protects a detainee's rights and ensures that all detainees are treated fairly by providing a procedure for them to file both informal and formal grievances, which shall receive timely responses.
- **Law Libraries and Legal Materials**—protects detainees' rights by ensuring their access to courts, counsel, and comprehensive legal materials.

Source: Cities' ICE contracts and ICE's detention standards.

In addition, the state contracting manual states that the contract manager should monitor progress of work to ensure that services are being performed according to the quality, quantity, objectives, time frames, and manner specified in the contract. In line with this best practice, each ICE contract requires the city to establish and maintain a quality control plan, which includes monitoring methods to ensure compliance with the detention standards. Although the private operators took on responsibility for developing this quality control plan on behalf of the cities through the detention subcontracts, the cities have not ensured that the private operators have developed and followed these plans.

None of the cities reviewed the federal inspection reports pertaining to their respective detention facilities or ensured that their subcontractors had prepared quality control plans and other documentation required by the cities' contracts with ICE, such as complaint notifications and incident reports, which we highlight in Figure 3 on page 14. These actions would help the cities ensure that their private operators are adequately performing contract responsibilities. The Holtville city manager stated that MTC verbally informs him of serious deficiencies in federal reports and any serious complaints, but he does not confirm this information by reading the reports himself. Further, although all three detention subcontracts include a provision that allows the cities to inspect the detention facilities, neither Adelanto nor McFarland regularly do so. The Holtville city manager stated that he tours the Imperial Regional Detention Facility several times a year.

### **Cities Must Improve Contract Management to Help Address Serious Health and Safety Issues at Their Contracted Detention Facilities**

The cities have failed to ensure that their private operators are housing detainees in accordance with the detention standards required by the ICE contracts. By increasing their contract management efforts, the cities could have helped ensure that the private operators were complying with those detention standards and possibly helped to prevent, minimize, or resolve significant health and safety issues that federal inspectors identified at Adelanto Detention Facility, Mesa Verde Detention Facility, and Imperial Regional Detention Facility. For example, in May 2018, the Inspector General performed an unannounced inspection at the Adelanto Detention Facility and found a number of serious issues that violated detention standards and that represented significant threats to the safety, rights, and health of detainees.

In particular, the Inspector General said that ICE did not take seriously the recurring problem of detainees hanging bedsheets at the Adelanto Detention Facility, which is in violation of detention standards and detainees could use them to attempt suicide. The Inspector General

concluded that ICE's failure to address this matter at the Adelanto facility showed a disregard for detainee health and safety. The Inspector General also noted that in 2017 a detainee at Adelanto died at an area hospital after detention facility staff found him hanging from his bedsheets. In addition, the Inspector General stated that ICE reports documented at least three additional attempts of suicide by hanging at Adelanto Detention Facility, two of which used bedsheets.

Additionally, the Inspector General found other significant issues at the Adelanto Detention Facility. For example, also in violation of detention standards, some detainees were segregated from the general population for disciplinary reasons before they were found guilty of a prohibited act or rule violation. The Inspector General stated that violations such as this pose a significant threat to maintaining detainee rights and ensuring their mental and physical well-being. The Inspector General also found that Adelanto Detention Facility medical providers conducted cursory walk-throughs of detainees in segregation instead of face-to-face medical assessments, and the facility did not provide appropriate interpretation services for detainees, in violation of detention standards. The Inspector General noted that ICE previously identified similar problems in March 2017, but the issues still persist. Additionally, the Inspector General noted that inadequate dental care was provided to detainees, stating that no detainees had received fillings over the prior four years.

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**Federal inspections found several health and safety deficiencies at three contracted detention facilities.**

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Despite the problems identified above, the Adelanto Detention Facility passed its annual compliance inspection. Specifically, in October 2018, just five months after the Inspector General's inspection, ICE's private inspection contractor, Nakamoto, performed an annual inspection of the Adelanto Detention Facility and reported that the facility was complying with detention standards. Furthermore, Nakamoto's inspection report noted that ICE and facility staff had expressed concerns over the Inspector General's characterizations of certain information, particularly the hanging bedsheets. Specifically, the Nakamoto inspectors suggested that the sheets were being used as privacy curtains or clotheslines and that there was no evidence to suggest that any privacy screen or curtain was being used for the purpose of suicide. According to Adelanto, the city was not aware of any of these inspection reports.

We also noted that federal inspections found several health and safety deficiencies at Holtville's and McFarland's contracted detention facilities. In particular, ICE's Detention Oversight found that both Imperial Regional Detention Facility and Mesa Verde Detention Facility were deficient in multiple detention standards. For example, Detention Oversight stated in a December 2015 report that Imperial Regional Detention Facility did not submit to ICE all detainee grievances alleging staff misconduct, and it did not check food service line temperatures for all menu items. The Holtville city manager stated that he feels the detention facility is well run, and he is confident in MTC's management of it. However, he did not review the inspection report.

Furthermore, according to a Detention Oversight report in January 2016, the Mesa Verde Detention Facility had multiple deficiencies. For example, its facility handbook did not include notification of all available services and programs, its process for segregating detainees was not well documented, and its staff were not properly trained in the Sexual Abuse or Assault Prevention and Intervention Program. The McFarland city manager stated that the city was not aware of this inspection report. In addition, as the Attorney General conducts his reviews of detention facilities, he might identify additional issues that the cities, through improved contract management efforts, could help ensure their private operators address.

The cities could also be subject to litigation for problems that arise at the private operators' detention facilities. The private operators agreed to perform the cities' contractual duties of housing detainees in accordance with detention standards when they subcontracted with the cities. In those subcontracts, the private operators agreed to indemnify and hold the cities harmless for claims arising out of the detention subcontracts by agreeing to be responsible for costs arising from litigation related to the management and operation of the facilities. Nevertheless, the cities may still be held liable for issues pertaining to the ICE contracts and detention subcontracts. In fact, the city of Adelanto has been named as a defendant in a lawsuit brought by detainees who allege they were subjected to inhumane conditions and that they were violently attacked by GEO staff while detained at Adelanto Detention Facility. The lawsuit claims that the city is liable for the actions of its subcontractor, GEO. According to the city's answer to the lawsuit complaint, it is not liable for any alleged acts by GEO employees. Regardless of the outcome of this lawsuit, it is in the best interest of each of the cities to ensure that they adequately manage their subcontractors to ensure that they house detainees in accordance with the terms of the ICE contract, including compliance with detention standards.

Finally, added scrutiny from the cities when managing these contracts is important because a separate report by the Inspector General found that ICE's inspections—those performed by Detention Oversight and Nakamoto—and ICE's monitoring of detention facilities do not lead to sustained compliance or systematic improvements. Specifically, according to an Inspector General report from June 2018 regarding these inspections, Nakamoto's inspection practices are not consistently thorough and Detention Oversight's inspections are too infrequent to ensure that the facilities implement all deficiency corrections. The Inspector General's report also stated that ICE does not adequately follow up on identified deficiencies nor does it consistently hold facilities accountable for correcting them. The report stated that the usefulness of ICE inspections is diminished by ICE's failure to ensure that identified deficiencies are consistently corrected. Thus, additional scrutiny from cities could help ensure that their private operators promptly correct deficiencies.

## **Recommendations**

### ***Legislature***

To ensure that significant health and safety problems are avoided, minimized, or at the very least addressed promptly, the Legislature should consider urgency legislation amending state law to require the cities that contract with ICE to house detainees implement oversight policies and practices that include the following:

- Review all federal inspection reports and ensure that private operators develop and implement timely corrective actions for any identified noncompliance.
- Obtain and review the quality control plan for the detention facility and ensure that the private operators implement and follow the plan.
- At least quarterly review detainee complaints and any incident reports and follow up with private operators on any pervasive or persistent problems.
- At least quarterly inspect the services provided and conditions at the detention facility as allowed by the detention subcontract.
- Formally approve all invoices and maintain copies of invoices and supporting documentation.

### *Cities*

To ensure that significant health and safety problems are avoided, minimized, or at the very least addressed promptly, by May 1, 2019, the cities that contract with ICE to house detainees should implement oversight policies and practices for their private operators that include the following:

- Review all federal inspection reports and ensure that private operators develop and implement timely corrective actions for any identified noncompliance.
- Obtain and review the quality control plan for the detention facility and ensure that the private operators implement and follow the plan.
- At least quarterly review detainee complaints and any incident reports and follow up with private operators on any pervasive or persistent problems.
- At least quarterly inspect the services provided and conditions at the detention facility as allowed by the detention subcontract.
- Formally approve all invoices and maintain copies of invoices and supporting documentation.

## Counties Incurred Costs for Housing Detainees or Unaccompanied Children That Exceeded Federal Payments

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### Key Points

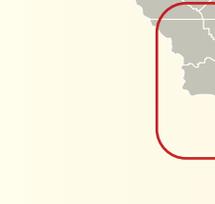
- None of the counties that housed detainees ensured that ICE fully paid for the cost of housing detainees each year during our audit period.
- Orange County might have spent as much as \$1.7 million in county funds to house detainees in fiscal year 2017–18.
- Yolo County’s budget proposal indicates that it subsidized its Refugee Resettlement program and we estimate it might have spent approximately \$700,000 doing so in fiscal year 2017–18.

### Some Counties Have Not Adequately Monitored the Financial Impact of Their ICE Contracts

Not all counties that contract with ICE consistently monitored their detainee costs during our audit period. Further, none of the counties ensured that ICE fully paid for the cost of housing detainees every year during that period, as shown in Figure 4 on the following page. As described previously, three California cities agreed to provide ICE with detention services and subcontracted with private operators to provide those detention services on the cities’ behalf. Unlike these cities, the four California counties that agreed to provide ICE with detention services during the audit period—Yuba, Sacramento, Contra Costa, and Orange counties—have done so directly by making beds in their local detention facilities available for detainees. Each county’s contract establishes a per-diem payment rate for each detainee the county houses.<sup>5</sup> Table 2 on page 25 shows the annual ICE payments the counties received in exchange for housing detainees during the past five fiscal years. To establish the payment rates, the counties submitted a proposed per-diem rate for the detention services to the federal government, a rate usually based on a statement of county costs. These cost statements have generally included direct costs such as food, clothing, and salaries for deputies who are directly involved in jail operations as well as indirect costs such as administrative support. The contracts allow counties to adjust the rates through a similar process. Therefore, to avoid spending county funds to pay for some of these costs, we expected the counties to monitor whether their actual detainee costs exceeded the per-diem rate.

<sup>5</sup> Contra Costa County originally contracted with the U.S. Marshals Service. A contract modification added ICE as a user agency so that the county could also hold detainees from ICE.

**Figure 4**  
None of the Counties Ensured That ICE Fully Paid the Costs of Housing Detainees Each Year

|   | <br>MAINTAINED ANNUAL<br>DETAINEE COST DATA<br>DURING AUDIT PERIOD? | <br>ICE<br>FULLY PAID<br>FOR COSTS? | <br>CURRENT<br>STATUS                            |
|---|--|---|---|
| <br><b>Yuba County</b>         |  YES  |  NO*                                |  Renegotiated contract per-diem rate             |
| <br><b>Sacramento County</b>   |  YES  |  NO*                                |  Did not renew contract                          |
| <br><b>Contra Costa County</b> |  NO   |  UNDETERMINED†                       |  Terminated agreement pertaining to ICE services |
| <br><b>Orange County</b>      |  NO  |  NO                                |  Has not renegotiated contract per-diem rate    |

Source: County contracts with ICE, county boards of supervisors' memos, and detainee cost analyses provided by County Sheriffs' departments.

\* ICE did not fully pay for detainee costs in fiscal year 2017–18.

† In fiscal years 2016–17 and 2017–18, ICE did not fully pay for detainee costs.

‡ The cost analysis provided by Contra Costa County did not include medical costs for detainees, which could have been significant. Therefore, we could not determine whether ICE was fully paying for detainee costs.

However, the counties that we reviewed do not account for detainee-related costs separately from inmate costs, such as by using an account designated for detainee-related costs. While the counties did conduct some analyses to identify detainee costs, Orange County, for example, did not take appropriate action when its cost analysis showed that detainee costs per day exceeded the per-diem payment rate it was receiving from ICE. Orange County also did not consistently monitor detainee costs since entering its contract. Orange County has conducted only two detainee cost studies, one for fiscal year 2010–11 and the other for fiscal year 2017–18. These studies identified detainee costs at its Theo Lacy Facility and James A. Musick Facility, the two facilities that house detainees in Orange County. The county did not conduct any detainee-specific cost analyses for fiscal years 2011–12 through 2016–17, despite renewing its contract with ICE in 2015.

**Table 2**  
**ICE Payments the Counties Received in the Past Five Fiscal Years**

|  | FISCAL YEAR |             |             |             |             | TOTALS              |
|--|-------------|-------------|-------------|-------------|-------------|---------------------|
|  | 2013-14     | 2014-15     | 2015-16     | 2016-17     | 2017-18     |                     |
| <b>Contra Costa County—<br/>West County Detention Facility</b>           | \$6,534,088 | \$4,208,240 | \$5,509,744 | \$6,170,828 | \$6,213,058 | <b>\$28,635,958</b> |
| <b>Orange County—Theo Lacy Facility<br/>and James A. Musick Facility</b> | 29,516,516  | 22,830,591  | 31,327,991  | 34,550,661  | 37,435,012  | <b>155,660,771</b>  |
| <b>Sacramento County—<br/>Rio Cosumnes Correctional Center</b>           | 7,025,400   | 5,235,700   | 4,972,000   | 4,783,300   | 5,029,200   | <b>27,045,600</b>   |
| <b>Yuba County—<br/>Yuba County Jail</b>                                 | 5,665,116   | 5,329,205   | 5,254,003   | 4,675,310   | 5,565,940   | <b>26,489,574</b>   |

Source: Invoices billed to ICE and revenue summaries provided by the counties.

The analyses it did conduct suggested that it might not be receiving all the revenue from ICE that it could, and therefore the county might be paying for some ICE detainee costs with county funds. According to the fiscal year 2010–11 cost study, the identified detainee cost per day was \$118, which is the per-diem rate that Orange County agreed to with ICE in 2010. However, for fiscal year 2017–18, Orange County found that the detainee cost per day increased to \$123.75—almost \$6 more than the \$118 per-diem rate that Orange County was still receiving per detainee in 2018. As shown in Figure 5 on the following page, this means that Orange County’s identified costs for detainees exceeded ICE payments by approximately \$1.7 million based on the average number of detainees billed to ICE per day in fiscal year 2017–18. While we are not questioning whether the contract is cost-beneficial, Orange County could be receiving more revenue from ICE. Although Orange County’s identified costs for housing detainees have exceeded the payments from ICE, Orange County has not taken any action to formally renegotiate the contract’s per-diem rate with ICE.

When presented with this finding, the Executive Director of the Administrative Services Command for the Orange County Sheriff, the entity responsible for providing all support services for the Orange County Sheriff, including financial and administrative services, indicated that the \$123.75 rate calculated for fiscal year 2017–18 considered both direct and indirect costs. He explained that the per-diem rate agreed upon in 2010 still paid for the direct costs of detainees in 2018, but it no longer pays for all allowable indirect costs, which he asserted would be incurred regardless of whether ICE detainees are housed in Orange County.

**Figure 5**  
Orange County's Identified Detainee Costs Exceeded ICE Payments in Fiscal Year 2017–18



Source: Average detainee cost study, Orange County's contract with ICE, and invoices billed to ICE in fiscal year 2017–18.

We question this explanation because ICE allows counties to charge for both direct and indirect costs associated with housing detainees. In fact, the initial cost study for fiscal year 2010–11 that Orange County conducted for the purpose of negotiating the original per-diem rate with ICE took into account all associated indirect costs, such as administrative support and training costs of its Custody Operations Command, which operates the county's jail system. ICE agreed to the resulting per-diem rate from that cost study. We question why Orange County would not request that ICE continue to pay for all of these allowable costs. If ICE no longer pays all allowable costs associated with housing ICE detainees, the county will likely have to pay for those costs with county funds.

Similar to Orange County, Yuba County and Sacramento County did not ensure that ICE paid for all allowable detainee costs each year during our audit period. However, as shown in Figure 4 on page 24, both counties maintained annual data on detainee costs. Specifically, although in Yuba County over the five-year period ICE payments have exceeded costs in total, annual costs began to exceed payments in fiscal year 2017–18 by more than \$780,000. In January 2018, Yuba County renegotiated the per-diem rate with ICE to reflect cost increases so that the per-diem rate would pay for current detainee expenses. In Sacramento County, total detainee costs over the five year period exceeded total ICE payments by approximately \$60,000. Initially, ICE payments more than covered costs, but that trend shifted in fiscal year 2016–17 when the annual costs began to exceed ICE payments by approximately \$260,000 and in fiscal

year 2017–18 the difference was approximately \$740,000, which eliminated any surplus from earlier years. Sacramento County did not renew its contract with ICE after it expired in 2018.

On the other hand, in Contra Costa County, the only analysis of detainee costs that the Contra Costa County Sheriff performed and documented was to estimate the financial impact of ending its agreement to provide ICE with detention services in July 2018. However, even that analysis was flawed. The Contra Costa County Sheriff compared certain budgeted expenditures associated with ICE detainees—staffing, food, clothing, and household items—with budgeted revenue from ICE. This analysis indicated that the Contra Costa County Sheriff’s budgeted revenue from ICE would exceed its estimated expenses by \$3.4 million. We question this calculation because it neglected to account for the cost of medical services for detainees, which could be significant for the county. Therefore, Contra Costa County cannot know for certain that ICE paid for all allowable detainee costs. However, in July 2018, Contra Costa County notified ICE that it was terminating its agreement to provide ICE with detention services, effective November 2018.

We also reviewed how Contra Costa County and Orange County used the payments from ICE. We found that both counties deposited the payments from ICE into accounts with other revenue sources for their detention facilities, and they did not distinguish spending of ICE revenue from spending of other revenues. As a result, they did not specifically track whether they used payments from ICE to fund programs that detainees participate in or to fund other facility operations. This explains why the counties did not identify which revenue sources they used for paying any costs in excess of ICE payments. We reviewed the accounts into which these counties deposited their ICE payments (along with other revenues), and found that in fiscal year 2017–18, the counties spent more than 80 percent of the funding from those accounts on employee salaries and benefits.

We did find that Orange County tracks its medical prescription expenses for detainees separately from those for local inmates. Its ICE contract includes a not-to-exceed limit of \$720,000 per year for medical prescriptions. Our review of Orange County’s spending on this category found it was well within this limit.

### **Yolo County Unnecessarily Paid Some Costs to House Unaccompanied Children**

Because of cost and safety concerns stemming from housing unaccompanied children for Refugee Resettlement at the Yolo Juvenile Facility, Yolo County requested an increase in program

funding and staffing. Specifically, in a May 2018 proposal to Refugee Resettlement, Yolo County indicated that the county previously had been subsidizing program costs. Yolo County's agreement with Refugee Resettlement requires the county to submit a program budget to Refugee Resettlement for approval. According to the approved Refugee Resettlement program budgets during our audit period, while Yolo County received some funding from Refugee Resettlement for travel, supplies, and other items, the majority of the funding was for employee salaries and benefits. From fiscal years 2013–14 through 2017–18, Yolo County received between \$1.2 million and \$2.8 million annually. However, as detailed below, Yolo County did not include all allowable costs in its proposed program budgets.

According to the program director of the Refugee Resettlement program at Yolo Juvenile Facility (program director), the Refugee Resettlement program is meant to be entirely federally funded. Yolo County's May 2018 proposal to Refugee Resettlement indicated that its past budgets for the program did not include all of the costs of running it and that it had substantially subsidized segments of the program. According to Yolo County, it expended county funds for services that it was unaware could have been paid for with federal funds, such as certain contractual and indirect costs, including education, medical and behavioral health services, programming, and administrative costs. For example, the Yolo County Office of Education (Office of Education) provides education services for the unaccompanied children at the Yolo Juvenile Facility. However, according to the program director, other county departments (such as the Office of Education) include those costs in their own budgets, so county personnel had previously not included them in the program budgets it submitted to Refugee Resettlement. Based on its proposal, we estimate that during fiscal year 2017–18, Yolo County might have spent approximately \$700,000 just to pay for contractual and indirect costs that it previously did not include in its budget and that could have been funded by Refugee Resettlement.

.....

**According to Yolo County, it expended county funds for services that it was unaware could have been paid for with federal funds.**

.....

Additionally, Yolo County indicated it had increasing and ongoing concerns about the danger of assaults on staff and the mental health needs of the unaccompanied children. Although Yolo Juvenile Facility had housed children within the physical capacity of the facility, Yolo County proposed to increase staffing to decrease the number of violent incidents, to facilitate a rapid and effective response by staff when issues arise, and to provide adequate staff to supervise the unaccompanied children. According to Yolo County, unaccompanied children who meet the criteria for placement at its juvenile facility have mental illnesses, have been exposed to significant trauma and violence, and exhibit anti-social traits that may lead to criminal behavior.

In October 2018, after negotiations, Yolo County provided Refugee Resettlement with budget documents detailing the supplemental funding it needed to continue the program from June 2018 through January 2019. Specifically, Yolo County requested an additional \$2 million for staffing increases and some costs that the county previously absorbed. However, according to Yolo County, Refugee Resettlement requested that Yolo County limit its budget increase to that \$2 million. Yolo County asserted that the budget increase does not fully represent costs for the following: certain public safety activities related to a Refugee Resettlement child who is criminally charged while in custody, a portion of medical services funded by the county to serve Refugee Resettlement children, and some indirect costs. Yolo County stated that it would fully assess and include all costs required to fund the program in future proposals to Refugee Resettlement. According to the chief fiscal administrative officer at the Yolo County Probation Department, although Yolo County has not received an official response from Refugee Resettlement, the federal grant system shows that Yolo County's budget increased by the requested \$2 million. As of February 2019, Yolo County continues to house unaccompanied children for Refugee Resettlement.

### **Recommendations**

To ensure that it does not unnecessarily spend county funds to house ICE detainees, Orange County officials should do the following:

- Renegotiate its contract per-diem rate with ICE as soon as possible, and at least before renewing the contract in 2020, to arrive at an amount that covers all of the county's allowable costs for housing ICE detainees.

- If the county continues contracting with ICE after 2020, annually analyze the cost of housing detainees compared with the payments it receives from ICE for doing so, and if necessary, renegotiate its contract to ensure that contract revenues at least meet the county's costs.

To ensure that it receives adequate funding to pay for the costs of housing unaccompanied children for Refugee Resettlement, Yolo County should identify all allowable costs and include them in its future budget requests to Refugee Resettlement.

## OTHER AREAS WE REVIEWED

To address the audit objectives approved by the Joint Legislative Audit Committee (Audit Committee), we reviewed the State's monitoring of community care facilities. We also reviewed county programs and housing for detainees or unaccompanied children, detention facility capacity, and whether the facilities were expanded. Below are the results of our work in these areas and any associated recommendations that do not appear in the other sections of the report.

### State Monitoring of Community Care Facilities

As we described in the Introduction, Social Services licenses community care facilities, some of which hold contracts with Refugee Resettlement to house unaccompanied children. Social Services is responsible for routinely inspecting community care facilities, including those that have contracts with Refugee Resettlement. Following media reports in Spring 2018 that the federal government had separated immigrant families and placed children in foster care or other shelters, Social Services identified those community care facilities that had contracts with Refugee Resettlement. In June 2018, Social Services initiated a one-time effort to visit those group homes and foster family homes that it had identified to check on the health and safety of children at those facilities.

At the time of the visits, Social Services found no health or safety concerns at the facilities, and it indicated that the facilities housed a total of 51 unaccompanied children who had been separated from their families. According to Social Services, this number is point-in-time information, and it can fluctuate considerably from day to day. Social Services subsequently contacted the facilities that contract with Refugee Resettlement and updated that number to nine unaccompanied children housed at community care facilities who had been separated from their families as of November 2018.

### Recommendation

To provide additional transparency regarding the use of community care facilities and juvenile detention facilities that house unaccompanied children in California, the Legislature should consider requiring Social Services to report to it by March 31 of each year the number of community care facilities, including foster family homes, that house unaccompanied children. Social Services should also report the total number of unaccompanied children and the ranges of the duration of their stays at those facilities.

Additionally, it should consider requiring Yolo County to report the total number and ranges of the duration of stay of unaccompanied children at the Yolo Juvenile Facility.

### **County Programs and Housing for Detainees or Unaccompanied Children**

We found that both the Orange County Sheriff and Contra Costa County Sheriff notify their detainees of available programs and services through detainee handbooks, which are in multiple languages and generally list the programs and services. The programs and services found in the detainee handbooks of Orange County and Contra Costa County include medical care, barbering services, access to a telephone, religious services, a voluntary work program, a law library, and recreation. The counties' practice is to obtain the signatures of detainees to verify their receipt of the handbook.

While Orange County's practice was to separate detainees from inmates consistent with state law, Contra Costa County allowed them to intermingle. The United States Supreme Court holds that immigration-related removal is a civil, not criminal, matter and that detention is a part of immigration-related removal proceedings. State law requires that individuals held in a county jail under civil process must be confined separately and distinctly from both individuals convicted of a crime and serving their sentence and individuals committed on criminal process and awaiting trial (collectively, criminal inmates). Since detainees are held for immigration-related reasons, they are being held under a civil process. Therefore, detainees should be housed separately from criminal inmates. During the time that Contra Costa County had a contract to house detainees, it did so at its West County Detention Facility, which is an open campus facility where detainees and criminal inmates intermingled in areas such as classrooms. By allowing detainees and criminal inmates to intermingle, Contra Costa County did not follow state law. According to the assistant sheriff, Contra Costa County's understanding at that time was that detainees were going through an administrative process with ICE and were not considered civil detainees.

Yolo County's quarterly progress reports to Refugee Resettlement indicate that it offers the required services to unaccompanied children, including medical and dental care, mental health services, educational services, and religious services. Yolo Juvenile Facility has policies and procedures that match the two Refugee Resettlement requirements to house unaccompanied children according to an assessment of the unaccompanied child's gender identity, housing preference, and health and safety needs; and to

assess each unaccompanied child for the risk of being a victim or a perpetrator of sexual abuse. According to the program director, Yolo Juvenile Facility staff classify children placed at the facility because of immigration status as noncriminal offenders and therefore keeps them separate from children with criminal charges. State law requires, to the extent practically feasible, that children without criminal charges be housed separately from children with criminal charges.

Multiple federal entities inspected Contra Costa County's and Orange County's detention facilities and reported on their compliance with detention standards. Although the facilities were generally rated as acceptable in their annual Nakamoto inspections, some inspection and monitoring reports identified concerns about certain conditions at the facilities. These concerns included Contra Costa County's West County Detention Facility not issuing detainee handbooks to detainees upon admission; Orange County's Theo Lacy Facility not appropriately separating detainees of different risk levels, improper food handling, and moldy and mildewed shower stalls. Also, Refugee Resettlement monitors and reports on Yolo County's compliance with its policies and procedures. Refugee Resettlement found that, among other things, the legal services documentation in Yolo Juvenile Facility's case files of some unaccompanied children was missing or not the most recent version. While Contra Costa has ended its agreement with ICE, Orange and Yolo counties have responded to the concerns and documented corrective actions. Nevertheless, the Attorney General's reviews of these detention facilities until 2027 may provide additional transparency into the conditions of confinement, standard of care, and due process provided to detainees and unaccompanied children.

We reviewed Community Corrections' inspections of some local detention facilities, which state law requires it to conduct biennially. According to Community Corrections, if a local detention facility has a wholly separate area for federal detainees, it would not consider those portions local detention facilities and thus would not include them in its inspection. Community Corrections stated that it excludes these areas because they are holding federal detainees, not local detainees. However, while state law does exempt certain facilities from the inspection requirement, such as facilities operated by or under contract with the California Department of Corrections and Rehabilitation, state law does not otherwise exempt areas of local detention facilities that house ICE detainees from Community Corrections' inspection requirement. Furthermore, Community Corrections was not able to identify any law or regulation that would prohibit it from inspecting and reporting on these facilities as state law requires.

## Recommendation

Community Corrections should inspect all areas of local detention facilities, including areas that are used to house ICE detainees and report any instances of noncompliance in those areas.

### Detention Facility Capacity and Expansion

Yolo Juvenile Facility's highest average daily population during the audit period was approximately 48 unaccompanied children and Yolo County youth, in total, which was well below the facility's maximum capacity of 90 beds.

State law allows a sheriff or other person responsible for a local detention facility to apply to the presiding judge of the superior court to receive general authorization to release inmates whenever the actual inmate count exceeds the actual bed capacity of the jail. Both Contra Costa County's West County Detention Facility and Orange County's Theo Lacy Facility housed populations that were below capacity during the audit period, so neither facility released inmates early due to lack of space. Further, Contra Costa County has ended its ICE agreement, and state law now prohibits counties from expanding the number of beds allowed under their respective ICE contracts, thereby mitigating the risk that housing additional detainees will lead to releasing inmates early in the future.

Only Yolo County expanded its detention facility during the audit period, although the expansion did not increase bed capacity. Specifically, Yolo County used a construction grant award of \$4.7 million from Community Corrections to build a multi-purpose facility at Yolo Juvenile Facility, which Yolo County opened in 2017, that would add space for indoor recreation, treatment, programs, and visiting services. Community Corrections has also conditionally awarded state funding for detention facility construction to Orange County and Yuba County. Nevertheless, as we noted above, state law now prohibits those counties from expanding the number of beds in their ICE or Refugee Resettlement contracts.

We conducted this audit under the authority vested in the California State Auditor by Government Code section 8543 et seq. and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive style with a long, sweeping tail on the letter "e" at the end.

ELAINE M. HOWLE, CPA  
California State Auditor

Date: February 26, 2019

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# APPENDIX A

## Scope and Methodology

The Audit Committee directed the California State Auditor to examine city, county, or other local government detention centers that contract with ICE, including determining the actual costs of detaining individuals covered by these contracts and whether requirements for housing detainees were met. Table A lists the objectives that the Audit Committee approved and the methods we used to address them.

**Table A**  
**Audit Objectives and the Methods Used to Address Them**

| AUDIT OBJECTIVE   | METHOD   |
|---|--|
| 1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.   | Reviewed and evaluated laws, rules, regulations, contracts, and cooperative agreements significant to detention facilities that house detainees and unaccompanied children.  |
| 2 Determine the roles and responsibilities, if any, of Community Corrections, or other state or local entities in overseeing contract jails.  | Reviewed laws and regulations that establish the roles and responsibilities of Community Corrections, the Attorney General, and county grand juries to oversee detention facilities; as well as the roles and responsibilities of Social Services to oversee community care facilities. We also interviewed Community Corrections staff and reviewed available reports on detention facilities, reviewed county grand jury reports on detention facilities, and interviewed Social Services staff and reviewed available reports on community care facilities.   |
| 3 Identify and evaluate for the past five fiscal years the number of individuals detained in contract jails for reasons of immigration status, and the duration and the amount of state and local funding used for these detentions. Determine the extent to which those costs include expenditures to expand contract jail facilities. | <ul style="list-style-type: none"> <li>• Reviewed data from a Freedom of Information Act (FOIA) request in ICE's FOIA library that included a listing of all facilities used by ICE to house detainees to identify detention facilities in California with contracts to house detainees for ICE, which we present in Figure 1 on page 8.</li> <li>• Analyzed demographic data from July 1, 2013, through June 30, 2018 for those detention facilities in California to determine the number, age, nationality, and sex of individuals detained for reasons of immigration status, as well as the duration of their stay at the detention facility.</li> <li>• Reviewed data on ICE payments for detainees and detainee costs. Compared the annual ICE payments with annual detainee costs, or the contracted per-diem rate with average daily costs of detainees. We interviewed staff and reviewed budget documents to identify the source of state and/or local funding used, if any. However, because the counties commingle funding we could not identify the specific funding sources used to cover detainee expenses.</li> <li>• Interviewed city and county staff regarding facility expansion, reviewed Community Corrections' documentation of detention facility construction financing awards, and reviewed applicable construction project documentation.</li> </ul> |
| 4 For a selection of contract jails holding current or recent contracts with ICE to detain individuals for reasons of immigration status, determine the following:  | <p>We selected the following detention facilities:</p> <ul style="list-style-type: none"> <li>• Theo Lacy Facility in Orange County</li> <li>• West County Detention Facility in Contra Costa County</li> <li>• Yolo Juvenile Facility in Yolo County</li> <li>• Adelanto Detention Facility in the City of Adelanto</li> </ul>  |

| AUDIT OBJECTIVE   | METHOD   |
|---|--|
| <p>a. The amount of federal revenue the contract jails receive in exchange for detaining individuals on ICE's behalf and how that revenue is being used to fund jail operations and services. In addition, if revenue is used to fund inmate programs, identify the programs and determine whether the programs are available to immigration-related detainees.</p>   | <ul style="list-style-type: none"> <li>• Reviewed monthly invoices from the selected detention facilities to ICE for the past five fiscal years in order to determine the amount of federal payments received for housing ICE detainees.</li> <li>• Reviewed federal funding awards to Yolo County for the Refugee Resettlement program from the last five fiscal years.</li> <li>• Obtained expenditure records of accounts into which cities and counties deposited ICE payments, and analyzed the records to identify the uses of ICE payments.</li> <li>• Interviewed city and county staff regarding programs, and obtained detainee handbooks to identify the programs and services available to detainees and quarterly reports to identify the programs and services available to unaccompanied children.</li> <li>• Reviewed federal inspection reports during our audit period.</li> </ul> |
| <p>b. The extent to which ICE contracts include monetary limits or caps for any categories of expenses, such as detainee medical care. If the contracts include such limits, determine whether counties and cities provide for such expenditures in excess of those limits.</p>   | <ul style="list-style-type: none"> <li>• Examined the ICE and Refugee Resettlement contracts and determined whether a monetary limit or cap exists for any spending category.</li> <li>• Orange County has a limit on its spending for prescription medications for ICE detainees.</li> <li>• Yolo County has a limit on its total spending for unaccompanied children based on the federal funding from Refugee Resettlement.</li> <li>• For Orange and Yolo counties, obtained expenditure data and determined whether the spending has been within the limit for the past five fiscal years.</li> </ul>   |
| <p>c. Whether the contract jails' actual costs for detaining individuals covered by these contracts have exceeded the federal revenue received in exchange for doing so. Identify the sources of state, local, or other funding that counties and cities have used to cover those extra expenses.</p>   | <ul style="list-style-type: none"> <li>• Interviewed key staff at the counties regarding actual detainee costs.</li> <li>• Obtained Orange County's and Contra Costa County's detainee cost analyses. We then compared the identified detainee costs with ICE revenue or the contracted per-diem rate. However, because the counties commingle funding we could not identify the specific funding sources used to cover detainee expenses.</li> <li>• Interviewed staff at Adelanto to confirm that the city does not spend local or state money on the Adelanto Detention Facility.</li> <li>• Interviewed staff and obtained documentation from Yolo County. We compared Yolo County's expenditures with the federal funding it received.</li> <li>• Reviewed Yolo County's budget proposals to Refugee Resettlement.</li> </ul>   |
| <p>d. The extent to which contract provisions and jail protocols include requirements for housing immigration-related detainees in locations other than those used for state criminal detainees and inmates, and whether those requirements are met and are consistent with state and federal law.</p>  | <ul style="list-style-type: none"> <li>• Reviewed contracts, detention standards, detention facility policies and procedures, and available federal inspection reports to determine whether policies and procedures for housing detainees or unaccompanied children were consistent with requirements.</li> <li>• Reviewed Adelanto's ICE contract to confirm that only ICE detainees are housed at the Adelanto Detention Facility.</li> <li>• For Yolo County, obtained policies and procedures, reports with program data and descriptions, and Refugee Resettlement inspection reports to determine whether Yolo County housed detainees in compliance with requirements.</li> </ul>   |
| <p>e. To the extent possible, determine whether and to what extent immigration-related detainees contribute to overcrowding in contract jails. Also determine whether contract jails have been forced to displace or release individuals facing or convicted of nonimmigration-related criminal charges due to overcrowding caused by the detention of individuals for immigration purposes on behalf of ICE.</p> | <p>Reviewed the capacity and population of the selected detention facilities. Reviewed laws and available policies for early release of inmates and determined whether detention facilities activated early release protocols. Reviewed Community Corrections' records of early releases during the audit period.</p>  |
| <p>5 To the extent possible, identify and summarize age and other demographic information for immigration-related detainees between 2013 and 2018. Determine how many, if any, of such individuals died while in custody and the causes of those deaths. Determine how many of those who died were detained for civil immigration cases.</p>  | <ul style="list-style-type: none"> <li>• See method for Objective 3 regarding demographic information.</li> <li>• Interviewed city and county staff regarding detainee deaths while in custody and reviewed available ICE documents.</li> <li>• Identified individuals that died while in custody within the demographic data we obtained from auditees. We present this information in Appendix C on page 45.</li> </ul>  |

| AUDIT OBJECTIVE  | METHOD   |
|--|--|
| <p>6 Review and assess any other issues that are significant to the audit.</p> | <p>For the three California cities with intergovernmental agreements with ICE (Adelanto, McFarland, and Holtville), we reviewed the following:</p> <ul style="list-style-type: none"> <li>• Contracts between the city and ICE.</li> <li>• Contracts between the city and the private operator.</li> <li>• City council meeting minutes, agendas, and other documents that identified the reasons these cities entered into the contracts.</li> <li>• Reviewed federal inspection reports for the three subcontracted detention facilities.</li> </ul> |

Source: Analysis of the Audit Committee’s audit request number 2018-117, as well as information and documentation identified in the column titled *Method*.

### Assessment of Data Reliability

In performing this audit, we relied on electronic data files that we obtained from local governments and private operators of detention facilities that house detainees. These electronic data files related to counties’ cost estimates for the detention facilities where they housed detainees, Orange County’s expenditures for prescription medication, and counties’ detainee population counts. The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. To perform this assessment, we reviewed the methodology the counties used to develop their cost estimates and found them to be reasonable, with the exception of Contra Costa’s, which we discuss in the report. However, we did not perform completeness or accuracy testing on the data so they are of undetermined reliability. We reviewed supporting documentation for Orange County’s expenditures for prescription medication, and we found the data to be sufficiently reliable for calculating annual totals. We corroborated the counties’ detainee population data with information from Community Corrections’ inspection reports, but we did not perform completeness and accuracy testing, so they are of undetermined reliability. We recognize that these limitations may affect the precision of the numbers we present, but there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

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## APPENDIX B

### Demographic Information of Detainees and Unaccompanied Children Housed in Detention Facilities in California Fiscal Years 2013–14 Through 2017–18

The Audit Committee directed us to identify and summarize demographic information for detainees held in California. Table B.1 on the following page presents the information we gathered from the eight local government detention facilities in California that agreed to house detainees for ICE during the audit period. Table B.2 on page 43 presents the information for unaccompanied children placed at Yolo Juvenile Facility. The Otay Mesa Detention Center is privately owned and operated by CoreCivic (formerly known as Corrections Corporation of America) and contracts directly with the federal government to house detainees. Thus, neither the State nor any local government has contractual involvement with Otay Mesa. While we made an FOIA request for demographic information to ICE concerning detainees at this facility, we did not receive a response as of February 20, 2019.

Additionally, the data we received from the other facilities are not standardized. For instance, facilities reported citizenship, country of birth, country of origin, nationality and similar terms, all of which we categorized as country. Tables B.3 and B.4 on page 44 present information regarding the duration of stay. We defined a stay at a detention facility as each instance of an individual arriving at and leaving the facility during our audit period (July 1, 2013, through June 30, 2018). In the data, we encountered individuals who had multiple stays at the same facility. Additionally, we found instances of the same individuals appearing in different facilities. Because we provide the demographic information as background information and did not use it to draw conclusions, we did not assess the reliability of the data.

**Table B.1**  
Demographic Information on Detainees Housed in Detention Facilities in California  
Data From July 1, 2013, Through June 30, 2018

| FACILITY*                               | CITY OR COUNTY/<br>PRIVATE OPERATOR | AVAILABLE<br>BED COUNT | TOTAL<br>DETAINEES | AVERAGE<br>AGE | PERCENT<br>MALE | COUNTRY |           |             |          |       |        |
|---|-------------------------------------|------------------------|--------------------|----------------|-----------------|---------|-----------|-------------|----------|-------|--------|
|   |                                     |                        |                    |                |                 | MEXICO  | GUATEMALA | EL SALVADOR | HONDURAS | INDIA | OTHER† |
| Adelanto Detention Facility             | City of Adelanto / GEO              | 1,940                  | 34,081             | 35             | 92%             | 55%     | 8%        | 7%          | 5%       | 5%    | 20%    |
| Imperial Regional<br>Detention Facility | City of Holtville / IVGC / MTC      | 640                    | 15,381             | 31             | 91              | 13      | 8         | 6           | 10       | 33    | 30     |
| James A. Musick Facility                | Orange County / NA                  | 958                    | 16,453             | 34             | 91              | 55      | 10        | 9           | 5        | 4     | 17     |
| Theo Lacy Facility                      |                                     |                        |                    |                |                 |         |           |             |          |       |        |
| Mesa Verde<br>Detention Facility        | City of McFarland / GEO             | 400                    | 10,000             | 36             | 84              | 71      | 5         | 6           | 4        | 1     | 13     |
| Rio Cosumnes<br>Correctional Facility   | Sacramento County / NA              | 165                    | 6,493              | 37             | 98              | 70      | 5         | 8           | 3        | 1     | 13     |
| West County<br>Detention Facility‡      | Contra Costa County / NA            | 269                    | 8,701              | 34             | 78              | 57      | 8         | 8           | 4        | 1     | 22     |
| Yuba County Jail                        | Yuba County / NA                    | 210                    | 6,616              | 36             | 92              | 58      | 2         | 0           | 0        | 0     | 40     |

Source: Contracts and other documents from facility operators.

NA = Not applicable.

\* The Oray Mesa Detention Center is privately owned and operated by CoreCivic (formerly known as Corrections Corporation of America) and contracts directly with the federal government to house detainees. While we made a FOIA request for demographic information to ICE, we have not received a response as of February 20, 2019.

† Other includes countries not listed and entries where the country was not specified.

‡ We identified some errors and inconsistencies in Contra Costa County's data. However, because it is the only source of the information, we present it here.

**Table B.2**  
Demographic Information on Unaccompanied Children Housed in Detention Facilities in California  
Data From July 1, 2013, Through June 30, 2018

| FACILITY                                | OPERATOR    | AVAILABLE BED COUNT | TOTAL CHILDREN | AVERAGE AGE | PERCENT MALE | COUNTRY |           |             |          |       |
|---|-------------|---------------------|----------------|-------------|--------------|---------|-----------|-------------|----------|-------|
|   |             |                     |                |             |              | MEXICO  | GUATEMALA | EL SALVADOR | HONDURAS | OTHER |
| Yolo County Juvenile Detention Facility | Yolo County | 24                  | 340            | 16          | 100%         | 44%     | 9%        | 16%         | 29%      | 2%    |

Source: Documents from Yolo County.

**Table B.3**  
 Duration of Stay for Detainees Housed in Detention Facilities in California  
 Data From July 1, 2013, Through June 30, 2018

| FACILITY  | DURATION OF STAY RANGES<br>(DAYS STAYED) |         |           |            |      |
|---|--|---------|-----------|------------|------|
|   | 0 TO 1                                   | 2 TO 30 | 31 TO 100 | 101 TO 365 | 366+ |
| Adelanto Detention Facility                     | 16%                                      | 37%     | 27%       | 18%        | 2%   |
| Imperial Regional Detention Facility            | 8  | 47      | 28        | 15         | 2    |
| James A. Musick Facility and Theo Lacy Facility | 1  | 37      | 39        | 20         | 3    |
| Mesa Verde Detention Facility                   | 37                                       | 31      | 22        | 9          | 1    |
| Rio Cosumnes Correctional Facility*             |  |         |           |            |      |
| West County Detention Facility†                 |  |         |           |            |      |
| Yuba County Jail                                | 30                                       | 39      | 19        | 11         | 1    |

Source: Facility operators.

\* We did not include duration of stay data for Rio Cosumnes Correctional Facility because it was not comparable to the other facilities' data and would have required significant manual reformatting.

† We did not include duration of stay data for West County Detention Facility because it included numerous errors and inconsistencies.

**Table B.4**  
 Duration of Stay for Unaccompanied Children Housed in Detention Facilities in California  
 Data From July 1, 2013, Through June 30, 2018

| FACILITY                                | DURATION OF STAY RANGES<br>(DAYS STAYED) |         |           |            |      |
|---|--|---------|-----------|------------|------|
|   | 0 TO 1                                   | 2 TO 30 | 31 TO 100 | 101 TO 365 | 366+ |
| Yolo County Juvenile Detention Facility | 2%                                       | 16%     | 65%       | 15%        | 2%   |

Source: Yolo County.

## APPENDIX C

### Detainee Deaths in Custody Fiscal Years 2013–14 Through 2017–18

The Audit Committee directed us to determine how many, if any, of the individuals identified in the demographic information summarized in Appendix B died while in custody, what the causes of those deaths were, and whether the individuals who died were detained for civil immigration cases. Table C presents the information we gathered about the number of individuals who died while in custody.

**Table C**  
**Deaths in Custody**

| DETENTION FACILITY NAME | NUMBER OF DEATHS | CAUSE OF DEATH   | TYPE OF DETENTION    |
|-------------------------|------------------|--|----------------------|
| Adelanto                | 5                | Cardiogenic shock (condition in which the heart suddenly cannot pump enough blood to meet the body's needs), massive right ventricular infarction (heart attack), and severe ischemic heart disease (reduced blood flow to the heart)  | Civil Immigration*   |
|                         |                  | Liver and kidney failure <sup>†</sup>  | Civil Immigration*   |
|                         |                  | Hypoxic encephalopathy (brain dysfunction caused by insufficient oxygen to the organ tissues) due to hanging   | Civil Immigration*   |
|                         |                  | Upper gastrointestinal bleeding from esophageal varices (enlarged veins in the lower esophagus), cirrhosis (scarring of the liver), and heroin and alcohol abuse   | Civil Immigration*   |
|                         |                  | Pending <sup>‡</sup>   | Civil Immigration*   |
| Otay Mesa               | 2                | Hypertensive and atherosclerotic cardiovascular disease (heart condition related to high blood pressure and heart disease in the blood vessels)  | Unknown <sup>§</sup> |
|                         |                  | Sudden cardiac death (sudden, unexpected loss of heart function, breathing, and consciousness), acute coronary syndrome (a range of conditions associated with sudden, reduced blood flow to the heart), multivessel coronary artery disease (blockages in several of the heart's main arteries) due to arteriosclerotic vascular disease (a blood vessel disease) | Unknown <sup>§</sup> |

Source: ICE's documentation of deaths in ICE custody and detainee death reviews; ICE contracts; Mayo Clinic's health information.

\* Facility houses immigration detainees who are only held to assure their presence throughout the immigration process and are not charged with criminal violations.

<sup>†</sup> This is a preliminary cause of death; source documentation does not include a final cause of death.

<sup>‡</sup> ICE has not made final cause of death information public.

<sup>§</sup> Facility holds individuals charged with federal offenses and detained while awaiting trial or sentencing, a hearing on their immigration status, or deportation.

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February 2019



February 8, 2019

**Gabriel Reyes**  
*Mayor***Stevevonna Evans**  
*Mayor Pro Tem***Ed Camargo**  
*Council Member***Gerardo Hernandez**  
*Council Member***Joy Jeannette**  
*Council Member***Jessie Flores**  
*City Manager***VIA EMAIL**

Elaine Howle\*  
California State Auditor  
621 Capitol Mall  
Suite 1200  
Sacramento, California 95814  
Email: [jordanw@auditor.ca.gov](mailto:jordanw@auditor.ca.gov)

**Re: City of Adelanto's Response to California State Auditor's Draft Report Entitled "City and County Contract with U.S. Immigration and Customs Enforcement: California Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns"**

Dear Ms. Howle:

This letter serves as the City of Adelanto's (the "City") formal response to your letter dated February 4, 2019 concerning the California State Auditor's draft report entitled "City and County Contract with U.S. Immigration and Customs Enforcement: California Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns" (the "Report"). We appreciate the opportunity to review and comment on the Report.

The City takes the findings contained in the Report seriously and appreciates the recommendations pertaining to the City's implementation of oversight policies and practices for private operators. The City, however, disagrees with certain claims made in the Report. ①

The Report provides that the City has failed to ensure that its private operators fulfill the City's obligations under the ICE contract. As stated in the Report, the City subcontracts with the GEO Group, Inc. ("GEO"), which manages and operates the Adelanto Detention Facility to perform the City's obligations under the ICE contract. Pursuant to the City's detention subcontract with GEO, GEO assumed the City's contractual duties of housing detainees in accordance with ICE's performance-based national detention standards when it subcontracted with the City, and agreed to indemnify and hold the City harmless for claims arising out of the detention subcontract by agreeing to be responsible for costs arising from litigation related to the management and operation of the facility.

February 2019

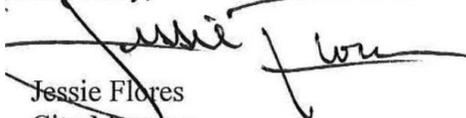
② Referring to the California State Contracting Manual's ("State Contracting Manual") policies, procedures, and guidelines, the Report also indicates that the City does not perform contract management tasks that would help ensure that the private operator fulfills the ICE contract. There is, however, no contractual or statutory requirement that the City comply with the standards under the State Contracting Manual. In fact, the Report notes that the City could use the State Contracting Manual as best practices to promote sound business decisions and practices when contracting for services, though it is not required to do so.

③ The Report further states that the City did not review federal inspection reports pertaining to their respective detention facilities to ensure that its subcontractor prepared quality control plans and other documentation required by the City's contract with ICE, such as complaint notifications and incident reports. As mentioned in the Report, the detention subcontract includes a provision that allows the City to inspect the detention facility and documents under the agreement; however, the City is not mandated to do so.

④ Finally, the Report claims that the City has failed to ensure that its private operator houses detainees in accordance with detention standards required by the ICE contract. As provided in the Report, according to the detention subcontract, the private operator assumed full responsibility for meeting detention standards when it subcontracted with the City, including the development of a quality control plan on behalf of the City through the detention subcontract. The Report also details an annual inspection of the Adelanto Detention Facility conducted by ICE's private inspection contractor in October 2018, which revealed that the facility complied with detention standards.

We thank you again for providing us with the opportunity to review and comment on the Report. Moving forward, the City will be implementing the State Contract Manual as part of its contract management practices. We also note that the City is in the process of forming an oversight committee to oversee the performance of the obligations under its agreements.

Sincerely,

  
Jessie Flores  
City Manager

## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CITY OF ADELANTO

To provide clarity and perspective, we are commenting on the response from Adelanto. The numbers below correspond to the numbers we have placed in the margin of its response.

Although Adelanto states that it disagrees with certain claims made in our report, it does not indicate which claims it is referring to. We conducted our audit in accordance with generally accepted auditing standards, which require us to obtain sufficient and appropriate evidence to support our conclusions and recommendations; thus we stand behind our conclusions.

①

Although Adelanto is not required to comply with the *State Contracting Manual*, by increasing its contract management efforts Adelanto could have helped to prevent, minimize, or resolve significant health and safety issues that federal inspectors identified at the Adelanto Detention Facility, as we state on page 18.

②

As we state on page 18, Adelanto's detention subcontract with GEO allows the city to inspect the detention facility, and we believe that doing so would help the city ensure that the private operator is adequately performing its contract responsibilities.

③

Adelanto focuses on results from the October 2018 Nakamoto inspection; however, as we state on page 19, it was not aware of any of the federal inspection reports discussed in our report, including the Inspector General's report that cited serious health and safety issues at the Adelanto Detention Facility. In addition, as we noted on page 21, in a separate report the Inspector General found that inspections performed by Nakamoto were not consistently thorough. Thus, we believe that additional scrutiny from the city could help ensure that its private operator promptly corrects deficiencies.

④

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## ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

February 8, 2019

Ms. Elaine M. Howle, CPA\*  
California State Auditor  
Transmitted via email to Jordan Wright ([jwright@auditor.ca.gov](mailto:jwright@auditor.ca.gov))

Re: Draft Report titled "City and County Contracts with U.S. Immigration and Customs Enforcement: California Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns"

Dear Ms. Howle:

The Orange County Sheriff's Department is in receipt of the above-referenced draft report. We appreciate the opportunity to review and provide a response.

Prior to engaging in this contract, a thorough analysis was performed in order to determine if the necessary Immigration Custom and Enforcement (ICE) program requirements and the related costs were agreed upon by both parties. There were several meetings which led to the final negotiations.

The Orange County Sheriff's Department (OCSD) does not agree with the statements related to "Orange County did not consistently monitor detainee costs during the audit period." OCSD monitors the costs associated with inmates and detainees as the cost of housing an ICE detainee is the same as housing an inmate. The contracted per-diem rate of \$118.00 covers all of the direct cost and the majority of indirect costs. The indirect costs associated with housing an inmate or an ICE detainee would be incurred regardless of whether an ICE detainee is housed in one of our facilities. Therefore, County funds are not spent on housing ICE detainees. ①

OCSD is not commingling payments from ICE. OCSD uses revenue source codes for revenues associated with the ICE program and is identified by jail facility. This in accordance with Generally Accepted Accounting Principles (GAAP). ②

OCSD tracks inmate and detainee costs via each jail facility based on a unit number. Within each unit number we also track the costs at the object level. Therefore the housing of the inmate or detainee is tracked the same. The only difference would be the various requirements for programming and staffing which is fully covered in our direct costs. There is no need to track detainee expenses separately and it would be very labor intensive to do so. Notably, the draft report does not recommend that we track these expenses separately. The Federal Detainee Program cost was built based on the requirements specific to the ICE Program. The cost study captured operations staffing and all relative indirect costs. Detail work was performed to ensure all costs were included. Any shared costs (e.g. Services and Supplies) between the ICE program and county inmates are prorated based on an appropriate factor as these costs are the same for a detainee and an inmate. ③



## ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

- ⑤ We are also concerned about the purpose of the draft report's comments regarding some inspection and monitoring reports identifying issues with conditions at the jail facilities. The draft report states that OCSD documented "some" corrective actions, implying that OCSD has not fully addressed these issues. We dispute that implication. These issues were fully addressed, and we question why these comments were included in the draft report as they do not accurately reflect the conditions at the jail facilities and appear to be outside the scope of the audit.
- ⑥

With respect to the Recommendations stated in the draft report, OCSD's responses are as follows:

### Recommendation:

- Renegotiate its contract per-diem rate with ICE as soon as possible, and at least before renewing the contract in 2020, to an amount that covers all of the County's allowable costs for housing ICE detainees.

OCSD Response:

- ⑦ We concur; we are in the process of conducting an updated cost study and based on the findings we will determine if an updated per-diem rate is needed.

### Recommendation:

- If the county continues contracting with ICE after 2020, annually analyze the cost of housing detainees compared with the payments it receives from ICE for doing so and if necessary renegotiate its contract to ensure contract revenues at least meet the county's cost.

OCSD Response:

We concur; we will analyze the cost of housing ICE detainees to ensure revenues received continue to cover costs.

The Orange County Sheriff's Department is committed to providing excellent housing and care of inmates and detainees. We take pride in our work and thoroughly analyze our contracts prior to negotiations to ensure the best interests of the department as well as the citizens of Orange County are met. Thank you for your consideration of our response.

Regards,

Don Barnes  
Sheriff-Coroner

## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE ORANGE COUNTY SHERIFF'S DEPARTMENT

To provide clarity and perspective, we are commenting on the response from Orange County. The numbers below correspond to the numbers we have placed in its response.

We disagree that Orange County has consistently monitored costs associated with detainees. As we state on page 24, Orange County only performed two detainee cost studies, one in fiscal year 2010–11 and the other in fiscal year 2017-18. By the time of the second analysis, annual detainee costs exceeded the per-diem rate by \$1.7 million.

①

Orange County's assertion that indirect costs would be incurred regardless of whether an ICE detainee is housed in one of its facilities misses the point. As we explain on page 26, those indirect costs could have been paid for by ICE rather than the county.

②

During our quality control process we replaced the word "commingled" with "deposited". The point we are making, as we explain on page 27, is that Orange County did not distinguish spending of ICE revenue from spending of other revenues. As a result, it did not specifically track whether it used payments from ICE to fund programs that detainees participate in or to fund other facility operations. This also explains why Orange County could not identify which revenue sources it used to pay costs in excess of ICE payments.

③

We do not take issue with Orange County's approach for identifying detainee costs. However, as we note on page 24, Orange County did not consistently monitor detainee costs. We recommend on page 30, that Orange County ensure that it does not unnecessarily spend county funds to house ICE detainees by annually analyzing the actual cost of housing detainees compared with the payments it receives from ICE for doing so. If necessary, it should renegotiate its contract to ensure that ICE pays for all of the county's costs for housing detainees.

④

During our quality control process we removed the word "some".

⑤

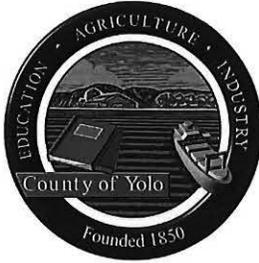
The results of inspections of Orange County's Theo Lacy Facility are not outside the scope of our audit. As we describe in Table A of the Scope and Methodology section of our report, the audit objectives focused on how detainees are housed, what programs are available to them, and whether facilities are overcrowded. We addressed these

⑥

objectives in part by reviewing inspection reports for the detention facilities. Furthermore, the 2017 federal inspection of Orange County's Theo Lacy Facility was specifically mentioned in the Audit Committee meeting when the audit was approved.

- ⑦ We look forward to reviewing Orange County's 60-day response to our audit report, which should include documentation demonstrating that it included all allowable direct and indirect costs in its updated cost study.

February 2019



# County of Yolo

## PROBATION DEPARTMENT

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Community Corrections

**Dan Fruchtenicht**  
Chief Probation Officer

February 8, 2019

Elaine M. Howle, CPA\*  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Howle,

I have reviewed the draft copy of the California State Auditor report, which was the result of the audit requested by the Joint Legislative Audit Committee, and offer the following response;

We would like to clarify the nature of our agreement with the Office of Refugee Resettlement, given the title of the report. The title of the report is, "City and County Contracts with U.S. Immigration and Customs Enforcement: California Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns." Yolo County does not have a contract with Immigration and Customs Enforcement, an agency under the jurisdiction of the Department of Homeland Security. Yolo County does, however, receive a grant award from the Office of Refugee Resettlement to provide secure placement beds. As referenced on page one of the report, the Office of Refugee Resettlement is a program of the Administration for Children and Families, an office within the U.S. Department of Health and Human Services. ①

Page two of the report provides an overview of recent "zero-tolerance" immigration policy, which resulted in family separation. When the federal government took custody of parents, the children effectively became "unaccompanied." To date, Yolo has not received any youth separated from their family as a result of "zero-tolerance" immigration policy. Rather, the youth placed in Yolo County were unaccompanied at the time they entered the United States. ②

The California State Auditor's final report yielded a recommendation for Yolo County to identify all allowable costs and include them in its future budget requests to the Office of Refugee Resettlement (ORR). As we shared throughout the audit process, Yolo County was previously informed by the ORR designee that care provider budgets were held to a \$3-million-dollar capped grant award. Through additional negotiations with ORR, Yolo County was informed all identified costs incurred by the program could be claimed in the program budget;

\* California State Auditor's comments appear on page 57.

therefore, Yolo County requested and received a mid-year supplemental grant award for the 2018/2019 grant year that increased our budget cap to ensure program costs were funded.

- ③ Yolo County recently provided a comprehensive budget for the 2019/2020 grant year that accounts for all anticipated costs in the coming year; ORR has confirmed approval of the proposed budget. We are continuing to actively evaluate the methodology of this budget, specifically in the direct and contractual costs areas, to ensure the program remains entirely federally-funded.

If you have any questions or require additional information, please contact me at (530) 406-5343.

Sincerely,



Dan Fruchtenicht, Chief Probation Officer  
Yolo County Probation Department

cc: Oscar Ruiz, JDF Superintendent  
Julie Burns, Probation Division Manager  
Carrie Scarlata, Assistant County Counsel

## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE YOLO COUNTY PROBATION DEPARTMENT

To provide clarity and perspective, we are commenting on the response from Yolo County. The numbers below correspond to the numbers we have placed in its response.

The title of our report is based on the general language of the audit request. We make it clear in the Introduction of the report and throughout the sections related to Yolo County that it has an agreement with the Office of Refugee Resettlement.

While preparing our draft report for publication, some page numbers shifted. Therefore the page numbers Yolo County cites in its response do not correspond to the page numbers in our final report.

We look forward to reviewing Yolo County's 60-day response to our audit report, which should include documentation demonstrating its progress and methodology for ensuring that its future budget requests to the Office of Refugee Resettlement include all allowable county costs.

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## COMMENT

### CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE BOARD OF STATE AND COMMUNITY CORRECTIONS

Although Community Corrections did not provide a formal response to our report it stated in an email that it accepts the recommendation of the State Auditor and will review and make conforming changes to its regulations, as necessary.