

# REBUILDING TRUST

## A CASE STUDY FOR CLOSING AND REPURPOSING IMMIGRATION DETENTION FACILITIES



Santa Ana City Jail: After



Santa Ana City Jail: Before

# Rebuilding Trust: A Case Study for Closing & Repurposing Immigration Detention Facilities

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## CIVIC

CIVIC is a national 501(c)(3) nonprofit organization incorporated in the state of California. CIVIC has extensive experience in assessing immigration detention conditions, working with the LGBTQI community, and developing and implementing alternative to detention programs. CIVIC has affiliated visitation programs at over 40 immigration detention facilities nationwide. These programs allow volunteers to build one-on-one relationships with people in immigration detention to provide a connection to the outside world and assess immigration detention conditions on a weekly basis. CIVIC began visiting and assessing conditions at the Santa Ana City Jail in 2012. You can learn more at [www.endisolation.org](http://www.endisolation.org).

## Torti Gallas + Partners

Torti Gallas + Partners was established in 1953 and maintains a global practice of planning, architecture and urban design with offices in Los Angeles, California, Silver Spring, Maryland, Washington, DC, Tampa, Florida and Istanbul, Turkey. The firm is one of the largest planning and architectural firms in the United States dedicated to advancing the principles of the New Urbanism and Smart Growth to meet the challenges of our time. Torti Gallas has extensive experience with all scales of master planning and building projects in the residential, mixed-use, transit-oriented, and commercial markets, applying jurisdictional needs and code requirements in local, national and international markets.

With extensive experience in the public and private sectors, Torti Gallas takes pride in balancing the diverse needs of communities with the realities of the marketplace to arrive at buildable solutions that bring value to our clients and to the communities in which we work. In applying this successful, market-focused balance, Torti Gallas has designed over 475,000 residential units and planned over 1,500 residential and mixed-use communities. Learn more at [www.tortigallas.com](http://www.tortigallas.com).

## Advancement Project

Advancement Project is a next generation, multiracial civil rights organization. In California, the organization champions the struggle for greater equity and opportunity for all, fostering upward mobility in communities most impacted by economic and racial injustice. Advancement Project California builds alliances and trust, uses data-driven policy solutions, creates innovative tools, and works alongside communities to ignite social transformation. For more information, visit [www.advancementprojectca.org](http://www.advancementprojectca.org).

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The American Civil Liberties Union of Southern California (ACLU SoCal) is a nonprofit, nonpartisan organization that works daily in courts, legislatures and communities to defend the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. Learn more at [www.aclusocal.org](http://www.aclusocal.org).

## Special thanks to:

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## Executive Summary

### a. Purpose

Many cities and counties have been facing increased pressure to decrease jail space or completely close their jails. Since 2011, at least 22 states have closed or announced closures for 94 state prisons and juvenile facilities, resulting in the elimination of over 48,000 state prison beds and an estimated cost savings of over \$345 million, according to the Sentencing Project.<sup>1</sup> California is one of four states that has reduced its prison population by over 20%, made possible by ballot initiatives that have curbed the state's "three strikes and you're out" law, expanded parole eligibility, limited the process governing juveniles tried as adults, and authorized the reclassification of certain felonies as misdemeanors.<sup>2</sup> As part of the state budget, California signed into law a bill in 2017 to halt the growth of municipal-run immigration detention facilities for the next 10 years.<sup>3</sup> And in October 2017, California also signed into law the Dignity Not Detention Act, which effectively eliminates the expansion of for-profit immigration detention facilities in the state.

While there are many examples of counties and cities closing their correctional facilities due to decreased incarceration levels, human rights violations, and budgetary decisions, very few—if any jails—have been closed in a specific effort to repurpose them to meet the community's needs. Counties and cities that have closed their correctional facilities have eventually repurposed them in exciting and innovative ways. For example, facilities have been converted into refugee housing, museums and special events venues, a movie studio, a distillery, and a live-work space with condominiums, office buildings, shops, and restaurants. While correctional facility closures offer a challenge to officials and the communities that are impacted, they also offer municipalities the opportunity to actively address the scale of incarceration and strengthen their own communities.

The City of Santa Ana, California, which previously used its city jail as an immigration detention facility in contract with U.S. Immigration & Customs Enforcement (ICE), became a "sanctuary city" by local ordinance in early 2017. Shortly after declaring itself a "sanctuary city," ICE terminated its contract with the City. The City also issued a Request for Qualifications (RFQ) for a jail reuse study to determine whether the City can and should

completely repurpose its jail. As part of the original RFQ, the City also requested analysis on how the City could be involved in community-based alternatives to immigration detention.

**While this report has been created for the City of Santa Ana, California, it also acts as a guide for any municipality that is considering repurposing its jail, prison, or immigration detention facility.** During the 1990's, a new jail, prison, or immigration detention facility was built every 15 days. These jails were constructed in a significantly different way from historic jails, and therefore, repurposing them presents unique challenges and opportunities. This report will assist any community looking to launch a campaign or collaborate with city leaders to repurpose a Clinton administration-era jail.

The report has three main components: a jail reuse assessment; a jail conditions assessment, including an analysis of human and civil rights conditions at the Santa Ana City Jail; and an analysis of ways municipalities can support alternatives to immigration detention.

### b. Findings & Recommendations

The City originally borrowed \$107.4 million in bonds in 1994 to assist with the cost of constructing the combined jail/police headquarters facility, with a 30-year repayment term. The final payment will be due in FY24. Since 1994, the City of Santa Ana refinanced portions of its debt in both 2004 and 2014 to take advantage of lower interest-rate environments. **The Santa Ana City Jail is currently operating at a significant deficit for the City.** Taking as comprehensive a view as possible of both costs and revenues, the deficit is about \$8.6 M in FY18. It would be inaccurate to attribute this deficit to the recent cancellation of the ICE contract because the FY18 deficit represents only a slight increase over what the City has been accustomed to running. This analysis suggests that well before the cancellation of the ICE contract, the Santa Ana City Jail appears to have been a fiscal albatross around the neck of the City. Equally important, these deficits are not wholly attributable to the need to repay the outstanding costs of borrowing; in each year since FY15, jail-specific revenues have failed to cover the operating costs of the facility.

The City will not be able to close the jail overnight even if it decides that this is the best option. **Nevertheless, if the City were to transition the jail facility into an urban farm, a shared artist studio, or**

<sup>1</sup> <http://www.sentencingproject.org/publications/repurposing-new-beginnings-closed-prisons/>

<sup>2</sup> *Id.*

<sup>3</sup> [https://www.buzzfeed.com/adolfoflores/california-deals-blow-to-trumps-plan-to-expand-immigrant?utm\\_term=.ka1B52aqD#.krE9pOZmz](https://www.buzzfeed.com/adolfoflores/california-deals-blow-to-trumps-plan-to-expand-immigrant?utm_term=.ka1B52aqD#.krE9pOZmz)

**a community-based reentry center within the coming year, calculations suggest that these uses could defray some of the facility's outstanding costs, as well as provide a public benefit.**

In addition to helping the City pull itself out of its current deficit, these options not only provide a public benefit, but also prevent more harm from occurring within the City jail. We analyzed records maintained by the City of Santa Ana about grievances filed by people previously and currently held at the jail. **We found that the most common grievance submitted by people detained at the Santa Ana City Jail from 2014 to 2017 focused on the inadequate medical care provided at the facility.** For example, the medical unit found two masses on the right breast of a woman inmate and another mass on her left breast. The medical department told her that the masses are not malignant. However, there is no way a medical doctor could claim this with any medical certainty because the medical unit refused to biopsy the masses or allow her to seek a second opinion from another doctor.

Other issues we examine in this report include prolonged solitary confinement, inappropriate classifications of inmates, excessive or inappropriate disciplinary actions; unhygienic food service; and lack of access to the law library, mail, visits, the commissary, jail programming, and the telephone. In addition, lengthy and frequent lockdowns were reported as well as violations of religious freedom, exploitation of workers, and other kinds of unfair treatment. For example, one person was held in solitary confinement for 11 months and experienced audible hallucinations and muscle atrophy. Other evidence showed that both inmates and facility auditors have expressed concern that the food service workers are not given the proper equipment or training to prevent the transmission of bacteria or disease.

The City of Santa Ana is at risk of losing millions of dollars defending and settling claims against its jail. The conditions individuals incarcerated at the Santa Ana City Jail are forced to endure are at best deficient. We believe many of the situations we have documented at the Santa Ana City Jail raise state and federal legal concerns. For example, dozens of cases involving absent or negligent medical treatment have resulted in large settlements or jury awards against cities, such as in the 2014 lawsuit against the City of San Diego, in which untreated asthma resulted in the death of an inmate. *Brummett and Sisson on Behalf of Sisson, Estate of v. City of San Diego*, JVR No. 1504220025, 2014 WL 8664199 (S.D. Cal. Nov. 10, 2014) (verdict and settlement summary).

**Only by closing the jail and repurposing it can the City rectify the toxic environment that its jail has created for the community.**

However, this alone is not enough to correct for the City's past failures, particularly with respect to its treatment of immigrants. As a self-proclaimed sanctuary city that operated one of our country's most notable immigration detention facilities, the City of Santa Ana has an obligation to consider piloting or supporting a community-based alternative to immigration detention.

Specifically, **the City of Santa Ana should consider repurposing the Santa Ana City Jail as a Community-Based Reentry Center**, which would open the City up to additional grant opportunities. The Center could serve people returning home to Orange County, particularly to Santa Ana, from prison and immigration detention. The City could employ a blended model and combine cognitive-behavioral treatments with skills oriented programming, including work opportunities, job training, and a community garden. Both reentry clients as well as the entire community would have access to these programs, which would help in reintegrating clients into their community. For example, clients returning home could operate a small farmers market or vegetable stand by selling produce from the garden.

**The City should also assist in the creation of a Revolving Immigration Bond Fund, which would be sustained by a public/private partnership.** The Revolving Immigration Bond Fund would ensure that no immigrant would remain imprisoned in immigration detention in Orange County for years or months simply because they are poor. Paired with case management and social services that the California legislature and the City of Santa Ana have already partially invested in, such as legal services, this Revolving Immigration Bond Fund could lead the nation in immigration detention reform.

## I. Methodology

This report was funded by The California Endowment and administered by Community Initiatives for Visiting Immigrants in Confinement (CIVIC), a nonprofit organization, in association with Torti Gallas + Partners, the Advancement Project, and the American Civil Liberties Union of Southern California. Our Reuse Study has been created as a shadow report to the Santa Ana City-funded jail reuse study conducted by the City's contractor, Vanir Construction Management Inc.

In December 2016, the City of Santa Ana issued a Request for Qualifications (RFQ). After awarding the RFQ to Vanir Construction Management<sup>4</sup>—a firm known for its jails expansion models—the City changed the scope of the reuse study to no longer include an assessment of human and civil rights conditions at the jail or analysis of alternatives to immigration detention. The original study was to include three main components: a jail reuse assessment; a jail conditions assessment, including an analysis of human and civil rights conditions; and an analysis of alternatives to immigration detention. Our reuse study addresses each of these components.

### a. Jail Reuse Assessment

Torti Gallas + Partners intended to conduct the jail reuse assessment at no cost to the City. However, the City was unwilling to provide us with copies of the topographical plot plan or floor plans of the Santa Ana City Jail. Although Torti Gallas was willing to sign a nondisclosure agreement and submit to any background checks or security protocols, the City was unwilling to provide us with the necessary documents to do a full jail reuse study. However, we did tour the facility on September 11, 2017, where we were able to conduct a survey of the site and surrounding area to gain a better understanding of the community character.

In order for the City to make an informed decision about which option the community most wants to see the City pursue, we conducted three community meetings. During

these meetings we administered two surveys to learn more about what the needs of the community are and how residents envisioned a reuse of the jail. Simultaneously, Torti Gallas gathered precedents of other jail and prison adaptive reuse projects in the United States and abroad. By comparing the community needs with the options for adaptive reuse, the Torti Gallas team came up with a few options that would benefit the community and be economically viable.



To ensure that these options are fiscally possible for the City, the Advancement Project developed a budget proposal for how these options could be carried out by the City given current financial realities. Torti Gallas created Photoshop renderings of the Santa Ana City Jail interior to showcase some of the suggested options for reuse.

### b. Jail Conditions Assessment

In conducting a jail conditions assessment, it is best to assess the conditions over a period of time. Ideally, our assessment would have included a series of surveys administered in multiple languages, ongoing assessment through randomly selected visitation dates/times, and analysis of data maintained by the City or other government agencies responsible for the population detained at the Santa Ana City Jail. In an attempt to make contact with people on the inside, we mailed an introduction letter and survey to 10 individuals who filed grievances within the past year at the Santa Ana City Jail. Of the 10 envelopes that were sent, four were returned and stamped "Return to Sender" and "No Longer in Santa Ana Jail Custody." We did not receive a response for the remaining six envelopes. An attempt to follow up with individuals through official visitation was unsuccessful. The City Jail's security clearance process requires applicants to submit personal information for each individual to be visited, including register numbers, which we did not have at the time and were unable to obtain. Unfortunately, due to privacy concerns voiced to

<sup>4</sup> For example, Vanir's "jail reuse study" for Los Angeles County resulted in five multi-billion dollar jail expansion options. In San Diego County, Vanir was the construction management company responsible for building the Women's Detention Facility in Santee, which is nearly triple the size of the old facility. In Indio, Vanir is currently at work constructing the East County Detention Center, which will add 1,273 new jail cells for Riverside County. Vanir also is building the new Tuolumne County Juvenile Detention Facility to incarcerate more youth. See here for more details: <https://www.ocregister.com/2017/04/04/santa-anas-motto-jails-not-schools>.

us by the City Jail Administrator, we were unable to establish contact with people currently detained at the Santa Ana City Jail to administer these surveys.

Therefore, to learn more about the conditions of confinement at the Santa Ana City Jail (SACJ) and determine how responsive the facility has been to these complaints, CIVIC filed a California Public Records Act request on July 26, 2017, which requested the following records, among others:

- the number of grievances filed at the SACJ since January 2014 and the subject of the grievances, including data on which complaints were investigated and what the outcomes or decisions of the investigations were, as well as the reasons for any decisions not to investigate complaints or take action;
- any grievances or complaints filed with the City of Santa Ana; the County of Orange; or the SACJ by people detained/incarcerated at the SACJ since January 2014; and

- any audits conducted by state or federal agencies, by companies, or by any other audit body since January 2014.

This report provides an analysis of the data and reports we received from the City of Santa Ana.

**c. Alternatives to Immigration Detention**

This report provides an overview of the landscape of alternatives to immigration detention in the United States with some examples of how cities in the U.S. and in Europe are supporting community-based alternatives to detention. This report also provides legal analysis for the City on who could be supported by a community-based alternative to detention and on the various ways the City could be involved with community-based alternatives to detention.

## II. History of the Santa Ana City Jail

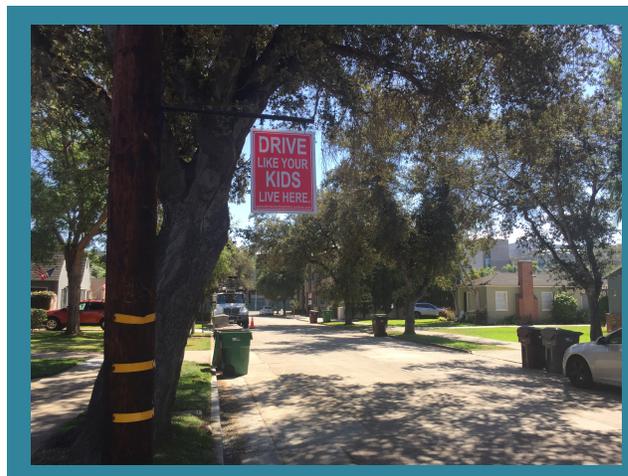
### a. Overview of the City of Santa Ana

The City of Santa Ana is located in Orange County, California. Orange County is the 6<sup>th</sup> most populous county in the United States.<sup>5</sup> In California, 28.2% of the population is immigrants, which is double the national average.<sup>6</sup> In Orange County, 31.5% of the population is immigrants.<sup>7</sup> There are seven cities in Orange County where the foreign-born percentage of the total population is greater than Orange County's county-wide average, and the City of Santa Ana is at the top of the list.<sup>8</sup> In the City of Santa Ana, 46.7% of the population is immigrants.<sup>9</sup>

In the City of Santa Ana, 78.2% of the population is Hispanic, followed by Asians (10%) and Whites (9.6%).<sup>10</sup> Approximately 108,000 people in Santa Ana are non-citizens, which is nearly 33% of the entire city population.<sup>11</sup> In addition, 48,900 people are naturalized citizens, which is nearly 15% of the population.<sup>12</sup> Most immigrants in Santa Ana are from Mexico (75.2%), Vietnam (11%), and El Salvador (4.1%).<sup>13</sup>

Among Orange County's immigrant population, 93.3% are employed.<sup>14</sup> In fact, Orange County's immigrant business entrepreneurs account for 40.9% of all business owners in the county.<sup>15</sup> Orange County's immigrant population contributes approximately \$2.2 billion annually in state and local income taxes and approximately \$5.9 billion annually in total income taxes.<sup>16</sup> Santa Ana's immigrant population makes \$2.53 billion annually in pre-tax wages and salary income.<sup>17</sup>

Despite the significant contribution immigrants are making to the City of Santa Ana, many are living under the poverty line. While Santa Ana's median annual



income is \$52,519, **22% of the city's population lives in poverty**.<sup>18</sup> The median rent for a Santa Ana apartment has increased by 9.3%, which is a sharper increase than the average rent increase in Orange County, where the median rose only 6.8%.<sup>19</sup> In part, this has resulted in an increase in homelessness in the City, particularly in the city's Civic Center where the Santa Ana City Jail is located.<sup>20</sup>

### b. Overview of the Santa Ana City Jail & Its Contracts

The Santa Ana City Jail is located at the corner of Boyd Way and 6th Street, a block away from City Hall. This is less than 500 feet from the Orange County Sheriff's Department Central Jail Complex, which includes the Intake/Release Center, Central Men's Jail and Central Women's Jail.

The current zoning of the site is Government Center (GC) with Single-Family Residence (R-1) to the west and north. West Civic Center Drive runs east-west to the north of the site, North Shelton St runs north-south on the west side of the street, Boyd Way to the east runs north-south, and to the south is West 6<sup>th</sup> St running east-west. The site is public transit accessible via the bus system.

The south and east sides of the jail front on W 6<sup>th</sup> St and Boyd Way both with 10-foot sidewalks on the building frontage sides. The south faces a large parking lot and

<sup>5</sup> "Orange County Immigration Profile," Orange County Opportunity Initiative, September 2017.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> <https://statisticalatlas.com/place/California/Santa-Ana/National-Origin> (data analyzed from the US Census Bureau, specifically from the 2010 (latest) census, and from the 2009-2013 (latest) American Community Survey).

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

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

<sup>13</sup> *Id.*

<sup>14</sup> "Orange County Immigration Profile," Orange County Opportunity Initiative, September 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Email between Christina Fialho of CIVIC and Tom Wong of the University of California at San Diego and author of the "Orange County Immigration Profile."

<sup>18</sup>

<https://www.census.gov/quickfacts/fact/table/santaanacitycalifornia/PST045216>

<sup>19</sup> <http://www.latimes.com/business/la-fi-worker-cooperatives-20160817-snap-story.html>

<sup>20</sup> <http://www.ocregister.com/2017/10/18/to-discourage-homeless-encampment-santa-ana-is-banning-structures-and-other-property-at-civic-center/>

the east faces a parking structure. The site is one block away to the west from the Santa Ana Stadium. The stadium, also known as Eddie West Field or Santa Ana Bowl, is city-owned and operated and has a 9,000-capacity for football and soccer. The main uses are high school and college football along with high school and college commencement ceremonies.

Heroes Elementary School is to the northwest of the site area and fronts on West Civic Center Drive. There are bike lanes going in both directions on this road. To the west of the site along North Shelton St there are single family homes. These are mostly one-story bungalows. About ¼-miles to the southwest is the Historic Santa Ana Downtown area.

The Santa Ana City Jail has 512 beds, mostly set up in module units, each holding up to 64 people. There are 224 double occupancy cells for a total of 448 beds used for general population. There are 32 single occupant cells for administrative segregation. On the second floor, the jail has two dorm style units, one houses 14 people and the other houses 18 used for general population housing. Also on the second floor, the jail has 5 court holding cells with a maximum capacity of 10 each for staging inmates scheduled to go out to court. In booking, on the first floor, the jail has two detox cells with a maximum capacity of 4 each and 7 holding cells with maximum capacity of 4 each. Arrestees may not be housed in booking per policy.

The City of Santa Ana first began contracting with the federal government to detain people in a form of immigration custody in 1996 at the Santa Ana Detention Facility and then when the City Jail opened in 1997. In 2006, U.S. Immigration & Customs Enforcement (ICE) entered into a separate agreement with the City to house up to 200 people in immigration detention. In 2011, the City also began operating what ICE referred to as the only “dedicated protective custody unit” for Gay, Bisexual, and Transgender immigrants.

In addition to the ICE contract, the City also has maintained contracts with the U.S. Marshals Service and the Federal Bureau of Prisons to hold people in criminal custody for extended periods of time. The Santa Ana Police Department uses the Santa Ana City Jail to book and process people who are arrested for suspected criminal activity within their jurisdiction before transferring them to the county jail system. The City also contracts with Fountain Valley, Irvine, and Tustin to book residents of those cities into the Santa Ana City Jail before being transferred to the county jail.<sup>21</sup>

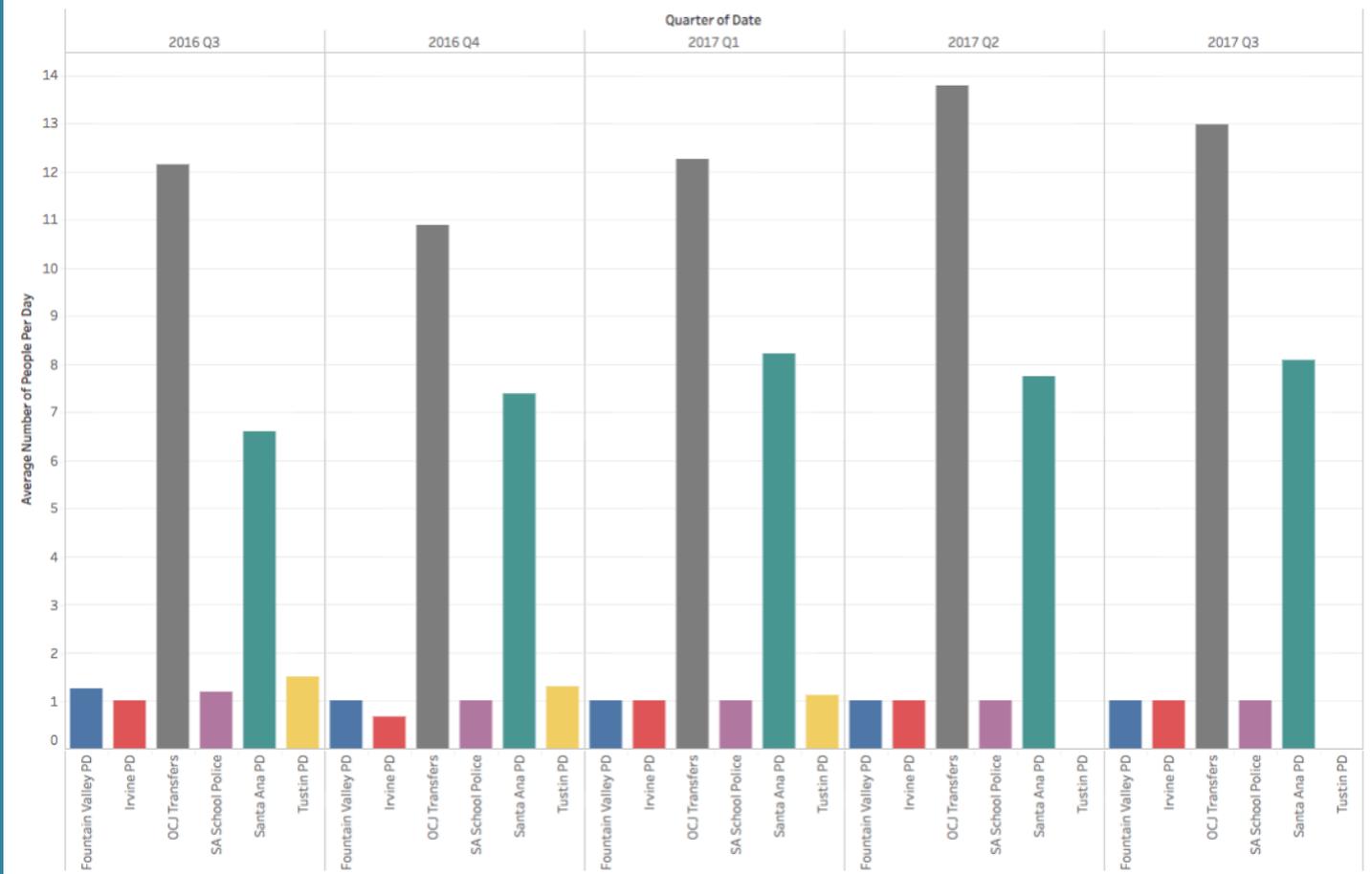
The total number of people booked and processed for criminal charges on a daily basis is extremely small.

Between September 2016 and August 2017, the smallest number of people arrested in the City of Santa Ana and booked into the Santa Ana City Jail on one day was zero and the largest was 33 people. On average, between seven and eight people per day are arrested in Santa Ana and booked into the Santa Ana City Jail before being transferred to the Orange County jail system. The Santa Ana School Police booked an additional 21 youth in total between September 2016 and August 2017. The Santa Ana City Jail booked an additional 16 people from Irvine, 35 people from Fountain Valley, and 35 people from Tustin in total during this time period (see diagram on next page).



<sup>21</sup> CIVIC California Public Record Request, September 2017.

Average # of People Arrested & Held at Santa Ana City Jail, Sept. 2016 - Aug. 2017



**c. Overview of Santa Ana City Jail Budget**

This section presents the findings from our analysis of Santa Ana budget documents and other materials related to the costs and revenues associated with the Santa Ana City Jail. Section 1 lays out the current costs and revenues to present a picture of the jail’s current fiscal status. Section 2 builds on the previous analysis by projecting how the fiscal picture might change were the jail to be closed and dedicated to a different use.

Throughout the analysis, when it becomes necessary to make estimates or assumptions about cost and revenue numbers, we make the most conservative choices possible—that is, choices that tend to minimize the costs of operating the jail and maximize its revenues—in order to avoid potential objections.

**1. Current fiscal status of the jail**

This subsection provides an overview of current budget issues relevant to the jail, running through operating costs (which the City divides between Jail Operations costs and Building and Facilities costs), the outstanding jail construction debt, and jail-related revenues. We then provide a historical analysis of the past few years’ spending and revenues, and conclude by examining the claim that Santa Ana realizes a “city benefit” from operating the jail. Taken together, our analysis finds that in recent years, the ongoing costs of the jail have been notably higher than the revenue it generates, even when the ICE contract was still ongoing.

1.2. Operating costs

i. Pre-Marshals Service contract

The City's FY18 adopted budget lays out the operating costs associated with the jail's operations, via the Jail Operations budget unit ( see pp. 2-99 to 2-100). They largely consist of salaries and benefits for jail personnel,

as well as more modest contract costs for professional services and commodity costs. Utility and maintenance costs for the facility are not included in this budget unit (see Section II.A.2, below, for more details). Costs have varied significantly in recent years, due to the changes the Council has made to its contract arrangements. The budget shows total costs for FY18 coming to \$11.8 M, down from \$17.4 M the year prior (*id.*, p. 2-100):

Account Code	LINE ITEM RESOURCES	ACTUAL FY 14-15	ACTUAL FY 15-16	ADOPTED FY 16-17	PROPOSED FY 17-18
61000	Salaries Regular	8,030,266	8,004,152	8,838,280	6,778,559
61020	Salaries Part-time	151,467	385,855	731,270	85,232
61040	Salaries Overtime	1,037,506	362,622	571,735	80,730
61100	Retirement - Employer Contribution	1,206,497	1,546,063	1,746,590	1,566,712
61110	Part-time Retirement	3,641	11,428	27,425	3,197
61120	Medicare Insurance	133,090	134,290	130,525	99,579
61130	Health Insurance	1,663,356	1,640,159	1,824,080	1,370,612
61170	Retiree Health Benefits	63,295	59,835	61,765	46,065
61180	Workers Compensation Insurance	232,372	236,679	235,195	224,095
SUBTOTAL PERSONNEL		12,521,490	12,381,084	14,166,865	10,254,779
62120	Training, Transportation, Meeting	1,828	9,889	5,000	2,500
62140	Membership, Subscription, Dues	180	22,305	0	0
62300	Contract Services - Professional	2,799,637	3,107,324	2,890,420	1,390,503
SUBTOTAL CONTRACTUAL		2,801,644	3,139,518	2,895,420	1,393,003
63001	Miscellaneous Operating Expenses	269,397	332,564	259,600	150,391
63300	Gas & Diesel	11,051	6,973	8,240	7,933
SUBTOTAL COMMODITIES		280,448	339,537	267,840	158,324
65010	Rental City Equipment	28,248	28,248	29,095	24,851
65011	Equipment Replacement Charges	0	0	0	9,000
65012	Accident Repair & Replacement Charges	0	720	725	630
SUBTOTAL FIXED CHARGES		28,248	28,968	29,820	34,481
TOTAL		15,631,830	15,889,108	17,359,945	11,840,586

The significant reduction in costs between FY17 and FY18 is largely attributable to proposed reductions in jail staff, which would have dropped from a total of 116 FTE to 83 FTE (*id.*):

Job Code	AUTHORIZED PERSONNEL	ADOPTED FY 16-17		PROPOSED FY 17-18	
		Full Time	Part Time	Full Time	Part Time
3230	Jail Administrator	1.00		1.00	
180	Police Administrative Manager	1.00		0.00	
370	Correctional Supervisor	10.00		6.00	
310	Correctional Officer	69.00		61.00	
1050	Security Electronics Technician	1.00		0.00	
7330	Senior Office Assistant	1.00		1.00	
7628	Lead Correctional Records Specialist	4.00		4.00	
7650	Senior Correctional Records Specialist	9.00		8.00	
7630	Correctional Records Specialist		1.00		1.00
360	Correctional Services Officer		18.00		0.00
9070	Senior Clerical Aide		1.00		1.00
TOTAL		96.00	20.00	81.00	2.00

ii. Post-Marshals Service contract

In August 2017, the Council voted to approve a new, two-year contract with the U.S. Marshals Service to house an additional 173 prisoners (see staff memo). The cost impact of this amendment to the budget was to add \$5.9 M to the FY18 jail operations budget, and 13 additional FTE positions. The new operating costs now total \$17.8 M:

	FY15	FY16	FY17	FY18	FY18 plus Marshal Contract
Operating Personnel	\$12,521,490	\$12,381,084	\$14,166,865	\$10,254,779	\$13,434,832
Operating Contract	\$2,801,644	\$3,139,518	\$2,895,420	\$1,393,003	\$4,025,142
Operating Commodities	\$280,448	\$339,537	\$267,840	\$158,324	\$271,043
Operating Fixed Charges	\$28,248	\$28,968	\$29,820	\$34,481	\$34,481
SUM COSTS	\$15,631,830	\$15,889,108	\$17,359,945	\$11,840,587	\$17,765,498

Staff FTEs have changed as follows:

	FY17 Adopted	FY18 Adopted	FY18 plus Marshal
Jail Administrator	1.00	1.00	1.00
Police Administrative Manager	1.00	0.00	0.00
Correctional Supervisor	10.00	6.00	8.00
Correctional Officer	69.00	61.00	71.00
Security Electronics Technician	1.00	0.00	0.00
Senior Office Assistant	1.00	1.00	1.00
Lead Correctional Records Specialist	4.00	4.00	4.00
Senior Correctional Records Specialist	9.00	8.00	8.00
Correctional Records Specialist (P/T)	1.00	1.00	1.00
Correctional Services Officer (P/T)	18.00	0.00	0.00
Senior Clerical Aide (P/T)	1.00	1.00	1.00
Correctional Manager	0.00	0.00	1.00
SUM FTES	116.00	83.00	96.00

1.3 Building costs

The City's budget does not separately break out the jail building utilities and maintenance costs from costs associated with the overall police facility in their public budget. Instead, all of these costs are combined in a separate Police Department Building and Facility budget unit, with spending for the combined unit budgeted at \$3.4 M (see pp. 2-65 and 2-66 of the FY18 budget). As a result it seems to be the case that when the City discusses the cost of the jail, it does not include these costs. For example, the City's May 17, 2016 update on the jail (p. 65A-3) refers to the cost of operating the jail as \$16.6 M. This number roughly tracks the FY16 Jail Operations total expense operation listed in the nearly-contemporaneous FY16 adopted budget (p. 2-100), and therefore does not seem to include an allocated share of the Building and Facility budget unit's costs.

This exclusion may lead to a significant underestimate of the true cost of operating the facility. Rough bounds for the portion of this budget unit's expenditures allocable to the jail can be obtained by first noting that in FY17, 1,553 of the total 2,596 work orders (60%) were generated by the jail, rather than the PD, portion of the building (id., 2-65), which appears to roughly be in line with the experience of recent years. On the other hand, the 168,243 square feet of the jail facility (see Vanir report, p. 65A-5) represent roughly a third of the 500,000 square feet that comprise the total facility (see FY18 adopted budget, p. 2-65). The fact that the share of maintenance requests for the jail is much higher than its share of the square footage suggests that as a high-intensity use, jail operations are responsible for a disproportionate share of maintenance costs relative to other areas of the facility. Nonetheless, a conservative estimate would be to use the one-third share based on square footage, which would put building costs allocable

to the jail at \$1.1 M for FY18 (with similar costs in recent prior years).

Taken together, the Jail Operations costs and the share of Building and Facilities costs for the jail appear to total roughly \$18.9 M in FY18.

#### 1.4 Indirect costs

Operating the jail also creates costs for the City beyond the direct expenditures associated with staffing and maintaining the facility. For example, the Police Department's Human Resources and Fiscal and Budget offices presumably spend some portion of their time supporting jail staff and operations, and a portion of the City's centralized payroll expenditures likewise are allocable to the jail. And a portion of the City Manager and City Council's time are certainly taken up dealing with jail operations. These costs are not insignificant, given that jail staff represent about 8% of the City's total FTEs (see FY18 proposed budget presentation). A 2014 City memo suggested that the total indirect costs came to \$1.1 M and \$1.2 M in FYs 14 and 15, respectively.

However, we do not include a detailed treatment of these costs in this memo, largely because it is not clear to what extent changes to jail operations will lead to direct changes in expenditures from support functions, versus simply leading to workload shifts—for example, the City Manager's salary would presumably not be reduced because the complexity of the job would be lower without a City jail, and expenditures on items such as payroll processing would likely not be impacted.

#### 1.5 Debt service

The City originally borrowed \$107.4 million in bonds in 1994 to assist with the cost of constructing the combined jail/police headquarters facility, with a 30-year repayment term (i.e., with the final payments coming in FY24). Since then, Santa Ana has refinanced portions of the debt in both 2004 and 2014 to take advantage of lower interest-rate environments. The debt is now spread across two separate capital funds—the Police Building Debt Service Fund and the COSA 2014 Lease Financing Debt Service Fund. This latter fund also pays for a portion of the 1998 borrowing associated with a City Hall expansion project (see FY18 budget, pp. 7-20 – 7-23).

In FY18, payments from the funds total to \$4,622,660 from the Police Building Fund and \$5,168,480 from the COSA Fund (the vast majority of which will go to bond interest and principal repayment, with a total of \$21,000 going for professional services to manage the bonds). However, as mentioned above, a portion of this payment is traceable to borrowing for a City Hall expansion,

rather than the police headquarters/jail. Fortunately, the two bond issues are on a different repayment schedule, with the headquarters/jail repayments ceasing in FY24 and the City Hall repayments ending in FY28. The city hall payments out of the COSA Fund are projected to range between \$730,531 and \$735,094 from FY25-FY28, which is likely to be similar to the pre-FY25 years as well and, therefore, suggests that an estimate of the Fund's FY18 repayment amount traceable to the police building would be around \$4.4 million.

The total FY18 debt service cost for the combined facility is therefore roughly \$9.0 M (from future year projections included in the budget, this appears to be roughly the cost expected each year through FY24). City personnel have stated that the portion attributable to the jail is roughly \$3 M (see e.g. [the May 2016 update](#), p. 3). Notably, this one-third share is similar to the jail's share of the total facility square footage, as discussed in Section II.A.2 above.

#### 1.6 Revenues

The City's FY18 adopted budget identifies several revenue items specifically associated with the jail, and as mentioned, the August contract with the U.S. Marshals Service will bring in additional funding for the city (see [FY18 adopted budget](#), pp. General Fund Summary – 1 – 4, [staff report on Marshals Service contract](#)). By far the largest of these items is the Police Department Jail Facility Rental line in the Use of Money category, representing contract payments from other entities for use of the facility's beds. Also of interest is the "jail reuse" revenue item, budgeted at \$400,000—from the budget document, it is unclear whether there is a specific proposal associated with this revenue, and whether it remains viable given the adoption of the Marshal Service contract, but to be as conservative as possible we continue to include it.

Beyond these jail-specific revenues, we note that when the City did its initial borrowing in 1994, per [contemporaneous news coverage](#), they raised the utility tax by one percentage point, from 5% to 6%, to help pay for the bond payments. A full consideration of the revenue associated with the jail should potentially include this yearly funding. However, in 2014 [the City's Measure AA cut the tax](#) by half a percentage point, down to 5.5%. In the FY18 adopted budget, total utility user tax revenues are \$27,780,000 (see p. GF Summary – 1). Since the rate is 5.5%, the half-point intended to defray the bond payments represents one-eleventh of the total, or roughly \$2.5 M. Since the bond payments allocable to the jail are roughly one-third of the total (\$3 M vs. \$9), a third of this revenue, or around \$842,000, can be assumed as an offset to the jail bond payments.

	FY15	FY16	FY17	FY18	FY18 plus Marshal
Rental fees	\$11,785,033	\$12,472,357	\$15,980,000	\$2,500,000	\$12,717,316
Kitchen rental	\$37,895	\$31,489	\$33,000	\$25,000	\$25,000
Booking fee	\$450	\$18,152	\$50,000	\$18,000	\$18,000
"Pay to stay"	\$0	\$48,480	\$50,000	\$75,000	\$75,000
"Jail reuse"	\$0	\$0	\$0	\$400,000	\$400,000
Share of utility tax (estimate)	\$828,000	\$761,000	\$842,000	\$842,000	\$842,000
<b>SUM REVENUES</b>	<b>\$12,651,378</b>	<b>\$13,331,478</b>	<b>\$16,955,000</b>	<b>\$3,018,000</b>	<b>\$13,235,316</b>

All told, jail-specific revenues for FY18, even with the Marshals Service contract revenues included, come to \$13.2 M. This is well below the \$17.8 M Jail Operations cost, and much less than the additional estimate of \$1.1 M for the jail's share of the Building and Facility costs and the \$3 M in debt service payments.

### 1.7 Recent historical perspective

**The previous sections show that the jail is currently operating at a significant deficit for the City—taking as comprehensive a view as possible of both costs and revenues, the deficit is about \$8.6 M in FY18.** It is not correct to attribute this deficit to the recent cancellation of the ICE contract, however, because extending the conservative FY18 analysis laid out above to recent fiscal years shows that the FY18 deficit represents only a slight increase over what the city has been accustomed to run:

	FY15	FY16	FY17	FY18	FY18 plus Marshals
Rental fees	\$11,785,033	\$12,472,357	\$15,980,000	\$2,500,000	\$12,717,316
Kitchen rental	\$37,895	\$31,489	\$33,000	\$25,000	\$25,000
Booking fee	\$450	\$18,152	\$50,000	\$18,000	\$18,000
"Pay to stay"	\$0	\$48,480	\$50,000	\$75,000	\$75,000
"Jail reuse"	\$0	\$0	\$0	\$400,000	\$400,000
Share of utility tax (estimate)	\$828,000	\$761,000	\$842,000	\$842,000	\$842,000
<b>SUM REVENUES</b>	<b>\$12,651,378</b>	<b>\$13,331,478</b>	<b>\$16,955,000</b>	<b>\$3,018,000</b>	<b>\$13,235,316</b>
	FY15	FY16	FY17	FY18	FY18 plus Marshals
Operating Personnel	\$12,521,490	\$12,381,084	\$14,166,865	\$10,254,779	\$13,434,832
Operating Contract	\$2,801,644	\$3,139,518	\$2,895,420	\$1,393,003	\$4,025,142
Operating Commodities	\$280,448	\$339,537	\$267,840	\$158,324	\$271,043
Operating Fixed Charges	\$28,248	\$28,968	\$29,820	\$34,481	\$34,481
Share of Building and Facilities (estimate)	\$1,100,000	\$1,200,000	\$1,100,000	\$1,100,000	\$1,100,000
Debt service payments (rough)	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
<b>SUM COSTS</b>	<b>\$19,731,830</b>	<b>\$20,089,107</b>	<b>\$21,459,945</b>	<b>\$15,940,587</b>	<b>\$21,865,498</b>
	FY15	FY16	FY17	FY18	FY18 plus Marshals
<b>DEFICIT</b>	<b>-\$7,080,452</b>	<b>-\$6,757,629</b>	<b>-\$4,504,945</b>	<b>-\$12,922,587</b>	<b>-\$8,630,182</b>

This analysis suggests that well before the cancellation of the ICE contract, the Santa Ana City Jail appears to have been a fiscal albatross around the neck of the city. Equally importantly, these deficits are not wholly attributable to the need to repay the outstanding costs of borrowing—in each year since FY15, jail-specific revenues have failed to cover the operating costs of the facility.

## 1.8 Avoided booking costs

The City's cost-benefit analyses of the jail have typically included a "City Benefit" line item that appears to represent the increased police officer staff time that would be required to book arrestees at County facilities in the absence of a City jail (see the [2014 City memo](#), pp. 25B-3 and 25B-5). For both FY14 and FY15 the benefit is quantified at \$4.3 M, though it appears that this total may include some reimbursable costs—meaning that it may double-count some portion of the revenue items listed above (for the remainder of this analysis, we assume that the whole \$4.3 M is attributable to the benefit from quicker booking, and that the value of the benefit has not changed meaningfully between FY15 and FY18).

The \$4.3 M is not actual revenue that defrays jail operations—per the same memo (p. 25B-3), the cost appears to be based on estimates of "hundreds of additional hours" that City police officers are able to spend in the field rather than on booking suspects. If the booking function were not available in the City jail, it would be up to City leadership how to respond: by hiring additional police officers (either \$4.3 M worth or a lesser amount), by making alternative arrangements for booking in a City facility, by setting different priorities on how many suspects are brought in for booking in the first place (the memo notes that the City facility allows SAPD to detain misdemeanor arrestees who would not normally be accepted by the County), or by simply accepting the increase in the amount of time officers must spend on booking in the County jail.

Further, the \$4.3 M number appears hard to take at face value—this [Voice of OC piece](#) uses plausible assumptions to assess the true staff-time savings and finds that they may be well below \$1 million (though note that per actual [Santa Ana police officer salaries](#), \$200,000 is a better median estimate for the annual cost of an individual officer—using this higher salary number is somewhat offset, however, by the fact that many officers appear to work a significant number of overtime hours).

At any rate, potential future staff-time costs associated with slower booking speeds are a potential policy issue rather than actual current-year cost or revenue figures, so we have excluded them from the analysis above.

## 2. Jail closure

This section addresses the potential impacts of a decision to close the jail facility and devote it to other uses, without specifically addressing what those other uses might be (see Section III for analysis of viable possibilities). It also looks at the real-world challenges that might arise in implementing such a decision.

## 2.1 Direct cost and revenue impacts

If the City were to simply close the jail facility and eliminate all spending directly associated with it, the Jail Operations costs discussed above would go away, because correctional officers and related staff would no longer be needed, nor would the City need to purchase food, clothing, etc. for inmates. The roughly \$1.1 M in Building and Facility costs to operate and maintain the building would not go to zero, because the City would presumably need to continue performing some amount of upkeep. Beyond operating costs, debt service costs, of course, would remain at the same \$3 M level through FY24. Thus, taking FY18 as a reference point, the city's costs would be roughly \$4 M through FY24, going down to \$1 M or so afterwards.

As discussed immediately above, it is possible that jail closure would lead to additional City costs due to the closure of the current booking facility, though the precise amount and nature of those costs is highly speculative. It is very unlikely that these additional costs would be higher than \$4 M, which is about the current estimate of "City Benefit," and more likely that they would be closer to \$1 M.

Revenues associated with the jail would likewise mostly be eliminated, as those beds would no longer be available to contract out. The \$400,000 "jail reuse" line item, as discussed above, may no longer be relevant given the extension of the Marshals Service contract, but can stand in for the City's current assessment of revenues it can raise in FY18 by moving to an alternative use, which would presumably be an underestimate of what it could receive in future years, after the alternative use is better established. The share of the utility user tax that is meant to help repay the bond payments would also remain—again, that is roughly \$842,000 in FY18. Taken together, the City appears to estimate total revenues post-closure as roughly \$1.2 M.

All told, in this scenario the City would have a deficit associated with the jail facility of slightly less than \$3 M through FY24, and more or less break even afterwards (with deficits increasing by somewhere in the range of \$1 M to \$4 M depending on whether the City decided to spend additional resources on booking). Notably, unless the City decides to significantly increase spending on booking, these deficits are lower than the actual deficits the City has been running while operating the jail in recent years and would continue to be lower even if the \$400,000 "jail reuse" revenue item is not realized.

Therefore, if it were possible to do so, **the most fiscally conservative option for the city is to simply close the jail as quickly as possible**—though if an alternative use that raises revenue on net is identified, of course that would be an improvement over simply letting

the facility remain vacant.

## 2.2 Potential challenges and transition costs

The City, however, will not be able to close the jail overnight even if it decides that closing it is the best option. Notably, per the City's contract with Police Department personnel, layoffs must be made in order of seniority and employees may have the right to occupy lower-down vacant positions, with potential "bumping" in some cases.

This could create disruptions in SAPD staffing as more-senior staff who work in the jail facility may not be able to immediately take on new responsibilities without new training, so advance planning (and potential staff buyouts) may be necessary, with potential one-time costs of a few million dollars.

Similarly, if the City does decide to dedicate the jail facility to a new use, there will be transition costs associated with removing the current infrastructure, when necessary, and remodeling it to support the new use.

### III. Jail Reuse Assessment

Subsection (a) provides a visual of the zoning and site context for the Santa Ana Jail, followed by an overview of some of the ways other cities have repurposed their jails. The remainder of the section consists of a series of before and after shots of the Santa Ana City Jail. These renderings show how the space could be transformed and actually support the community rather than being used to detain human beings. Subsection (b) provides an analysis of a community-based reentry center.

#### a. Overview of Reuse Options

The first option is a Shared Office Workspace. These are becoming more popular throughout the United States, especially in cities. The space can be used for individuals who work from home and need a work/life separation. Small companies can also use the space and share it with others. It helps save on the cost of managing your own office and supports workers in the growing shared economy. Why buy office supplies like a printer for only two people when you can go in with a few other firms and save that money? The downside to this option is that it would be fairly expensive because the City would need to expand the cells to provide a variety of space sizes.

The next option is an Urban Farm. High-end herb cultivation (i.e. cannabis and saffron) need to be grown in protected areas. A former jail is a perfect location. The space would not only be for growing and processing but also for retail purposes, with a commercial frontage, café, and seating area. You could grow several varieties of herbs in different parts of the converted jail.

Next is a shared artist studio. The idea being that an artist could rent out a former cell to house their materials and work. They can also use the common spaces for work or rent a room that is a converted “double-cell” where two single cells have been connected and enlarged by removing the central wall. The main common areas would also serve as an art gallery. This would be one of the easiest transformations because the City would simply need to provide a clean slate for work and let the artists use their creativity to transform the jail’s appearance. This allows for a cheaper remodel but also gives ownership and freedom to local artists.

Next is another version of the urban farming, but in individual cells. The growing rooms are an easy transformation because the City would only need to add grow lights for now. As the business expands, the City could add murals and other things to brighten up the space. The cost of added electrical needs, however, may be costly.

Another option is to convert the jail into an alcohol distillery. The whole facility could be dedicated to one type or have a variety. There would be tours, tasting, retail, and

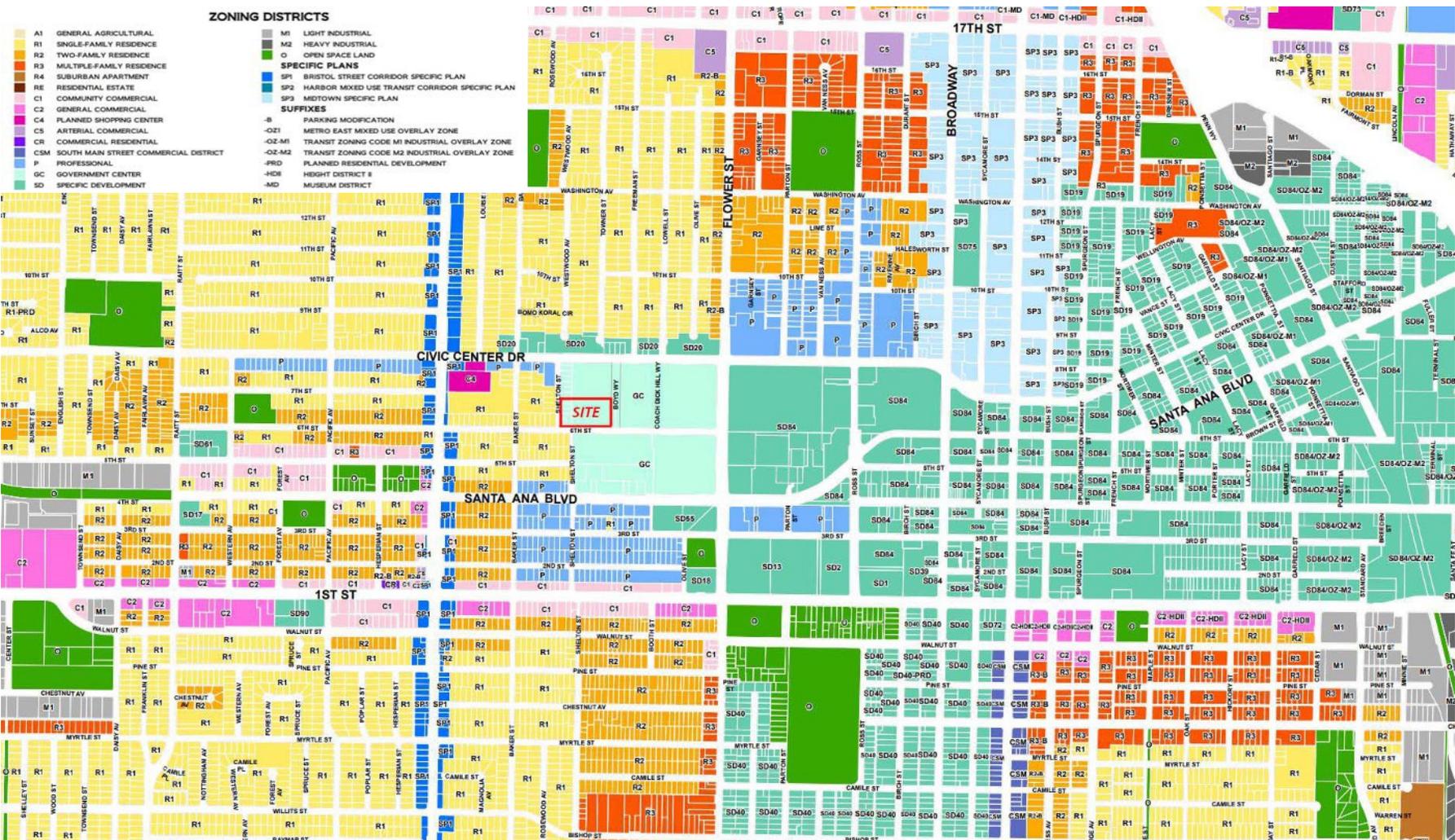
dining. The distillery would be an easy transformation depending on style. If the City would want something rustic and simple, the City would only need to remove and replace doors as well as add some paint and a bar.

The final image is yet another urban farming option. This is showing the large common area being converted into a grow area.

**While these options are all viable, the community is most interested in seeing the jail converted into a center for community-based reentry and alternatives to immigration detention.** The City of Santa Ana could employ a blended model and combine cognitive-behavioral treatments with skills oriented programming, including work opportunities, job training, and a community garden. Both reentry clients as well as the entire community would have access to these programs, which would help in reintegrating reentry clients into their community. For example, clients returning home could operate a small farmers market or vegetable stand by selling produce from the garden. This option is explored in detail in section (b) below.

**ZONING DISTRICTS**

- A1 GENERAL AGRICULTURAL
  - R1 SINGLE-FAMILY RESIDENCE
  - R2 TWO-FAMILY RESIDENCE
  - R3 MULTIPLE-FAMILY RESIDENCE
  - R4 SUBURBAN APARTMENT
  - RE RESIDENTIAL ESTATE
  - C1 COMMUNITY COMMERCIAL
  - C2 GENERAL COMMERCIAL
  - C4 PLANNED SHOPPING CENTER
  - C5 ARTERIAL COMMERCIAL
  - CR COMMERCIAL RESIDENTIAL
  - CSM SOUTH MAIN STREET COMMERCIAL DISTRICT
  - P PROFESSIONAL
  - GC GOVERNMENT CENTER
  - SD SPECIFIC DEVELOPMENT
  - M1 LIGHT INDUSTRIAL
  - M2 HEAVY INDUSTRIAL
  - O OPEN SPACE LAND
- SPECIFIC PLANS**
- SP1 BRISTOL STREET CORRIDOR SPECIFIC PLAN
  - SP2 HARBOR MIXED USE TRANSIT CORRIDOR SPECIFIC PLAN
  - SP3 MIDTOWN SPECIFIC PLAN
- SUFFIXES**
- B PARKING MODIFICATION
  - OZ1 METRO EAST MIXED USE OVERLAY ZONE
  - OZ-M1 TRANSIT ZONING CODE M1 INDUSTRIAL OVERLAY ZONE
  - OZ-M2 TRANSIT ZONING CODE M2 INDUSTRIAL OVERLAY ZONE
  - PRD PLANNED RESIDENTIAL DEVELOPMENT
  - HDB HEIGHT DISTRICT 8
  - MD MUSEUM DISTRICT



CIVIC





- School
- Government Center
- Residential
- Community Open Space
- Parking
- Professional

## Living\*



- Refugee Housing
- Supportive Housing
- Homeless Shelter
- Workforce/Affordable Housing
- Micro Units
- Reentry Facility
- Senior Housing

*\*Please note: While some jails have been converted into homeless shelters and supportive housing, these are not viable options for the Santa Ana City Jail because of its location, among other things. In addition, the community expressed widespread opposition to these ideas.*

## Working



- Shared/Creative Workspace
- Market Rate Office
- Job Training Facility
- Office for City and County Agencies

## Alternative



- Urban Indoor Agriculture
- Cooking School
- Data Storage
- Self Storage
- Artists Studios
- Sports Facility
- Movie Studio
- Sound studio
- Makers Space
- Distillery
- Laser tag/arcade/play space
- Cultural Center
- Music School
- Spa
- Community Space
- Wellness Center
- Theater

BASIC FACTS

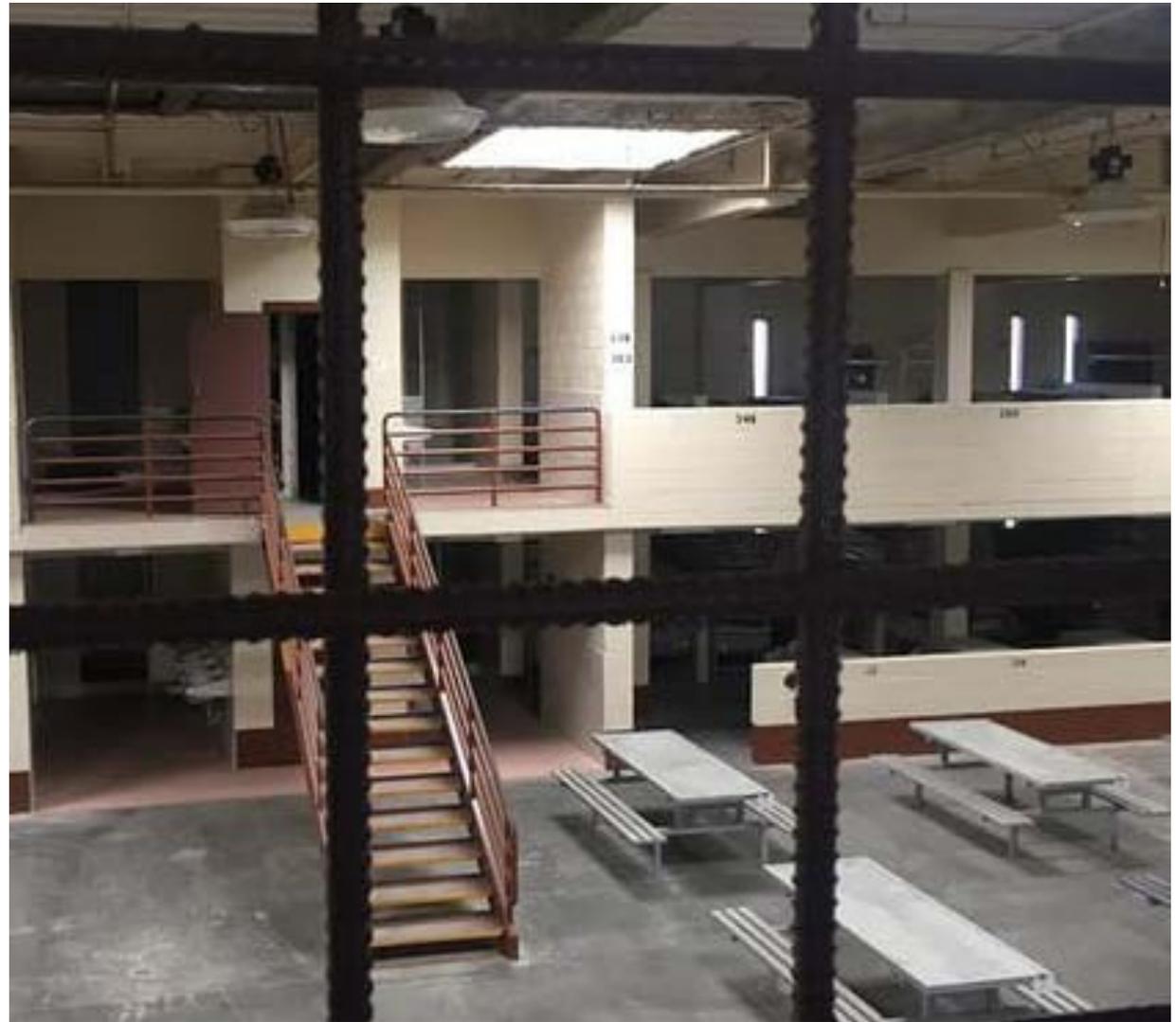
- Old facility: De Koepel Prison
- New Use: Refugee Housing
- Location: Haarlem, Netherlands





## BASIC FACTS

- Old facility: Claremont Custody Center
- New Use: Prison-to-Pot-Farm
- Location: Coalinga, CA
- Size: 77,000 SF
- Will generate 100 jobs and an estimated million dollars in annual tax revenues for the area





**BASIC FACTS**

- Old facility: Mid-Orange Correctional Facility
- New Use: Fitness Center
- Location: Warwick, New York
- Size: 38-acres





**BASIC FACTS**

- Old facility: Lorton Correctional Facility
- New Use: Art Center
- Location: Lorton, VA
- Size: 55-acres



civic

Workhouse Arts Center  
SANTA ANA JAIL REUSE



## BASIC FACTS

- Old facility: Morgan County Jail
- New Use: Office Space for County Commissioner
- Location: Fort Morgan, CO



## BASIC FACTS

- Old facility: Athur Kill Correctional Facility
- New Use: Movie Studio
- Location: Staten Island, NY
- Size: 69-acres
- Expect to create 800 jobs over 2-year period for the area and up to 1,500 over the next 5-years

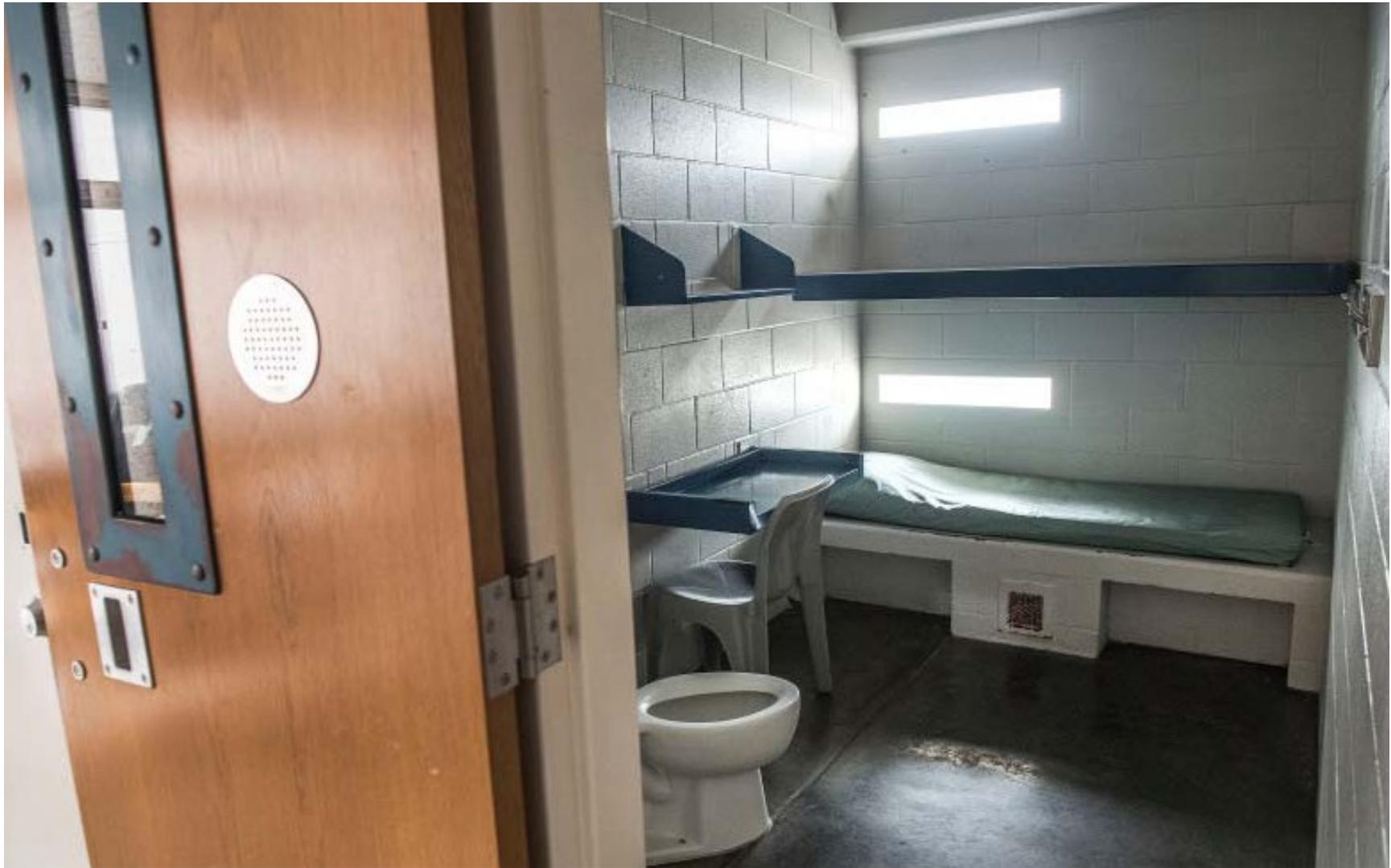




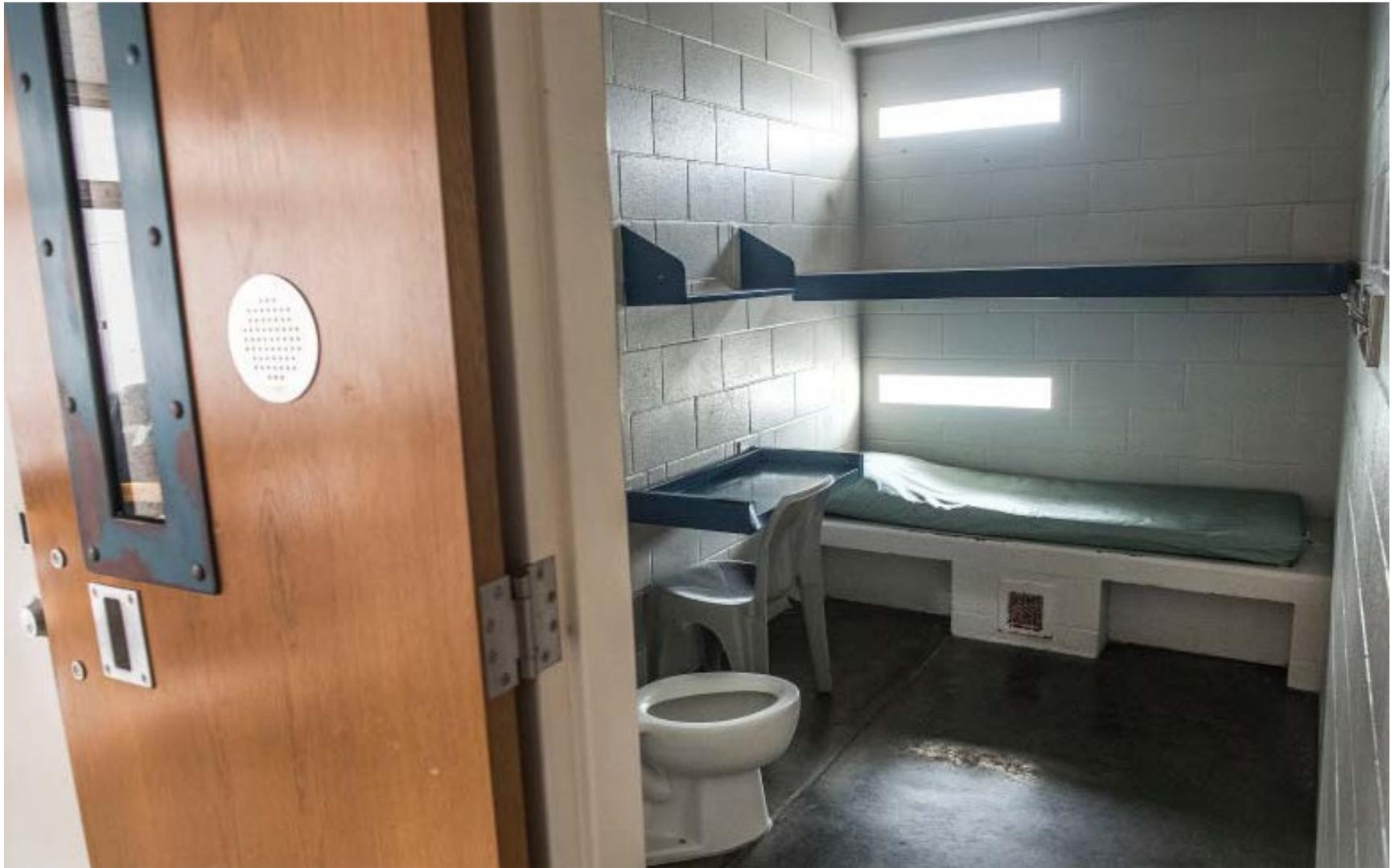






















## **b. Community-Based Reentry Center**

The criminal justice system in the United States holds more than 2.3 million people in many types of correctional facilities, including but not limited to local jails, state prisons, federal prisons and immigration detention facilities.<sup>22</sup> Every year about 600,000 to 650,000 people are released from state and federal prisons.<sup>23</sup> At least 95% of all incarcerated people in America will ultimately be released and return to their communities.<sup>24</sup> The release of said group of folks should be planned for accordingly.

Nationwide about three-quarters of people released from state prisons are rearrested within five years of their release, and about 55% are incarcerated again.<sup>25</sup> These numbers include both federal prisoners and state prisoners. The Bureau of Justice Statistics measures recidivism, broadly understood as the likelihood that a person will reengage in criminal activity after being released, as a person's involvement in criminal behavior that results in rearrest, reconviction or return to prison with or without a new sentence over a certain period of time from the date of release. According to a 2011 report by the Pew Charitable Trusts, California has one of the highest rates of recidivism in the country—58% of individuals released from prison return within three years of their release.<sup>26</sup> This revolving door represents a failure of the prison system to rehabilitate people and deter them from reengaging in criminal activity and highlights the consequences of an overly punitive parole system.<sup>27</sup>

Only a small percentage of overall prison budgets are spent on in-prison programs to support rehabilitation. Not surprisingly, most incarcerated individuals do not

participate in programs and often times exit prison with more needs than when they entered. The most common support formerly incarcerated individuals receive upon release is money for transportation or spending. In California, people exiting prisons are given \$200 and a bus ticket to return to their county of sentencing. The importance of effective reentry programming and access to it cannot be overstated. Formerly incarcerated individuals face a host of challenges when returning to their communities particularly in the areas of mental and physical health, housing, employment and education.<sup>28</sup> Reentry programs should be designed to address the varied needs of formerly incarcerated individuals and as many of the challenges they face as possible. Doing so can help to rehabilitate people and ease their transition back into their community. This in turn will reduce the likelihood of reengaging in criminal behavior, and thus, increase the likelihood that they successfully reintegrate into their community.

### **1. Reentry Programs**

Several factors influence recidivism and whether a formerly incarcerated person successfully reintegrates into their community. Researchers consider participation in prison programs and reentry services being among the most important. Overall, meaningful intervention and reentry services reduce recidivism, but program effects are mixed.<sup>29</sup> Due to a lack of rigorous and well-designed outcome evaluations there is no consensus over the exact services and programming that constitute a model reentry program.<sup>30</sup> Although limited in scope and rigor, a number of evaluations have been conducted to measure what works and what does not. Effective programs typically share certain elements such as using behavioral and cognitive approaches, occurring in the person's community, being multi-faceted and intensive enough to be effective, encompassing rewards for pro-social behavior, targeting individuals who are most at risk, responsive to multiple needs, and tailored to the learning styles and abilities of the person.<sup>31</sup> These elements are considered to be best practices in the field of reentry.

### **1.2 Best Practices/ Key Principles**

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<sup>22</sup> Peter Wagner and Bernadette Rabuy, "Mass Incarceration: The Whole Pie 2017," Prison Policy Initiative, 2017, <https://www.prisonpolicy.org/reports/pie2017.html>

<sup>23</sup> Cheryl Lero Jonson and Francis T. Cullen, "Prisoner Reentry Programs," *Crime and Justice* 44 (2015): 517-575.

<sup>24</sup> "State of Recidivism: The Revolving Door of America's Prisons," Pew Center on the States, 2011, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_asets/2011/pewstateofrecidivism.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_asets/2011/pewstateofrecidivism.pdf)

<sup>25</sup> Matthew R. Durose, Alexia D. Cooper and Howard N. Snyder, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," Bureau of Justice Statistics, April 2014, <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

<sup>26</sup> "State of Recidivism: The Revolving Door of America's Prisons," Pew Center on the States, 2011, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_asets/2011/pewstateofrecidivism.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_asets/2011/pewstateofrecidivism.pdf)

<sup>27</sup> Ram Subramanian, Ruth Delaney, Stephen Roberts, Nancy Fishman, and Peggy McGarry, "Incarceration's Front Door: The Misuse of Jails in America," Vera Institute of Justice, February 2015, <https://www.vera.org/the-human-toll-of-jail/a-helping-had-on-the-way-home/the-challenges-of-reentry>

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<sup>28</sup> Joan Petersilia, "When Prisoners Come Home: Parole and Prisoner Reentry," (2003). New York, NY: Oxford University Press

<sup>29</sup> Mirlinda Mdrecka, "The Impact of Reentry Programs on Recidivism: A MetaAnalysis," PhD Dissertation, University of Cincinnati, School of Criminal Justice, 2014, <http://cech.uc.edu/content/dam/cech/programs/criminaljustice/Docs/Dissertations/Ndrecka.pdf>

<sup>30</sup> Jonson and Cullen, "Prisoner Reentry Programs."

<sup>31</sup> Christy A. Visher, Pamela K. Lattimore, Kelle Barrick & Stephen Tueller, "Evaluating the Long-Term Effects of Prisoner Reentry Services on recidivism: What Types of Services Matter?" *Justice Quarterly* 34 (2017).

Below is a summary of key principles and best practices.

i. Risk Differentiation

Reentry programs should measure the risks of potential participants and services should target people most at risk of recidivating. This group of folks is considered most likely to benefit from services in comparison to people less at risk. People considered to be most at risk are those with varied needs and limited protective factors.

ii. Setting

The majority of people exiting prisons are released on parole, or some other type of post-prison supervision. Reentry programming should take place primarily in therapeutic community settings as opposed to institutions. Community settings are considered to be one of the least restrictive environments for formerly incarcerated people and as such facilitate a person's transition. Community-based organizations comprised of people working together to help themselves and one another are ideal places for the delivery of reentry services and programming.

iii. Length of Programming

There is limited research that specifically addresses the appropriate length of programming for people returning to their communities after having served time in jail and prison. The general consensus is that it is best to tailor the length of services to the person's needs and not to over-program.

iv. Continuity of Care

Research indicates that continuity of care is ideal. Service providers in the field of reentry should coordinate services to maximize their impact. Programs offered in correctional institutions that are linked to programs in the community improve stability for formerly incarcerated individuals. Some researchers in the field suggest that the best programs begin during incarceration and extend throughout the release and reintegration process. Therefore, partnerships and collaborations between correctional programs and reentry programs are key. It is important to note, that additional in-jail programming should not require more funding for correctional entities. Rather existing jail and prison budgets should be revised to reallocate existing monies to in-jail and in-prison programs.

The Anti-Recidivism Coalition (ARC) believes that reentry begins before an individual leaves prison. Their model of support combines educational

and rehabilitative programming inside detention facilities, with reentry services upon release.<sup>32</sup> ARC members conduct mentoring workshops inside juvenile halls and in adult prisons to shift the mindset of incarcerated individuals and the culture in the facilities. ARC's mentorship program is designed to support better decision-making by building positive relationships with encouraging peer role models. The organization also provides transportation home to recently released individuals through their Ride Home Program. In addition to providing transportation, members of the Ride Home Program prepare individuals for their first few days after release and provide tools and resources to help participants transition back into the community.

v. Varied Needs

Effective reentry programs must meet the particular and varied needs of formerly incarcerated individuals, including, but not limited to, housing, education, job training, employment, counseling and case management, substance abuse treatment, life skills, and formal follow-up support.<sup>33</sup> According to a Congressional Research Service report, formerly incarcerated people are less educated, less likely to be employed, and more likely to have a history of mental health problems or substance abuse than the general U.S. population.<sup>34</sup> According to a National Research Council report, mental health needs among incarcerated individuals is widespread, with 64% of people in jail, 54% of people in state prisoners and 45% of people in federal prisons reporting mental health concerns.<sup>35</sup> Furthermore, about 10% to 25% of U.S. prisoners suffer from serious mental health problems, like major affective disorders or schizophrenia. That is five times higher than the average rate of about 5% for the U.S. population.

In addition to mental health needs, formerly incarcerated people returning to their communities also face educational and vocational barriers. The availability of stable work for recently released people is low, and when people find work it is difficult to maintain it. Research shows that the characteristics of a job, not the job itself, are most effective in reducing recidivism. Said risk factors among several others have been linked to higher

<sup>32</sup> See <http://www.antirecidivism.org/our-work-1/>

<sup>33</sup> Shelley J. Listwan, Francis T. Cullen, and Edward J. Latessa, "How to Prevent Prisoner Reentry Programs from Failing: Insights from Evidence-Based Corrections." *Federal Probation* 70 (2006): 19-25.

<sup>34</sup> Nathan James, "Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism." *Congressional Research Service*. (2015), <https://fas.org/sgp/crs/misc/RL34287.pdf>

<sup>35</sup> National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC. The National Academies Press.

levels of recidivism and must be addressed with comprehensive services.<sup>36</sup> When varied risks and needs are targeted in practice, programming is more effective at reducing the likelihood that someone will reengage in criminal behavior.

vi. Varied Programs and Services

Reentry services must address the varied needs of participants through comprehensive programming. Addressing only one or two needs of formerly incarcerated people trying to navigate the disorienting experience of reentry reduces a program's effectiveness and the likelihood that the person will successfully reintegrate into the community. For example, studies have shown that employment is associated with lower levels of recidivism. Nonetheless, a job alone does not ensure successful reentry into the community. Hence, services should not focus solely on practical skills and needs like education and employment. Services must also be varied and based on cognitive behavioral principles that address the root causes of why people engage in criminal behavior.

vii. Responsiveness

In addition to addressing the varied needs of individuals, reentry programming should be client-centered and tailored to the learning styles of people in the program. Client-centered programming assists people in developing and achieving self-defined goals informed by their personal values and provides them the means to take ownership of their reintegration and wellbeing.<sup>37</sup> In addition to attending to the compatibility between the goals and abilities of a formerly incarcerated person, it is fundamental that programming be sustainable. This can be achieved through a strengths-based approach where programming draws on a person's skills and abilities instead of setting unreasonable expectations that are often counterproductive and can lead to frustration and feelings of failure. This type of client-centered approach that corresponds with participants' learning styles and abilities is associated with lower levels of recidivism.

viii. Skills Oriented and Cognitive-Behavioral Treatments

Programs that target skills and abilities through education and employment alone are not as effective as programs that are rooted in cognitive behavioral treatment models.<sup>38</sup> Such models improve problem

solving skills and target people's thinking through a system of reinforcement, pro-social modeling and role-playing. This is particularly important given that time in jail and prison exacerbate psychological distress and maladaptive coping strategies. Reentry programming should teach social learning principles and skills that help people respond to stressors in adaptive ways and thus refrain from engaging in harmful behavior. Developing and reinforcing positive cognitions is critical to promoting successful reentry and has been linked to reducing recidivism.<sup>39</sup> Adaptive mental actions or processes help formerly incarcerated people respond rather than react to the disorienting experiences of returning home after incarceration. Addressing the psychological turbulence people experience is as important as tackling the structural problems they face, like access to housing, employment or drug treatment. Social support and strong social bonds, including familial and marital relationships, also can help reduce stress and subsequent negative emotions, as well as yield higher levels of self-control and predictability.<sup>40</sup> Such relationships are important protective factors for dealing with stressors both while incarcerated and when returning to the community. Hence, including a person's family into reentry programming is strongly encouraged. Programming that facilitates repairing and cultivating relationships with loved ones, peers and positive role models can help formerly incarcerated people gain a sense of connectedness and healthy coping.<sup>41</sup> Improved coping strategies can be applied to different facets of a person's life and promotes wellbeing. Adaptive behavioral and psychological efforts to manage and reduce stressors particularly related to the use of drugs and alcohol is associated with lower recidivism rates among formerly incarcerated people.

ix. Researcher Involvement

Researcher involvement in reentry program development, implementation and evaluation has been linked to more effective programming. It is important to design programs and deliver services that are based in best practices and monitor progress through rigorous evaluations that measure more than just recidivism rates.

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behavioral programs for offenders. *Criminal Justice and Behavior*, 32,172-204.

<sup>39</sup> Lindsay A. Phillips and Mary Lindsay, "Prison to Society: A Mixed Methods Analysis of Coping with Reentry." (2011), *International Journal of Offender Therapy and Comparative Criminology* 55 (1): 136-54.

<sup>40</sup> Colvin, M., Cullen, F. T., & Vander Ven, T. (2002). Coercion, social support, and crime: An emerging theoretical consensus. *Criminology*, 40, 19-42.

<sup>41</sup> Pettus-Davis, Carrie, Matthew O. Howard, Amelia Roberts-Lewis, and Anna M. Scheyett. 2011. "Naturally Occurring Social Support in Intervention for Former Prisoners with Substance Abuse Disorders: Conceptual Framework and Program Model." *Journal of Criminal Justice* 39 (6): 479-88

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<sup>36</sup> David A. Andrews and James Bonta, *The Psychology of Criminal Conduct*. 5th ed. New Providence, NJ, (2010).

<sup>37</sup> Tony Ward and Shadd Maruna, *Rehabilitation: Beyond the Risk Paradigm*. New York, NY: Routledge, (2007).

<sup>38</sup> Wilson, D. B., Bouffard, L. A., & Mackenzie, D. L. (2005). Quantitative review of structured, group-oriented, cognitive-

## 2. Model Reentry Program Summaries

We researched and visited reentry programs in Southern California that are widely believed to be model reentry programs. All three organizations provide varied programming in a community and therapeutic setting to address the multifaceted needs of formerly incarcerated people.

### i. Project Kinship

**Program Philosophy and Mission.** Founded in 2014 in Santa Ana, California, its mission is to increase community safety, promote hope, health and well-being among the formerly incarcerated and their families, and help individuals successfully re-enter the community.

**Services.** Project Kinship provides services to address the needs of the reentry population. Services include both direct service and capacity training for systems and community agencies. Project Kinship's staff provides emotional support and advocacy as they assist individuals through the stages of re-entry and system network of care. A strong emphasis is centered on promoting system care access, individual and family driven case management services, short-term individual and group counseling services, group educational/skills classes, and short-term group support services, program participants are provided with supports that help develop the coping skills that to lead meaningful and productive lives.

**Measures of Success.** Individuals are able to enroll in Project Kinship's 6 month re-entry program upon release, but the demand for this program in Santa Ana outweighs current capacity.

### ii. Homeboy Industries

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**Program Philosophy and Mission.** Homeboy Industries is one of the largest and most comprehensive gang intervention, rehabilitation and reentry programs in the United States. The organization's mission is to provide hope, training, and support to formerly gang-involved and previously incarcerated individuals to allow them to redirect their lives and become contributing members of the community. Our visit to Homeboy Industries in the city of Los Angeles yielded important details about the specific programs and practices that are instrumental in making a reentry center successful.

**Services.** Homeboy Industries started as a job program called "Job for a Future" in 1988. At the outset programming focused on employment and education as a way to combat violence and involvement in gangs. Over the years, Homeboy Industries recognized the importance of therapeutic and support services, so it

expanded its programming to include therapy, substance abuse treatment and life skills classes. The organization still provides employment to more than 200 trainees at a time through an 18-month training program intended to serve as a stepping stone for formerly gang-involved and previously incarcerated people returning to their communities. Trainees who graduate from the program can go on to become navigators, who mentor others and guide cohorts of trainees through the same program.

Thousands more, known as community clients, receive free services through the organization's comprehensive programs, including tattoo removal, workforce development, educational services, case management, legal services and mental health services. Homeboy Industries also operates nine different social enterprise businesses, including the Homeboy Bakery, Homegirl Café and Catering and Homeboy Silkscreen and Embroidery, where trainees receive valuable job training. More than just providing a job, Homeboy Industries provides a trauma-informed and therapeutic community setting that allows people to work on repairing and building healthy relationships with loved ones and co-workers.

**Measures of Success.** Members of Homeboy Industries have a recidivism rate of about 35%. More than one third of the organization's staff members are former trainees who graduated from the 18-month program and have been promoted from within. Homeboy Industries' model works because its free programming and services are developed in and by the community they serve.

### iii. Anti-Recidivism Coalition

**Program Philosophy and Mission.** The Anti-Recidivism Coalition (ARC) is a support and advocacy network that provides reentry and supportive services to formerly incarcerated youth. Its mission is to provide a support network for formerly incarcerated young people and advocate for fairer criminal justice policies. The ARC network consists of more than 300 members, and hundreds of volunteer mentors and allies committed to helping youth through reentry programming and advocating for a just criminal justice system.

**Services.** ARC serves nearly 450 formerly incarcerated individuals—a majority of which live in Los Angeles County. ARC was founded in Los Angeles County but has expanded its network to also include members in San Bernardino, Riverside and Orange Counties in addition to Sacramento and the San Francisco Bay Area. The organization fights to reduce recidivism through varied programming including inreach services, support and mentoring, supportive housing, access to jobs, and education and policy advocacy. This comprehensive approach to reentry improves individual outcomes and increases the health and safety of communities.

ARC staff and members regularly travel to prisons and detention facilities across the state of California to provide rehabilitative programming and host policy workshops among several other things. Specific inreach programs include youth offender parole workshops, peer mentorship programming, ARC/PUP college program, and the Ride Home Program. Upon release, ARC members have access to counseling services to help them navigate the process of reentering their communities. Services include one-on-one counseling sessions and group sessions in addition life coaches who connect them to other resources such as legal support, public benefits and transportation needs.

ARC's mentorship program is designed to help members develop a strong sense of self and connection to the community. New members are paired with peer mentors at intake and, eventually, become mentors themselves. ARC also hosts regular retreats to promote peer mentorship, strong social bonds, and to provide opportunities for healing, self-reflection, and goal-setting. In 2014, the organization launched a Supportive Housing and Education Initiative in partnership with the California Community College System to provide housing (Bromont Housing and Magnolia Housing), counseling and academic support to formerly incarcerated members. ARC also mobilizes system-involved and system-impacted young people and their families to advocate for fairer criminal justice policies and a more humane system. To do this, ARC offers regular advocacy trainings and leadership development opportunities that are trauma-informed.

Measures of Success. ARC's advocacy efforts have been integral to many reforms in California's justice system that have improved the treatment of young people in the justice system, including, but not limited to, restricting the practice of sentencing juveniles to life without the possibility of parole. Members of ARC have a recidivism rate of less than 5%.

### **3. The Dangers of Reentry**

As is the case with alternatives to immigration detention (explored in detail on page 67), entities bidding for reentry contracts are oftentimes the same groups benefiting from mass incarceration. Profit-driven corporations like the Geo Group and Corrections Corporation of America (recently rebranded as CoreCivic) have expanded their "services" to include alternatives to incarceration and reentry as mass incarceration reform becomes a bipartisan issue. Said corporations have invested significantly on rehabilitation services, mental health centers, residential reentry programs and electronic monitoring in order to follow growth and make money. Many people are referring to

this as the "Treatment Industrial Complex" or TIC.<sup>42</sup> TIC permits the same corporations to profit from providing privatized treatment-oriented and reentry focused services.

Simply because private prison corporations, who have profited from mass incarceration, are embracing the language of reentry does not mean that they are implementing best practices. The bottom line of said entities is to generate profit for their investors. **Similar to private prisons' track records, treatment-oriented services operated by the same corporations are vulnerable to spending reductions on staff and important services.** Doing so comes at the expense of the quality of services.

Private reentry services including, but not limited to, residential programs, electronic monitoring and day reporting centers prioritize restrictive environments, which is contrary to the best practice of the least amount of restrictions for people reintegrating into their communities. Restrictive environments and surveillance are most lucrative and thus corporations are pushing for increased levels of supervision and surveillance in the private realm. When advocating for comprehensive reentry programming and services, it is important to address the potential dangers of allowing said services to be sources of profit for the same corporations that incentivized putting people behind bars in the first place.

### **4. Reentry and Santa Ana**

There remains much to learn about what works best and how to effectively reintegrate formerly incarcerated individuals into the community. The City of Santa Ana has the opportunity to join local organizations in an effort to equip formerly incarcerated people to handle the challenges they encounter upon release and become contributing members of society for the betterment of all.

If the City of Santa Ana repurposes its jail as a Community-Based Reentry Center, Orange County residents will likely be in support, as the majority of residents support criminal justice reform.<sup>43</sup> In fact, 53% of Orange County residents voted in favor of Proposition 47, which reduced some crimes from felonies to misdemeanors. In addition, 58% of Orange County residents voted in favor of Proposition 57, which increased parole chances for some individuals in prison. And 65% of Orange County residents voted in favor of Proposition 36, which reformed the "three strikes" law.

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<sup>42</sup> See [https://grassrootsleadership.org/sites/default/files/reports/TIC\\_report\\_online.pdf](https://grassrootsleadership.org/sites/default/files/reports/TIC_report_online.pdf)

<sup>43</sup> <https://meetyourda.org/>

If the City of Santa Ana were to consider a community-based reentry center as an alternative to the Santa Ana City Jail, it should prioritize the following:

- Oppose any and all efforts to privatize reentry services, including, but not limited to, day reporting centers, home arrest, and electronic monitoring.
- Prioritize community-based organizations for any Request for Proposals (RFP). Organizations that directly or indirectly profit from mass incarceration should not be considered.
- Services must be comprehensive and address the varied needs of formerly incarcerated people. **The City of Santa Ana could employ a blended model** and combine cognitive-behavioral treatments with skills oriented programming, including work opportunities, job training, and a community garden. Both reentry clients as well as the entire community would have access to said programs. For example, clients returning home could operate a small farmers market or vegetable stand by selling produce from the garden. Exploring such blended models could further support reintegration and promote relationship building and connectedness among the community at large.
- Ensure a community benefit by providing services primarily to Santa Ana residents reintegrating into their community.
- Program development and implementation must be driven by empirical research on effective interventions, inclusive of varied factors. Program and outcome evaluation should include more than just measures of recidivism.

## 5. **Funding/Cost-Benefit Analysis**

As discussed in the budget analysis section above, the jail is currently running a deficit of over \$8 million, largely due to the ongoing cost of operating the facility. Deficits have been consistently high for the last several years, even before the cancellation of the ICE contract. While there are some outstanding debt payments—roughly \$2 million a year on net through FY24—these are much smaller than the spending associated with ongoing operation.

There are certainly transition costs associated with shifting staffing to account for the closure of the jail and spending to reconfigure the space. The only alternative to reuse, however, is to run multi-million dollar deficits, which will only be ameliorated partially by the end of bond repayment in seven years. In the medium and long

terms the city's fiscal outlook appears likely to improve if current jail operations can be replaced with a new use that at least covers its operating costs.

A full fiscal analysis of the costs and revenues associated with converting the jail to a reentry facility would be premature. The city would need to make many decisions that could have significant impacts on the expected costs. A threshold question is whether the city would operate the facility directly or contract with a service provider instead. It could also choose to sell the facility outright to a new owner. The city would also need to take action to assess need to determine a target capacity (especially important since errors in over-estimating the need for incarceration led to the city's present challenges). In addition, as the preceding discussion suggests, a specific model and approach would need to be chosen, as would staffing levels and many other considerations.

If this recommendation is taken, the city should begin a planning process, with robust community involvement, to determine how to answer these questions in a way that would provide a clear community benefit. One aspect of this process should involve creating a plan for financial sustainability. While City General Fund support would likely be an important piece of this plan, it would not be the only one—and indeed, one of the benefits of shifting the jail to a reentry use is that it could potentially bring in a broader set of funding sources to support operations.

Much public funding for reentry programming passes through counties in California, as they are primarily responsible for incarceration and probation. Thus, if the city pursues a strategy of turning the jail into a reentry facility, it would be well-advised to create a partnership with the county to explore potential funding streams to support reentry operations. This is especially the case because the financing for such programming often involves multi-year grants—even if it took several years to perform facility reconstruction and reconfiguration, immediate engagement with the county could help create a plan to build the city into future grants and ensure that there are operating funds available to support the new reentry housing once it is operational.

For illustrative purposes, some of the county's most significant recent revenues that could potentially support (or, for grant funding, could have supported) reentry include:

- State Prop 47 grant funds: Last year, Orange County received an allocation of \$6 M over three years, to support housing, reentry, and health services for justice system-involved residents.
- A Medi-Cal Whole Person Care pilot with \$31 M in funding over five years to provide health

services for homeless individuals. The dollars come from a mix of state and federal dollars, matched by local funding including General Fund support, Mental Health Services Act funds, and dollars from the tobacco settlement.

- The county also receives significant state dollars to support its general public safety operations, over which it has significant discretion. This includes AB109 realignment funding (in FY14, this amounted to \$63 M, of which \$15 M went to the health care agency for services, and \$17 M for probation for post-release supervision); and recidivism-reduction funding via the state's SB678 (in FY16 this came to \$4.6 M; the county receives more funding through this program if it makes greater progress in reducing recidivism).

Beyond public funding, there are numerous potential kinds of revenue a reentry provider could access. For example, in 2016, Los Angeles' Homeboy Industries saw more than 250 clients go through their primary 18-month reentry program and provided free services to thousands more, supporting this work with over \$16 million in revenue. Over \$6 million of the organization's income comes from social enterprises, such as their bakery and catering service, over \$4 million from individual contributions, \$2.3 million in foundation and corporate support, another \$2.3 million from events, and \$1.7 million from public sources (including funding from the City of Los Angeles). While bringing a new provider to such a scale would obviously take multiple years, the basic model of leveraging multiple funding streams beyond governmental ones could be applied in Santa Ana, too.

## IV. Civil & Human Rights Conditions in the Santa Ana City Jail

### a. Analysis of Santa Ana City Jail Grievances

There is a lengthy and disturbing history of human rights violations and inhumane conditions at the Santa Ana City Jail that have been well documented and reported on to the public. Unfortunately, there have been no apparent improvements in conditions, despite the recent widespread media and community outrage over the state of the facility and the plight of those confined there:

- In November 2015, a 55-year-old inmate died in custody in the Santa Ana City Jail medical ward.
- In January 2016, 31 transgender and cisgender women in the custody of U.S. Immigration & Customs Enforcement (ICE) at the jail filed a civil rights complaint against the City of Santa Ana and ICE. CIVIC called for a federal investigation and for the City of Santa Ana to abandon a degrading strip search policy and practice in which women in immigration detention were routinely forced to remove all of their clothing and use their hands to spread apart their private parts as officers peered into them. These searches often occurred under unsanitary conditions and sometimes in full view of other people in immigration detention. Two days after this complaint was filed, CIVIC and its allies spoke at a City Council meeting where the City chose not to expand the number of immigration detention beds at the jail.
- In March 2016, Human Rights Watch published an investigative report that documented that transgender women in ICE detention at SACJ had been regularly subjected to humiliating and abusive strip searches by male guards, not able to get adequate medical services, including hormone replacement therapy, and had spent unreasonably long periods of time in solitary confinement.
- In May 2016, activists from Familia: Trans Queer Liberation Movement and Orange County Immigrant Youth United began a hunger strike, vowing to continue it until Santa Ana stopped renting out its city jail to ICE.
- In December 2016, the City of Santa Ana became the first sanctuary city in Orange County and ordered that the number of people in ICE detention at SACJ be reduced.
- In February 2017, ICE officials notified the city that they planned to terminate its detention contract.
- On June 10, 2017, the Santa Ana police detained a man on suspicion of public intoxication. Officers transported the man to the Santa Ana City Jail to be booked after he

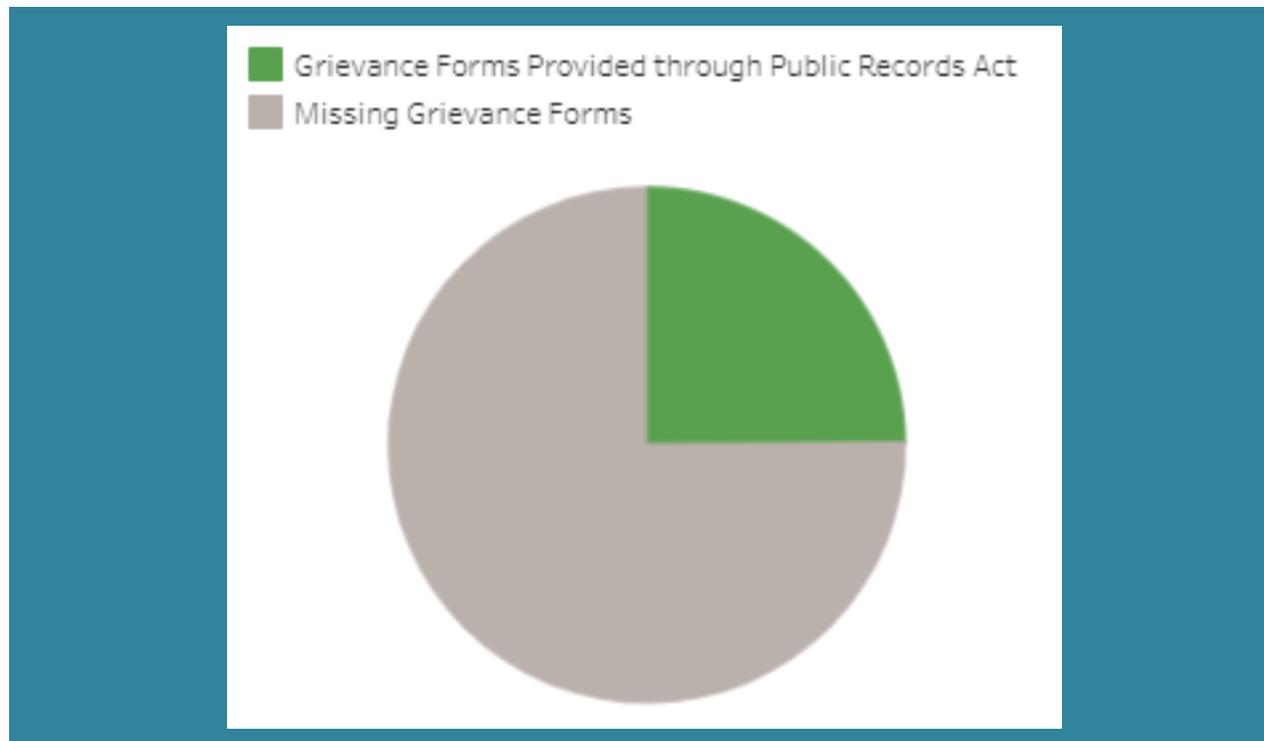
allegedly became uncooperative. At the jail, the man became unresponsive and was transported to a hospital where he was pronounced dead two days later on June 13, 2017. Santa Ana police say the man was never booked.

- In June 2017, the ACLU of Southern California Jails Project published a two-year investigation that revealed violent, abusive and unhealthy conditions in Orange County's jails system and a record of denial and indifference by the officials in charge.
- On August 4, 2017, a man was found unresponsive in his cell at the Santa Ana City Jail. The man, who was detained under the City's contract with the U.S. Marshals, died six days later on August 10, 2017. Santa Ana police said the man died after going into "medical distress" at the hospital. The official cause of death is unknown.
- On August 17-19, 2017, the Office for Civil Rights & Civil Liberties at Department of Homeland Security conducted an audit of the Santa Ana City Jail. One of the auditors, Wendy Still, MAS subsequently issued a memo, "Santa Ana City Jail Initial Recommendations" outlining multiple areas of concern.
- On December 11, 2017, the Office of Inspector General at Department of Homeland Security published a report that raised concerns about ICE detainee treatment and care at five detention facilities, including the Santa Ana City Jail.

To learn more about the conditions of confinement at the Santa Ana City Jail (SACJ) and determine how responsive the facility has been to these complaints, CIVIC filed a public records request on July 26, 2017 which requested the following records, among others:

- the number of grievances filed at the SACJ since January 2014 and the subject of the grievances, including data on which complaints were investigated and what the outcomes or decisions of the investigations were, as well as the reasons for any decisions not to investigate complaints or take action;
- any grievances or complaints filed with the City of Santa Ana; the County of Orange; or the SACJ by people detained/incarcerated at the SACJ since January 2014; and
- any audits conducted by state or federal agencies, by companies, or by any other audit body since January 2014.

In response to this public records request, we received a grievance log of 1,449 grievances, and only 366 grievance forms:

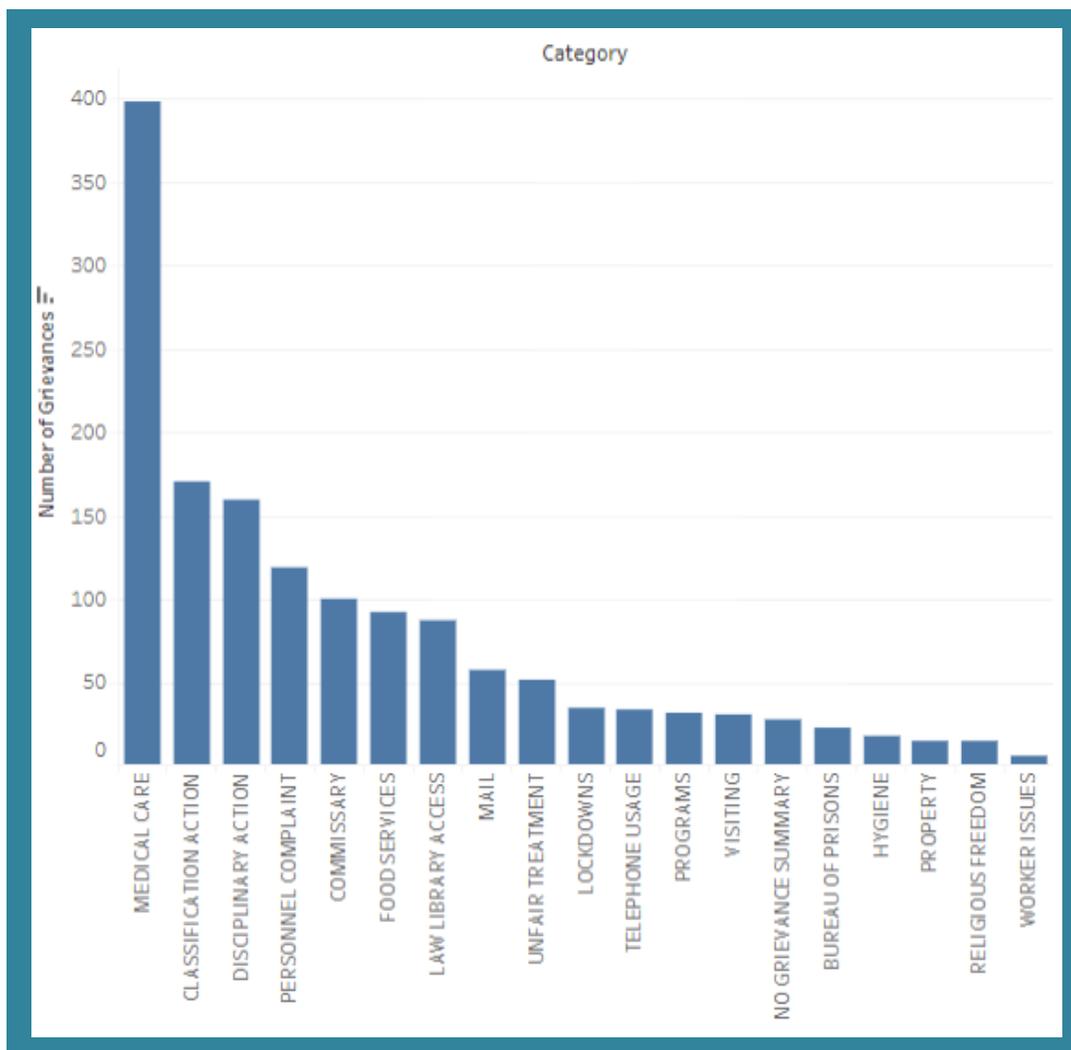


The SACJ administrator informed us that the City is only able to provide the itemized medical grievances but the content is in the possession, care and custody of a non-public entity, their medical contractor NaphCare. Furthermore, the information is also protected by HIPAA (Health Insurance Portability and Accountability Act of 1996), and therefore the SACJ is not provided the specific information regarding each grievance due to privacy concerns. The SACJ administrator also informed us that grievances found to be based on personnel complaints are not subject to public release per Govt Code 6254(c). However, medical grievances and personnel complaints combined only make up 517 grievances in the grievance log, meaning that at least 566 grievance forms were not provided to us without acknowledgement or justification. In addition, many grievances refer to additional pages due to the limited space available for writing (e.g., “see attached letter”), but almost none of the grievance attachments were provided.

The inability to review all grievance forms subject to public release unfortunately inhibited our ability to fully analyze the most common grievances and outcomes. The grievance summaries in the grievance log are often brief and vague. Many grievances had been filed under the

categories of “Complaint” or “Other.” To assist our analysis, we recategorized these based on the information provided in the grievance summaries, however limited. Furthermore, the log does not include data on whether complaints were investigated, what the outcomes or decisions of the investigations were, or the reasons for any decisions not to investigate complaints or take action, as was requested. Some grievance forms include this information, but many do not. Disturbingly, we also received many copies of grievance forms that were never logged in the grievance log, calling into question whether the grievance log is truly representative of all the grievances submitted to the facility.

Despite the apparent inadequacy of the SACJ’s record keeping, the grievance log and grievance forms provided paint a chilling portrait of conditions inside the facility. The breadth of the sample size—1,471 grievances submitted by 452 different individuals over the course of over 3.5 years—demonstrates that the issues raised in the grievance forms are systemic and long-term, in addition to being extremely concerning. In this section, we analyze the grievances and describe the complaints within each category, beginning with the most common grievance (medical care):



In addition to the grievance log and grievance forms, we received copies of audit reports completed by the Board of State and Community Corrections (BSCC), the Immigration & Customs Enforcement (ICE) Office of Detention Oversight (ODO), and the U.S. Marshals Service (USMS). When compared with the number and severity of the grievances submitted to the jail by people detained there, these audit reports demonstrate the limitations of governmental oversight, as they for the most part do not contain information about many of the issues that appear to be systemic and long-term. However, there are a few categories for which these audits did report deficiencies, and they are included in our analysis when appropriate.

#### 1. Medical Care

The most common grievance submitted by people detained at the SACJ from 2014 to 2017 focused on the inadequate medical care provided at the facility, the category of approximately 27.1% of all grievances recorded (398 out of 1,471). While we were only provided with approximately 50 of the 398 grievance

forms due to HIPAA regulations cited by the city, these forms indicate specific trends. Individuals most commonly lament that their requests for care were refused, ignored, or unreasonably delayed. They offer examples of being denied treatment even for serious and possibly life-threatening medical conditions such as HIV/AIDS and high blood pressure.

Many individuals have to submit several grievances before being granted access to medical services. As one individual wrote, “*yet again (3rd time) [I] did not have my Atripla (HIV med). I can only miss one dose a month without compromising my health.*” (Name redacted, August 21, 2014.) The shift supervisor responded by citing the medical service policy of not providing prescribed medication before an individual is seen by a staff doctor, despite lengthy waiting periods of weeks or months: “*detainee needs to be seen... before treatment is given. Once detainee is seen... the meds prescribed will be ordered.*” Another grievance form stated, “*this is [the] 4th request that I turn in... my [HIV] meds that I need to take everyday, I’ve been a month without.*” (Name redacted, October 10, 2014). The medical

supervisor noted in their response that they were still “awaiting medical records.” Individuals on lockdown face additional barriers to medical care, and lockdowns may go on for several days.

The quality of medical care and advice, when it is provided, is poor and provided by ill-informed medical staff who are not responsive to patients’ wishes or concerns. One woman, anxious about the possibility of having breast cancer, explained that she had to consult outside advocates to get accurate information about the appropriate course of action, albeit to no avail: “*The recent ultrasound of both breasts... confirmed two masses in my right breast and one mass on my left breast... I was told... that the masses were not malignant. She also stated I would be seen again 6 months... and for now to still continue with the treatment, when in fact NaphCare has not given me any treatment for said issue. I spoke with my advocate, who informed me that ultrasound tests cannot differentiate between malignant and benign masses. Only a biopsy of actual tissue cells from the masses can confirm the type... I therefore am requesting a biopsy... I am entitled to a second opinion therefore asking to also be referred to an oncologist.*” (Name redacted, March 21, 2016.) The medical supervisor did not allow the woman to seek a second opinion, and instead just reiterated the original medical order: “*Patient educated about treatment program... [and] will have a follow-up to measure for any changes in the mass.*” Another individual observed this phenomenon, noting that “*the ubiquitous response to all medical queries is to reiterate the drugs I have already been prescribed... My health has deteriorated in this facility and the lack of information and humane treatment is to blame.*” (Name redacted, November 20, 2014).

In addition to the lack of thoughtful care, there were many documented instances of medical staff mistreating individuals in highly unprofessional manners. One individual described his feeling of humiliation after being repeatedly treated in a disrespectful manner by a specific nurse: “*after 3 medical request forms (unanswered), I was finally called down to the infirmary... [The nurse] is angry and rude, replying with smart aleck remarks, for example, ‘It’s not my fault that your health sucks.’ ... I told him if he could give me some eye drops to clean my eyes and he said ‘I can’t do that, instead when you shower, hold your eyelids to the running water and stay for a minute or two,’ resulting in me burning my eyes. I trusted his expertise... Today I went to see the R.N.... my neck is still in severe pain and [the nurse] in an angry way said, ‘You just keep throwing shit to my face.’ Then I asked him, ‘Excuse me sir, why is it that everytime I come to see you, you answer me in a very angry and disrespectful way, discriminatory way?’ By then, his face red like a tomato,*

*he stands up and with a loud voice, he said ‘Look, we could end this conversation right here now.’ For a moment I thought he wanted to hit me... I got up and walked out... I’m supposed to be treated with dignity and respect. I felt humiliated.*” (Name redacted, June 25, 2014.) The fact that this nurse suggested that this individual flush out their eyes in the shower is especially troubling, given that the Immigration & Customs Enforcement Office of Detention Oversight (ODO) 2013 audit of the facility expressed concern that its water is not tested by a state laboratory, which “is critical, because contaminants can form within the internal water system” (p. 18).

The incidents of disrespect described in the previous grievance are not the isolated consequences of a single unprofessional staff member. As another example, one individual complained about a different nurse’s refusal to provide even a bandage after he cut his face while shaving: “*I asked [the nurse] for a Bandaid or some little antibiotic lotion and she said, ‘Even if you are badly bleeding I would not give you anything...’ Officer [redacted] made me a recommendation just to put a little piece of paper on my injury... [The nurse] says she does not want to lose her ‘license’ only because we require a simple Bandaid.*” (Name redacted, January 13, 2016.)

Transgender individuals face even additional discrimination and barriers to receiving quality care. The ODO 2016 audit reviewed 30 medical records and found that the medical intake screening form used does not include a requirement for the screener to inquire about a transgender individual’s gender identification or their history of transition-related care (p. 11). As a result, many transgender individuals submitted grievances about not receiving necessary hormone therapy for months: “*I’d like to know why you don’t want to give me my hormones. You took my blood and I saw the psychologist two and a half months ago... I need them now.*” (Translated from Spanish, name redacted, February 13, 2016). Medical staff also exhibit transphobic tendencies, refusing to acknowledge their patients’ transgender identities: “*I felt discriminated today with this nurse... she called me ‘Sir.’ She shouldn’t say that, she knows this is a transgender module... I am a transgender woman. I need respect.*” (Name not provided, December 2, 2013.)

The mental health services and provision of mental health medications are particularly inadequate, which is especially troubling given the psychological and emotional toll that the lack of adequate mental health care can cause. One individual anxiously wrote about the consequences of being denied his psychiatric medication: “*It’s been 3 days since I have not have my medication. I’ve not slept. I need my medication. I’m hearing voices.*” (Name redacted, October 4, 2014.) Another common

issue noted by individuals is being forced to take drugs that they do not wish to be taking, likely because of unpleasant side effects: *“I have put in several requests to be seen by the psych doctor to be weaned off my Wellbutrin.”* (Name redacted, October 4, 2014.)

Indeed, there appears to be a lack of informed refusals of care, not only in mental health services. For example, during the medical record review conducted by the ODO in 2013, they identified two individuals who had undergone dental extractions but never signed informed consent forms specific to the procedure. Unfortunately, while the ODO is provided access to medical records, which contain crucial data about the flaws of the medical services provided, medical records are routinely not released to individuals or even their attorneys. Such records may be very salient to someone’s case.

As recently as December 2017, the Office of the Inspector General at the Department of Homeland Security, explained, “Although the facilities provided health care services, as required by PBNDS [ICE’s Performance-Based National Detention Standards], some detainees at the Santa Ana City Jail and Stewart Detention Center reported long waits for the provision of medical care, including instances of detainees with painful conditions, such as infected teeth and a knee injury, waiting days for medical intervention. In addition, two detainees, one at the Hudson County Jail and another at the Santa Ana City Jail, waited several months for eyeglasses following a vision exam that confirmed a need for them. Finally, not all medical requests detainees claimed they submitted or the outcomes were documented in detainee files or facility medical files.”<sup>44</sup>

## 2. Classification System

Classification is the process of assessing every person in custody in order “to identify the level of risk and needs presented by each so that appropriate housing and program assignments can be made.” This process supposedly functions to “reduce escapes and escape attempts, suicides and suicide attempts, and inmate assaults.” According to complaints made by individuals jailed at the SACJ as well as observations made by the ICE ODO, both the classification protocols and the conditions in which people are confined as a result of particular classifications are very concerning. The main issues that have been flagged include: limited or no access to medical services for people in segregation; failure to first consult with medical and mental health

practitioners when classifying transgender individuals; excessive use of isolation as punishment; segregation caused by personnel shortage or other administrative reasons; and no consistency regarding recreation or law library access for people in segregation.

Individuals held in separate housing or in segregation submitted almost 200 grievances, reflecting the systematic failure of the jail to address their needs and ensure their safety. In July 2016, an individual in segregation at SACJ submitted three medical complaints. Six months later he asked for his classification to be reviewed, as he was not receiving the appropriate care while in segregation, stating that *“I was left in SHU for longer than 11 months...I experienced audible hallucinations and deterioration of my medical condition. Resulting in muscle atrophy, pain and loss of mobility”* (Name redacted, December 16, 2016).

Individuals reported that staff would repeatedly ignore classification review status for long periods of time, even up to four years, as one person recounted: *“I was told on October 15, 2013 that I was going to be reclassified 30 days later to go to the general population. It’s been 39 months now and I still haven’t got any response”* (Name redacted, January 1, 2017). This same individual later submitted a follow up grievance, writing: *“This is cruel and unusual punishment. I’ve never been given any specific answer in almost 4 years”* (Name redacted, April 18, 2017). Nor was this an isolated incident, as a different individual submitted a similar grievance: *“Mr. Classification Supervisor, I need to speak with you. I’ve been trying to speak with you for the past 83 days. Please speak with me, I need to solve this problem”* (Translated from Spanish, Name redacted, November 3, 2014). The ODO flagged this issue as recently as September 2016, and suggested substantial changes in the SACJ classification practices.

## 3. Disciplinary Actions

There are many complaints that recount excessive or inappropriate punishments or “disciplinary actions” on the part of SACJ staff towards people confined in the facility. Grievances reviewed include references to “excessive force” and “unlawful punishment.” These include violations against people with conditions that make them particularly vulnerable: *“I am 62 years old, wheelchair...with a heart condition, making me easily go into fatal heart attack. [Being] attacked by a taser by your mental patient staff and your facility employees is a violation...I am being set up to be afraid for my life... [due to] civil rights violations against me and others”* (Name redacted, November 26, 2016).

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<sup>44</sup> “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” U.S. Department of Homeland Security, Office of Inspector General, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> on January 12, 2018

In addition, there is a reported absence of due process in the determination of disciplinary actions. The grievances reviewed contain several requests to speak with a supervisor due to unjust or excessive disciplinary actions. Staff responses tend to be either unresponsive to individuals' concerns or, more disturbingly, missing entirely. For example, one person wrote *"I need to urgently speak with a supervisor. I consider that you are violating my rights and due process. Today, Friday, I'll start a hunger strike, as it is my right to protest the abuses committed against me. I hope you'll address my petition. Thank you"* (Translated from Spanish, Name redacted, April 4, 2014). Instead of addressing his concerns, the facility's staff instead simply denied that the individual was indeed going to carry out his protest, writing: *"You're not going on a hunger strike if you are eating your cart meals or commissary"* (Name redacted, April 12, 2014). Additionally, another person detained at SACJ complained about his due process being violated after he was placed in isolation for 20 days, even though the incident that led to the punishment was "still being investigated" (Name redacted, November 25, 2016).

Complaints regarding disciplinary actions were often related to grievances over classification actions, as individuals are often placed in segregation as punishment and not given information regarding when the punishment would end. In her CRCL audit report, Homeland Security auditor Wendy Still recommended that the jail formulate a process to identify punishment abuses and trends, as certain people seemed to be disproportionately targeted and punished.

#### 4. Personnel Complaints & the Grievance System

The SACJ Inmate/Detainee Orientation Handbook states that "non-emergency grievances shall be responded to within 72 hours, excluding weekends and holidays... Grievances that are emergent in nature, must be responded to within 24 hours. Examples of emergency grievances may be related to medical treatment or in cases involving a 23 hour lockdown" (p. 9). However, scores of grievance forms refer to previous grievance forms that had gone unanswered for days or weeks. One individual expressed his concern over this after multiple personnel complaints he filed seemed to disappear entirely: *"I don't mean to question the integrity and honesty of the Santa Ana Jail staff on how they handle grievances, but I filed a grievance on 11/16/16 and a follow up on 11/21/16 and a 3rd follow up grievance on 12/6/16 all in hope to resolve and shed some light on the excessive force resulting in injuries. All have gone unanswered."* (Name redacted, December 20, 2016.)

The staff's apparent utter disinterest in reading and responding to grievances, or even documenting them at all, unsurprisingly creates a strong disincentive for individuals to submit them in the first place. Among the

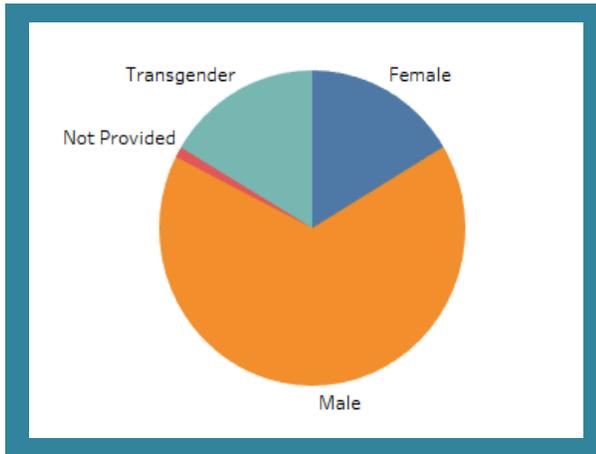
"Initial Recommendations" issued by Still was a suggestion that the facility's Administrator and Grievance Coordinator "provide a secure locking grievance box for detainees to directly place grievances into, in order to ensure they are routed appropriately and to prevent staff from destroying them" (p. 1-2). Still also recommends that they "develop a regular meeting schedule to review detainee grievance data that has been analyzed for trends, grievance type, location, staff who are identified as mistreating detainees, and additional systemic issues; develop a reporting system to ensure that facility personnel respond to and resolve the detainee grievance issues assigned to them by the Grievance Coordinator and to ensure that detainees receive responses to all submitted grievances; [and] ensure that detainees suffer no retaliation from staff for filing grievances" (p. 1-2).

Such a secure locking box would also help resolve the issue of confidentiality, another concern widely expressed by individuals. When corrections officers do review the grievances, they do not take any steps to avoid unnecessarily sharing ones that may contain sensitive information (such as medical data or personnel complaints) with others. One woman had a private medical issue shared in this manner without her permission: *"I would please like to speak with a supervising officer in regards to an issue I have with an officer regarding one of my medical requests that has now been made known to others, when I trusted it was a private and resolved situation."* (Name redacted, May 16, 2016).

In the same way that lesbian, gay, bisexual, and transgender (LGBT) individuals face discrimination by the medical staff, they suffer targeted mistreatment from the corrections officers: *"I am reporting the mistreatment that I receive from Officer Ginnis as he is an officer that does not have anything to do with us transgender people, because he is homophobic, discriminatory and racist."* (Translated from Spanish, F. P., October 10, 2015, grievance form missing.) Still's "Initial Recommendations" make the following suggestions for the jail administrator to reduce officer discrimination against LGBT individuals: "hold facility staff accountable for substantiated verbal abuse and mistreatment of the Gay, Bi-Sexual and Transgender (GBT) detainees... meet with GBT detainees to improve communication and develop resolutions to mistreatment complaints... [and] replace the male counselor that was reported to make inappropriate and degrading comments to the Transgender detainees, and hire a licensed clinician to provide appropriate counseling services to GBT detainees" (p.2.)

The increased discrimination and mistreatment suffered by transgender individuals at the SACJ is perhaps most clearly demonstrated by the fact that although they made

up only 37 of the 452 (or 8.2%) individuals who submitted grievances, they submitted 242 (or 16.5%) of all 1,471 grievances.



## 5. Commissary

For many incarcerated people that have the ability to purchase commissary items, the commissary can serve to offer them small comforts, however exorbitantly priced, that may make their daily experience slightly more bearable. At SACJ, the commissary is often a source of distress and confusion, as information and opportunities for input regarding its inventory are not provided to the people detained there. One common complaint is that the food choices offered tend to consist almost entirely of unhealthy and processed junk food such as pork rinds, bacon cheeseburgers, ice cream, and candy bars. Individuals lament the lack of healthy food choices, in particular people who are attempting to follow specific diets such as cardiac, diabetic, or bland diets. Many grievances request fresh food choices for purchase. Examples of such requests include sandwiches, avocados, and nuts.

Furthermore, there are restrictions placed on individuals regarding what they can purchase from the commissary based on the diets that they have requested from the kitchen or that the medical staff have ordered. However, there are frequently both staff and technical mix-ups regarding the diets that people are supposed to follow. For example, when one individual asked why he was suddenly denied certain commissary items that he knew he was allowed to consume as part of his bland diet, the kitchen supervisor explained that *“it appears our computer program glitched and placed all bland diets on a cardiac diet”* (February 19, 2014).

Beyond the food options, there are sudden, excessive hikes in the prices of many items without any notification to the people detained there, leading to confusion and concerns among individuals that they are being overcharged. More troublingly, many individuals

expressed distress over not receiving refunds for orders that are not delivered to them, either because the items are out of stock (a common complaint) or the delivery is heavily delayed (another common complaint.) Finally, when items do arrive, they may arrive in bad condition (for example, a torn article of clothing), or simply not function at all (for example, a broken radio).

## 6. Food Services

In addition to commissary deliveries, individuals receive foods inappropriate for their dietary needs or religious preferences at mealtimes as well. Kitchen staff routinely give inappropriate food trays to individuals who may have vegetarian, vegan, kosher, bland, gluten-restricted, lactose-intolerant, diabetic, cardiac, liquid or soft food diets, or allergies to certain foods such as nuts. As one individual described, *“I have a court order from the Judge to receive a high fiber diet... For dinner they brought me white bread... [Officer Perez] called the kitchen and whoever is in charge refused to bring wheat bread or corn tortillas... Is Officer Perez the ‘Supervisor or a Doctor’? Cause I feel discriminated and neglected.”* (Manuel Ochoa, February 9, 2014.) Another individual lamented the lack of having enough food to eat due to a dietary mix-up: *“I am on the vegetarian diet and I am being given the kosher/Muslim diet by the kitchen... I’ve been starving because of it.”* (Name redacted, July 12, 2015). The response of the module officer to his grievance was that the kitchen staff did not know which diet he was on.

In general, the menus lack variety and the food is of poor quality. One individual expressed disbelief that the food was ever even tasted by kitchen staff: *“Why are we eating the same pasta over and over with no flavor? You should have a dog taste it; if the dog eats it, then it’s good, maybe. We are not animals.”* (Name redacted, December 23, 2015.) Other examples of the poor food quality detailed in the grievances include soggy bread, expired milk, and mystery ground meat made up of various types. In addition to tasting bad, the meals lack nutritious value. Many individuals lament the lack of fruits and vegetables, which of course they cannot purchase from the commissary either. Even for those willing or desperate enough to consume the meals provided, the portions are very small, causing individuals to have to purchase food from the commissary in order to not feel hungry or lose weight: *“I order some hot food... because the amount [in] Santa Ana Jail is not sufficient for me and I have lost tremendous amounts of weight.”* (Name redacted, May 12, 2015).

Finally, both individuals and facility auditors have expressed concern that the food service workers are not given the proper equipment or training to prevent the transmission of bacteria or disease. As one individual observed, *“the food workers in mod might be violating*

health standards. Inmates with facial hair do not cover it with a hairnet; others do not cover all their hair (sideburns). New gloves should be used to pass bread on trays, and before serving ice. I've witness the workers touch their body, face, clothes, personal cups, laundry bin/trash bin, and occasionally playing ping pong with the same gloves they serve with. The person dispensing ice should not need to touch every cup, as it could pass germs or bacteria from cup to cup." (Name redacted, September 2, 2015.) **The Local Detention Facility Health Inspection conducted by the Board of State and Community Corrections (BSCC) in 2016 also observed a lack of cleanliness and proper food treatment in the kitchen, and ordered the facility to clean and remove residue from kitchen appliances, and store food containers on shelves instead of on the floor to prevent contamination (p. 10).**

#### 7. Law Library Access

Many individuals face the necessity of representing themselves or doing their own research for their legal cases while incarcerated. For this reason, access to legal materials through the law library is essential and time-sensitive. However, the SACJ appears to provide inadequate access to its law library. People at the SACJ frequently complained about not being given access to use the law library. When they are granted access, the computers and software are often not functioning. Access to computers in the law library is especially limited in the areas designated for LGBTQ individuals.

Access to the law library in the SACJ has been reported to be unreliable since 2014 up until and including this year, which has had direct negative consequences on the legal cases of the people detained there. **Numerous people stated that computers were down for several weeks at a time, and that they were not provided with the information necessary to use the legal research software.** One individual wrote: *"The computer in the module has [been] out of service since January 1, 2014. I have told several officers about the situation. I have not finished translating my story and typing it on the computer. My court date is tomorrow"* (Name redacted, January 7, 2014). Another person politely asked about the need for computer repair: *"Does routine maintenance take from November 20<sup>th</sup> to December 2<sup>nd</sup>? As a detainee, I need access to [the] computer [in the] law library to work on my immigration case. The so called routine maintenance is happening too often. Thank you"* (Name redacted, December 3, 2014)". Concerned with the lack of access to the law library, some individuals started to submit grievances if only to keep records of the durations during which access was unavailable. For example, *"This is for the record, as of May 24<sup>th</sup> [the] law library has been*

*down for maintenance since May 15<sup>th</sup>. As a result, I have not been able to access discovery. Furthermore, all motions and files are erased"* (Name redacted, May 24, 2017). This individual actually lost all of his files due to the ongoing computer glitches. In response, he was told by staff that he *"...needs to have files uploaded/requested from attorney"* (Name redacted, May 28, 2017).

There are multiple incidents in which individuals were prevented from doing legal research and working on their legal cases due to the lack of access to a functioning law library. Another individual at the SACJ reported the same problem: *"After now 6 grievances...you have compromised my constitutional rights to due process by making it impossible to prepare and get any documents"* (Name redacted, September 27, 2016). Yet another individual was unable to access the legal library not because the system was down, but because he was not provided with the information necessary to access it: *"I have repeatedly requested my password for the law library and computer account...my first request was on May 16, second was May 26"* (Name redacted, June 1, 2017).

These reoccurring problems are due in part to insufficient staff, but also because of ineffective protocols. There is no clear communication about law library hours and holdings available to people incarcerated at the SACJ, as highlighted in the ICE ODO September 2016 audit report. As a result, ICE directed the facility to post information about the law library hours, maintenance protocols and on how to use the computer's legal programs for all inmates to see. It is unclear if the facility has yet carried out these recommendations, but given the ongoing complaints, it appears that it has not.

#### 8. Mail

Corrections officers are permitted to open and read mail in the presence of the recipient, with the exception of legal mail, which should not be read as it is privileged. Several grievances reported that this policy is not followed. One woman's privileged legal mail was not only read but moreover forwarded on by a corrections officer without her permission or knowledge to ICE: *"I received legal mail from my family and my original birth certificate was also sent. Mail Officer Alvarez took the liberty to send the original to DHS without my consent. I need original papers for the Immigration Judge and I would like the original birth certificate paper given back to me."* (Name redacted, July 25, 2015).

According to the inmate/detainee handbook, indigent individuals are supposed to be allowed to send three pieces of mail per week for non-legal correspondence and to send unlimited legal mail. Multiple grievances

report that corrections officers do not observe this crucial policy.

In addition, individuals cite lengthy delays in mail deliveries, including important and timely items such as legal documents, newspapers, and magazines. The SACJ administrator explained to CIVIC that the “mail system is quite complex.” The City mail service is only open Monday through Thursday and every other Friday. After mail from the jail is placed in outgoing mail, it is only picked up on one of these days. It is then delivered to City Hall where it is sorted. At some point later in the day, the outgoing mail is dropped off at the Post Office (or possibly picked up by the U.S. Post Office Personnel).

#### 9. Unfair Treatment

Several individuals report being unfairly treated by facility personnel, stating that they are being singled out for “bullying” or that they are “getting picked on.” Examples of ways in which guards unfairly treat certain people include: making them undergo excessive cell inspections or strip searches; putting them in lockdown; denying them their time in the dayroom or law library; taking them off work teams; not providing necessary auxiliary aids such as wheelchairs; falsely accusing them of misconduct; and not responding to or resolving their grievances. One individual described feeling targeted after he had his grievance form returned to him without any attempt to resolve the relevant issue: “*You cannot oblige me to accept a returned grievance form that I’ve submitted when you still have not resolved it. I know that the staff have problems with me but you cannot intimidate me in this way. I have rights. I know you’re corrupt, which is why I am complaining to you and you have to resolve the problem.*” (Translated from Spanish, Name redacted, May 21, 2016).

**The Office of Inspector General at the Department of Homeland Security found that “at the Santa Ana City Jail, staff confirmed detainee reports of personnel strip searching all detainees upon admission, which they did not document in detainee files as required.** This raises two concerns. First,

according to the 2011 PBNDS, staff are not to routinely subject detainees to strip searches unless there is ‘reasonable suspicion’ based on ‘specific and articulable facts that would lead a reasonable officer to believe that a specific detainee is in possession of contraband.’ Second, without documentation, there is no way to ascertain whether these searches were justified or

whether they infringed on the privacy and rights of detainees.”<sup>45</sup>

Individuals believe that some of the reasons for the unfair treatment that guards are inflicting upon them include racism, homophobia, transphobia, and ableism. In one grievance, a transgender woman wrote that another cleaning crew was given two servings of chicken, two slices of pizza, two bags of popcorn, and two full soda glasses each as an incentive for their work whereas her team only received one of each (Name redacted, October 10, 2015, grievance form missing). Notably, although this woman identifies as a transgender woman, she is referred to as a “he” by personnel staff in the grievance summary log. Such staff favoritism toward certain individuals or groups can lead to interpersonal tensions among those detained at the facility.

#### 10. Lockdown Periods

The SACJ staff has made excessive use of lockdowns, both as a means of punishment and for administrative reasons, as discussed earlier. The practice of putting individuals on lockdown for administrative purposes is disturbingly common, despite its severe negative effect on individuals’ mental health. One person writes: “*I’m being housed for almost 2 weeks 23 hours a day...It’s emotionally exhausting to only be out 1 hour a day when I am not on punishment*” (Name redacted, July 6, 2014). Another individual echoed the impact that the extensive lockdown periods had on his mental health, stating: “*I cannot take it anymore, my anxiety is growing. I need to speak with a supervisor, please we’ve been locked out for more than 9 hours*” Translated from Spanish, Name redacted, July 30, 2014). In response, the staff at the facility wrote that “[lockdowns] will continue to occur if operational needs require it” (Name redacted, August 3, 2014). We did not find any evidence of staff taking steps to ensure that lockdowns take place only when necessary, adding to the collective feeling of arbitrariness and injustice reflected in the grievances.

Lengthy and frequent lockdowns appear to be the consequence of the jail often having insufficient staff, resulting in unjust limits on recreation time and access to services. This can even affect legal cases, as one individual reported: “*I have a big issue with the amount of program hours...I can’t even call my lawyer and that’s a problem*” (Name redacted, August 22, 2015).

Another woman raised concerns about the unhygienic

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<sup>45</sup> “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” U.S. Department of Homeland Security, Office of Inspector General, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> on January 12, 2018.

and unhealthy conditions that result during lockdowns. She states that “[this is the] second unreasonable lockdown and deprivation of clean water/air/shower for 33 hours non-stop” (Name redacted, August 5, 2015).

The Office of Inspector General at the Department of Homeland Security noted similar concern. ““The Otero County Processing Center, Stewart Detention Center, and the Santa Ana City Jail were violating the PBNDS in the administration, justification, and documentation of segregation and lock-down of detainees. Staff did not always tell detainees why they were being segregated, nor did they always communicate detainees’ rights in writing or provide appeal forms for those put in punitive lock-down or placed in segregation. In multiple instances, detainees were disciplined, including being segregated or locked down in their cells, without adequate documentation in the detainee’s file to justify the disciplinary action.”<sup>46</sup>

#### 11. Telephone Usage

Personal telephone calls in detention facilities are notoriously expensive to make, but certain types of calls are supposed to be provided non-collect. At SACJ, calls that should be provided non-collect, such as legal and court-ordered calls, or calls to consulates, are often not provided to individuals when requested. One father found himself unable to speak with his children, despite the fact that this contact had been ordered by a judge: “*I spoke to C/S Villa about my court ordered phone calls with my children... Please see minute order, please provide non-collect phone usage on weekends.*” (Name redacted, May 22, 2017.) Another individual described requesting a non-collect legal phone call to the Federal Bureau of Prisons (BOP) Western Regional officer several times without success, noting that “*this is my third request to make a legal call non-collect.*” (Name redacted, June 28, 2015, grievance form missing.)

Even when non-collect legal calls are allowed, individuals are sometimes not informed of their right to make unmonitored calls to their attorneys. **The ICE ODO 2016 audit found that the procedures to make unmonitored calls to counsel were not consistently posted near all telephones in English and Spanish.** Even when individuals are trying to make collect calls, they are not always allowed by the guards to do so, and the hours for telephone access are not posted consistently near all telephones.

The ODO 2016 audit found that of six housing units, only one unit had the hours for telephone access posted.

The telephone services provided also do not comply with the American Disabilities Act, as telephone services to assist people with hearing disabilities do not work. One deaf woman in ICE detention lamented not being able to speak with family members for 6 weeks because the teletypewriter (TTY) phone was not working (July 6, 2015). Furthermore, this woman, who seemingly had limited English proficiency, might find communication via a TTY phone ineffective in any case, which almost always only operate in English. Videophone services, which would allow deaf individuals to use sign language, are not provided. Many individuals submitted grievances stating that they were not able to use the telephone due to the voice recognition service not working either.

Many people state they are not able to connect successfully but are still charged. Phones stop functioning entirely or will cut off repeatedly and are not repaired. Despite this common occurrence, the ODO 2016 audit found that no designated staff member inspects the detainee telephones daily to promptly report out-of-order phones for service and/or repair (p. 11-12).

#### 12. Programming

According to the Santa Ana City Jail website, “Santa Ana Jail is a leader in inmate programming.” However, multiple complaints shed light on the unreliable access to the jail’s programs, which negatively impacts individuals’ wellbeing and legal cases. Many individuals either would like to or are ordered to participate in rehabilitation programs such as anger management, parenting, and substance abuse prevention. However, even when the facility is fully operational and not in lockdown, people struggle to have access to programming. For example, one individual in the facility who was required to participate in court-mandated programs stated the following: “*I made the facility supervisor aware of [my need to attend court mandated programs] and was told I would be provided with these programs via home study, I have not. Instructor [name redacted] seen me at my door and told me he would return, he has not. I ask to be allowed to participate in these programs*” (Name redacted, April 30, 2017). There are often gaps or delays in programming, with no explanation, as one individual wrote: “*I’ve been waiting for seven months to take [the] GED test. I was told it would start in January and I’ve asked recently and still no word on when it is going to start*” (Name redacted, January 19, 2017). Additionally, even when programs are in place, people are not able to take advantage of all the programs they would like to attend that would help them gain valuable skills. One individual wrote, “*I put about five for school and they only add me in the ESL class. No GED, no music, no computer and no breaking*

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<sup>46</sup> “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” U.S. Department of Homeland Security, Office of Inspector General, <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> on January 12, 2018

barriers” (Name redacted, February 9, 2016). Another common complaint raised was people being prevented from participating in programs as punishment.

### 13. Visitation

People jailed at SACJ greatly value their access to visitation, so that they can spend time with their families, loved ones and/or legal counsel. However, several grievances voiced concerns regarding deficiencies in the facility’s visitation policies that lead to limited or no access to visitation. One common occurrence is when the sudden administrative transfer of individuals from one module to another results in changes in visitation schedules. Because these transfers are done without notice to families or other visitors, individuals are unable to see their visitors when they come during their previously scheduled hours: *“I have not been able to let my family know [about the different visiting hours]”* (Name redacted, April 11, 2015). Another individual similarly noted the facility staff’s disregard for how the module change affected his visitation hours: *“...this whole move has gone from bad to worse...my family comes from far to see me...for them to pay for someone else’s bad decisions or poor management is not fair. My main concern is that this move was done and planned ahead of time.”* (Name redacted, March 1, 2015).

Other visitation issues beyond module changes were reported, such as accessibility issues and long waiting times. In 2014, people hoping to be visited by elderly or handicapped loved ones were not able to receive them for at least two months due to elevator malfunctions. As someone recounted, *“...please note the dates of the elevator malfunction or give me further notes. My family keeps coming and [not being able to] visit. This is creating hardships on my family ties. Thank you”* (Name redacted, November 12, 2014). The officer handling the complaint confirmed the elevator issues and said that *“[the facility] has had irregular elevator problems throughout the year and more recently. We are working towards a long term solution”* (Name redacted, November 12, 2014). There were also complaints of visitors having to wait up to four hours despite having visitation spaces available: *“On 2 separate visits my family was turned away...after they drove for hours [they were told] that I was in class, which I don’t take any...today they were told at 4 [pm] that [the] 8 was the second [visitation slot] available”* (Name redacted, February 20, 2017).

### 14. Lack of Communication with Bureau of Prisons Staff

Due to the lack of access to a BOP counselor or representative, and the apparent lack of communication between jail staff and the BOP, individuals often do not know their BOP case statuses and have no way of

finding out information. Many try to contact the BOP without any results. Even when they know that they have received release orders from a judge, they are not provided with their release date and some individuals state that they are being held past their release date. In a clear disregard for due process, the jail does not provide specific BOP forms that would allow people to file appeals in their BOP cases. One individual noted that this was essentially denying her the right to appeal.

### 15. Hygienic Conditions

The SACJ is responsible for providing a clean, safe and healthy environment so people can live with dignity and without any threats to their health. To this effect, the facility should provide access to potable water, unsoiled and necessary clothing, hygiene products and be clean at all times. Nevertheless, people jailed at SACJ reported lack of access to showers, not having access to water for days at a time, insufficient hygiene supplies, receipt of soiled uniforms, laundry machines malfunctioning and broken hair clippers and razors. Also, the Health Inspection Report that evaluated the Health and Safety Code Section 101045 in 2016 found that food items were stored on the floor and utensils and kitchen premises were not adequately clean.

The deficient plumbing conditions of the SACJ were pointed out by the 2016 Health Inspection Report, and again by Vanir in its initial jail reuse report update on August 1, 2017. During CIVIC and Torti Gallas’ tour of the Santa Ana City Jail on September 11, 2017, we could see a greenish yellow substance resembling mildew seeping from the ceiling of the 4th floor units. When asked what the substance was, Jail Administrator Holland explained that it had to do with a plumbing issue that Vanir had recently pointed out to the City.

Despite the fact that the City was on notice about the deficient plumbing since at least 2016, the plumbing problem affected and continues to affect people’s quality of life in terms of access to clean water and ability to maintain a clean environment. After some inmates were moved to a different module, people complained that *“this [module is] dirty, unsanitary and unlivable...We’re going on four days with no running water”* (Name redacted, March 11, 2015). Another person also said that *“I have not had running water in my cell for days”* (Name redacted, March 11, 2015). The bad plumbing conditions also affected the ability to maintain clean clothes, as someone wrote in a grievance that *“the color laundry comes with a bad smell and dirty. The white laundry comes yellow”* (Name redacted, February 27, 2017). The aforementioned CIVIC inspection also found that showers did not have the appropriate pressure or temperature control and the walls and ceilings in the shower area and kitchen were deteriorating.

While at the SACJ, people should have the right to maintain a clean appearance. However, people often had to submit several complaints in order to have access to working hair clippers and razors. Per an individual jailed at SACJ: *“Can you please provide us with a set of new hair clippers, the ones we have now are old and pull when using.”* (Name redacted, May 21, 2015). Five months later another person complained about the same issue, stating: *“...we are in dire need of hair clippers again. Those that were purchased last time did not last because they were cheaply made. We need some good ones. A standard valuable brand”* (October 10, 2015).

#### 16. Property

According to the Inmate/Detainee handbook, detainees have the right to protection from property damage (p. 1). However, guards frequently handle individuals’ personal property with carelessness during property/cell searches (called “shakedowns”) and transfers, resulting in the loss or damage of clothing items, glasses, hygiene products, and books: *“Incompetence and oppression... Careless handlers of my personal property.”* (Name redacted, February 20, 2015.)

Guards read and censor the reading and written materials that individuals have in their cells. One shift supervisor wrote in a condescending manner to an individual from whom he took such materials: *“You are encouraged to express your feelings in healthy ways. Writing and keeping materials that reasonably infer violence towards staff or others is not productive.”* (February 20, 2015.)

Individuals are not told what to do about property that is lost or damaged in the facility, or even given the security to prevent such loss or damage in the first place. According to the ODO audit in 2016, the facility handbook fails to inform people “what the procedure is for claiming property upon release, or identify the procedure for filing a claim regarding lost/damaged property.” Another concerning discovery from their inspection found that the bins in which people are permitted to store personal property within the housing unit are not securable.

#### 17. Religious Freedom

All individuals incarcerated at the SACJ have the right to practice their religion. Yet, grievances reported violations to religious freedom through delays or denial of kosher meal requests, insufficient nutritional value for religiously mandated meals, denial and confiscation of items needed to practice religious acts and not allowing people to practice their religion while on lockdown.

Mainly, people were concerned with the long periods of time they had to wait in order to get their religiously mandated diets. For example, an individual wrote *“this is*

*my second request within a week to start getting kosher meal and a Quran. This request is being made for religious reasons”* (Name redacted, January 5, 2017). The supervisor’s response was *“provided January 10, 2017”* (Name redacted, January 10, 2017). Yet, on January 12, 2017 the same individual submitted another grievance saying that his kosher diet was not yet provided. Moreover, this individual was effectively forced to decide between practicing his religion and eating for at least seven days.

At the SACJ, people’s religious freedoms were also violated by not allowing religious items at the facility. A man recounts such an incident: *“I was asked yesterday at the second shift around 7:30 pm by [an] officer to remove my yamaka [cloth cap required by the Jewish religion] and hand it to her. I am a person of Orthodox faith and have to keep my religious item on at all times [and] during prayers”* (Name redacted, January 12, 2014). Another person also complained about the violation to his right to wear religious items, writing that *“...I was denied my [first] amendment right to exercise and practice my religion. I was denied my right to receive my Eleekie necklaces, or my Santeria Cowrie shells...inmates are allowed to receive items including the Santeria ceremonial [objects]”* (Name redacted, September 29, 2016).

#### 18. Worker Issues

One of the most exploitative aspects of detention facilities is that individuals are desperate to work for low or no wages in order to escape the monotony of confinement. As a result, not being allowed to work can be a source of severe distress for people. As one woman pleaded, *“I’ve been relieved from my work crew for no reason. I want this problem handled. Please, I need this job. This is what keeps me going mentally. I have no money like that so the extra meals is very helpful.”* (Name redacted, February 11, 2017.) The staff responded to her that they *“have the discretion to use or not to use eligible workers. I understand having this duty is beneficial, but other inmates also need an opportunity to work.... It is a privilege.”*

Meanwhile, many of those who are “privileged” enough to work expressed concerns about being exposed to dangerous chemicals while handling the cleaning supplies. **The facility does not take the necessary steps to ensure the safety of the workers tasked with maintenance.** According to the 2013 ODO audit, cleaning supplies that workers may handle include industrial strength detergent, fabric softener, bleach, floor stripper, wax, insecticide, glass cleaner, degreaser, and stainless steel cleaner. The ODO audit report continued to observe that “running inventories of all hazardous substances are not

maintained in the laundry area, maintenance department, or housing units. Material Safety Data Sheets (MSDS) for hazardous substances stored and used in the laundry area and housing units were not present. It is critical that MSDS are available in all areas where hazardous substances are stored and used, because of potential life-safety issues” (p. 9). This finding is even more disturbing once you consider that the medical care that would need to be provided in the case of such “life-safety issues” would likely be inadequate.

## **b. Jails in California – the Context**

This section provides an overview of California laws that regulate the maintenance of facilities such as the Santa Ana City Jail. The section also provides an overview of the California laws that regulate conditions of confinement in facilities such as the Santa Ana City Jail.

### **1. Jail Buildings**

California law requires any city operating a local detention facility to abide by state fire safety standards, building standards, and the health and safety code. Court holding facilities built in accordance with standards at the time of construction are considered in compliance with California regulations unless the condition of the structure is determined by the appropriate authority to be dangerous to life, health, or welfare of minors.

Under California law, jails must also contain a sufficient number of rooms to allow all persons belonging to a certain specified class of prisoners to be confined separately from persons belonging to any other classes. The specified classes of prisoners include: persons committed on criminal process and detained for trial; persons already convicted of a crime and held under sentence; and persons detained as witnesses or held under civil process or under an order imposing punishment for a contempt. Court holding facilities must also be designed to provide for segregation of minors in accordance with an established classification plan.

Federal law directs facilities to consider the effect of the design, acquisition, expansion, or modification upon a local agency's ability to protect inmates from sexual abuse when designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, local agencies shall consider how such technology may enhance the ability to protect inmates from sexual abuse.

## **2. Facility Conditions**

### **2.1 Solitary Confinement/Administrative Segregation**

California law requires individuals detained for trial to be segregated from individuals already convicted of crimes and serving their sentences. Additionally, individuals who are held pending civil process under the sexually violent predator laws must be held in administrative segregation. Administrative segregation must consist of separate and secure housing but cannot involve any other deprivation of privileges than is necessary to obtain the objective of protecting inmates and staff.

The California Court of Appeals has held that inmates placed in administrative segregation are entitled to a hearing with advance written notice for initial placement except in case of a genuine emergency, and an opportunity to present witnesses and documentary evidence. The United States Court of Appeals for the Ninth Circuit has also imposed Due Process limitations on segregated confinement. The Ninth Circuit has held that segregated confinement of pretrial detainees, where that confinement amounts to punishment, must be accompanied by a due process hearing.

The Ninth Circuit and Supreme Court have also imposed Eighth Amendment limits on living conditions within segregation. Whether segregation constitutes cruel and unusual punishment depends upon the living conditions of such segregation including the length of time such conditions are imposed.

Local jails, regardless of size, are also subject to the Prison Rape Elimination Act (“PREA”) of 2003, the first federal law dealing with the sexual assault of prisoners. Under PREA, the federal government has limited jails from denying youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision absent exigent circumstances.

### **2.2 Mail Delivery**

California law provides various protections for inmates’ mail correspondence. For example, section 2601 of the California Penal Code grants inmates the broad right to receive and read written materials accepted for distribution by the post office. However, authorities may exclude: (1) obscene publications or writings, and mail relating to how to obtain such matter; (2) matter tending to incite any form of violence; and (3) matter concerning gambling or a lottery. Authorities may open and inspect packages received by an inmate and establish reasonable restrictions on the number of newspapers, magazines, and books that an inmate may have in the cell or elsewhere at one time. Moreover, inmates’ rights to

receive mail are subject to regulations reasonably related to legitimate penological interests.

Under California law, prisoners are explicitly guaranteed the right to correspond confidentially with any member of the State Bar. Moreover, federal courts have interpreted interference with inmates' correspondence with counsel as constituting a violation of the Sixth Amendment right to counsel.

While the Supreme Court has recognized the right to mail correspondence, the Court has also upheld federal regulations authorizing prison officials to reject incoming publications found to be detrimental to prison security.

### 2.3 Medical Treatment

California law requires city jails with a daily average of more than 100 persons to have a duly licensed and practicing physician available at all times. In defining "licensed physicians" in the context of abortion, the Supreme Court has noted that nurses are not licensed physicians.

When a prisoner requires medical or surgical treatment necessitating hospitalization, a judge may order the prisoner removed to a hospital. The city or county bears the costs unless the prisoner is able to pay. California law provides for removal from jail and commitment of mentally ill prisoners, and for voluntary application by a prisoner for inpatient or outpatient mental health services.

Jails cannot deny inmates medical care because of a lack of funds in his or her personal account at the facility. A sheriff, chief or director of corrections, or chief of police is authorized to charge an inmate's personal account a \$3 fee for each inmate-initiated medical visit while confined in city jail. If the inmate has no money in his or her personal account, there shall be no charge for the medical visit.

When a prison is in lockdown, inmates in the general population housed in the general population are unable to leave their housing units to access medical care; instead, clinical staff must go from cell to cell to see the prisoner, or prisoners must be escorted by correctional officers to and from clinic areas. The Supreme Court has recognized overcrowding in a California jail as the primary cause of Eighth Amendment violations, including where overcrowding demands increased reliance on lockdowns and impedes the effective delivery of care because staff must either escort prisoners to medical facilities or bring medical staff to the prisoners.

California law also requires city jails to provide female-specific medical care. Female prisoners are also entitled

to continue using materials necessary for personal hygiene and prescribed birth control measures. They must be given information regarding family planning services, and offered those services at least 60 days prior to their scheduled release dates. A prisoner who is pregnant and desires an abortion, if eligible under the law, is entitled to obtain the abortion.

The Supreme Court has interpreted the prohibition against cruel and unusual punishment under the Eighth Amendment as requiring a duty to provide medical care. Federal courts have also held that the minimum constitutional level of medical care that must be provided prisoners is care that does not evince a deliberate indifference to their serious medical needs. When staff purposefully ignore or fail to respond to a prisoner's pain or possible medical needs, they act with deliberate indifference. Courts have defined serious medical needs as those sufficiently serious such that the failure to treat the prisoner's condition could have resulted in further significant injury or the unnecessary and wanton infliction of pain. For example, serious needs for medical treatment include an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.

Courts have noted that while not every request for medical attention must be heeded, where circumstances are clearly sufficient to indicate the need of medical attention for injury or illness, the denial of such aid constitutes a deprivation of due process. Moreover, constitutional rights are violated if prison officials fail to provide medical care to inmates that is reasonably designed to meet their routine and emergency health care needs.

In treating transgender inmates, a medical indifference claim will not fail where an inmate has received some treatment for gender dysphoria, as an inmate need not prove they are completely denied medical care in order to prevail.

In providing for inmates with dietary needs, jails cannot refuse special diets based on religious beliefs without violating the First Amendment. Moreover, inmates who are disabled because of severe dietary restrictions enjoy the protections of the American with Disabilities Act. Adequate food is a basic human need protected by the Eighth Amendment, and thus requires that prisoners receive food that is adequate to maintain health.

Within the PREA regulations, the only references to medical care involve ensuring that prisoners who have experienced sexual abuse have access to medical care. These protections include requiring facilities to offer medical and mental health evaluations and, as

appropriate, treatment to all inmates who have been victimized by sexual abuse. PREA also requires full and part-time medical and mental health care practitioners who work regularly in its facilities to have been trained in the following: (1) how to detect and assess signs of sexual abuse and sexual harassment; (2) how to preserve physical evidence of sexual abuse; (3) how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and (4) how and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

The PREA regulations leave the area of nonconsensual medical interventions virtually unregulated. It appears that, according to the regulations, nonconsensual medical interventions would consist of sexual abuse only where the healthcare provider “has the intent to abuse, arouse, or gratify sexual desire,” which would not cover most of the forms of sexually violent medical interventions.

#### 2.4 Strip Searches

California law expressly limits strip and body cavity searches based on widely varying law enforcement policies and practices for conducting strip or body cavity searches of detained persons throughout California. The purpose of section 4030 was to create statewide policies that respect arrestees’ rights.

Limits on strip searches under section 4030 of the California Penal Code apply only to pre-arraignment detainees arrested for infraction or misdemeanor offenses and to any minor detained prior to a detention hearing alleged to have committed a misdemeanor or infraction offense. Individuals arrested for any misdemeanor or infraction cannot be subject to a physical body cavity search except pursuant to a search warrant issued by a magistrate specifically authorizing the search.

Pre-arraignment detainees may not be subject to a strip search or visual body cavity search prior to placement in the general jail population unless an officer has determined there is reasonable suspicion, based on specific articulable facts, to believe the person is concealing weapons or contraband and that a strip search will result in their discovery. Such a search, however, cannot be conducted without the supervising officer’s prior written authorization, which includes the circumstances giving rise to the reasonable suspicion. Prior written authorizations must be placed in the agency’s records and made available on request to the person searched or his or her authorized representative.

Persons conducting or otherwise present or within sight of the inmate during a strip search or visual or physical body cavity search must be of the same sex as the person being searched, except for physicians or licensed medical personnel. Persons conducting a strip search or a visual

body cavity search cannot touch the breasts, buttocks, or genitalia of the person being searched. A physical body cavity search must also be conducted under sanitary conditions and must be conducted by a specified licensed medical practitioner. Additionally, jails are to avoid knowingly using a body scanner to scan a pregnant woman.

The Ninth Circuit has found strip searches to be unconstitutional when strip searches are excessive, vindictive, harassing, or unrelated to any legitimate penological interest. In 2012, however, the Supreme Court’s decision in *Florence v. Burlington* permitted agents of the government to conduct strip searches of misdemeanor arrestees without reasonable suspicion.

Federal regulations under PREA incorporate substantial limitations on cross-gender searches, limiting who can conduct a search. However, the PREA regulations leave virtually unregulated when, where, how, and whether a search may be conducted.

#### 2.5 Disciplinary Action

A detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. Thus, courts must distinguish conditions whose purpose is to effectuate detention and conditions which are punitively imposed. Institutional restrictions that infringe upon constitutional guarantees must be evaluated in the light of the central object of prison administration and safeguarding institutional security.

For a prison disciplinary hearing, the procedural due process safeguards include: (1) written notice of the charges, no less than 24 hours prior to the hearing; (2) a written statement by the fact finders as to the evidence relied on and reasons for the disciplinary action; and (3) a limited right to call witnesses and present documentary evidence when it would not be unduly hazardous to institutional safety or correctional goals to allow the inmate to do so. The California Supreme Court has extended these requirements to prison inmates placed in administrative segregation because of a pending disciplinary charge.

Where disciplinary action and loss of privileges are express manifestations of punitive intent—that is, action taken solely for retribution or deterrence—they are invalid. Inmates are subjected to cruel and unusual punishment where jails impose administrative segregation on inmates and deprive them of the use of the day room, chapel, exercise, and visitation rights based upon an assessment of their propensities instead of their offenses committed within the jail.

The Ninth Circuit has found a prison’s policy of not permitting any outdoor recreation to inmates in long-

term incarceration in continuous segregation as violating the Eighth Amendment. However, courts have also upheld the denial of exercise rights to inmates. For example, the Ninth Circuit upheld the denial of exercise rights to an inmate who had attacked prison guards in an exercise yard and vowed to attack them again. The Ninth Circuit has also upheld a month-long deprivation of outdoor exercise during a lockdown issued in response to a genuine emergency.

Restrictions placed on use of the day room—such as limiting administrative segregation detainees’ use of the room to one or two inmates at a time—have been found to be reasonably related to institutional security concerns instead of punitive intent. Moreover, where there is an emergency such as extreme physical violence within a jail, the Ninth Circuit has upheld substantial lockdown restrictions including a five-month lockdown where privileges were partially or wholly revoked, showers and exercise limited for around two or more months, and inmates were confined to their cells for 24 hours a day for two weeks without access to hot meals.

### c. Legal Liability for City

#### **The City of Santa Ana is at risk of losing millions defending and settling claims against its jail.**

The living conditions that individuals incarcerated at the SACJ are forced to endure are at best deficient. We believe many of the situations we have documented at the Santa Ana City Jail raise state and federal legal concerns. This analysis has highlighted some of the many issues that take place in this facility; yet, it is crucial to keep in mind that this is a very small sample of problems described in the hundreds of grievances submitted each year. People held at this facility were mainly concerned with access to adequate medical care, procedures and practices of classifying inmates, and excessive use of disciplinary actions. Other significant categories analyzed included personnel complaints and ineffective grievance system, problems related to commissary items, inadequate food services, lack of access to the law library, issues with receiving and sending mail—including legal mail—unfair treatment by the staff, excessive lockdowns, problems related to telephone services, inability to participate in programs, no visiting access, ineffective communication with the Bureau of Prisons Staff, serious hygiene deficiencies, unfair seizure of property, violations to religious freedom and work related issues.

The complaints, along with the inspections made by different government agencies, underscored the substandard environment at the facility. Even more, a significant amount of grievances are concerned with life threatening situations, especially when dealing with medical care deficiencies. Many grievance forms reference inadequate or absent medical treatment,

disregard of severe or potentially severe symptoms and mistreatment by the medical staff.

Dozens of cases involving absent or negligent medical treatment has resulted in large settlements or jury awards against cities. For example, a jury awarded \$3 million where untreated asthma resulted in an inmate’s death and, after trial, the city agreed to pay the estate over \$3 million. *Brummett and Sisson on Behalf of Sisson, Estate of v. Cty. of San Diego*, JVR No. 1504220025, 2014 WL 8664199 (S.D. Cal. Nov. 10, 2014) (verdict and settlement summary).

In addition to finding an unreasonable use of force against a deceased inmate, a jury also found that defendants were negligent and denied the decedent medical care in violation of the inmate’s constitutional rights where an arrestee died in police custody following an alleged beating. The jury rendered a verdict of \$3,215,000. *Confidential v. City of Los Angeles*, No. 09CV00842(PLA), 2012 WL 3541937 (C.D. Cal. Apr. 25, 2012) (verdict and settlement summary).

A decedent’s parents, brother, and daughter sued a county and several officers and nurses and received a \$3 million settlement. A day before the his death, he informed a jail nurse he was experiencing anxiety. The decedent was subsequently placed in a restraint chair, handcuffed and shackled, tased, and restrained with a spit mask over his face. The autopsy revealed that the cause of death was anoxic encephalopathy due to cardiopulmonary arrest, asphyxiation, and chest compression during the restraint procedure. *Estate of David Cross v. Santa Cruz County*, No. 5:06-cv-04891-RS, 2008 WL 3166807 (N.D. Cal. Aug. 1, 2008) (verdict and settlement summary).

The unfair treatment of individuals at the Santa Ana City Jail is not limited to medical staff, as people, especially members of the LGBTQ community, reported discrimination and being targeted by staff. This unfair treatment may be the result of a lack of proper protocols or adherence to protocols when classifying individuals, including when putting them into segregation. The City of New York settled a lawsuit in August 2017 against 470 former inmates over solitary confinement, costing the City \$5 million. And here in California, an Ontario judge awarded two inmates \$85,000 for excessive lockdowns caused by staff shortages. The judge explained that these lockdowns resembled segregation or solitary confinement. Excessive lockdowns have been a consistent and documented problem at the Santa Ana City Jail, especially in recent years. This could lead to a class-action lawsuit against the City.

Strip searches continue to be an issue at the Santa Ana City Jail. In Illinois, two separate lawsuits resulted in \$60 million settlements under 42 U.S.C. §1983. In one case,

former detainees were subjected to humiliating mass strip searches while being verbally abused by guards; CIVIC and other organizations have documented a similar incident that occurred at the Santa Ana City Jail. The other lawsuit concerned strip searches that were occurring after prisoners were returned to the jail from court before being released.

In determining its jail reuse strategy, the City should take into consideration the potential for hefty settlements resulting out of these concerning conditions at the Santa Ana City Jail.

## V. City & Community-Based Partnerships on Alternatives to Immigration Detention

Immigration detention is a civil form of confinement. The City of Santa Ana no longer operates an immigration detention facility at the Santa Ana City Jail. However, Orange County operates two immigration detention facilities, the Theo Lacy Facility and James Musick Facility. The City of Santa Ana, now a sanctuary city, has an opportunity to lead the nation in community-based alternatives to immigration detention (ATD).

Community-based ATD programs are run by community groups or nonprofits in a similar manner to the federal Refugee Resettlement Program. Instead of being detained, immigrants are allowed to remain living with family. If they are recent asylum seekers without family, then they are housed with volunteers or in group homes while the courts process their immigration cases.

Community-based programs demonstrate that people nationwide can build effective and humane pathways away from our punitive immigration detention system.

**Currently, there are 20 community-based ATDs in operation across the United States**, according to CIVIC's own survey. Internationally, there are over 250 examples of alternatives in 60 countries, according to the International Detention Coalition.<sup>47</sup>

CIVIC views community-based ATD programs as similar to the ad hoc Refugee Task Force, which was made up of ethnic and religious groups in the 1970s and gave rise to today's robust federal Refugee Resettlement Program. In other words, community-initiated programs are the precursor to a system where detention is replaced by federally funded, community-based alternatives.

We believe the City of Santa Ana has a unique opportunity to work with community leaders to run a community-based alternative to detention program. This could set a precedent at the county, national, and even international levels for how municipalities can help to eliminate immigration detention. It also would be in line with what the majority of Californians believe is best for their communities. Independent poll results show that 68% of Californians favor community alternatives over incarceration.<sup>48</sup>

As explained below, CIVIC believes that all people currently in immigration detention are eligible for a community-based alternative to immigration detention

that would not require the payment of a bond. However, under the current political climate, the only viable way to get someone released from immigration detention is through payment of an immigration bond. Therefore, in this section, CIVIC provides an overview of the problem, legal analysis of the viability of community-based alternatives to detention, domestic and international examples of community-based alternatives to detention, and a clear path forward for the city that involves the creation of the first city-supported revolving bond fund.

### a. **The Problem in Orange County**

Although Santa Ana ended its contract with ICE, residents of Santa Ana can still be arrested by ICE and detained in over 200 immigration detention facilities across the country, including two immigration detention facilities that remain in Orange County—Theo Lacy Facility and James Musick Jail.

From June 2016 to May 2017, CIVIC conducted in-custody surveys with people in immigration detention at these two facilities to determine language abilities, national origin, age range, legal representation, and eligibility to stay in the United States. The surveys were conducted in person, over the phone, or via mail. We conducted these surveys with 261 people in immigration detention in Orange County. Approximately 55% of the participants spoke English, often in addition to another language. Other languages spoken included Spanish, French, Arabic, Chinese, Tagalog, Hausa, Portuguese, Punjabi, Wolof, and Igbo. Participants were originally from 18 different countries with the largest representation from Mexico, Ghana, and Nigeria. Most people were under 30 years old (40%) with the oldest person being 78 years old.

**Of the 261 participants CIVIC surveyed, only 8.9% were represented by an attorney, far below the national average of 16%.** Over 80% of the participants had a possible form of relief, including asylum parole or bond. The most common types of relief from removal were asylum/withholding/convention against torture (20.19%) and cancellation of removal (15.93%).

From August 2015 to April 2017, the ACLU of Southern California received and collected complaints and reports from incarcerated individuals in the Orange County jail system through 120 post-release surveys as well as multiple jail visits with, and correspondence from, incarcerated individuals. They found that the frequency and normalcy of issues identified—ranging from excessive use of force and verbal abuse to inadequate

<sup>47</sup> <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

<sup>48</sup> The Field Poll, Field Research Corporation, available at <https://www.politico.com/states/f/?id=00000157-b071-dd2a-a37f-b8f14a380001>.

medical treatment and deprivation of due process—strongly suggest subpar conditions and potential violations within the Orange County jail system.<sup>49</sup>

Because immigration is a civil form of confinement, there is no time limit for how long someone can be held in immigration detention. And now under the Trump administration, not only are more people being detained, but also fewer people are being released. Data from the Transactional Records Access Clearinghouse (TRAC) at Syracuse University shows that 61% of immigrants given a Notice to Appear, or NTA, under Trump have been detained, compared to 27% under Obama.<sup>50</sup> The Trump administration’s January 25th Executive Order, “Border Security and Immigration Enforcement Improvements” and the subsequent Implementation Memo by the Department of Homeland Security, released February 20, 2017, also have had a chilling effect on the use of parole and bond.<sup>51</sup>

For those who are fortunate to be granted a bond by an immigration judge, it is often impossible for them to pay the bond. The Department of Homeland Security does not keep statistics on the number of people who languish for years in U.S. immigration detention simply because they are poor and cannot pay an immigration bond, which may be as low as \$1,500. It is widely recognized, though, that thousands of immigrants have been granted bonds and cannot pay them in Orange County and nationwide.

Unlike in the criminal justice context, most immigrants are required to pay their entire immigration bond rather than a portion that is negotiated through bail bondsmen. Traditionally, there have been very few bail bondsmen willing to operate in the immigration detention context because the Department of Homeland Security requires the entire bond to be paid in cash. Similarly, immigration bonds typically take at least five years to be returned to the obligor, since there is such a backlog in immigration cases. This reality has given rise to exploitative companies, such as Libre by Nexus, that strap an ankle monitor on the immigrant, charging them \$420 a month until their case is closed plus 20% of the original bond each year in what is called a “yearly renewal premium” for the life of the loan.

**b. Legal Analysis of Viability of Community-Based ATDs**

This section provides legal analysis of immigration detention statutes, concluding that **all detained immigrants should be eligible for release**

<sup>49</sup> <https://www.aclusocal.org/sites/default/files/ocjails2017-aclu-socal-report.pdf>

<sup>50</sup> <http://trac.syr.edu/immigration/reports/466/>

<sup>51</sup> <http://www.endisolation.org/parole-denials>

**into a community-based alternative to immigration detention.** A noncitizen can be held in civil immigration detention under various federal statutes. Under most statutes, ICE and immigration judges have the legal ability to release a person from immigration detention on parole, bond, or their own recognizance so that they can fight their immigration case from the outside.

Only one statute provides for mandatory custody. Section 1226(c) provides that the Attorney General “shall take into custody” aliens who are either “inadmissible” or “deportable” “by reason of having committed” certain offenses. 8 U.S.C. § 1226(c). A review of the case law and legislative history of §1226(c) does not foreclose on the idea that “in custody” includes the use of community-initiated ATD programs. The term “in custody” is open to a broad interpretation, which can be supported by policy arguments for these programs. Additionally, the INS’s involvement in the Vera Institute Appearance Assistance Program is promising precedent that a similar community-initiated ATD program would be acceptable under the statute. Therefore, all noncitizens held in immigration detention in Orange County—and across the country—should be eligible for release on a community-based ATD.

**i. Overview of 8 U.S.C.A. § 1226(c) – Detention of Criminal Aliens”<sup>52</sup>**

The U.S. immigration detention system is a relatively recent phenomenon. Prior to the 1980s, there were only approximately 30 people in detention each day. The 1980s gave rise to two major prison corporations that lobbied the government for laws that expanded detention and other forms of incarceration. In fact, various federal and state laws were passed that resulted in a new prison built every 15 days throughout the 1990s, such as the Santa Ana City Jail. In 1996, President Clinton signed two laws, which doubled the number of people in immigration detention from 8,500 each day in 1996 to 16,000 in 1998. Today, the detention population has increased nearly fivefold to over 40,000 asylum seekers and other migrants held in over 200 jails and private prisons each day.

Congress passed the 1996 laws out of misplaced fear, following the first World Trade Center attack and the Oklahoma City bombing. On April 24, 1996, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) adding to the Immigration and Nationality Act (INA) a provision requiring automatic mandatory detention without bond for any “alien” convicted of an “aggravated felony” and for certain other non-citizens with criminal convictions. This provision was replaced on September 30, 1996, with the Illegal

Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended the INA to include 8 U.S.C.A. § 1226(c), a mandatory pre-deportation detention provision directed at noncitizens with criminal convictions. Congress intended it to serve two main purposes: to protect the community at large from further criminal acts by these noncitizens and to ensure deportation (“removal”) by preventing a noncitizen from fleeing.

The 1226(c) provision is entitled “Detention of Criminal Aliens,” and it directs the Attorney General to hold in immigration detention without the right to a bail bond hearing “deportable” “criminal aliens” following release from their original criminal sentences, without regard to whether they were released on parole, supervised release, or probation (i.e. when released from physical criminal custody) and without regard to whether they could be arrested or imprisoned again for the same offense, prior to decisions on their removal from the United States. The statute does not provide a time period for review of detention or for conducting a deportation hearing, nor does it allow for the exercise of discretion in determining whether continued detention is reasonable.

Section 1226(c) provides for detention "when the alien is released" from criminal custody. The courts construing this language have concluded that the statute is applicable any time after release from incarceration, and does not require that a noncitizen must be detained by the ICE immediately upon release from prison. Congress anticipated that the ICE, and previously the INS, would not have sufficient detention space and personnel to enforce the new law immediately, so it provided the Attorney General with a grace period during which mandatory detention of “criminal aliens” would not be the general rule. Thus, the IIRIRA contained "transition period custody rules" (TPCRs) where lawfully admitted noncitizens who had been convicted of aggravated felonies could be released from detention during the pendency of their removal proceedings under certain circumstances. These TPCR provided immigration bond hearings to noncitizens with criminal convictions, at which they could demonstrate that they had entered legally and did not present a substantial risk of flight or threat to persons or property. These transition rules expired on October 9, 1998, and §1226(c) became effective on October 10, 1998, requiring mandatory detention without bond pending final removal orders for both lawfully and unlawfully admitted noncitizens with criminal convictions requiring deportation who were released after that date.

- ii. No case law has excluded the use of community-based ATD programs as a form of custody and the legislative history indicates that the term “custody” is broader than “detention.”

No authority exists that has definitively determined that “in custody,” as used in §1226(c), excludes or includes the use of community-based ATD programs. Only one immigration case has interpreted the word “custody”; in 2009, the Board of Immigration Appeals was tasked with interpreting the term “custody” as used in 8 C.F.R. § 1236.1(d)(1) and INA §236(a). *Matter of Aguilar-Aquino*, 24 I. & N. Dec. 747 (BIA 2009). Section 1226(a) allows for detention of an arrested noncitizen, but does not require it, whereas 8 C.F.R. § 1236.1(d)(1), allows an immigration judge to grant an amelioration of the terms of release within seven days of a noncitizens release from custody. The BIA determined that in this context, “custody” was the “actual physical restraint or confinement within a given space.” *Id.* at 747.

In reaching this decision, the BIA sought to construe the regulation in a way that would effectuate the intent of the enacting body. It first looked to the plain and ordinary meaning of the word “custody” and noted the broad definitions in *Black’s Law Dictionary* and *The Random House Dictionary of English*. From these definitions the BIA determined that “custody” could be interpreted in different ways and looked to the legislative history behind the regulation and statute. Comparing Congress’s language in the former § 242(a)(1) and the revised language used in § 1226(a), the BIA noted that Congress substituted the word “detain” where “custody” has previously been used. Therefore, the BIA interpreted this change as Congress’s intent that “custody” means the actual physical restraint or confinement in a given place. *Id.* at 752.

There have been no other decisions from the BIA defining the term “custody” or extending its decision in *Aguilar-Aquino* to other parts of §1226, such as the mandatory custody provision of § 1226(c). Therefore, there is a strong argument that the BIA’s decision in *Aguilar-Aquino* was limited to §1226(a) and 8 C.F.R. § 1236.1(d)(1). Many law review articles have adopted this argument, while at least one has examined the legislative history behind § 1226(c): Katie Mullins, *Mandatory Detention? Why the Colloquial Name for §236(c) is a Misnomer and How Alternatives to Detention Programs Can Fulfill its Custody Requirements*, 72 Nat’l Law Guild Rev. 34 (2015). The article argues that Congress did not intend for “custody” to require physical confinement. The first version of the bill when presented to the House of Representatives made no reference to the words “detention” or “detain.” Furthermore, when proposed to the Senate, the bill used the term “custody” and not detain. In fact, the title “Detention of Criminal Aliens” is the first mention of the word “detain” and was obtained when the bill was copied and put into the appropriations bill. The accompanying report by the House is silent on the addition of “detain” to the title. The article also noted that the Supreme Court has been reluctant to give the titles of statutes controlling authority

over the statute's interpretation. Furthermore, Congress revised §1226(c) and §1226(a) concurrently but only affirmatively changed the word "custody" to "detain" in the latter.

While case law and the BIA's decision in *Aguilar-Aquino* indicate an inclination toward a narrow interpretation of the term, there has yet to be a decision that establishes "in custody" to mean physical detention for §1226(c). Additionally, when applying the logic of the BIA's decision in *Aguilar-Aquino* it would suggest that the legislative history of the statute supports an argument that "custody" does not exclusively mean "detain." Furthermore, we believe the Vera Institute's Appearance Assistance Program is promising precedent for a community-initiated ATD since it was contracted by INS and used similar monitoring methods as proposed by CIVIC.

iii. Vera Institute – Appearance Assistance Program

In 1996, the Immigration & Naturalization Service (INS) contracted with the Vera Institute for Justice to run a three-year demonstration program in New York testing the alternative-to-detention program strategy. The reasoning behind the program was that many of those arrested for immigration violations were routinely released, and never re-detained, when detention space was not available while others were detained from apprehension until their removal proceedings were complete.

In order to participate in the program, individuals needed to meet criteria demonstrating a lack of threat to public safety, strong community ties and satisfactory compliance with prior reporting requirements. Participants also had to live in the New York metropolitan area. If a detained noncitizen met this criteria, the Appearance Assistance Program (AAP) would recommend release from custody, without bond, conditioned upon complying with the program's requirements. INS had discretion to approve or deny the recommendation.

AAP tested two levels of supervision: intensive and regular. The intensive track was designed for those the INS would otherwise have detained and was in practice similar to the supervision provided in U.S. criminal cases by pretrial service agencies. It included mandatory personal and telephonic reporting, home visits (sometimes at pre-arranged times, others not), and consistent monitoring. The regular track's only required attendance at an orientation session, a verified address, and a stated commitment to comply with the requirements of the law. Notably, neither track involved ankle monitoring.

Additionally, there were three groups of participants. Members of the first group were detained at JFK and were primarily asylum seekers. Members of the second group were "criminal aliens" who had resided in the United States for decades and had U.S. citizen relatives. Members of the third were undocumented individuals arrested at their workplaces.

INS's involvement in the AAP provides good evidence that similar community programs are not foreclosed by Section 1226(c). However, given the date of this program (1996), it likely took place under the TPCRs discussed above, which gave INS more flexibility in enforcing the custody requirement of 1226(c). Despite the program year, the appearance rate for program makes a strong case for why people held even under 1226(c) should be eligible for release on an alternative to immigration detention:

- 93% of asylum seekers appeared for their hearings
- 94% of people with past criminal convictions showed up for their hearings

iv. Additional federal support for alternatives to detention

Since the Vera Institute for Justice's pilot program, the federal government has recognized the viability of community-based ATDs to some extent. For example, in 2013, Lutheran Immigration and Refugee Services (LIRS) and U.S. Conference of Catholic Bishops (USCCB) both signed Memorandum of Understanding with ICE to administer self-funded alternatives to detention pilot programs. LIRS administered its program in the New York/Newark area and in San Antonio. USCCB administered its program in Baton Rouge and Boston. The pilot programs were small in size, working with approximately 50 to 75 individuals total.

The fact that the federal government has acknowledged community-based ATD programs became a driving force behind the Gang of Eight's decision to include a provision in the 2013 immigration reform bill that passed the Senate to clarify that all immigrants, including those who fall under mandatory immigration detention, can be released on alternatives to immigration detention.

In addition, the Democratic Party in its 2016 platform pledged the following: "We will fight to end federal, state, and municipal contracts with for-profit private prisons and private detention centers. In order to end family detention, we will ensure *humane alternatives* for those who pose no public threat. We recognize that there are vulnerable communities within our immigration system who are often seeking refuge from persecution abroad, such as LGBT families, for whom detention can be unacceptably dangerous."

**The problem has been that each time the federal government has partnered with a nonprofit on a true community-based alternative to detention program, the private prison industry has swooped in and changed the game.** For example, after the LIRS/USCCB pilot, ICE issued an RFP, awarding the \$11 million program contract to GEO Care, a subsidiary of GEO Group, to provide social, medical, and legal services to 1,500 mothers and children who would otherwise be detained. Advocates had deep concerns about the viability of allowing a private prison company to run an ATD, which was terminated in June 2017.

Similarly after the Vera Institute’s pilot, ICE issued an RFP for an ATD. Vera applied, but Behavioral Interventions (BI), another subsidiary of GEO Group, won the contract. BI created the Intensive Supervision Appearance Program (ISAP). ISAP relies on the use of electronic ankle monitors, biometric voice recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants. GEO Group generates approximately \$47 million in annualized revenues from ISAP. We believe this is not a true alternative to detention, but rather, an alternative *form* of detention because it privileges surveillance over support.

c. **Examples of Community-Based Alternatives Today**

i. Domestic Examples

Currently, there are 20 community-based alternatives to immigration detention in operation across the United States in Washington, New Jersey, Texas, Minnesota, Arizona, Illinois, Maryland, Massachusetts, and California, according to CIVIC’s own survey.

Only one of these programs is supported by a local municipality: the **City of Austin, Texas**, provides a social service grant to Casa Marianella, a nonprofit that operates an emergency homeless shelter for immigrants, many of whom are released from immigration detention.<sup>53</sup> To get a person—usually an arriving asylum seeker—out of immigration detention, Casa Marianella will sponsor the person by providing them with an address and place to live once they are released from immigration detention. In addition, Casa Marianella offers three levels of English classes four nights a week, a legal clinic with three attorneys open on Thursday afternoons, and an Eastern medicine clinic seeing patients twice a week. Staff members, most of them

<sup>53</sup> <http://www.mystatesman.com/lifestyles/casa-marianella-fresh-start-for-asylum-seekers-austin-house/rdLPDh4fSDT4maUb6Qy63H/>

AmeriCorps members doing a year of volunteer service, help the residents with anything they need, be it finding a doctor, a mode of transportation or a job.

In California, CIVIC has partnered with Centro Legal de la Raza and Interfaith Movement For Human Integrity to create the Post Release Accompaniment Program (PRAP). PRAP is a community-based alternative to detention model based in the San Francisco Bay Area, which provides immigrants who would otherwise be detained with the ability to fight their case from the outside. PRAP assists in helping immigrants obtain release on parole and provides them with housing, connections to attorneys, transportation to immigration court, and limited financial support. When a person does not have a place to live, a network of local volunteers open their homes to people so that they can be released and have a safe place to live. For those who have families, PRAP helps the person reunite with the family and then transfer their immigration case to the jurisdiction closest to their family. In the first year and a half of the program, PRAP secured the safe release of approximately 300 asylum seekers from the West County Detention Facility.

ii. International Examples

**There exist over 250 examples of alternatives in 60 countries**, according to the International Detention Coalition.<sup>54</sup> For example, **Poland** has passed legislation providing for a mandate to consider alternatives to immigration detention. Poland’s New Act on Foreigners of 2014 gives authority to the Polish Border Guard to require people to report at specified intervals to the Polish Border Guard, pay a security deposit, and direct people to stay in certain locations instead of being held in immigration detention. In **Sweden**, rather than being immediately detained which is the law in the United States, arriving asylum seekers are taken to an open reception center where they are registered and screened for health or other support needs. They are registered on arrival and issued with a plastic photo identity card. This is used by immigration to track the case and used by the asylum seeker to access services in the community. The asylum seeker is assigned a caseworker. In **China**, the Exit and Entry Law of 2013 excludes certain vulnerable migrants from detention, including minors under 16 years of age, persons with disabilities, persons with serious illnesses, pregnant women, and those over 70 years of age. Even in **Greece**, which has faced heavy criticism for falling short of international minimum standards, announced a policy change in 2015 for the immediate release and

<sup>54</sup> <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

referral to accommodation facilities of vulnerable groups.<sup>55</sup>

The **City of Madrid, Spain**, has taken a local approach to supporting community-based alternatives to immigration detention. Like the United States, municipalities in Spain do not have the authority to manage immigration policy, but within its authority, Madrid's City Council (*Ayuntamiento de Madrid*) voted to offer housing and food in protected homes in Madrid so that immigration judges have an alternative to deprivation of liberty. The City Council did a number of other things, including hiring and training social workers in Madrid so that they understand the effects of migration and detention, including on the families of people in detention. These social workers then work with the people being released from detention and work to get vulnerable people out of detention and housed in one of the City's homes.<sup>56</sup>

**d. Santa Ana's Opportunity**

As a self-proclaimed "sanctuary city," the City has a responsibility to live up to its stated values and protect all residents, regardless of national origin or immigration status. The City of Santa Ana could follow in the footsteps of cities such as Austin, Texas, and Madrid, Spain, by supporting community-based alternatives to detention.

Specifically, the City of Santa Ana could set up a Revolving Immigration Bond Fund supported by a public/private partnership that would ensure that no immigrant will remain imprisoned in immigration detention in Orange County for years or months simply because they are poor. Paired with case management and social services that the California legislature and the City of Santa Ana have already partially invested in, such as legal services, this Revolving Immigration Bond Fund could lead the nation in immigration detention reform.

The Fund would provide no-interest and non-exploitative loans that facilitate freedom from immigration detention. As immigration bonds are eventually returned to the obligor at the conclusion of the person's immigration case, the funds may be recycled in perpetuity. If the City also opts to reuse the city jail as a reentry center, people who are released from immigration detention through the

<sup>55</sup> Id. (Information in this paragraph was obtained from the International Detention Coalition.)

<sup>56</sup> See,

<http://www.madrid.es/portales/munimadrid/es/Inicio/Actualidad/Noticias/Madrid-exige-el-cierre-del-Centro-de-Internamiento-de-extranjeros-de-Aluche?vgnextfmt=default&vgnextoid=6431c4abc4c2d510VgnVCM2000001f4a900aRCRD&vgnextchannel=a12149fa40ec9410VgnVCM100000171f5a0aRCRD>

support of this Revolving Bond Fund would also have the support of the services provided by the reentry programming.

A Revolving Immigration Bond Fund would be especially beneficial to immigrants in Orange County who are under the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit held in *Rodriguez v. Robbins* that people in immigration detention—including those in mandatory detention—have the right to request a bond hearing after six months in detention. Therefore, everyone in California, including everyone detained in Orange County, is eligible for bond hearings.

In addition, in 2017, the ACLU litigated the case *Hernandez v. Sessions* asserting that the federal government sets unreasonably high immigration bonds without consideration of a person's ability to pay. A preliminary injunction issued by the Ninth Circuit requires the government to consider a person's ability to pay an immigration bond and alternative conditions of release. This decision means that in the state of California, immigration judges are likely to set bonds for lower amounts, such as the minimum amount of \$1,500. Even this minimum amount is too much to pay for many people in immigration detention. However, *Hernandez* guarantees that Santa Ana's Revolving Immigration Bond Fund will assist as many people to be released from immigration detention as possible, while loaning the least amount of money.

A Revolving Immigration Bond Fund also complements the statewide and national movement to reform the criminal bail system. The California Bail Reform Act of 2017 was a positive step in this direction as is Senators Kamala Harris and Rand Paul's National Bail Reform Bill, introduced in July 2017. While we hope the state of California will introduce and pass legislation that also reforms the immigration bond system, the City of Santa Ana can lead our state with the creation of the first Revolving Bond Fund.

