

# Systemic Failures

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Conditions in California  
State Prisons During the  
Covid-19 Pandemic



Prison  
Accountability  
Project

at UCLA School of Law

June 2023

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## Prison Accountability Project

The Prison Accountability Project is a student-led effort at the UCLA School of Law. It is associated with the Prison Law and Policy Program, managed by student volunteers, and guided by Law School faculty. The project will function as a multi-year effort to track abuses in the California Department of Corrections and Rehabilitation (CDCR).

## PrisonPandemic™

The data this report relies on was generously provided by PrisonPandemic™—a digital archive started by a group of faculty and students at UC Irvine that documents stories from people incarcerated in California prisons and jails and their loved ones.

## Acknowledgements

This report is based on stories collected by PrisonPandemic™ and coding conducted by the Prison Accountability Project. It was drafted by Kamilah Mims, Shireen Jalali-Yazdi, and Joseph Gaylin and supported extensively by Nora Browning, who assisted with data analysis and copy editing; Marisol Alvarez, who assisted with spot-checking and copy editing; and Jade Magaña, Viviana Gonzalez, and Mike Dickerson, who assisted with copy editing. This report was generously designed, pro bono, by Andrea Masterson, with support from Marc Schultz.

This report would not have been possible without the incredibly generous support of the PrisonPandemic™ team, including Keramet Reiter, Mariela Villalba Madrid, Joanne DeCaro, Gabe Rosales, and Alexis Rowland.

Special thanks are also due to Professor Sharon Dolovich, Professor Aaron Littman, and Dr. Ben Nyblade, whose sage advice informed nearly every aspect of this report. Additionally, the support of Grace Meng, Jamie Libonate, Professor Alicia Virani, and Professor Jasleen Kohli, as well as the support of the Prison Law and Policy Program, the Criminal Justice Program, Critical Race Studies Program, and the Judge Rand Schrader Pro Bono Program was invaluable in our effort to organize the infrastructure necessary to code hundreds of transcripts. We are also very grateful to the UCLA School of Law student volunteers who helped code over 500 transcripts.

Finally, yet critically, we want to thank the people who shared their experiences with PrisonPandemic™. Your decision to speak out about your experiences during the COVID-19 pandemic is the reason we had the information to write this report—your bravery, labor, and selflessness is deserving of so much more praise than we could ever express in these few sentences. Thank you.

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To inquire about PrisonPandemic™ please visit the project's website, which can be used to contact the PrisonPandemic™ team.

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## Executive Summary

Toward the end of March 2020, the COVID-19 pandemic began infecting people incarcerated in California state prisons.<sup>1</sup> Just one year later, over 45,000 infections were confirmed among California’s incarcerated population, with nearly 10,000 new cases a day.<sup>2</sup> Three years have now passed since the start of COVID-19. As of April 2023, the vast majority of people incarcerated in California state prisons—90,720 people to be precise<sup>3</sup>—have contracted COVID-19. Although high-level data tracking illustrates the extent to which COVID-19 overwhelmed California Department of Corrections and Rehabilitation (CDCR) facilities, oversight bodies have largely failed to document the harm incarcerated people experienced during the COVID-19 pandemic.

This report builds on the work of UC Irvine’s PrisonPandemic™, which documented stories from people incarcerated throughout California to shed light on their experiences during the COVID-19 pandemic.<sup>4</sup> Drawing on this work, the Prison Accountability Project<sup>5</sup> analyzed hundreds of transcripts of calls and letters from incarcerated people. Limiting our analysis to letters and calls received between April 2020 and April 2021, we tracked specific issues in CDCR facilities, focusing on four major themes: (1) Isolation and Programming, (2) Facility Protocol, (3) Medical Care, and (4) Interpersonal Violence and Death. The results were unsettling, to say the least.

The CDCR demonstrated indifference to the medical needs of incarcerated people. Respondents repeatedly described inadequate medical care and detailed the ways correctional staff failed to follow medical protocol. Incarcerated people who tested positive for COVID-19 were forced to quarantine in unsanitary, unheated, and

### Conditions by the Numbers

Out of 279 respondents:

115	people identified unsanitary conditions.
57	people indicated that staff did not appropriately wear masks.
14	people were denied medical care after contracting COVID-19.
22	people were subjected to verbal harassment from correctional officers.
21	people were not given basic hygiene supplies.
9	people witnessed a person die or saw a dead body.
8	people were subjected to physical violence from correctional officers.

Medical care was withheld until health conditions were so dire as to be life threatening.

unventilated cells that impeded their recovery. Moreover, medical care was often withheld entirely or administered only when a person’s medical condition was dire.



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Correctional staff intentionally disregarded policies designed to protect incarcerated people. Even after Governor Newsom issued an executive order halting transfers between prisons, respondents noted that inter-facility transfers continued, increasing the spread of COVID-19 across CDCR facilities. In addition, correctional staff refused to wear masks or intentionally wore their masks improperly around the incarcerated population.

CDCR facilities were unsanitary. Indeed, already deplorable conditions were made worse by the pandemic. Incarcerated people were isolated in cells with leaking roofs, mold, and vermin, and in cells that had not been cleaned in between use by infected residents. Incarcerated people did not even have access to basic hygiene or sanitation products.

Incarcerated people were also subjected to inhumane isolation due to the CDCR's COVID-19 response. In an effort to mitigate the spread of COVID-19, incarcerated people were routinely isolated in their cells for weeks or months at a time. Some people were locked in cells with up to seven other individuals—a practice that was profoundly detrimental to their well-being. Restrictions on in-person visitation, phone calls, programming, and recreation exacerbated the negative effects of isolation and catalyzed serious mental health issues, including depression, anxiety, and suicidal ideations. When coupled with decreased access to prosocial programming, these restrictions fostered tension and violence in CDCR facilities, including abuse at the hands of correctional staff and violence between incarcerated people.

The aforementioned conditions illustrate a pattern of inhumanity that may constitute cruel and unusual punishment. Grossly

inadequate medical care in conjunction with unsanitary conditions in CDCR facilities is not only morally repugnant but may also form the basis of a cognizable Eighth Amendment claim. Separately, correctional officers who subjected incarcerated people to unprovoked physical abuse may have engaged in excessive force under the Eighth Amendment. Such abuses may be ripe for legal redress.

**Mule Creek**

**Chuckawalla**

**Chino**

**Solano**

\*The four facilities particularly likely to be engaging in unconstitutional practices.

## 1. Introduction

The humanitarian crisis spurred by the pandemic in California's state prisons is profound: tens of thousands of people have contracted COVID-19 and hundreds of people have died while in CDCR custody.<sup>6</sup> As others have documented at length, prisons were—and continue to be—ill-equipped to handle the spread of an airborne respiratory disease.<sup>7</sup> Existing oversight bodies like the Office of the Inspector General<sup>8</sup> and the Office of the Ombudsman<sup>9</sup> have, by and large, failed to document the extent to which incarcerated people were harmed during the COVID-19 pandemic. Even reports drafted by non-governmental entities about prison conditions in California during the pandemic do not adequately capture the quotidian abuses to which incarcerated people were subjected.<sup>10</sup> In short, reporting that centers the experiences of incarcerated people is sorely needed.

Seeking to address this lack of information, this report illustrates the conditions of prison life between April 2020 and April 2021 by centering the perspectives of incarcerated people. After analyzing letters and calls provided by UC Irvine's PrisonPandemic™, we found that incarcerated people were subjected to extreme isolation, systemic medical neglect, and physical and verbal abuse—all of which went largely unreported by existing oversight bodies. Accordingly, this report provides an unmediated account of conditions in California's state prisons during the first year of the COVID-19 pandemic. The findings are critical for anyone interested in protecting the well-being of incarcerated people, as this report details patterns of unconstitutional abuse that have, to date, been largely unaddressed.

## 2. Methodology

### A. Transcript Collection

This report draws on letters and phone calls collected by PrisonPandemic™—a group of faculty and students at UC Irvine that is creating a digital archive of stories from people incarcerated in CDCR facilities.<sup>11</sup> PrisonPandemic™ solicited testimonials by sending letters to incarcerated people across the state.<sup>12</sup> In relevant part, the solicitation letters stated:

We would love to hear directly from you about your experiences. No story is too small. Some things you could share are: What has it been like to be inside during this time (either at the beginning of the pandemic, the middle, or now)? How have you felt about your safety inside? What has it been like to have reduced visitation from family and loved ones? How have you been coping with this crisis? How have the vaccinations been going at your facility?<sup>13</sup>

People who wished to share their story had the option to mail letters or call a hotline. Respondents who called the hotline were asked the following questions:<sup>14</sup>

- What facility are you currently housed at?
- What is the current Covid-19 situation at your facility?
- What is ok?
- What is troubling or concerning to you?

- How was Covid-19 handled at your facility at the beginning of the outbreak?
- Is it being handled differently now?
- If possible, could you please tell us month-by-month how the situation changed your facility?

If time permitted, callers were asked some additional prompts, including:

- What would make the situation at your facility better?
- How has the Covid-19 situation at your facility affected your loved ones?
- What has it been like for you to have reduced visitation and programming?
- How have you been coping with the crisis?
- What else do you want people to know about your experience?

The calls and letters were transcribed, compiled, and organized by the PrisonPandemic™ team in order to be processed as part of the PrisonPandemic™ digital archive. The PrisonPandemic™ team then shared hundreds of transcripts with the Prison Accountability Project to be used for coding.

## B. Transcript Coding

When used in this report, coding refers to the process of identifying trends within qualitative data. Specifically, we coded transcripts of letters and phone calls by reading the same transcript multiple times, while also looking for answers to a set of questions. These questions were developed through an iterative process that drew on our team members' previous experiences working to address prison conditions issues during the pandemic and the advice of UCLA Law faculty. The questions broadly fit into four themes: (1) Isolation and Programming, (2) Facility Protocol, (3) Medical Care, and (4) Interpersonal Violence and Death. Each coding question listed all possible answer choices with a precise explanation about the meaning of each answer and, where necessary, a definition of technical terms. For example, one of the Isolation and Programming questions reads as follows:

- After the pandemic began, was the person denied or restricted in their ability to access commissary?

The answer options were: (1) unclear (This person mentioned the denial or restriction of commissary, but it is not clear that THEY personally were denied commissary) (2) Yes (This person indicated that they WERE denied or restricted in their ability to access commissary.) (3) No (This person indicated that they WERE NOT denied or restricted in their ability to access commissary.) (4) Didn't Mention (This person did not mention whether they were denied access to commissary.)

As we conducted an initial, cursory review of the transcripts, we refined our coding questions and answers to better reflect the trends emerging in the qualitative data. In addition, we performed two intercoder reliability tests where five members of our team coded the same transcripts and compared results to identify any ambiguous or unproductive questions. This process helped ensure that our final set of 41 coding questions yielded precise and consistent results.<sup>15</sup> This, in turn, allowed us to scale our project and elicit the help of student volunteers.<sup>16</sup>

Volunteers followed particular steps during their coding process to ensure accuracy. The coding process involved four reading steps: (1) a global reading, (2) a thematic reading, (3) a topic reading, and (4) a final reading.

**(1) Global reading:** volunteers were instructed to read through all the coding questions, definitions, and answer options to prime their memory for the relevant trends they would need to identify in the transcripts. Next, volunteers were instructed to read through their assigned transcript and highlight or otherwise mark the transcript after identifying relevant themes based on their memory of the coding questions.

**(2) Thematic reading:** volunteers were then instructed to re-read the coding questions, definitions, and answer options for a theme (e.g., Isolation and Programming) and also re-read the transcript to highlight or mark any themes they missed after their global reading of the transcript.

**(3) Topic reading:** after reading the transcript with a particular theme in mind, volunteers were instructed to answer each question under a particular theme, and always refer to the definitions and answer options when

selecting an answer. When answering each question during the topic reading, volunteers were instructed to re-read the portion of the transcript that justified their response to a particular question. Volunteers logged their answers in an Excel spreadsheet. Volunteers were instructed to repeat the thematic reading and topic reading for the remaining themes (e.g., Facility Protocol, Medical Care, and Interpersonal Violence and Death). At this point, volunteers would have read through the transcript at least nine times.

**(4) Final reading:** lastly, volunteers were instructed to read through the transcript one last time and log any answers or details they missed in prior readings. Volunteers were routinely reminded to follow this reading process and to avoid coding transcripts based on mere instinct or memory. By instituting this reading method, we sought to standardize the coding process to minimize discrepancies. In total, student volunteers coded 514 transcripts.

## C. Data Compilation

Our next step was to compile a final set of data, which required spot-checking the transcripts coded by volunteers. Each volunteer was assigned a batch of 10 randomly selected transcripts to code. Members of our team reviewed one coded transcript in every batch assigned to a volunteer. Where a transcript was deemed inaccurately coded, all transcripts from that batch were removed from the data set. Where a transcript was deemed accurately coded, all transcripts from that batch remained in the data set. This method of spot-checking helped ensure the accuracy of the data set as we could exclude all transcripts that may have been improperly coded. Our operating assumption was that volunteers who made significant coding mistakes in one instance likely carried forward those



mistakes when coding the other transcripts to which they were assigned. An alternative spot-checking method that might involve reviewing a random selection of coded transcripts would not have enabled us to make this inference and would have negatively affected the accuracy of our data set.

Our metric for accuracy did not require perfect consistency; in other words, coded transcripts were not deemed inaccurate simply because the answers deviated from what the spot-checker would have selected. Rather, we found coding to be inaccurate where the volunteer's answers deviated significantly from the information given in the transcript or where the volunteer failed to code crucial information altogether. For example, say a respondent stated: "buying items from commissary has become difficult." If a volunteer answered either that the respondent stated they were not restricted in their ability to access commissary (coded "No"), or that the respondent did not mention whether they were restricted in their ability to access commissary (coded "Didn't Mention"), then the coding would be deemed inaccurate. If the volunteer answered that the respondent was restricted in their ability to access commissary (coded "Yes"), or that the respondent mentioned the restrictions on commissary but was not clear whether they were personally restricted access (coded "Unclear"), then the coding would be deemed accurate. This method helped ensure that we excluded coding that was inaccurate, while also retaining coding that reflected the natural ambiguities of testimonial data. From the 514 transcripts that were coded by student volunteers, 390 transcripts were retained after spot-checking.

After noticing that some transcripts had been coded by multiple volunteers,<sup>17</sup> we manually

went through all the transcripts and removed any duplicate coding to ensure that the data set reflected the perspectives of unique respondents.<sup>18</sup> We then double-checked our deduplication efforts by keyword searching all transcripts for unique phrases. After the spot-checking and deduplication process, we used 279 transcripts in our data analysis.

## D. Data Processing

After compiling our data set, we began processing the results to identify quantitative trends. We computed three items: a total count of the answers for each coding question ("Total Count"),<sup>19</sup> a total count of the answers for each coding question by month ("Time Count"),<sup>20</sup> and a total count of the answers for each coding question by facility ("Facility Count").<sup>21</sup> After analyzing our data for quantitative trends, we turned to the transcripts to develop a qualitative analysis of our findings.

### The Total Count

The Total Count (i.e., how many "Yes," "No," "Unclear," "Didn't Mention," and "N/A" results for each question) gave us a sense of which themes were more widely reported. It also gave us a baseline that we used to determine the rate at which respondents discussed certain topics. For example, six respondents (approximately two percent) noted concerns regarding unvaccinated staff, whereas 135 respondents (approximately 48 percent) raised the topic of in-person visitation restrictions. In this example, the total count suggests that, during the relevant time period, incarcerated people were more concerned about in-person visitation than unvaccinated staff. In short, the total count helped us track which conditions were particularly concerning to incarcerated people.

## The Time Count

The Time Count stratified the Total Count by month in order to identify temporal trends present in the data set. Between April 2020 and April 2021, the time period analyzed in this report, respondents reported the most issues between November 2020 and February 2021. However, it is unclear if the higher reporting rate reflects a worsening of prison conditions or increased participation in UC Irvine's PrisonPandemic™.<sup>22</sup> Even if the increased reports were a function of worsening prison conditions, it still remains unclear if respondents were contemporaneously reporting those conditions or if respondents were reporting conditions from previous months. Because of these ambiguities, we did not ascribe significance to the Time Count.

## The Facility Count

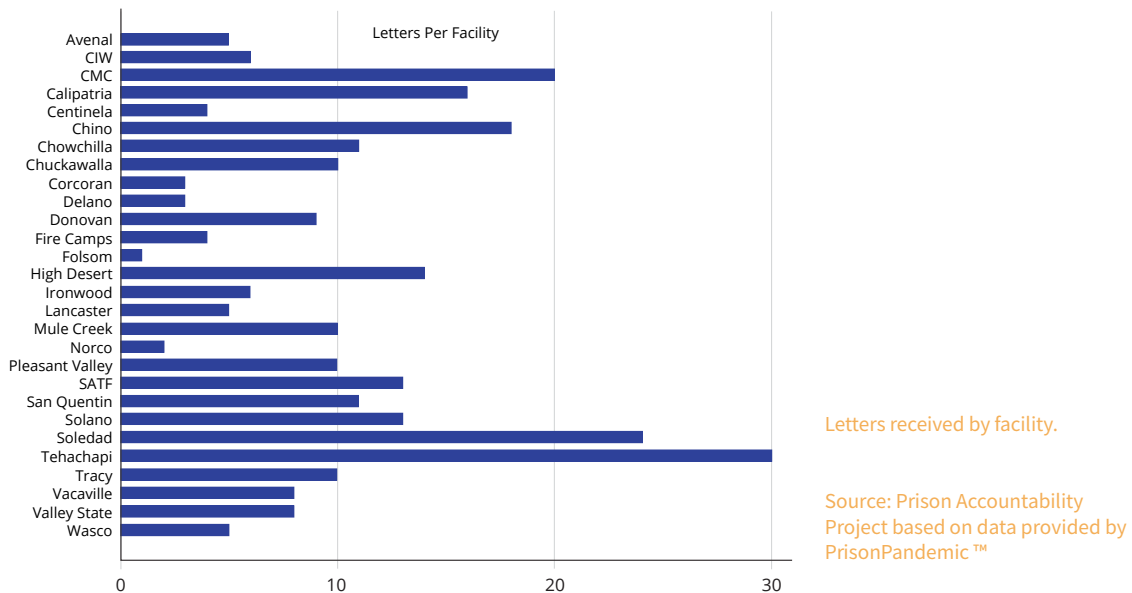
The Facility Count stratified the total count by facility<sup>23</sup> and allowed us to detect facilities with particularly problematic practices. Because issues related to Facility Protocol and Medical Care were discussed most frequently, these themes were particularly apt for facility-specific analysis. These themes covered a total of 18 different topics, including, among others, access to cleaning supplies, ability to social distance, staff compliance with mask mandates, quarantine and testing practices, and access to COVID-19-related and other medical care.<sup>24</sup>

To determine which facilities were particularly problematic with respect to Facility Protocol and Medical Care, we first excluded facilities from which we analyzed fewer than 10 letters, as few meaningful inferences could be made based on such a limited sample size. Next, for each of the 18 topics, we defined particular responses as either problematic or not problematic. For example, of the respondents

who raised the topic of staff compliance with mask mandates, those who indicated that staff members were not wearing masks identified a problem with the facility protocol, constituting a problematic response. Conversely, responses that indicated staff members were wearing masks were defined as not problematic.

After defining each question accordingly, we used a two-factor approach to identify particularly concerning prisons. First, we identified intra-prison problems by noting the ratio of problematic responses to the total times a topic was mentioned. For each CDCR facility, we labeled a topic a problem if, among those who raised that topic, more than 50 percent of respondents at that facility reported that it had problems in that area. For example, in Mule Creek, five people discussed access to medical care unrelated to COVID-19 (i.e., five respondents incarcerated at Mule Creek mentioned medical care unrelated to COVID-19), and three of those five people indicated that they did not have access to medical care (i.e., three of the five respondents who mentioned the topic identified it as a problem at Mule Creek). Thus, because more than 50 percent of the respondents at Mule Creek who discussed access to non-COVID-19 medical care identified a problem in the facility, we identified access to non-COVID-19 medical care as a problematic topic for Mule Creek.

Second, we examined inter-prison issues by calculating the ratio of problematic responses for each question to the total letters coded for each facility. To use the same example from Mule Creek, we divided the three people who identified a lack of access to non-COVID-19-related medical care by the 10 letters we coded from Mule Creek, resulting in a ratio of 0.3 for the facility. We then compared the prison-specific ratio to the average ratio across all



prisons. With respect to medical care in Mule Creek, we compared 0.3 (problematic responses at Mule Creek/total letters at Mule Creek) to 0.086 (sum of problematic responses across all facilities/sum of total letters across all facilities). When the ratio for a particular facility was higher than the average across all facilities, we determined that the facility was more problematic than other prisons with respect to that particular topic. Accordingly, access to medical care for non-COVID-19 related issues was more problematic at Mule Creek than other prisons.

Finally, we noted when a facility was problematic on both the inter- and intra-prison metrics for over 50 percent of the questions analyzed. Those facilities were Chino, Solano, Chuckawalla, and Mule Creek—meaning these facilities, as compared with others throughout the state, had substantially more problems across all 18 topics considered in this analysis.

Although this metric is arguably imperfect, it provides an objective test that can be employed

to highlight facilities that may be engaging in a particularly egregious pattern or practice of abuse. It would, however, be a misreading of this analysis to understand these four facilities as outliers. Numerous other facilities such as Calipatria, San Quentin, and Soledad barely missed the 50 percent cut off that we used to define particularly problematic facilities. Thus, this metric is useful only insofar as it identifies facilities that require additional scrutiny due to particularly egregious abuse.

## Qualitative Trends

After establishing quantitative trends, we returned to the transcripts to contextualize the findings. We looked for qualitative details in the transcripts that would exemplify the broad trends illustrated in the data set. Incorporating testimonial details into our analysis was essential to convey the actual conditions of prison life in CDCR facilities during the first year of the pandemic. These details are explained at length in the following section.

### 3. Findings

#### A. Medical Abuse that Incarcerated People Suffered in California Prisons

California state prisons and their staff responded to the medical needs of incarcerated people during the pandemic with indifference. Nearly half of the respondents—114 people—described conditions in which social distancing was impossible. Sometimes, ineffective social distancing strategies, like haphazardly taping off sections of dormitories, were the extent of CDCR efforts to reduce the spread of COVID-19.<sup>25</sup> Other times, CDCR facilities adopted COVID-19 mitigation strategies only to later reverse course. One respondent indicated that very early on in the pandemic CDCR staff “started moving people back into the buildings” such that they had “people all the way around [them], right, left, within 42 inches.”<sup>26</sup> In addition to ineffective social distancing strategies, common sense protocols that could have prevented the spread of the disease were not followed. Forty-eight respondents indicated that they were exposed to COVID-19 due to a failure to follow appropriate medical protocol,<sup>27</sup> and these failures went well beyond mere mismanagement. As one respondent noted:

I caught a virus from a professional state government worker who is supposed to have health protocols in place to prevent the spread of COVID-19. Not only do I feel expendable, many of the men do as well... I asked a nurse to wipe down the equipment before checking my vital life signs... and this turned into custody [officers] and the nurse teaming up to put me in my place while stating, “You all have COVID anyways.”<sup>28</sup>

This respondent’s experience is illustrative of a broader trend wherein requests for minor modifications that would have protected incarcerated people from illness were met with fierce resistance and contempt.

Given that respondents were prompted to discuss prison conditions during the pandemic, it is perhaps unsurprising that 110 people—nearly half of the respondents—described concerns about the quality of healthcare they received, and that 95 people expressed concerns about the quality of health care they received after contracting COVID-19. However, the nature of the concerns discussed indicates that respondents were not simply worried about COVID-19. Rather, respondents described inhumane and inadequate medical care that is by and large an indictment of the CDCR’s ability to care for the medical needs of incarcerated people. According to respondents, the CDCR ignored over 80 percent of incarcerated people’s requests for medical care<sup>29</sup> and failed to protect people with pre-existing conditions from COVID-19.<sup>30</sup>

People who contracted COVID-19 were relegated to makeshift isolation cells that negatively impacted their ability to recover. Incarcerated people were often removed to cold, cramped, and unsanitary cells in an effort to quarantine them from the general population. After testing positive for COVID-19, one respondent explained that they were put into a cell that had no windows, heat, or power—conditions that would be deemed inhumane under the best of circumstances.<sup>31</sup> Another respondent indicated that they were isolated in a cell that was “so cold [it was] impossible to get from under your covers.”<sup>32</sup> The cell also had no mattress, “looked like it hadn’t been cleaned in over a year,” and seemingly had “rat poop on the floor.”<sup>33</sup> These

cells, in all likelihood, made it harder for incarcerated people to recover from their infection.<sup>34</sup>

Many respondents described circumstances wherein medical care was largely withheld until their health conditions were so dire as to be life threatening. As discussed by one respondent:

“it seems to be the practice here that medical issues are only treated or diagnostic tests are only ordered when it is necessary, and by then the inmate is either incapacitated or very ill.”<sup>35</sup>

Unsurprisingly, this medical-care-as-a-last-resort approach fostered conditions in which the medical needs of incarcerated people were neglected. As one person with asthma and COPD<sup>36</sup> noted, they were unable to see a doctor until they could not breathe and had to be transported by ambulance.<sup>37</sup> Still other respondents discussed how the CDCR’s approach to medical care placed their non-COVID-19 medical issues on the back-burner. One respondent who identified as transgender indicated that they did not receive “any medically necessary treatment” and that they had to beg just so they “could get their mammogram done.”<sup>38</sup>

Although the line between providing medical care as a last resort and the flat out denial of medical care is not always clear, it is telling that 14 respondents indicated that they were explicitly denied medical care after contracting COVID-19. One respondent noted:

“you got people out there on the streets that are on machines, ICU, and everything, and they’re dying,” but in prison “there’s nothing.”<sup>39</sup>

Although COVID-19-specific treatments like antiviral medications were not widely available during the first year of the pandemic, the flat out denial of any medical care is cause for serious concern.

In myriad ways, the medical care in CDCR facilities—both COVID-19 and non-COVID-19 related—was woefully inadequate. Facilities repeatedly failed to follow basic medical protocols that were considered common sense in the free world. At times, when medical procedures were implemented, they were so inadequate, haphazard, or negligent that they negatively impacted the health of incarcerated people. Finally, the medical care that was provided was often too little, too late: incarcerated people were treated only when their condition was life threatening, and sometimes medical care was denied entirely to COVID-19 patients in prisons. COVID-19 was an unprecedented healthcare crisis and prison healthcare systems were taxed well before the pandemic, making the CDCR’s systemic failure to manage the disease unsurprising. Nonetheless, the agency often failed to make even minor adjustments that would have protected the well-being of incarcerated people.

## **B. Correctional Staff’s Intentional Disregard for COVID-19 Protocols**

CDCR policies intended to protect the health of incarcerated people were undercut by managerial negligence and staff who decided to flout the rules. Two main examples of staff



misconduct stand out with respect to medical care: quarantining and masking.

With respect to quarantining practices, correctional staff routinely failed to follow guidelines announced by the CDCR.<sup>40</sup> Despite policies directing staff to quarantine incarcerated people after exposure to COVID-19, 19 people reported that their facility did not quarantine incarcerated people who tested positive for COVID-19. Moreover, 73 people described quarantine practices as ineffective, inconsistent, or inadequate. Relatedly, despite policies directing incarcerated people to be tested and quarantined upon intake, 23 respondents reported that people were neither tested nor quarantined upon admission or transfer. The failure to implement appropriate quarantine practices likely contributed to the spread of COVID-19 in California state prisons.

The CDCR's haphazard approach to quarantine procedures raised concerns for many respondents. Respondents frequently described intra-prison transfers, purportedly intended to prevent the spread of COVID-19, that were so random and illogical that the transfers felt malicious. According to one respondent:

This prison continued moving people at random for several months. It really seemed like they were almost purposely spreading COVID all over the prison because there were numerous dorms that were COVID-free for months until they randomly moved inmates in and infected everyone.<sup>41</sup>

Other respondents, who were well aware of policies intended to protect them, observed that managerial staff seemingly ignored policies altogether. One respondent recounted that:

When the pandemic hit, Governor Newsom made an announcement for prisons to stop transferring prisoners because of what happened to San Quentin. CDCR moved infected prisoners to San Quentin and they were hit with a pandemic that they could not get under control. Lots of people got exposed, and got sick, and some even died. On October 27, 2020 inmates that were infected at Old Folsom prison were transferred to Solano prison (where I currently reside). This was done after Governor Newsom told CDCR to stop the transfers. One of those prisoners was moved right next to me and told me he tested positive for COVID at Old Folsom and went through their quarantine. Then was moved to Solano prison without being quarantined here. I tested positive for COVID-19 on December 10, 2020.<sup>42</sup>

This respondent was not alone in their observation that correctional staff were violating Governor Newsom's March 2020 Executive Order N-36-20.<sup>43</sup> Respondents repeatedly shared examples of correctional staff contravening existing quarantining policies.



Protesting prison transfers at San Quentin.

Photo: Peg Hunter

Quarantining practices were not the only set of policies that were routinely disregarded by staff. A striking 57 respondents indicated that staff members were not complying with mask mandates. Although incarcerated people were often forced to wear masks under the threat of punishment,<sup>44</sup> correctional officers would not wear masks themselves, would put on their masks only when “a sergeant walk[ed] in,” or would otherwise wear inadequate mouth coverings.<sup>45</sup> Indeed, officers would often wear flimsy, cloth-based masks or use bandanas or their sleeves to cover their mouths.<sup>46</sup>

Flying in the face of existing directives, correctional officers would even refuse to wear masks when walking through dorms and going through incarcerated people’s personal belongings.<sup>47</sup> Some respondents reported correctional officers intentionally coughing on their belongings before handing them back.<sup>48</sup> This particularly malicious behavior is assaultive in nature and was cause for prosecution in the free world.<sup>49</sup>

Taken together, respondents painted a damning picture of staff misconduct in CDCR facilities. Notwithstanding policies designed to protect incarcerated people, haphazard implementation subjected incarcerated people

to the dangers of COVID-19. Perhaps even more concerning, individual staff members repeatedly and intentionally disregarded policies designed to protect incarcerated people and engaged in malicious behavior either intended to spread COVID-19 or mock incarcerated people’s legitimate health-related concerns.

### **C. Unsanitary Conditions in California State Prisons**

Many respondents discussed serious sanitation problems that posed a threat to the health and safety of incarcerated people. Specifically, 115 respondents identified unsanitary conditions and 21 respondents reported that they were not given basic hygiene supplies.<sup>50</sup> In an effort to implement quarantine policies, prisons created temporary cells and dorms for incarcerated people; however, these quarantine facilities were thoroughly unsanitary. Respondents routinely noted that they were housed in temporary cells that lacked any form of climate control.<sup>51</sup> According to a respondent who was being temporarily housed in the prison’s gym, the roof was leaking and water was “literally coming through the roof in

sheets.”<sup>52</sup> They further noted that after being transferred to new cells, “no one had cleaned those cells... so, a lot of guys ended up catching some kind of... a lung infection, some kind of allergic reaction to the poor ventilation ...”<sup>53</sup> For some respondents, the conditions in quarantine cells were so unhygienic that they did not want to report symptoms for fear of being moved into one of them.<sup>54</sup>

Unsanitary food was another major concern for respondents. Discussing the quality of food in CDCR facilities, one respondent noted that “there’s mold, bugs, rats, and Lord knows what else in the kitchen” and “the machines use[d] to wash trays are barely functional.”<sup>55</sup> After prefacing that their job was to deliver food to people confined in cells due to the pandemic, this respondent noted that no one wanted the food that they were delivering.<sup>56</sup> Without other options, incarcerated people were forced to either forgo meals or eat unsafe and unsanitary food. Both situations are unhealthy and may have facilitated the spread of disease in CDCR facilities.

Widespread unsanitary conditions were further amplified by a lack of basic hygiene products in CDCR facilities. For example, respondents reported not having access to disinfectant to clean their cells and not being able to launder their linens or shower frequently enough to prevent contracting the virus.<sup>57</sup> In part, these unsanitary conditions can be explained by the fact that prison infrastructure was strained by the pandemic. However, many of the conditions discussed by respondents—like poor climate control, vermin, and spoiled food—are endemic to the prison environment. Prisons are unsanitary under the best of circumstances<sup>58</sup> and, when confronted with a public health emergency, CDCR facilities were unable to meet even the basic hygiene needs of incarcerated people.

## D. Conditions of Isolation Exacerbated by Covid-19

‘Twas the night before Christmas  
And all through the jail  
Not a creature was stirring  
Not even a snail  
Some inmates were hanging  
By their necks in despair  
With hopes that soon  
They’d be free from there

This excerpt of a poem submitted by a person incarcerated at the California Institution for Women illustrates the disturbing relationship between prison conditions during the pandemic and the mental health of people incarcerated in CDCR facilities. Due to restrictions on visitation, phone calls, recreation, and programming, as well as the use of draconian quarantine practices, respondents reported feeling exceedingly isolated and disconnected from the free world. One respondent sought to express this reality by probing the reader’s imagination:

Have you ever tried to visualize what prison looks like from a prisoner’s perspective? You have probably imagined that there are bars and striped uniforms. However, if you want a more accurate depiction of what prison is like, lock yourself in a bathroom without any communication devices. After that, stay there without any contact with the physical world. No physical or sexual touch by others; no visitation by friends or family or significant other; nothing to look forward to.<sup>59</sup>

This respondent's depiction of prison highlights the extreme isolation experienced by incarcerated people during the pandemic—conditions that were amplified by CDCR's restrictive, and punitive approach to disease management.

## 1. Severe Lockdown and Quarantine Practices

In an effort to minimize the spread of COVID-19 throughout facilities, the CDCR implemented a policy requiring widespread facility lockdowns and the quarantine of individuals infected with or exposed to COVID-19.<sup>60</sup> Quarantine practices were often similar or identical to conditions of solitary confinement. The net result was that incarcerated people were subjected to extended periods of isolation to the detriment of their physical and mental health.

Twenty-two respondents indicated that they were placed in conditions that met the formal definition of solitary confinement, as provided by the United Nations.<sup>61</sup> As one respondent explained:

**“most prisons resort to the horrible practice of using the hole, solitary confinement, as quarantine for COVID-positive inmates.”<sup>62</sup>**

Discussing the particular conditions of their confinement, that respondent explained that they had “[n]o TV, no personal property, 24/7 lockdown, lack of social stimuli. Just you and your boxers, one book, and four walls.”<sup>63</sup> Another respondent described being quarantined in a single-person cell for “24 hours a day, 14 days straight without even the ability to use a shower.”<sup>64</sup> Some respondents reported that these periods of isolation lasted

for months. One respondent explained, “I have been repeatedly quarantined now since December 7th, going on my third month with today being the 9th of February.”<sup>65</sup> Reports of this kind from respondents were frequent and illustrative of the cruel forms of isolation incarcerated people experienced throughout CDCR facilities.

Oftentimes, the use of isolation against incarcerated people who had contracted or been exposed to COVID-19 exceeded the scope of medical isolation and was punitive in nature.<sup>66</sup> Whereas medical isolation is intended to reduce the spread of disease by separating a person with a confirmed or suspected infection until they are no longer contagious, punitive isolation, as the name suggests, is intended to punish a person by removing them from the rest of the prison population and imposing restrictions on visitation, phone calls, recreation, and the use of property.<sup>67</sup> Illustrating the punitive nature of their isolation, one respondent from Ironwood who contracted COVID-19 recounted that:

**[T]hey snatched me up about two o'clock in the morning and sent me to the hospital ... and I was held there with just basically solitary confinement for approximately 18 days. From there they moved me to [administrative segregation] for another 18 days and then, all this time it was in solitary confinement basically. I was ... being treated as if I was an [administrative segregation] inmate that did something wrong which the only thing was wrong was that I caught COVID virus.”<sup>68</sup>**

In total, 20 respondents reported confinement due to COVID-19 exposure or infection where the conditions of isolation were punitive, rather than medical in nature.

Extreme conditions of confinement were not limited to those who had contracted or been exposed to the virus. Respondents not subjected to medical isolation reported being locked in cells with up to seven other people at a time.<sup>69</sup> For some, this extended confinement in small spaces with others led to violence and even death. As one respondent explained, “what really stands out to me is that inmates celled together for such a long time in the cell are fighting each other more frequently. And a lot of the tim[e] ending in one of them being killed by the other.”<sup>70</sup> The CDCR was severely ill-equipped to deal with the COVID-19 pandemic owing in part to its facilities’ systemic overpopulation.<sup>71</sup> As a result, incarcerated people were forced to submit to both extreme isolation and extreme overcrowding, creating increasingly unsafe conditions.

Together with the unhygienic conditions of quarantine, punitive and dangerous conditions of isolation also discouraged people from accurately reporting their symptoms. Forced to choose between extended periods of isolation that accompanied reporting COVID-19 symptoms and avoiding quarantine by hiding symptoms of illness, many people chose the latter. One respondent described this reality saying:

“of course [people] did not want to stay locked in a room for 24 hours a day, so regardless of how they felt, they reported twice each day that they had no fever.”<sup>72</sup>

This respondent’s experience reflects how incarcerated people navigated draconian COVID-19 policies, preferring, at times, to risk their physical health in an effort to protect their mental wellbeing. Taking this reality into account, it is clear that the CDCR’s inability to humanely respond to the COVID-19 pandemic ultimately thwarted its efforts to monitor and prevent the spread of COVID-19 throughout its facilities.

## 2. Restricted Communication with the Free World

The CDCR’s official response to the pandemic created an environment where incarcerated people struggled to stay connected with their loved ones in the free world. Some policies, such as temporarily restricting in-person visitation, may have been a reasonable response to COVID-19 at the beginning of the pandemic, but the CDCR’s failure to provide incarcerated people with alternative avenues of communication during this period of intense isolation was devastating to incarcerated people and their loved ones. As a matter of official policy, the CDCR increased access to some alternative forms of communication. Ultimately, these supposed alternatives were rendered ineffective by a plethora of barriers: the practices of correctional officers, highly restrictive social distancing policies, and problems with technology. These barriers severely restricted incarcerated people’s ability to communicate with loved ones, which had a profound effect on their mental health. As one respondent described, “[n]ot being able to see our family takes a mental toll on you that can only be explained with tears and sobs.”<sup>73</sup>

With respect to visitation policies, 135 people—nearly half of the respondents—reported that they were denied or restricted



in their ability to access in-person visitation. Given that on March 11th, 2020, the CDCR canceled normal in-person visitation statewide,<sup>74</sup> and on March 14th, postponed family in-person visitation statewide, these numbers are unsurprising. Still, the gravity of canceling in-person visitation for incarcerated people should not be understated. As one respondent noted:

**It's very bad to not have that time to share with your loved ones or family members. First of all, that's the only time that you get to escape from the darkness of prison. Then you must take in consideration that some people live so far that they're only able to see you once a year, but the visit is so meaningful and remarkable that the one visit is just enough. It's truly the only personal time that you have to spend with someone who you care about or love.**<sup>75</sup>

In some respects, canceling in-person visitation was a reasonable means of mitigating the spread of COVID-19, but for many incarcerated people who witnessed staff members introduce the virus into the prison setting, this policy came off as little more than an arbitrary restriction.<sup>76</sup> A common theme raised by respondents was the disparity between the way COVID-19 policies were enforced against incarcerated people versus the prison staff. Correctional staff often refused to follow COVID-19 policies with no accountability from their superiors, but, when incarcerated people failed to follow these same policies, they were harshly disciplined.<sup>77</sup>

One respondent noted this double-standard in regard to in-person visitation, writing:

**"[t]hey took our visits. They say they are trying to keep us away from the COVID but still today their staff are still bringing it in."**<sup>78</sup>

To many, the cancellation of in-person visits felt like just another way of taking away one of the few things that brought them joy.

Responding to restrictions on in-person visitation, the CDCR attempted to increase access to video calls. While these calls were intended to provide another means of connecting incarcerated people to the free world, these substitutes consistently fell short. For some, video calls were inaccessible to their loved ones in the free world due to technological barriers; this was especially true for incarcerated people with elderly loved ones who were often unable to navigate the complexities of the video software.<sup>79</sup> For others, the video calls "sound[ed] great on paper," but in reality were inaccessible due to the scarcity of available appointment times.<sup>80</sup> To clarify this point, one respondent explained that these video calls were "rare" and that they had been waiting for a single visit "for months."<sup>81</sup> Unfortunately, this respondent's experience was not out of the ordinary. Respondents noted that video calls were limited to once a month,<sup>82</sup> and that opportunities to speak with loved ones on video calls were provided far less often than in-person visits.<sup>83</sup> In some facilities, access to video calls was limited to incarcerated people who had tested positive for COVID-19.<sup>84</sup> In effect, video calls largely failed to address the void left by the cancellation of in-person visitation.

On March 31st, 2020, the CDCR began to provide free phone calls to incarcerated people three days a week.<sup>85</sup> For those who sought to take advantage of these phone calls, the CDCR's policies and practices still posed substantial barriers to effective and meaningful communication. Specifically, 58 people indicated that they were denied or restricted in their ability to access the phone, and the vast majority of facilities from which letters were received had at least one respondent who noted issues with phone access. Respondents cited faulty and inadequate technology, abusive staff practices, prohibitive social distancing policies, and sanitation issues as the primary problems restricting phone access. Indeed, respondents reported that it was commonplace for the phones to not work, creating a barrier to accessing their free phone calls. As one respondent explained:

Phone calls were supposed to be free on certain days. But when it came down to having that free phone call, there has always been an issue with the phones. Either the phones are down and not working or calls are just static. Calls get disconnected after five minutes or you simply cannot hear the other person.<sup>86</sup>

Aside from faulty technology, correctional staff often obstructed incarcerated people's access to the phones. Many respondents reported staff preventing people from signing up for phone calls or accessing the phone when they were on the phone access roster.<sup>87</sup> One respondent reported that "[h]alf of the privileged inmates are not getting their one

phone call per day."<sup>88</sup> Another respondent indicated:

"[t]here have been times when the COs hang up our phone calls short so we don't even get our full fifteen minutes."<sup>89</sup>

The CDCR's social distancing policy also proved to be a major inhibitor to incarcerated peoples' phone access. For example, people incarcerated at Valley State Prison were restricted from accessing the yard where phones were located.<sup>90</sup> As a result of yard closure, people had to be approved for telephone calls by staff.<sup>91</sup> This reliance on the good will of correctional staff rendered phone calls inaccessible to many incarcerated people. Even when people were not relying on prison staff for phone access, social distancing policies still proved to be an impediment to phone access—phone access was reduced to half, making it exceedingly difficult for people to sign up to use the phone.<sup>92</sup> Even for the incarcerated people who successfully accessed their allotted phone calls, these phone calls were intermittent and insufficient. As one respondent explained, the phone calls are only fifteen minutes long, and after COVID-19, "you're lucky to get two calls a week."<sup>93</sup>

Another barrier to phone access was inadequate sanitation protocol. Respondents expressed that accessing phone calls felt unsafe, as the phones were all shared, but not effectively sanitized. One respondent recounted that, "they haven't even given us cleaner for the phones or anyone assigned to clean them between each use."<sup>94</sup> In light of these numerous barriers, respondents consistently reported the inadequacy of phone access in CDCR facilities.

Incarcerated people's restricted ability to communicate with loved ones not only compounded the isolation they experienced from punitive quarantine practices and canceled visitation, but also fostered worry for their loved ones. One respondent feared not being a part of his children's lives, which he felt was crucial to "break [the] cycle" so "they won't grow up to be criminals."<sup>95</sup> Another respondent expressed anguish over the health and safety of her sons, who were both essential workers.<sup>96</sup> This same respondent recounted receiving a photo of her sister on a ventilator and lamented not being able to say goodbye before her sister passed away.<sup>97</sup> Still others reported that family ties were severed as a result of the inability to stay connected with loved ones. As one respondent put it:

The inability to have that physical contact with a loved one is a strain. The strain is placed on all relationships especially with your wife or girlfriend. I, along with other inmates, have lost these relationships due to the extra strain of lack of visits, access to phone calls, and how slow mail is processed. This is what COVID has done. Made our isolation even more extreme here in prison. This is just the isolation aspect of this pandemic.<sup>98</sup>

As these stories illustrated, incarcerated people existed in a lose-lose situation: they could try to communicate with loved ones and risk infection, or they could try to protect their health and watch their free world

relationships decline. Unlike the isolation faced by people in the free world, who were able to communicate via phone call, video call, and socially distanced gatherings, the restricted access to phone calls in CDCR facilities deprived incarcerated people of one of their only remaining ties to loved ones in the free world.

### 3. Restricted Access to Quality of Life Resources

Respondents repeatedly explained that they were restricted in their ability to access essential services like recreation, programming, and commissary, and that these restrictions negatively impacted their physical and mental well-being. Notably, 69 respondents indicated that they were denied or restricted in their ability to access "rec" or exercise, creating barriers to living a healthy life. As one respondent recounted:

We have not been outside of our cells for outdoor exercise in over 120 days. 120 days confined to a nine by 10 cell with no outdoor exercise, no ability to function. I - we've all put on weight, I myself have put on 30 pounds. I'm having COVID fallout and complications-medical repercussions, and I can't get outdoors.<sup>99</sup>

Highlighting the impact of restricted access to exercise and movement, this respondent continued "[o]ur bodies are weakened—we're weakened...the American Humane Society doesn't even allow animals to be treated like this."<sup>100</sup> In addition to its general importance

to health,<sup>101</sup> exercise is also important for fighting a COVID-19 infection.<sup>102</sup> The Center for Disease Control and Prevention has noted that “[p]eople who do little or no physical activity are more likely to get very sick from COVID-19 than those who are physically active.”<sup>103</sup> With COVID-19 quickly spreading throughout CDCR facilities, restricted access to physical exercise compounded the physical health risks posed by COVID-19.

A significant number of respondents also highlighted issues accessing programming and educational resources.<sup>104</sup> Specifically, 63 respondents reported that they were denied or restricted in their ability to access programming and 42 respondents indicated that they were denied or restricted in their ability to access educational programs. Typically, a person’s decision to participate in programming is a critical factor in evaluating their parole suitability.<sup>105</sup> With the cancellation of these programs, many respondents detailed their inability to prove to the Board of Parole Hearings (BPH) that they were fit to return to society. One respondent noted, “[n]o one gets to participate in any rehabilitation program. Some of us want to acquire or achieve as much [as] possible to show BPH (Board of [Parole] Hearings) that we are changing and deserve a chance in society once again.”<sup>106</sup> Another respondent explained that some people “come up out of their parole hearings with some pretty good results, you know, just takes a little bit of self-exploration. And they’re not getting that now. So, it just doesn’t seem to me anything positive is coming out of this lack of programming.”<sup>107</sup> Because the BPH looks to institutional behavior, including the activities and programs people participated in while incarcerated, to determine if someone is eligible for parole, the cancellation of programming negatively impacts incarcerated people’s ability to obtain their freedom.<sup>108</sup>

The cancellation of programming affected the mental health of incarcerated people, who felt a loss of control over their everyday life and environment. One respondent described their usual routine as consisting of “work, self-help programs, college, and recreation time,” which abruptly stopped when the virus reached CDCR facilities.<sup>109</sup> They expressed that as someone “who was very active in positive programming, [it] was very discouraging to have [their] routine thwarted.”<sup>110</sup> Magnifying this loss of routine and control were facility policies that frequently and unpredictably moved incarcerated people within and between facilities in an effort to mitigate the spread of the virus. For example, one respondent recounted being moved from the cell that they had lived in for over a year after being exposed to a staff member who tested positive for COVID-19.<sup>111</sup> This respondent described the movement as a “big disruptor to [their] lives and program” and noted that they were “not settling in or getting too comfortable [...] because sooner or later the bouncing around will start all over again.”<sup>112</sup>

In addition to losing access to programming, incarcerated people also had trouble accessing commissary. Seventeen respondents noted that they were denied or restricted in their ability to access commissary. Although this is a relatively small number of respondents, the harm that incarcerated people experienced due to restricted commissary was significant. One respondent explained:

Our food portions have become food rations. For example, for lunch we get 6 salted crackers, 1 pasteurized processed cheese, and a small bag of extremely salted sunflower seeds. We are given little access to purchase

food from the prison canteen and most of us honestly are left hungry most days now, not just because of COVID but because prior to COVID this prison had cut down our food portions, added now with COVID it's only been made worse.<sup>113</sup>

As this quote demonstrates, incarcerated people rely on food purchased from commissary to supplement inadequate, unhealthy meals provided by the CDCR. As COVID-19 spread throughout CDCR facilities, access to commissary became even more crucial as food portions became even smaller and respondents skipped meals for fear of catching the virus from contaminated trays. Yet, it was at precisely this moment that commissary access was restricted.<sup>114</sup>

That incarcerated people were restricted in their ability to properly nourish themselves, speak with loved ones, exercise, and keep their minds occupied harmed their emotional and physical well-being and amplified the impact of COVID-19 in CDCR facilities.

#### 4. Violence, Death, and Suicide in CDCR Facilities

Prisons were notoriously dangerous environments long before the advent of COVID-19.<sup>115</sup> However, the pandemic undoubtedly affected the way people experienced violence in California state prisons. Several respondents reported being subject to verbal and physical abuse whenever they complained about the inadequacy of or non-compliance with COVID-19 protocols. For example, one respondent reported that staff would threaten to move incarcerated people

into administrative segregation units if they complained about COVID-19 protocols.<sup>116</sup> Another respondent said:

[C]orrections officers don't care, don't wear masks sometimes. And if I or any inmates tells them anything about wearing a mask, they go off on you and talk to you like you're a piece of shit. And if you respond they put hands on you. Some are cool. Majority though like to put hands on you, put you on the ground, spray you with pepper spray and send you to the Hole all sprayed up.<sup>117</sup>

Respondents expressed anger toward the use of verbal threats and physical violence in response to complaints of staff non-compliance, as incarcerated people made significant sacrifices to curb the spread of the virus. To add insult to injury, incarcerated people were aware that, in all likelihood, it was the staff who were contributing to the spread of the virus as they navigated between yards, the facility, and the free world.<sup>118</sup> These threats to incarcerated people were yet another indignity suffered as a result of the COVID-19 pandemic.

Respondents also reported incidents of violence between incarcerated people. One respondent mentioned that he received 12 staples in the back of his head and seven stitches in his lip after he was assaulted on the yard.<sup>119</sup> Another respondent reported being on lockdown due to a riot that took place between different racial groups in the facility.<sup>120</sup> Yet another respondent explained that he was



fearful because he was incarcerated with patients experiencing mental health crises who posed a likelihood of harming themselves or others.<sup>121</sup> While these reports reflect the forms of interpersonal violence that exist in regular prison life (i.e., race- and gang-based violence and violence resulting from mental health episodes or substance abuse), it is likely that there was an increase in conflict among incarcerated people who “could not escape one another while living under increasingly stressful conditions.”<sup>122</sup> One respondent explained that they were a patient receiving mental health care who was supposed to be transferred to a hospital setting for treatment before a COVID-19 policy halted the transfer.<sup>123</sup> Writing from an administrative segregation unit, this respondent stated that they displayed “behavior that could lead to violence” as a result of not getting the care they needed.<sup>124</sup>

Under these stressful and isolating conditions, many incarcerated people experienced suicidal ideation; others died by suicide. One respondent stated that “[f]amily is the reason I behave, the reason I strive towards rehabilitation, the only thing to look forward to.”<sup>125</sup> Without the ability to see or call their family, this respondent expressed a profound sense of despair: “Are they just waiting for people to kill themselves?”<sup>126</sup> Another respondent recounted that they “had gotten to the point where [they’d] actually created a plan, started writing suicide notes” after being placed in an administrative segregation unit to quarantine.<sup>127</sup>

The increased rate of death in CDCR facilities due to both COVID-19 infections and suicide, together with the closed-in environment, caused incarcerated people to experience loss and witness death at alarming rates. One respondent recalled seeing the body of an incarcerated person who ended their own

life “with the material that he had used still tied around his neck.”<sup>128</sup> Another respondent said that they knew of at least 17 people who died, two of whom were his close friends.<sup>129</sup> Remembering one of his friends, this respondent said:

[This] gentlemen had been incarcerated for more than 20 years. In which he had seven years left, and to succumb to something like Covid-19. For that to be the end, it was terrible. Of course, they sent his belongings home, and when the officers gathered his things I couldn't help but think. He did all that time survived some pretty bad prison experiences and died from coronavirus. At that his family is being sent paperwork, and Top Ramen noodles to remember him by.<sup>130</sup>

These accounts clearly show that COVID-19-related stressors negatively impacted the mental health of incarcerated people. Restrictions on visitation, phone access, recreation, and programming were severe and disparately enforced. Incarcerated people could neither speak with loved ones, nor occupy their minds as their routines were fractured by pandemic restrictions. Instead, incarcerated people were isolated and alone, left to grapple with staff abuse, and increased rates of illness and death. The severity of the isolation was overwhelming, and for some people it proved to be too much to bear. The lives lost from suicide behind bars are the hidden fatalities of the pandemic.

## 4. Constitutional Violations in California State Prisons

Incarcerated people discussed numerous instances of reckless, sadistic, and malicious behavior that may violate the Eighth Amendment's prohibition on cruel and unusual punishment. At times, respondents highlighted the actions of rogue staff members or particularly abusive conditions to which they alone were subjected. However, our analysis demonstrates systemic patterns of abuse that suggest widespread constitutional violations. Such abuse may be ripe for system-wide legal redress.

The cumulative impact of various prison conditions discussed by respondents presents numerous potential constitutional violations.

### A. Deliberate Indifference to Medical Needs and Prison Conditions

#### 1. Medical Care

In the context of medical care, a constitutional violation may be established upon a showing of deliberate indifference to the serious medical needs of incarcerated people.<sup>131</sup> Legally, a prison official acts with deliberate indifference where they know of and consciously disregard an excessive risk to an incarcerated person's health or safety.<sup>132</sup> Courts have spent considerable effort defining a serious medical need, but, very broadly, it might be considered something so obvious that a lay person would recognize the need for a doctor.<sup>133</sup> Under these standards, medical abuses detailed throughout this report raise the specter of widespread constitutional violations in CDCR facilities.

Because an Eighth Amendment violation requires a showing that prison officials consciously disregarded an incarcerated person's serious medical needs, prison

officials may be able to explain away pandemic-related medical abuse as something entirely unpredictable. However, the rapid onset of communicable disease is not unprecedented, and correctional administrators have previously been tasked with implementing strategies to mitigate and prevent the spread of infectious diseases.<sup>134</sup> Against this backdrop there would seem to be strong grounds to argue that prison officials had at least some knowledge, experience, and training in how to appropriately respond to a pandemic.<sup>135</sup> Thus, the repeated and obvious failure to take reasonable measures to protect the health and safety of incarcerated people could be construed as conscious disregard for the wellbeing of incarcerated people. The pandemic was not so unprecedented as to excuse all forms of medical abuse.

Still, exigent circumstances may have stretched prison medical staff thin, providing potential cover for prison officials. Courts have relied on this argument to reject numerous lawsuits arguing that prison officials failed to protect incarcerated people from COVID-19.<sup>136</sup> Notwithstanding these initial decisions,<sup>137</sup> the law requires prison officials who know of a risk (e.g., a deadly virus) to take reasonable measures to abate it.<sup>138</sup> Numerous respondents indicated that, even after contracting COVID-19, they were explicitly denied medical care. A flat out denial of any form of care is not a "reasonable measure," even when considering the emergent nature of COVID-19.<sup>139</sup> Coupled with the inhumane practice of providing medical care to incarcerated people only as a last resort, the blatant denial of medical care to incarcerated people who contracted COVID-19 demonstrates that prison officials may have been acting with deliberate indifference to the medical needs of incarcerated people.

In addition to the flat out denial of medical

care, respondents discussed numerous other patterns of behavior wherein staff and administrators may have been acting with deliberate indifference. Respondents reported that staff routinely failed to comply with mask mandates, failed to follow medical protocol, and failed to quarantine incarcerated people after they tested positive. These failures to follow existing protocols make a compelling case that prison officials were acting with deliberate indifference. Indeed, respondents recounted that staff would wear their masks correctly only in the presence of supervisors and that medical staff would say things like “you all have covid anyways” to justify their disregard for appropriate procedure.<sup>140</sup> These behaviors offer compelling evidence that noncompliant staff were well aware of their obligation to wear masks and the serious risks of transmission created by their failure to do so. That staff were aware that their conduct negatively impacted incarcerated people’s health and safety is clear evidence of deliberate indifference. Moreover, the purported reasonableness of the CDCR’s efforts to reduce the harm of COVID-19 in prisons is severely undercut by prison officials’ intentional and routine disregard of these very procedures.

Courts have long held that deliberate indifference to the exposure of a serious communicable disease, even when incarcerated people show no signs of illness, may constitute an Eighth Amendment violation.<sup>141</sup> The litany medical abuses to which incarcerated people were subjected—e.g. the intentional failure to follow appropriate medical protocol and the outright denial of medical care—demonstrate that prison officials in CDCR facilities knew of and consciously disregarded the risk of exposure to COVID-19. Thus, these medical abuses are not merely the result of negligence, and potentially form the basis for an Eighth

Amendment claim.

The blatant denial of medical care to incarcerated people who contracted COVID-19 demonstrates that prison officials may have been acting with deliberate indifference to the medical needs of incarcerated people.

## 2. Conditions of Incarceration

Prison conditions that inflict wanton and unnecessary pain or result in a serious deprivation of basic human needs may also violate the Eighth Amendment’s prohibition on cruel and unusual punishment.<sup>142</sup> Similar to medical care, a conditions of confinement claim generally requires proof that prison officials acted with deliberate indifference.<sup>143</sup> This subjective intent may be inferred where the risk of harm is obvious.<sup>144</sup> In many instances, the conditions discussed by incarcerated people were so severe that it would be nearly impossible for prison officials to be unaware. As such, the severe deprivations highlighted by incarcerated people also underscore the extent to which prison officials may have consciously disregarded those same conditions.

A staggering number of respondents reported prison conditions that resulted in a serious deprivation of their basic human needs. Incarcerated people were subjected to unsanitary cells with water leaking from the roof in sheets, vermin, mold, bugs, and rats.<sup>145</sup> These conditions are concerning on their own, but even when a standalone condition may not constitute a sufficiently serious deprivation, the cumulative effect of various conditions can demonstrate that an incarcerated person was subjected to a sufficiently serious deprivation. For example, a low temperature in a cell in

conjunction with a failure to issue blankets may contravene the Eighth Amendment.<sup>146</sup>

The cumulative impact of various prison conditions discussed by respondents presents numerous potential constitutional violations. Incarcerated people were quarantined in cells that were unsanitary and unheated—conditions that likely exacerbated their symptoms. Unsanitary conditions in quarantine cells also led to severe medical complications unrelated to COVID-19. Because medical isolation was so punitive, incarcerated people avoided reporting symptoms, potentially exposing even more people to COVID-19. When considered together, the unsanitary, unheated, and punitive nature of quarantine unconstitutionally threatened the health and well-being of incarcerated people.

Severe food restrictions can also form the basis of an Eighth Amendment violation.<sup>147</sup> Respondents repeatedly noted that food was unsanitary and served cold. At times, it was also rationed. These conditions, on their own, are already cause for concern. Compounding these food related issues were CDCR policies that restricted access to commissary. Without commissary, issues related to food quality were particularly pronounced, depriving incarcerated people of a fundamental human need.

Where it can be shown that the conditions of isolation are particularly egregious, there is a cognizable argument that prison officials violated the Eighth Amendment rights of incarcerated people.

Finally, incarcerated people were severely deprived of human contact throughout the pandemic. They were quarantined for days on

end and lost access to visitation, phone calls, and recreation. These conditions constituted a kind of de facto solitary confinement that threatened incarcerated people's health and well-being. Although solitary confinement has not been deemed cruel and unusual punishment per se, it is worth noting that some isolative conditions may constitute a constitutional violation.<sup>148</sup> Moreover, lower courts<sup>149</sup> and a dissenting opinion from Justice Breyer<sup>150</sup> have called for appellate review on the matter. The imposition of widespread, de facto solitary confinement deprives incarcerated people of basic human needs. Where it can be shown that the conditions of isolation are particularly egregious, there is a cognizable argument that prison officials violated the Eighth Amendment rights of incarcerated people.<sup>151</sup>

### 3. Problematic Facilities

Chino, Solano, Chuckawalla,<sup>152</sup> and Mule Creek stood out as facilities that might be particularly problematic with respect to medical care and certain conditions of confinement.<sup>153</sup> As a result, class actions brought on behalf of a large number of incarcerated people—so-called institutional reform litigation—may be particularly apt for these four facilities. The combined effect of sub-standard prison conditions that, by themselves, would not rise to the level of a constitutional violation may form the basis of an Eighth Amendment claim. For example, ineffective quarantine practices might be related to overpopulation in a particular facility, leading to the denial of constitutionally adequate health care. In such a scenario, large-scale reductions in prison population would be a potential remedy.<sup>154</sup> Although the unconstitutional combination might be different in each of the four problematic facilities identified in this report, the sheer quantity of issues identified in each



facility indicates that class action litigation might be particularly effective to address conditions in these four prisons.

## **B. Use of Excessive Force**

The use of force against an incarcerated person violates the Eighth Amendment when two conditions are met. First, the force was used “maliciously and sadistically for the purpose of causing harm,” and not in a “good faith effort to maintain or restore discipline.”<sup>155</sup> Second, the degree of force used must be more than de minimis.<sup>156</sup> With these two standards in mind, the use of force detailed by respondents may form the basis of excessive force claims.

Prison officials used force against incarcerated people who requested that staff properly wear their personal protective equipment. It was also used to retaliate against incarcerated people who filed complaints against staff members.<sup>157</sup> Force is not employed in a good faith effort to maintain discipline when it is used to punish or retaliate against an incarcerated person for filing a grievance.<sup>158</sup> Thus, the use of force in response to complaints to and about correctional staff demonstrates its motive: it is retaliatory and, by extension, unconstitutional.

The physical abuse that incarcerated people experienced occurred in many forms: they were pushed, kicked, punched, and slammed against the wall or ground. Respondents also reported that they were pepper sprayed and left in de facto solitary confinement without any medical care to treat their injuries. In the midst of these abuses, some respondents indicated that they were handcuffed or otherwise restrained, demonstrating that they did not pose a physical threat to the attacking officers. It is precisely because incarcerated

people posed no threat that the use of force in these situations likely stemmed from an “impermissible motive.”<sup>159</sup> Beating a person who is already restrained is not a good faith effort to restore discipline. To the contrary, respondents highlighted numerous instances where prison staff acted in a manner that was malicious, sadistic, and devoid of any penological purpose.<sup>160</sup>



Rally at San  
Quentin.

Photo: Peg Hunter



## 5. Conclusion

After analyzing hundreds of letters and calls from 28 CDCR facilities, this report makes clear that abuse, violence, and neglect are commonplace in California state prisons. In addition to identifying specific prisons—Chino, Solano, Chuckawalla, and Mule Creek—where incarcerated people reported issues regarding medical care and conditions of confinement at alarming rates, this report identified distinct forms of abuse in most facilities. While these conditions are potentially ripe for redress through legal or administrative advocacy, courts and executive agencies have consistently repudiated their responsibility to protect incarcerated people from disease, staff abuse, malnutrition, and extreme isolation—conditions that were exacerbated by, but not necessarily unique to, the COVID-19 pandemic.<sup>161</sup>

At present, reporting from the Office of Inspector General largely focuses on discrete failures at particular CDCR facilities,<sup>162</sup> or readily observable patterns of misconduct.<sup>163</sup> In both instances, the most egregious forms of systemic abuse are not communicated to the public because the reports fail to center the experiences of incarcerated people. To the extent that the Office of Correction Ombudsman reports on prisons conditions

issues, the reports merely recount the number of complaints received in a given year as mandated by the legislature.<sup>164</sup> Such reporting utterly fails to capture the extent of the harm incarcerated people experience in CDCR facilities. In contrast to the conditions detailed in institutional reports from state agencies, people incarcerated in CDCR facilities describe environments that foster isolation, generate violence, and induce the spread of infectious disease.

Unfortunately, incarcerated peoples' concerns are often ignored. Institutional oversight sanitizes their suffering and institutional grievance procedures function more as an impediment to legal recourse than a means to hold prison officials accountable. Building on the work of UC Irvine's PrisonPandemic™, this report ultimately demonstrates a terrifying reality: that inhumanity, violence, and deliberate indifference to human life are normalized in CDCR facilities. In the absence of substantive reporting that reflects the experiences of incarcerated people, the Prison Accountability Project at the UCLA School of Law is committed to accurately reporting systemic abuses endured by incarcerated people in California state prisons and jails.

## 6. Appendix

### A. PrisonPandemic's Solicitation Letter

Hello

I hope this message finds you in good health! We all come across difficult times in our lives and we all have different ways of dealing with them. I just wanted to tell you, I know this hasn't been easy, but I also know you've got what it takes to get through it. I may not know you personally, but I would like you to know people are thinking about you and hoping you and everyone else gets through this challenge. I found your name from a public list on CDCR's website, but I'm not associated with CDCR.

I am a college student and part of a team at UCI collecting stories about what has been happening inside facilities during the COVID-19 pandemic. One of our professors is [name redacted], who is on the return address. We would love to hear directly from you about your experiences. No story is too small. Some things you could share are: What has it been like to be inside during this time (either at the beginning of the pandemic, the middle, or now)? How have you felt about your safety inside? What has it been like to have reduced visitation from family and loved ones? How have you been coping with this crisis? How have the vaccinations been going at your facility? We are collecting these stories to preserve them in an archive for historical purposes with the goal that they could help lead to positive reforms.

We have two ways you and others can get in touch with us. Call our hotline at [phone number redacted], which is running Monday to Friday from 5pm to 9pm. We accept collect calls. Or mail us your letters, artwork, or other contributions to: [address redacted]. We will post these stories, anonymously, on our website: [prisonpandemic.uci.edu](http://prisonpandemic.uci.edu). Unfortunately, we cannot offer legal aid. If you don't have a story yourself to share, maybe you know someone who would be interested. Sending you good thoughts—and hoping you believe in yourself just as much as I believe in you.

Best wishes,

## **B. PrisonPandemic's Hotline Script**

Greet: Hello, my name is YOUR FIRST NAME. Thank you for calling PrisonPandemic to tell your story. Please don't state your name for your own safety.

Consent Process. Needs to be read verbatim:

- I want to let you know how your story will be used.
- I am recording this conversation. Please do not tell me your name or any other information that could identify you.
- If you are willing, I will record our phone conversation so that you can tell your story about your experience with COVID-19.
- By continuing this conversation and allowing me to record your voice, you are consenting to my recording this phone conversation and posting an audio-recording of this phone conversation on a website repository that will be available to the public.
- Anyone will be able to listen to your story and other stories from other prisoners and employees at California prisons and to use what they hear for any purpose.
- Because you are not providing your name or any other information that could identify you, you will never be able to ask us to remove the audio-recording of this phone conversation from the website repository.
- By continuing this conversation, you are also waiving and releasing the University from any claims or lawsuits of any kind for any reason related to the phone conversation we are about to have.
- Are you at least 18 years old? [IF NO, END THE CALL.] Are you freely and knowingly willing to proceed under the conditions I have described? [IF NO, END THE CALL.]”

Intro: The time is now INSERT TIME. My name is YOUR FIRST NAME. I am a volunteer with the UCI project PrisonPandemic. Today is DATE, and I am on the phone with someone who says s/he is a prisoner at a California prison. Please give your testimonial about any aspects you think are important for people to know about the situation of people incarcerated during COVID-19.

Questions to ask all participants (does not need to be verbatim):

- What facility are you currently housed at?
- What is the current COVID-19 situation at your facility? What is going ok? What is troubling or concerning to you?
- How was COVID-19 handled at your facility at the beginning of the outbreak? Is it being handled differently now? If possible, could you please tell us month-by-month how the situation has changed at your facility.

Additional Possible Prompts (does not need to be verbatim):

- What would make the situation at your facility better?
- How has the COVID-19 situation at your facility affected your loved ones?
- What has it been like for you to have reduced visitation and programming?
- How have you been coping with the crisis?
- What else do you want people to know about your experience?

To be read at end of call:

It is now TIME. Thank you very much for participating in PrisonPandemic. I am ending this call and this recording. [STOP TAPE.]

If identifying information is about to be mentioned:

Please remember that you are not providing your name or other information that could identify you, and you will never be able to ask us to remove the audio-recording of this phone conversation from the website repository.

If identifying information has already been mentioned:

Please remember that you are not providing your name or other information that could identify you, and you will never be able to ask us to remove the audio-recording of this phone conversation from the website repository. Would you like to repeat the last part of your story with no identifying information? Or would you like to stop the recording and have it all deleted?

## C. Coding Questions

### Isolation and Programming

#### 1. Was this person placed in conditions of isolation which constitute solitary confinement?

Definition: Solitary confinement is defined as the confinement of prisoners for 22 hours or more a day without meaningful human contact. If someone indicates they were subjected to solitary confinement for more than 15 days please note that in the “other concerns” section.

#### Answer Options:

- Unclear: this person broadly discussed isolation but without sufficient specificity to unequivocally constitute solitary confinement.
  - Yes: this person described conditions that indicate they were confined for more than 22 hours or more a day without meaningful human contact.
  - No: this person described conditions that indicate that they were not confined in this manner.
  - Didn't Mention: this person did not mention the conditions of their isolation.
2. If the person indicated they were isolated due to COVID-19 exposure or infection, were the conditions of isolation punitive, rather than medical?

Definition: Punitive isolation (i.e., no phone calls, indeterminate, longer than necessary for medical purposes, etc.) is distinct from medical isolation (i.e., access to phones, proper sanitation, etc.). Please see: <https://amend.us/wp-content/uploads/2020/06/MI-v.-SC.pdf>

#### Answer Options:

- Unclear: this person indicated that they were isolated due to the pandemic, but, from their response, it is not possible to determine whether their isolation was largely punitive or medical.
  - N/A: this person did not mention that they were physically isolated due to the pandemic.
  - Yes: this person described conditions that were largely punitive in nature.
  - No: this person described conditions that were largely medical in nature.
3. After the pandemic began, was the person denied or restricted in their ability to access the phone?

#### Answer Options:

- Unclear: this person mentioned the denial or restriction of phone privileges broadly, but it is not entirely clear that THEY personally were denied phone privileges.



- Yes: this person explicitly stated that they WERE denied or restricted in their ability to access a phone.
  - No: this person explicitly stated that they WERE NOT denied or restricted in their ability to access a phone.
  - Didn't Mention: this person did not mention whether they were denied access to a phone.
- 4. After the pandemic began, was this person denied or restricted in their ability to access in-person visitation?**

Answer Options:

- Unclear: this person mentioned the denial or restriction of in-person visitation broadly, but it is not entirely clear that THEY themselves were denied in-person visitation privileges.
  - Yes: this person explicitly stated that they WERE denied or restricted in their ability to access in-person visitation.
  - No: this person explicitly stated that they WERE NOT denied or restricted in their ability to access in-person visitation.
  - Didn't Mention: this person did not mention whether they were denied in-person visitation.
- 5. After the pandemic began, was the person denied or restricted in their ability to access to a lawyer, courts, or law libraries?**

Answer Options:

- Unclear: this person mentioned the denial of legal services broadly, but it is not entirely clear that THEY personally were denied or restricted in their ability to access legal services
  - Yes: this person indicated that they WERE denied or restricted in their ability to access a lawyer, courts, or law library
  - No: this person indicated that they WERE NOT denied or restricted in their ability to access a lawyer, court, or law library
  - Didn't Mention: this person did not mention whether they were denied access to a lawyer, court, or law library
- 6. After the pandemic began, was the person denied or restricted in their ability to access religious services?**

Answer Options:

- Unclear: this person mentioned the denial or restriction of religious services broadly, but it is not entirely clear that THEY personally were denied or restricted in their ability to access religious services.
- Yes: this person indicated that they WERE denied or restricted in their ability to access religious services

- No: this person indicated that they WERE NOT denied or restricted in their ability to access religious services
  - Didn't Mention: this person did not mention whether they were denied access to religious services
7. After the pandemic began, was the person denied or restricted in their ability to access educational programs?

Answer Options:

- Unclear: this person mentioned the denial or restriction of educational services broadly, but it is not entirely clear that THEY personally were denied or restricted in their ability to access educational programs.
  - Yes: this person indicated that they WERE denied or restricted in their ability to access educational programs.
  - No: this person indicated that they WERE NOT denied or restricted in their ability to access educational programs.
  - Didn't Mention: this person did not mention whether they were denied access to educational programs.
8. After the pandemic began, was the person denied or restricted in their ability to access "rec" or exercise?

Definition: Normal recreational time includes terms such as "rec," "rec time," "yard privileges," "exercise," etc.

Answer Options:

- Unclear: this person mentioned the denial of recreation broadly, but it is not entirely clear that THEY personally were denied exercise time.
  - Yes: this person indicated that they WERE denied or restricted in their ability to access normal recreation or exercise time.
  - No: this person indicated that they WERE NOT denied or restricted in their ability to access normal recreation or exercise time.
  - Didn't Mention: this person did not mention whether they were denied normal recreation or exercise time.
9. After the pandemic began, was the person denied or restricted in their ability to access mental health programming?

Definition: Such programming includes, but is not limited to, Alcoholics Anonymous, Narcotics Anonymous, etc.

Answer Options:

- Unclear: this person mentioned the denial or restriction of mental health programming broadly, but it is not clear that THEY were denied or restricted in their ability to access mental health programming.
  - Yes: this person indicated that they WERE denied or restricted in their ability to access mental health programming.
  - No: this person indicated that they WERE NOT denied or restricted in their ability to access mental health programming.
  - Didn't Mention: this person did not mention whether they were denied access to mental health programming.
10. After the pandemic began, was the person denied or restricted in their ability to access commissary?

Answer Options:

- Unclear: this person mentioned the denial or restriction of commissary, but it is not clear that THEY personally were denied commissary.
  - Yes: this person indicated that they WERE denied or restricted in their ability to access commissary.
  - No: this person indicated that they WERE NOT denied or restricted in their ability to access commissary.
  - Didn't Mention: this person did not mention whether they were denied access to commissary.
11. After the pandemic began, was the person denied or restricted in their ability to access any other programming or services?

Note: If so, note the programs from which they were denied access in "other concerns."

Answer Options:

- Unclear: this person mentioned the denial or restriction of programs or services not explicitly mentioned in the previous questions, but it is not clear that THEY personally were denied such programming or services.
- Yes: this person indicated that they WERE denied or restricted in their ability to access other programming or services not mentioned in the other questions.
- No: this person indicated that they WERE NOT denied or restricted in their ability to access any programming or services.
- Didn't Mention: this person did not mention whether they were denied access to other programming or services.

## Facility Protocol

### 12. Did the person contract COVID-19 while incarcerated?

#### Answer Options:

- Yes: this person explicitly stated that they contracted COVID-19 while incarcerated.
- No: this person explicitly stated that they DID NOT contract COVID-19 while incarcerated.
- Didn't Mention: this person did not mention whether they contracted COVID-19 while incarcerated.

### 13. Was the person exposed to COVID-19 due to a failure to follow appropriate medical procedures?

Definition: Appropriate medical procedures refers to your common sense understanding of how to appropriately social distance, mask, test, quarantine, etc.

#### Answer Options:

- Yes: this person indicated that they were exposed to COVID-19 due to a failure to follow protocol.
- No: this person indicated that they WERE NOT exposed to COVID-19 due to a failure to follow protocol.
- Didn't Mention: this person did not mention whether they were exposed to COVID-19 due to failure to follow protocol.
- Unclear: this person indicated that they were exposed to COVID-19, but it is not clear whether the exposure was the result of a failure to follow protocol.

### 14. Did the person report any sanitation or hygiene problems in the prison facility?

Definition: Proper hygiene includes, but is not limited to, access to clean running water, access to working showers/ baths, properly functioning sewage systems, and well ventilated facilities.

#### Answer Options:

- Yes: this person explicitly reported sanitation or hygiene problems.
- No: this person explicitly stated there were not sanitation or hygiene problems.
- Didn't Mention: this person did not mention whether there were sanitation or hygiene problems.
- Didn't Mention: this person did not mention whether they were denied access to other programming or services.

**15. Was the person provided with cleaning supplies, hand sanitizer, or PPE?**

**Definition: “PPE” is “Personal Protective Equipment” such as face masks and face shields.**

Answer Options:

- Yes: this person reported they were given supplies.
- No: this person reported that were NOT given supplies.
- Didn't Mention: this person did not mention whether they were given supplies.

**16. If the answer to the previous question (15) is yes, did the person consider the amount of cleaning supplies/hand sanitizer/masks to be adequate?**

Answer Options:

- N/A: this person did not answer yes to being provided with PPE.
- Yes: this person seemed to consider the supplies adequate.
- No: this person seemed to consider the supplies inadequate.
- Didn't Mention: this person did not mention clearly enough to determine whether they believed the supplies were adequate.

**17. Did the person report that they were able to practice social distancing?**

Answer Options:

- Yes: this person reported they were able to social distance or described conditions where it can be reasonably inferred that they were able to practice social distancing.
- No: this person reported that they were NOT able to social distance or described conditions where it can be reasonably inferred that they were unable to practice social distancing.
- Didn't Mention: this person did not mention whether they were able to social distance.
- Unclear: this person identified that social distancing was broadly difficult, but did not describe the circumstances sufficiently to indicate whether they personally were able to practice social distance.

**18. When incarcerated persons were newly admitted or transferred into the facility, were they quarantined and tested?**

Answer Options:

- Yes: this person reported that incarcerated people were both tested and quarantined upon admission or transfer.
- No: this person reported that incarcerated people were either not tested or not quarantined upon admission or transfer.



- Didn't Mention: this person did not mention whether an incarcerated person was quarantined or tested upon admission or transfer.

**19. Were incarcerated people quarantined after contracting COVID-19?**

Answer Options:

- Yes: this person reported that incarcerated people WERE quarantined after contracting COVID-19.
- No: this person reported that incarcerated people WERE NOT quarantined after contracting COVID-19.
- Didn't Mention: this person did not mention whether incarcerated people were quarantined after contracting COVID-19.

**20. If the answer to the previous question (19) was yes, did the person describe inconsistent, inadequate, or ineffective quarantining practices?**

Answer Options:

- Yes: this person reported that incarcerated people were officially quarantined, but the quarantine process was in some way inconsistent, inadequate, or ineffective.
- No: this person reported that incarcerated people were officially quarantined, and the quarantine process was consistent, effective, and adequate.
- Didn't Mention: this person did not mention the consistency, effectiveness, or adequacy of the quarantining practices.

**21. Were staff members complying with mask mandates?**

**Definition: Mask mandates:** Staff are complying with the mask mandate when they wear their masks around incarcerated people. A failure to wear a mask around incarcerated people is a failure to comply.

Answer Options:

- Yes: this person reported that staff were complying with mask mandates.
- No: this person indicated that staff were NOT complying with mask mandates. \*If no, please indicate, if noted, which staff were not complying with mask mandates in the "other concerns" section.
- Didn't Mention: this person did not mention whether staff were complying with the mask mandate.

## Medical Care

### 22. If the person contracted COVID-19, did they receive access to medical care?

#### Answer Options:

- N/A: this person did not mention whether they contracted COVID-19 while incarcerated.
- Yes: this person explicitly reported they received access to medical care when they contracted COVID-19.
- No: this person explicitly stated that they were DENIED access to medical care when they contracted COVID-19.
- Didn't mention: this person stated that they contracted COVID-19, but did not mention whether they received access to medical care.

### 23. If the answer to the previous question (22) is yes, did the person believe the medical care was sufficient?

#### Answer Options:

- N/A: the answer to the previous question was not yes.
- Yes: this person reported that the medical care they received after contracting COVID-19 was largely sufficient.
- No: this person indicated that the medical care they received after contracting COVID-19 was largely insufficient.
- Didn't Mention: this person received access to medical care for COVID-19, but did not reflect on the quality of the care they received (i.e., the person might have reflected on conditions of quarantine and not medical care).

### 24. Was the person concerned about the quality of health care for incarcerated people who contracted COVID-19?

#### Answer Options:

- Yes: this person expressed a general concern about the quality of COVID-19 health care.
- No: this person did not express a general concern about the quality of COVID-19 health care.
- Didn't Mention: this person did not mention whether they were generally concerned about COVID-19 health care.

### 25. If the person had medical issues not related to COVID-19, did they have access to medical care?

#### Answer Options:

- Yes: this person explicitly reported having a medical issue not related to COVID-19 and having access to medical care.
- No: this person explicitly reported having a medical issue not related to COVID-19 and NOT having access to medical care.

- Didn't Mention: this person did not mention medical issues unrelated to COVID-19.
- Unclear: this person mentioned issues unrelated to COVID-19, but it is unclear if they had access to medical care.

**26. Was the person broadly concerned about the quality of healthcare, including mental health care?**

Answer Options:

- Yes: this person expressed a general concern about the quality of healthcare.
- No: this person expressed that they were NOT generally concerned about the quality of healthcare.
- Didn't Mention: this person did not mention whether they were generally concerned about health care.

**27. Did the person have any concerns related to unvaccinated staff?**

**Note: If so, please note any additional details in the "other concerns" column.**

Answer Options:

- Yes: this person explicitly reported having concerns about unvaccinated staff.
- No: this person explicitly reported NOT having concerns about unvaccinated staff.
- Didn't Mention: this person did not mention whether they were concerned about unvaccinated staff.
- Unclear: this person mentioned that staff were unvaccinated, but did not explicitly highlight any concerns about staff vaccination.

**28. Did the person have any difficulty getting COVID-19 vaccine access?**

Answer Options:

- Yes: this person explicitly reported having difficulty getting the vaccine.
- No: this person explicitly reported NOT having difficulty getting the vaccine.
- Didn't Mention: this person did not mention whether they had difficulty receiving the vaccine.

**29. Was the person denied or restricted in their ability to access previously available mental healthcare services during the pandemic?**

**Definition: Mental healthcare services includes, but is not limited to, individual psychological counseling, psychiatric care, psychiatric drugs, etc. This is distinct from mental health programming like NA, AA, etc.**

Answer Options:

- Unclear: this person mentioned the denial or restriction of mental healthcare programming broadly, but did not explicitly indicate that THEY personally were denied or restricted in their ability to access mental healthcare.
- Yes: this person indicated that they WERE denied or restricted in their ability to access mental healthcare during the pandemic.
- No: this person indicated that they WERE NOT denied access or restricted in their ability to access mental healthcare during the pandemic.
- Didn't Mention: this person did not mention whether they were denied access to mental healthcare.

Note: If the person has a concern about mental healthcare that was present prior to the pandemic, please describe the concern in the "other concerns" column. However, you should still select didn't mention for this question.

## **Interpersonal Violence and Death**

### **30. Was the person subjected to verbal threats or harassment from staff members?**

Note: For questions 30-32, answers are not mutually exclusive. A single incident of violence could fall in more than one category.

Definition: Verbal abuse involves the use of oral language, gestured language, and written language directed to a victim. Verbal abuse can include the act of harassing, labeling, insulting, scolding, rebuking, and excessive yelling towards an individual.

Answer Options:

- Yes: this person explicitly reported being subjected to verbal threats or harassment from staff members.
- No: this person explicitly reported NOT being subjected to verbal threats or harassment from staff members.
- Didn't Mention: this person did not mention being subjected to verbal threats or harassment from staff members.

**31. Was the person subjected to non-sexual physical force or violence from staff members?**

Note: For questions 30-32, answers are not mutually exclusive. A single incident of violence could fall in more than one category.

Definition: This question covers all physical contact from one person to another that may involve actions such as punching, pushing, kicking, biting, choking, burning, shaking, and beating.

Answer Options:

- Yes: this person explicitly reported being subjected to physical force or violence from staff members.
- No: this person explicitly reported NOT being subjected to physical force or violence from staff members.
- Didn't Mention: this person did not mention being subjected to physical force or violence from staff members.

**32. Was the person subjected to sexual abuse or sexual violence from staff members?**

Note: For questions 30-32, answers are not mutually exclusive. A single incident of violence could fall in more than one category.

Answer Options:

- Yes: this person explicitly reported being subjected to sexual abuse or violence from staff members.
- No: this person explicitly reported NOT being subjected to sexual abuse or violence from staff members.
- Didn't Mention: this person did not mention being subjected to sexual abuse or violence from staff members.

**33. If the answer to any of the first three questions of this section (30, 31, 32) is yes, was another staff member present at the time of the incident?**

Answer Options:

- N/A: the answer to the first three questions was not yes.
- Yes: this person explicitly reported that another staff member was present.
- No: this person explicitly reported that another staff member was NOT present.
- Didn't Mention: this person did not mention whether another staff member was present.



**34. If the answer to any of the first three questions in this section (30, 31, 32) is yes, was anything done to address it?**

Answer Options:

- N/A: the answer to the first three questions was not yes.
- Yes: this person explicitly reported that something was done to address the event.
- No: this person explicitly reported that nothing was done to address the event.
- Didn't Mention: this person did not mention whether anything was done to address the event.

**35. If the answer to the previous question (34) is yes, did the person feel like the situation was improved or the measures taken were adequate?**

Answer Options:

- N/A: the answer to the previous question was not yes.
- Yes: this person explicitly reported that they feel like the situation was improved or the measures taken were adequate.
- No: this person explicitly reported that they do NOT feel like the situation was improved or the measures taken were adequate.
- Didn't Mention: this person did not mention whether they feel like the situation was improved or the measures taken were adequate.

**36. Did the person mention violent incidents between themselves and another incarcerated person?**

Note: If more than one incident is mentioned, note the number of incidents in "other concerns."

Answer Options:

- Yes: this person DID mention violent incidents between themselves and another incarcerated person.
- No: this person DID NOT mention violent incidents between themselves and another incarcerated person.

**37. Did the person mention violent incidents between other incarcerated persons?**

Note: If more than one incident is mentioned, note the number of incidents in "other concerns."

Answer Options:

- Yes: this person DID mention violent incidents between other incarcerated persons.
- No: this person DID NOT mention violent incidents between other incarcerated persons.

**38. Did the person mention attempting suicide or having suicidal thoughts?**

Note: If more than one incident is mentioned, note the number of incidents in "other concerns."

Answer Options:

- Yes: this person DID mention attempting suicide or having suicidal thoughts.
- No: this person DID NOT mention attempting suicide or having suicidal thoughts.

**39. Did the person mention other incarcerated people attempting suicide or having suicidal thoughts?**

Note: If more than one incident is mentioned, note the number of incidents in "other concerns."

Answer Options:

- Yes: this person DID mention other incarcerated people attempting suicide or having suicidal thoughts.
- No: this person DID NOT mention other incarcerated people attempting suicide or having suicidal thoughts.

**40. Did the person mention that they witnessed a person die or saw a dead body while incarcerated?**

Note: If more than one incident is mentioned, note the number of incidents in "other concerns."

Answer Options:

- Yes: this person DID mention witnessing a person die or seeing a dead body while incarcerated.
- No: this person DID NOT mention witnessing a person die or seeing a dead body while incarcerated.

**41. Did the person identify as transgender or nonbinary?**

Answer Options:

- Yes: this person explicitly identified as transgender or nonbinary.
- No: this person either did not mention their gender identity or explicitly identified as cisgender.

## **D. Spring 2022 Coding Marathon Volunteers**

Our thanks go to:

Abigael Neufeld  
Abigail Smith  
Abigail Wiggans  
Abraham Rinck  
Adam Sloate  
Alex Statman  
Alexis Russell  
Angela Kim  
Anis Guedoir  
Ansley Bolick  
Ashley Conde  
Brandon Wilens  
Connor Green  
Daphne Ratnarajah  
Edouard Goguillon  
Eirene Oji  
Emily Evans  
Erin Matsutsuyu  
Gabi Rosenfeld  
Gabrielle Manchon  
Geena Roberts  
Griffin Baumberger  
Houston Smith  
Ilina Bhor  
Jaein Cho

Jake Lebovic  
Jeff Hajdin  
Jenna Cummings  
Jimmy Magee  
Joe Druckman  
Kate Mitchell  
Katie Gowing  
Kimaya Abreu  
Kyle Groves  
Lindsay Bracken  
Lucy Rollins  
Mariana Garcia  
Melissa Segarra  
Michelle Geller  
Nadine Tejadilla  
Neekta Eftekharzadeh  
Peter Jones  
Philip Kay  
Sabrina Medler  
Sareen Khakh  
Seung Jae Choi  
Sukhmeen Kahlon  
Takashi Idoji  
Thaara Sumithra Shankar

## E. Data Processing: Total Count Chart

Isolation and Programming												
	Was this person placed in conditions of isolation which constitute solitary confinement?	If the person indicated they were isolated due to Covid-19 exposure or infection, were the conditions of isolation punitive, rather than medical?	After the pandemic began, was the person denied or restricted in their ability to access the phone?	After the pandemic began, was this person denied or restricted in their ability to access in-person visitation?	After the pandemic began, was the person denied or restricted in their ability to access a lawyer, courts, or law libraries?	After the pandemic began, was the person denied or restricted in their ability to access religious services?	After the pandemic began, was the person denied or restricted in their ability to access educational programs?	After the pandemic began, was the person denied or restricted in their ability to access "rec" or exercise?	After the pandemic began, was the person denied or restricted in their ability to access mental health programming?	After the pandemic began, was the person denied or restricted in their ability to access commissary?	After the pandemic began, was the person denied or restricted in their ability to access any other programming or services?	Other concerns?
Didn't mention	145	1	178	128	262	254	216	182	237	252	196	0
Yes	22	20	58	135	12	15	42	69	24	17	63	0
No	62	17	24	0	2	3	3	12	1	3	1	0
Unclear	50	48	19	16	3	7	18	16	17	7	19	0
N/A	0	193	0	0	0	0	0	0	0	0	0	0
Total	279	279	279	279	279	279	279	279	279	279	279	0

	Facility Protocol										
	Did the person contract Covid-19 while incarcerated?	Was the person exposed to Covid-19 due to a failure to follow appropriate medical procedures?	Did the person report any sanitation or hygiene problems in the prison facility?	Was the person provided with cleaning supplies, hand sanitizer, or PPE?	If the answer to the previous question (V) is yes, did the person consider the amount of cleaning supplies/hand sanitizer/masks to be adequate?	Did the person report that they were able to practice social distancing?	When incarcerated persons were newly admitted or transferred into the facility, were they quarantined and tested?	Were incarcerated people quarantined after contracting Covid-19?	If the answer to the previous question (Z) was yes, did the person describe inconsistent, inadequate, or ineffective quarantining practices?	Were staff members complying with mask mandates?	Other concerns?
Didn't mention	131	178	153	193	51	119	246	151	51	218	0
Yes	99	47	115	64	1	18	10	108	73	4	0
No	48	7	10	21	42	114	23	19	5	57	0
Unclear	0	47	0	0	0	28	0	1	0	0	0
N/A	0	0	0	0	184	0	0	0	150	0	0
Total	278	279	278	278	278	279	279	279	279	279	0

	Medical Care - For this section, please answer questions in order								
	If the person contracted Covid-19, did they receive access to medical care ?	If the answer to the previous question (AD) is yes, did the person believe the medical care was sufficient?	Was the person concerned about quality of health care for incarcerated people who contracted Covid-19?	If the person had medical issues not related to Covid-19, did they have access to medical care?	Was the person broadly concerned about the quality of health care, including mental health care?	Did the person have any concerns related to unvaccinated staff?	Did the person have any difficulty getting Covid-19 vaccine access?	Was the person denied or restricted in their ability to access previously available mental healthcare services during the pandemic?	Other concerns?
Didn't mention	95	27	182	223	168	268	258	255	0
Yes	31	3	95	12	110	6	11	13	0
No	14	22	2	24	1	2	10	1	0
Unclear	0	0	0	20	0	3	0	10	0
N/A	139	227	0	0	0	0	0	0	0
Total	279	279	279	279	279	279	279	279	0

Interpersonal Violence and Death - for this section, please answer questions in order												
	Was the person subjected to verbal threats or harassment from staff members?	Was the person subjected to non-sexual physical force or violence from staff members?	Was the person subjected to sexual abuse or sexual violence from staff members?	If the answer to any of the first three questions of this section (AM, AN, AO) is yes, was another staff member present at the time of the incident?	If the answer to any of the first three questions of this section (AM, AN, AO) is yes, was anything done to address it?	If the answer to the previous question (AQ) is yes, did the person feel like the situation was improved or the measures taken were adequate?	Did the person mention violent incidents between themselves and another incarcerated person?	Did the person mention violent incidents between other incarcerated persons?	Did the person mention attempting suicide or having suicidal thoughts?	Did the person mention other incarcerated people attempting suicide or having suicidal thoughts?	Did the person mention that they witnessed a person die or saw a dead body while incarcerated?	Did the person identify as transgender or nonbinary?
Didn't mention	256	266	270	27	30	14	0	0	0	0	0	0
Yes	22	8	3	7	1	0	5	10	5	10	9	5
No	1	5	6	1	5	6	273	269	274	269	270	274
Unclear	0	0	0	0	0	0	0	0	0	0	0	0
N/A	0	0	0	244	243	259	0	0	0	0	0	0
Total	279	279	279	279	279	279	278	279	279	279	279	279

## 7. Endnotes

<sup>1</sup> *Population COVID-19 Tracking*, Cal. Dep't of Corr. & Rehab., <https://www.cdcr.ca.gov/covid19/population-status-tracking/> (click on “Trended”; then click on “Table View”) (last visited Dec. 16, 2022) [*Population Covid-19 Tracking*].

<sup>2</sup> *Population Covid-19 Tracking*.

<sup>3</sup> *California*, UCLA Law Covid Behind Bars Project, <https://uclacovidbehindbars.org/states/california/#scorecard> (last visited Apr. 1, 2023).

<sup>4</sup> *See generally* PrisonPandemic™, <https://prisonpandemic.uci.edu> (last visited Dec. 16, 2022).

<sup>5</sup> The Prison Accountability Project is a student-led effort, associated with the Prison Law and Policy Program at UCLA School of Law, that tracks prison conditions in California state prisons and jails.

<sup>6</sup> *California*, UCLA Law Covid Behind Bars Project, <https://uclacovidbehindbars.org/states/california/#scorecard> (last visited Apr. 1, 2023).

<sup>7</sup> *See* Eric Reinhart, *How Mass Incarceration Makes Us All Sick*, Health Affairs (May 28, 2021) <https://www.healthaffairs.org/doi/10.1377/forefront.20210526.678786>; *see also* Joseph Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047 (Oct. 2007).

<sup>8</sup> Inspector general reports typically focus on discrete failures at particular institutions. Although these reports provide important insights about certain institutional failures, the reports do not adequately convey the reality experienced by incarcerated people. *See, e.g.*, Office of Inspector General, *Monitoring the Staff Complaints Process of the California Department of Corrections and Rehabilitation* (Sept. 29, 2022), <https://www.oig.ca.gov/wp-content/uploads/2022/09/2021-Staff-Complaint-Monitoring-Report.pdf>.

<sup>9</sup> The Ombuds Office is largely concerned with internal investigations. The Ombuds’ annual report published pursuant to Senate Bill 518 only documents instances in which youth contacted the Ombuds and the status of the complaint. The report contains little information about prison conditions in CDCR facilities. *See, e.g.*, Office of the Ombudsman, *Senate Bill 518 Report* (2021) <https://www.cdcr.ca.gov/ombuds/wp-content/uploads/sites/165/2022/02/2021-DJJ-SB-518-Report.pdf>.

<sup>10</sup> For example, a report drafted by CalPROTEC and commissioned by the California Prison Receivership focuses on areas where the CDCR can improve its ability to respond to airborne disease. This is an important intervention; however, notably absent from the report is a discussion of the profound institutional failures that characterized the experiences of many incarcerated people. *See* Sears D Kwan et al., *California State prisons during the COVID-19 Pandemic: A Report by the CalPROTECT Project* (2022), <https://ucsf.app.box.com/s/753jnnq45yxoll36qwn9rw2hxis5f1n5s>.

<sup>11</sup> PrisonPandemic, <https://prisonpandemic.uci.edu/> (last visited Dec. 15, 2022).

<sup>12</sup> PrisonPandemic received letters from thirty-four CDCR prisons: Avenal, Calipatria, Centinela, Chino, Chowchilla, Chuckawalla, California Institution for Women (CIW), California Men’s Colony (CMC), Corcoran, Delano, Donovan, Fire Camps, Folsom, High Desert, Ironwood, Kern Valley, Lancaster, Mule Creek, New Folsom, Norco, Pelican Bay, Pleasant Valley, Salinas Valley, San Quentin, California Substance Abuse Treatment Facility and State Prison (SATF), Solano, Soledad, Stockton, Susanville, Tehachapi, Tracy, Vacaville, Valley State, and Wasco.

<sup>13</sup> *See* Appendix A.

<sup>14</sup> *See* Appendix B.

<sup>15</sup> *See* Appendix C.

<sup>16</sup> We want to convey our deepest gratitude to the 49 UCLA School of Law student volunteers who participated in the Prison Accountability Project’s 2022 Spring Coding Marathon. We could not have written this report without their work. A list of the volunteers is available at Appendix D.

<sup>17</sup> Each response was assigned a unique randomized ID by PrisonPandemic. We noticed that the testimonial data we received from PrisonPandemic included both excerpts of complete responses (short transcripts) and the complete responses themselves (full transcripts), which meant that we needed to go through all transcripts to make sure no duplicates skewed the data. Thus, all unique IDs that are cited in this report can be traced to a unique, full transcript. PrisonPandemic and the Prison Accountability Project have a full list of all unique IDs and associated responses, which can be made available upon request at [prisonprojectucla@gmail.com](mailto:prisonprojectucla@gmail.com).



<sup>18</sup> A total of 71 letters were coded by multiple coders, allowing for straightforward analysis of intercoder reliability. Overall levels of intercoder reliability were extremely high, with all coders agreeing on the coding of every single letter for nearly half (44%) of the questions coded, and coders agreeing on the coding of more than 95% of the letters for all but five of the questions coded. Coders unanimously agreed on the coding of 85-95% of the letters for the five questions that were most difficult to code.

<sup>19</sup> See Appendix E.

<sup>20</sup> Please contact [prisonprojectucla@gmail.com](mailto:prisonprojectucla@gmail.com) if you wish to see our Time Count charts.

<sup>21</sup> Please contact [prisonprojectucla@gmail.com](mailto:prisonprojectucla@gmail.com) if you wish to see our Facility Count charts.

<sup>22</sup> An increase in participation in UC Irvine's Prison-Pandemic™ could itself be driven by worsening prison conditions but it could also be a function of PrisonPandemic™'s outreach practices or increased awareness about the project among incarcerated people.

<sup>23</sup> Our final data set included transcripts from people incarcerated in twenty-eight CDCR prisons: Avenal, Calipatria, Centinela, Chino, Chowchilla, Chuckawalla, CIW, CMC, Corcoran, Delano, Donovan, Fire Camps, Folsom, High Desert, Ironwood, Lancaster, Mule Creek, Norco, Pleasant Valley, San Quentin, SATF, Solano, Soledad, Tehachapi, Tracy, Vacaville, Valley State, and Wasco.

<sup>24</sup> See Appendix C for the full list of topics raised under these themes.

<sup>25</sup> Unique ID #5346, <https://prisonpandemic.uci.edu/stories/call-from-avenal-november-10-2020-6462/>.

<sup>26</sup> Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>.

<sup>27</sup> Neither the authors of this report nor the individuals who coded the responses are medical experts. As such, coders were instructed to rely on their "common sense understanding of how to appropriately social distance, mask, test, and quarantine." Inevitably, this led to some variation in the consistency in our coding methodology. However, after months of dealing with COVID-19, all coders would have been familiar with basic disease prevention strategies. Moreover, correctional staff, who presumably were trained on and in charge of implementing disease mitigation strategies, should have been able to recognize common sense ways to prevent the spread of COVID-19.

<sup>28</sup> Unique ID #1163, <https://prisonpandemic.uci.edu/stories/i-feel-expendable-2/>.

<sup>29</sup> Unique ID # 2191, <https://prisonpandemic.uci.edu/stories/treated-inhumane/>.

<sup>30</sup> Unique ID #2310, <https://prisonpandemic.uci.edu/stories/the-hardship/>.

<sup>31</sup> See Unique ID #1364, <https://prisonpandemic.uci.edu/stories/havent-recovered-2/>.

<sup>32</sup> Unique ID #5430, <https://prisonpandemic.uci.edu/stories/letter-from-ciw-december-17-2020-1044/>.

<sup>33</sup> *Id.*

<sup>34</sup> See Amanda K. Weaver et al., *Environmental Factors Influencing COVID-19 Incidence and Severity*, 43 Ann. Rev. of Pub. Health 271, 280-81 (2022) (discussing the impact of environmental factors on the incidence and severity of Covid-19 infection, including how low ambient temperatures and lack of ventilation in indoor environments increase the transmission and severity of the disease).

<sup>35</sup> Unique ID #5391, <https://prisonpandemic.uci.edu/stories/letter-from-chowchilla-december-9-2020-5228/>.

<sup>36</sup> COPD stands for chronic obstructive pulmonary disease; it refers to a group of diseases that cause airflow blockage and breathing-related problems. See *Chronic obstructive pulmonary disease (COPD)* WORLD HEALTH ORG. (May 20, 2022), [https://www.who.int/news-room/fact-sheets/detail/chronic-obstructive-pulmonary-disease-\(copd\)](https://www.who.int/news-room/fact-sheets/detail/chronic-obstructive-pulmonary-disease-(copd)).

<sup>37</sup> Unique ID #1364, <https://prisonpandemic.uci.edu/stories/havent-recovered-2/>.

<sup>38</sup> Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>.

<sup>39</sup> Unique ID #5542, <https://prisonpandemic.uci.edu/stories/call-from-solano-january-23-2021-4612/>.

<sup>40</sup> See *Timeline*, Cal. Dep't of Corr. & Rehab., <https://www.cdcr.ca.gov/covid19/updates/> (last visited Dec. 15, 2022).

<sup>41</sup> Unique ID #5514, <https://prisonpandemic.uci.edu/stories/letter-from-norco-february-19-2021-2324/>.

<sup>42</sup> Unique ID #5781, <https://prisonpandemic.uci.edu/stories/letter-from-solano-march-12-2021-4717/>.

<sup>43</sup> Press Release, Off. of Governor Newsom, Governor Newsom Issues Exec. Ord. on State Prisons & Juv. Facilities in Response to the COVID-19 Outbreak (Mar. 24, 2020) <https://www.gov.ca.gov/2020/03/24/governor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak/>.

<sup>44</sup> See Unique ID #609, <https://prisonpandemic.uci.edu/stories/treating-us-like-dogs/>.

<sup>45</sup> Unique ID #5346, <https://prisonpandemic.uci.edu/stories/call-from-avenal-november-10-2020-6462/>.

<sup>46</sup> Unique ID #5487, <https://prisonpandemic.uci.edu/stories/call-from-ironwood-november-9-2020-4583/>.

<sup>47</sup> See Unique ID #5346, <https://prisonpandemic.uci.edu/stories/call-from-avenal-november-10-2020-6462/>; see also Hadar Aviram *The House Always Wins: Doctrine and Animus in California's COVID-19 Prison Litigation*, 72 CASE W. RES. L. REV. 565, 580, 592 n. 128 (2022) (discussing correctional officers' well-documented failure to comply with mask mandates and surmising possible explanations for the willful decision to violate mask mandates, including "garden variety COVID-19 denialism and Trumpism among rank and file" correctional officers).

<sup>48</sup> *Id.*

<sup>49</sup> See Chelsea James, *Coughing 'attacks' may be prosecuted as terrorism in war on coronavirus*, WASH. POST (Apr. 8, 2020, 6:13 PM), [https://www.washingtonpost.com/national/health-science/coughing-attacks-may-be-prosecuted-as-terrorism-in-war-on-coronavirus/2020/04/08/b97d7f9a-790d-11ea-9bee-c5bf9d2e3288\\_story.html](https://www.washingtonpost.com/national/health-science/coughing-attacks-may-be-prosecuted-as-terrorism-in-war-on-coronavirus/2020/04/08/b97d7f9a-790d-11ea-9bee-c5bf9d2e3288_story.html).

<sup>50</sup> Hygiene supplies include supplies for washing hands, bathing, oral hygiene, and other personal hygiene, including but not limited to: soap, toothpaste or toothpowder, toothbrush, and toilet paper.

<sup>51</sup> See, e.g., Unique ID #5341, <https://prisonpandemic.uci.edu/stories/call-from-avenal-october-30-2020-2833/>; Unique ID #5430, <https://prisonpandemic.uci.edu/stories/letter-from-ciwd-december-17-2020-1044/>; Unique ID #5539, <https://prisonpandemic.uci.edu/stories/call-from-solano-december-17-2020-1320/>.

<sup>52</sup> Unique ID #5539, <https://prisonpandemic.uci.edu/stories/call-from-solano-december-17-2020-1320/>.

<sup>53</sup> *Id.*

<sup>54</sup> See, e.g., Unique ID #1044, <https://prisonpandemic.uci.edu/stories/letter-from-ciwd-december-17-2020-1044/>.

<sup>55</sup> Unique ID #5852, <https://prisonpandemic.uci.edu/stories/letter-from-vacaville-april-28-2021-8432/>.

<sup>56</sup> *Id.*

<sup>57</sup> See, e.g., Unique ID #5501, <https://prisonpandemic.uci.edu/stories/call-from-mule-creek-december-28-2020-9428/>; Unique ID #5406, <https://prisonpandemic.uci.edu/stories/call-from-chuckawalla-november-6-2020-6891/>.

<sup>58</sup> See, e.g., Sharon Bernstein, *California prison inspection uncovers unsanitary conditions*, REUTERS (May 13, 2015, 8:35 PM) <https://www.reuters.com/article/us-usa-california-prisons/california-prison-inspection-uncovers-unsanitary-conditions-idUSKBN0NZ07D20150514>.

<sup>59</sup> Unique ID #3134, <https://prisonpandemic.uci.edu/stories/without-any-contact/>.

<sup>60</sup> See Memorandum from Dir. of Div. of Adult Inst. to Assoc. Dir. & Wardens on Covid-19 Guidance for Programming (May 11, 2020) <https://www.cdcr.ca.gov/covid19/wp-content/uploads/sites/197/2020/05/R-Daily-Programming.pdf>.

<sup>61</sup> See G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Dec. 17, 2015) (defining solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact and prolonged solitary confinement as solitary confinement lasting longer than 15 days).

<sup>62</sup> Unique ID #5610, <https://prisonpandemic.uci.edu/stories/letter-from-vacaville-december-22-2020-5022/>.

<sup>63</sup> *Id.*

<sup>64</sup> Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>.

<sup>65</sup> Unique ID #1679, <https://prisonpandemic.uci.edu/stories/cant-get-any-help-2/>.

<sup>66</sup> See David Cloud et al., THE ETHICAL USE OF MEDICAL ISOLATION – NOT SOLITARY CONFINEMENT – TO REDUCE COVID-19 TRANSMISSION IN CORRECTIONAL SETTINGS (2020), [https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary\\_Amend.pdf](https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf) (discussing the difference between medical and punitive isolation).

<sup>67</sup> *Medical Isolation Versus Solitary Confinement*, AMEND, <https://amend.us/wp-content/uploads/2020/06/MI-v-SC.pdf> (last visited Jan. 13, 2023).

<sup>68</sup> Unique ID #5487, <https://prisonpandemic.uci.edu/stories/call-from-ironwood-november-9-2020-4583/>.

<sup>69</sup> See, e.g., Unique ID #5391, <https://prisonpandemic.uci.edu/stories/letter-from-chowchilla-december-9-2020-5228/>.

<sup>70</sup> Unique ID #5698, <https://prisonpandemic.uci.edu/stories/letter-from-solano-march-19-2021-7080/>.

<sup>71</sup> See Cal. Dep’t Corr. & Rehabilitation, *Three-Judge Court Quarterly Update* (March 15, 2023), <https://www.cdcr.ca.gov/3-judge-court-update/> (noting that “[a]s of March 8, 2023, the State’s adult prison population is 90,934, occupying 110.9 percent of design capacity).

<sup>72</sup> Unique ID #5637, <https://prisonpandemic.uci.edu/stories/letter-from-valley-state-february-26-2021-5202/>; see also Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>; Unique ID #5610, <https://prisonpandemic.uci.edu/stories/letter-from-vacaville-december-22-2020-5022/>.

<sup>73</sup> Unique ID #5706, <https://prisonpandemic.uci.edu/stories/letter-from-tracy-march-16-2021-1575/>.

<sup>74</sup> *Timeline*, *supra* note 40.

<sup>75</sup> Unique ID #485, <https://prisonpandemic.uci.edu/stories/cant-help-family-2/>.

<sup>76</sup> In May of 2020—barely a month into the time period that this report analyzes—the infection rate for incarcerated people began to outpace the infection rate for prison staff, although the initial infection rate for prison staff was higher than the rate for incarcerated people. This data point may corroborate the experiences of incarcerated people who observed that staff members were the initial vectors for COVID-19 in prison facilities. See Julie A. Ward, et al., *COVID-19 Cases Among Employees of U.S. Federal and State Prisons*, 60 AM. J. OF PREVENTIVE MED. 840, 841 (2021).

<sup>77</sup> See, e.g., Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>; Unique ID #609, <https://prisonpandemic.uci.edu/stories/treating-us-like-dogs/>.

<sup>78</sup> Unique ID #5500, <https://prisonpandemic.uci.edu/stories/letter-from-lancaster-january-26-2021-618/>.

<sup>79</sup> Unique ID #5738, <https://prisonpandemic.uci.edu/stories/letter-from-valley-state-march-22-2021-522/>.

<sup>80</sup> Unique ID #1413, <https://prisonpandemic.uci.edu/stories/staffs-guard-down-2/>.

<sup>81</sup> Unique ID #5645, <https://prisonpandemic.uci.edu/stories/letter-from-cmc-february-11-2021-5115/>.

<sup>82</sup> See, e.g., Unique ID #2392, <https://prisonpandemic.uci.edu/stories/safety-concerns-2/>.

<sup>83</sup> *Id.*

<sup>84</sup> See Unique ID #5349, <https://prisonpandemic.uci.edu/stories/call-from-calipatria-january-22-2021-4862/>.

<sup>85</sup> Letter from CDCR Secretary Ralph Diaz, CDCR, GTL, JPay expand commc’n access, CAL. DEP’T OF CORR. & REHAB., <https://www.cdcr.ca.gov/covid19/cdcr-gtl-jpay-expand-communication-access/>.

<sup>86</sup> Unique ID #1177, <https://prisonpandemic.uci.edu/stories/calls-just-static-2/>.

<sup>87</sup> See, e.g., Unique ID #5757, <https://prisonpandemic.uci.edu/stories/letter-from-jamestown-march-25-2021-8475/>.

<sup>88</sup> *Id.* The term used by this respondent, “privileged inmates,” refers to incarcerated people who are entitled to phone access.

<sup>89</sup> Unique ID #2392, <https://prisonpandemic.uci.edu/stories/safety-concerns-2/>.

<sup>90</sup> Unique ID #5637, <https://prisonpandemic.uci.edu/stories/letter-from-valley-state-february-26-2021-5202/>.

<sup>91</sup> Unique ID #5556, <https://prisonpandemic.uci.edu/stories/letter-from-soledad-december-28-2020-5953/>.

<sup>92</sup> Unique ID #5637, <https://prisonpandemic.uci.edu/stories/letter-from-valley-state-february-26-2021-5202/>.

<sup>93</sup> Unique ID #2365, <https://prisonpandemic.uci.edu/stories/not-being-vigilant-2/>.

<sup>94</sup> Unique ID #1031, <https://prisonpandemic.uci.edu/stories/no-mask-on-2/>.

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

<sup>96</sup> Unique ID #868, <https://prisonpandemic.uci.edu/stories/taking-its-toll/>.

<sup>97</sup> *Id.*

<sup>98</sup> Unique ID #5738, <https://prisonpandemic.uci.edu/stories/letter-from-valley-state-march-22-2021-522/>.

<sup>99</sup> Unique ID #5472, <https://prisonpandemic.uci.edu/stories/call-from-donovan-january-15-2021-5780/>.

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

<sup>101</sup> See, e.g., Marie E. Donaghy, *Exercise can seriously improve your mental health: Fact or fiction?*, 9 ADVANCES IN PHYSIOTHERAPY 76, 86 (2007); Emily M. Paolucci et al., *Exercise reduces depression and inflammation but intensity matters*, 133 BIOLOGICAL PSYCH. 79, 81 (2018).

<sup>102</sup> See, e.g., Matheus Pelinski da Silveira et al., *Physical exercise as a tool to help the immune system against COVID-19: an integrative review of the current literature*, 21 CLINICAL & EXPERIMENTAL MED. 15, 15 (2021); Robert Sallis et al., *Brief Summary of Findings on the Association Between Physical Inactivity and Severe COVID-19 Outcomes*, 55 BRITISH J. OF SPORTS MED. 1099, 1099 (2021).

<sup>103</sup> *Physical Activity and COVID-19*, Ctr. for Disease Control & Prevention, <https://www.cdc.gov/physicalactivity/physical-activity-and-COVID-19.html> (last visited Dec. 15, 2022).

<sup>104</sup> Programming may include, among other things, Alcoholics Anonymous, Narcotics Anonymous, religious services, academic instruction, and vocational training.

<sup>105</sup> See Cal Code Regs tit. 15 § 2402(d)(9) (noting that a consideration weighing in favor of suitability is whether “institutional activities indicate an enhanced ability to function within the law upon release”); see also Joel M. Caplan, *What Factors Affect Parole: A Review of Empirical Research*, 71 FED. PROBATION J. 1, 2 (2007).

<sup>106</sup> Unique ID #3143, <https://prisonpandemic.uci.edu/stories/deserve-a-chance-2/>.

<sup>107</sup> Unique ID #5545, <https://prisonpandemic.uci.edu/stories/call-from-soledad-october-26-2020-8137/>.

<sup>108</sup> Historical data from the BPH are consistent with the suggestion that the pandemic’s restriction on programming may have negatively impacted people’s ability to obtain their freedom. Parole grant rates gradually rose from 2016 to 2018, before peaking at 21.7 percent. After the pandemic, grant rates declined from 16 percent in 2020 to 14 percent in 2022. BPH grant rates are now at the lowest rate since 2011, suggesting that the pandemic-era restrictions on programming may have, in part, negatively affected parole grant rates. See CAL. DEP’T OF CORR. & REHAB., OVERVIEW OF PAROLE HEARINGS AND STATISTICS 5 (2022), <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2020/08/Parole-Hearings-Overview-Stats-Feb-2020-final-2.pdf>; see also *Calendar Year 2019 Suitability Results*, Cal. Dep’t of Corr. & Rehab., <https://www.cdcr.ca.gov/bph/2019/10/24/cy-2019-suitability-results/> (last visited Jan. 7, 2023); *Calendar Year 2020 Suitability Results*, Cal. Dep’t of Corr. & Rehab., <https://www.cdcr.ca.gov/bph/2020/03/04/cy-2020-suitability-results/> (last visited Jan. 7, 2023); *Calendar Year 2021 Suitability Results*, Cal. Dep’t of Corr. & Rehab., <https://www.cdcr.ca.gov/bph/2021/03/15/calendar-year-2021-suitability-results/> (last visited Jan. 7, 2023); *Calendar Year 2022 Suitability Results*, Cal. Dep’t of Corr. & Rehab., <https://www.cdcr.ca.gov/bph/2022/03/16/calendar-year-2022-suitability-results/> (last visited Jan. 7, 2023).

<sup>109</sup> Unique ID #5494, <https://prisonpandemic.uci.edu/stories/letter-from-ironwood-january-25-2021-394/>.

<sup>110</sup> *Id.*

<sup>111</sup> Unique ID #5622, <https://prisonpandemic.uci.edu/stories/letter-from-delano-february-16-2021-9823/>.

<sup>112</sup> *Id.*

<sup>113</sup> Unique ID #6384, <https://prisonpandemic.uci.edu/stories/letter-from-ironwood-december-29-2020-6384/>.

<sup>114</sup> Unique ID #5559, <https://prisonpandemic.uci.edu/stories/letter-from-soledad-december-28-2020-3882/>.

<sup>115</sup> Leah Wang & Wendy Sawyer, *New data: State prisons are increasingly deadly places*, PRISON POLICY INITIATIVE (June 8, 2021), [https://www.prisonpolicy.org/blog/2021/06/08/prison\\_mortality/](https://www.prisonpolicy.org/blog/2021/06/08/prison_mortality/).

<sup>116</sup> Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>.

<sup>117</sup> Unique ID # 6937, <https://prisonpandemic.uci.edu/stories/letter-from-tehachapi-december-31-2020-6937/>.

<sup>118</sup> See, e.g., Unique ID #1031, <https://prisonpandemic.uci.edu/stories/no-mask-on-2/>.

<sup>119</sup> Unique ID #5383, <https://prisonpandemic.uci.edu/stories/letter-from-chino-december-31-2020-8598/>.

<sup>120</sup> Unique ID #5726, <https://prisonpandemic.uci.edu/stories/letter-from-satf-january-8-2021-1913/>; Unique ID #3220, <https://prisonpandemic.uci.edu/stories/beyond-my-control-2/>.

<sup>121</sup> Unique ID #5762, <https://prisonpandemic.uci.edu/stories/letter-from-satf-january-14-2021-3980/>.

<sup>122</sup> CalProtect Project, California State Prisons During the COVID-19 Pandemic 203 (Ada Kwan et al. eds., 2022), <https://amend.us/wp-content/uploads/2022/05/2022-0501-CalPROTECT-Report.pdf>.

<sup>123</sup> Unique ID #609, <https://prisonpandemic.uci.edu/stories/treating-us-like-dogs/>.

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

<sup>125</sup> Unique ID #1031, <https://prisonpandemic.uci.edu/stories/no-mask-on-2/>.

<sup>126</sup> *Id.*

<sup>127</sup> Unique ID #5416, <https://prisonpandemic.uci.edu/stories/call-from-chino-december-8-2020-5350/>.

<sup>128</sup> Unique ID #5556, <https://prisonpandemic.uci.edu/stories/letter-from-soledad-december-28-2020-5953/>.

<sup>129</sup> Unique ID #5653, <https://prisonpandemic.uci.edu/stories/letter-from-chino-december-1-2020-7527/>.

<sup>130</sup> *Id.*

<sup>131</sup> *Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976).

<sup>132</sup> See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

<sup>133</sup> See § 4:4. What is a “serious medical need?”, 1 Rights of Prisoners § 4:4 (5th ed.)(enumerating five factors that have been held to indicate a serious medical need, one of which was if the medical need is “so obvious that even a lay person would easily recognize the necessity of a doctor’s attention”).

<sup>134</sup> See, e.g., CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, GUIDELINES FOR COMMUNICATION AND RESPONSE TO A COMMUNICABLE DISEASE OUTBREAK WITHIN CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) ADULT INSTITUTIONS 3 (2008) (“Outbreaks of communicable diseases (CDs) have been well documented in correctional settings. In recent years outbreaks in the California Department of Corrections and Rehabilitation (CDCR) Adult Institutions have occurred due to infections with Mycobacterium tuberculosis, Norovirus, Influenza, and Campylobacter.”).

<sup>135</sup> In addition to extensive experience dealing with disease in correctional settings, the CDCR’s operations manual notes explicitly that correctional staff were to be trained, at least yearly, on “communicable disease prevention.” See also CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION, OPERATIONS MANUAL, 209–10 (2015), [https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2019/07/Ch\\_3\\_2019\\_DOM.pdf](https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2019/07/Ch_3_2019_DOM.pdf).

<sup>136</sup> See Sharon Dolovich, *The Coherence of Prison Law*, 135 Harv. L. Rev. 302, 335 (2022) (arguing that “courts faced with cases involving Covid in prisons combined a recasting of the deliberate indifference standard with a defendant-friendly reading of the facts to justify the finding for the state”).

<sup>137</sup> See *Id.* at 337–9 (2022); *Swain v. Junior* 961 F.3d 1276 (11th Cir. 2020); *Wilson v. Williams* 961 F.3d 829 (6th Cir. 2020).

<sup>138</sup> See *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

<sup>139</sup> See *Estelle v. Gamble*, 429 U.S. 97, 103 (discussing the denial of medical care as an example of deliberate indifference).

<sup>140</sup> Unique ID #1163, <https://prisonpandemic.uci.edu/stories/i-feel-expendable-2/>.



<sup>141</sup> See, e.g., *Helling v. McKinney*, 509 U.S. 25 (1993).

<sup>142</sup> *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

<sup>143</sup> *Wilson v. Seiter*, 501 U.S. 294, 302 (1991).

<sup>144</sup> *Hope v. Pelzer*, 536 U.S. 730, 738 (2002).

<sup>145</sup> See *Rhodes*, 452 U.S. at 364 (noting that courts should examine “the effect upon [incarcerated people] of the condition of the physical plant (lighting, heat, plumbing, ventilation, living space, noise levels, recreation space); sanitation (control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping, and working); safety (protection from violent, deranged, or diseased [incarcerated people], fire protection, emergency evacuation); [incarcerated people’s] needs and services (clothing, nutrition, bedding, medical, dental, and mental health care, visitation time, exercise and recreation, educational and rehabilitative programming); and staffing (trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other [incarcerated people])”).

<sup>146</sup> *Wilson v. Seiter*, 501 U.S. 294, 304 (1991).

<sup>147</sup> See *Reyes v. Valley State Prison*, No. 120CV00023ADAGSAPC, 2022 WL 3691359 (E.D. Cal. Aug. 25, 2022); see also *Foster v. Runnels*, 554 F.3d 807 (9th Cir. 2009) (finding that depriving an incarcerated person of sixteen meals in a twenty-three day period may be cruel and unusual punishment).

<sup>148</sup> See, e.g., *Disability Rts. Montana, Inc. v. Batista*, 930 F.3d 1090 (9th Cir. 2019); see also UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE MISSISSIPPI STATE PENITENTIARY (PARCHMAN) 2 (2022), <https://www.justice.gov/opa/pr/justice-department-finds-conditions-mississippi-state-penitentiary-violate-constitution> (concluding that the use of prolonged restrictive housing placed incarcerated people at the risk of serious harm, and that this extreme isolation, coupled with egregious environmental conditions, revealed conditions that violate the Eighth Amendment).

<sup>149</sup> See, e.g., *Mora-Contreras v. Peters*, No. 6:18-CV-00678-SB, 2020 WL 2089479 (D. Or. Apr. 30, 2020), *aff’d*, 851 F. App’x 73 (9th Cir. 2021).

<sup>150</sup> See *Ruiz v. Texas*, 197 L. Ed. 2d 487, 137 S. Ct. 1246 (2017) (Breyer, J., dissenting).

<sup>151</sup> See, e.g., *Petition for Writ of Certiorari, Johnson v. Prentice* (No. 22-693) (presenting the question of whether depriving an incarcerated person in solitary confinement of virtually all exercise for three years without a security justification violates the eighth amendment).

<sup>152</sup> On December 6th, 2022, the CDCR announced that Chuckwalla is scheduled to be closed by March 2025. This is a welcome announcement in light of the facilities particularly problematic practices. Still, the closure does not obviate the need to address the facility’s present conditions, nor does the closure address the harms that incarcerated people have previously experienced in this facility. Considering that this facility is scheduled to be closed, it also seems particularly unlikely that the CDCR would invest significant resources in addressing present unconstitutional conditions. As a result, it might be particularly important to pay attention to conditions at Chuckwalla until it is eventually closed. See Cal. Dep’t Corr. & Rehabilitation, California Department of Corrections and Rehabilitation Announces the Planned Closure of Chuckawalla Valley State Prison (Dec. 6, 2022), <https://www.cdcr.ca.gov/news/2022/12/06/california-department-of-corrections-and-rehabilitation-announces-the-planned-closure-of-chuckawalla-valley-state-prison/>.

<sup>153</sup> The methodology employed to identify these problematic facilities is discussed at length in the Methodology section of this report. In analyzing problematic facilities, we focused on issues related to medical care and facility protocol. While additional issues related to isolation, lack of programming, and interpersonal violence are also discussed in the report, these issues were excluded from our analysis of problematic facilities due to concerns about sample size.

<sup>154</sup> See, e.g., *Coleman v. Schwarzenegger*, 922 F. Supp 2d 882 (E.D. Cal. 2009) (finding that the relationship between crowding and the provision of essential services to incarcerated people resulted in the denial of constitutionally adequate health care and ordering large-scale prison population reductions in California state prisons).

<sup>155</sup> *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986).

<sup>156</sup> *Hudson v. McMillian*, 503 U.S. 1, 2 (1992).

<sup>157</sup> Retaliation against an incarcerated person for filing grievances or requesting that staff follow protocol may also violate the first amendment. See *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005).



<sup>158</sup> See, e.g., *Dean v. Jones*, 984 F.3d 295, 302 (4th Cir. 2021) (“[O]fficers employ force in ‘good faith’ – and thus permissibly – when they are motivated by an ‘immediate risk[ ] to physical safety’ or threat to prison order. But they cross the line into an impermissible motive when they inflict pain not to protect safety or prison discipline but to punish or retaliate against an inmate for his prior conduct.” (citation omitted)); *Boone v. Stallings*, 583 F. App’x 174, 177 (4th Cir. 2014) (“[T]he Eighth Amendment does not permit a correctional officer to respond to a misbehaving inmate in kind.”).

<sup>159</sup> See *Dean*, 984 F.3d at 302 (“[T]he use of force on an [incarcerated person] who is ‘restrained and compliant and posing no physical threat raises the specter of such an impermissible motive.”) (quoting *Thompson v. Virginia*, 878 F.3d 89, 102 (4th Cir. 2017)).

<sup>160</sup> See *Whitley*, 475 U.S. at 320–21.

<sup>161</sup> See *Dolovich*, *supra* note 133.

<sup>162</sup> See, e.g., OFF. OF THE INSPECTOR GEN., MEDICAL INSPECTION REPORT MULE CREEK STATE PRISON (2022), <https://www.oig.ca.gov/wp-content/uploads/2022/11/Mule-Creek-State-Prison-Cycle-6-Medical-Inspection-Report.pdf>.

<sup>163</sup> See, e.g., OFF. OF THE INSPECTOR GEN., COVID-19 REVIEW SERIES: PART TWO (2020) <https://www.oig.ca.gov/wp-content/uploads/2020/10/OIG-COVID-19-Review-Series-Part-2-%E2%80%93-Face-Coverings-and-PPE.pdf>.

<sup>164</sup> See generally CAL. DEP’T OF CORRECTIONS & REHAB. OFF. OF THE OMBUDSMAN, Senate Bill 518 Report 2021 (2021), <https://www.cdcr.ca.gov/ombuds/wp-content/uploads/sites/165/2022/02/2021-DJJ-SB-518-Report.pdf>.