

Via Email

April 16, 2020

Office of Arizona Governor
Doug Ducey
1700 West Washington Street
Phoenix, AZ 85007

Dear Governor Ducey:

The American Civil Liberties Union of Arizona urges you to use your executive authority to immediately develop and implement proactive, evidence-based plans for the prevention and management of the coronavirus (COVID-19) for all people in jails, prisons, and detention centers in Arizona that: (1) releases, relocates or furloughs vulnerable populations and others that do not pose a specific threat to public safety; (2) requires the implementation of evidence-based procedures to limit the spread of COVID-19 in these facilities; and (3) requires the daily public release of critical health and safety information to incarcerated persons, their families, and the public.

We strongly urge you to reconsider the position you took earlier this month not to release people from prison in order to mitigate the spread of COVID-19.¹ Just yesterday, the public learned that there are now 17 cases of COVID-19 in the state prisons and that only 91 people out of a prison population of 41,674 have been tested.² This marks the largest increase in positive cases to date.³ People in jails, prisons and detention facilities are clearly at a heightened risk for contracting and spreading the COVID-19 virus. That risk increases significantly for medically vulnerable people including the elderly, immunocompromised, pregnant, and those with other health conditions. The Arizona Department of Corrections, Rehabilitation and Reentry's (ADCRR) health care provider has already identified approximately 6,600 vulnerable people based on their age, health status, and diagnoses.⁴ These cases, along with others, should be reviewed immediately for release, relocation, or furlough.

¹ Jimmy Jenkins, *Arizona Governor Will Not Release Inmates From State Prisons To Mitigate Coronavirus Risk*, KJZZ (Apr. 1, 2020), <https://kjzz.org/content/1512571/arizona-governor-will-not-release-inmates-state-prisons-mitigate-coronavirus-risk>.

² See, *COVID-19 Dashboard*, Arizona Department Of Corrections, Rehabilitation and Reentry, (last updated Apr. 15, 2020), <https://corrections.az.gov/adcr-covid-19-dashboard>.

³ Dave Biscobing, *Arizona Department Of Corrections Not Releasing Number Of Positive Tests Of Officers*, ABC 15 (Apr. 15, 2020), <https://www.abc15.com/news/local-news/investigations/arizona-department-of-corrections-not-releasing-number-of-positive-tests-of-officers>.

⁴ Jimmy Jenkins, *Arizona Governor Will Not Release Inmates From State Prisons To Mitigate Coronavirus Risk*, *supra* note 1.



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Once an outbreak occurs, it will be too late for corrections facilities to combat the virus. Therefore, immediate action is required to limit the spread of COVID-19 and the subsequent harm to detainees, staff, healthcare workers, and the public. Importantly, we share your concerns about public safety, which is why we make these requests. One way that you can effectively ensure public safety during this pandemic is by immediately implementing the following recommendations.

Since the emergence of COVID-19 as a global pandemic, doctors and epidemiologists have warned that “suppression will minimally require a combination of social distancing of the entire population, home isolation of cases and household quarantine of their family members,” in addition to school and university closures.⁵ Yet enclosed environments like jails, prisons, and detention centers make it impossible to implement and enforce social distancing guidelines. Such facilities, therefore, are at a heightened risk for the spread of COVID-19.⁶

The unique attributes of corrections facilities also make it impossible for those facilities to adopt and implement the mitigation efforts necessary to stop the spread of viral infection. Incarcerated persons share close quarters, including dining halls, bathrooms, showers, and other common areas, each presenting dangerous opportunities for transmission.⁷ Additionally, spaces within detention facilities often are poorly ventilated, which promotes the spread of diseases. Other hygiene-based prevention strategies are similarly ineffective in a prison or jail setting. Detainees will not typically have access to enough soap and alcohol-based sanitizers to engage in the kind of frequent hand washing encouraged by health officials. Staff often do not clean or sanitize high-touch surfaces like door handles or light switches. These factors that make it effectively impossible for people inside corrections facilities to protect themselves from outbreaks and are worsened by the fact that it is difficult to identify and isolate those individuals who are infected with COVID-19. Such individuals may suffer from only mild symptoms or even be entirely asymptomatic while carrying and spreading the disease. Unfortunately, corrections facilities typically do

⁵ *Id.*

⁶ See David Reuter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, PRISON LEGAL NEWS (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>; Bianca Malcolm, *The Rise of Methicillin-Resistant Staphylococcus aureus in U.S. Correctional Populations*, JOURNAL OF CORRECTIONAL HEALTH CARE (May 13, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3116074/>; Stephanie M. Lee, *Nearly 900 Immigrants Had The Mumps In Detention Centers In The Last Year*, BUZZFEED NEWS (Aug. 29, 2019) <https://www.buzzfeednews.com/article/stephaniemlee/mumps-ice-immigrant-detention-cdc>.

⁷ Poor inmate hygiene has in previous years led to staph infection outbreaks, spread by, inter alia, the shared use of soap and towels and person-to-person contact via contaminated hands. See Management of Methicillin-Resistant Staphylococcus aureus (MRSA) Infections, Federal Bureau of Prisons Clinical Practice Guidelines 1-2 (April 2012), <https://www.bop.gov/resources/pdfs/mrsa.pdf>.



not have the ability to perform the kind of systematic testing that would be required to ensure that the virus does not enter the facility.

The enormity of the problem is exacerbated by the fact that detained people, staff, visitors, contractors and vendors all pass between different communities and corrections facilities, and each group can bring infectious diseases into, and out of, those facilities. Correctional medicine professionals recently wrote that, “It is essential to understand that, despite being physically secure, jails and prisons are not isolated from the community. People continuously enter and leave, including multiple shifts of corrections staff; newly arrested, charged and sentenced individuals; attorneys; and visitors. Even if this flow is limited to the extent possible, corrections facilities remain densely populated and poorly designed to prevent the inevitable rapid and widespread dissemination of this virus.”⁸ Public health experts warn that outbreaks that happen in prisons and jails will inevitably spread to local communities. Indeed, this is already happening around the country. On March 23, two people held in the Cook County, Illinois jail tested positive for Coronavirus. Now, two weeks later, that jail is the nation’s largest-known source of coronavirus infections.⁹

Because of the immediate, serious threat COVID-19 poses to the people in Arizona prisons and jails, as well as staff, healthcare workers and the public, we recommend that the Governor order the following actions to combat the spread of COVID-19:

1. Release Populations That Do Not Pose A Specific Risk to Public Safety.

We ask that Governor Ducey issue an Order taking the following action and/or directing appropriate state and county officials to:

- Identify all those currently held in a state correctional facility who have 365 days or less of incarceration left to serve as of the date of this Order for the purpose of granting immediate commutation of the remainder of these individuals’ prison term;
- Identify and commute sentences for all those in custody who are elderly, immunocompromised, or pregnant and who do not pose a specific threat to public safety;
- Identify all those incarcerated who are currently parole-eligible or will be within 2 years of the date of this Order and who also meet one or more of the following conditions: (1) 55 years of age

⁸Josiah Rich, Scott Allen and Mavis Nimoh, *We Must Release Prisoners to Stop the Spread of Coronavirus*, THE WASHINGTON POST (March 17, 2020), <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lesser-spread-coronavirus/>.

⁹Timothy Williams and Danielle Ivory, *Chicago’s Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars*, THE NEW YORK TIMES (April 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

or older; (2) chronic respiratory disease; (3) cancer; (4) heart disease; (5) lung disease; (6) diabetes; (7) pregnant; or (8) who are otherwise immuno-compromised (“vulnerable populations”) and mandate that the files of these parole-eligible individuals be sent to the Governor’s office for an expedited review for a presumptive grant commuting the remainder of their prison term;

- Identify all other incarcerated people who are among the medically vulnerable populations, regardless of parole eligibility or date of release and immediately grant them a medical furlough until at least July 31, 2020;
- Identify and release those serving a sentence for a non-criminal parole or probation violation (i.e. “technical violation”);
- Order all in-person check-ins with parole or community supervision officers to cease by either suspending check-in requirements or allowing check-ins to occur by voice or video call;
- Suspend enforcement of any mobility-restricting supervision conditions (e.g. home arrest) that impede a person’s ability to seek medical care or to support a dependent; and
- Release all pre-trial detainees from jails unless they pose a specific threat to public safety.

2. Require Each Jail and Prison in Arizona to Implement Necessary Health and Safety Measures to Limit the Spread of COVID-19.

We ask that Governor Ducey issue an Order taking the following action and/or directing appropriate state and county officials to:

- Require each jail and prison provide comprehensive education to every incarcerated person and staff member on how to reduce the risk of COVID-19 transmission;
- Require each jail and prison provide all staff with appropriate cleaning and hygiene materials to limit the spread of COVID-19, including face masks, hand sanitizer, soap, and cleaning supplies;
- Require each jail and prison to create a detailed plan for the screening and testing of persons who may be potentially infected, including those who are incarcerated, staff and support personnel;
- Require each jail and prison to create a detailed plan for treatment and housing of persons who are exhibiting symptoms or who have tested positive for COVID 19;
- Require each jail and prison to create a plan to work with community hospitals that serve incarcerated persons;





- Require each jail and prison to implement policies that require reductions in the density of the population for those who are high risk according to the standards set forth by the Centers for Disease Control and Prevention;
- Require each jail and prison to eliminate all fees charged to incarcerated persons related to seeing a nurse, medical care practitioner or doctor;
- Require each jail and prison to eliminate all fees charged to incarcerated persons for cleaning and hygiene products; and
- Require each jail and prison to eliminate all fees on phone and video calls to loved ones.

3. Provide the Public Accurate and Timely Information Concerning COVID-19 Outbreaks in Jails and Prisons.

In order to ensure greater transparency to the public, we ask that Governor Ducey issue an Order taking the following action and/or directing appropriate state and county officials to:

- Require each jail, prison, and detention facility in Arizona to publicly announce the number of people tested for COVID-19 by each facility on a daily basis;
- Require each jail, prison, and detention facility in Arizona to publicly announce the number of confirmed cases of COVID-19 in each facility on a daily basis;
- Require each jail, prison, and detention facility in Arizona to publicly announce the number of suspected cases of COVID-19 in each facility on a daily basis; and
- Require each jail, prison, and detention facility in Arizona to publicly announce the number of persons quarantined because of a COVID-19 diagnosis, or related symptoms, in each facility on a daily basis.

Dozens of state and local governments have already instituted policies designed to limit the spread of COVID-19 in correctional facilities by releasing vulnerable populations and instituting comprehensive health and safety provision designed to limit the spread of the virus in correctional facilities.¹⁰

Arizona should not wait another minute to limit the spread of COVID-19 in its jails, prisons and detention centers. We urge you and other state officials to take the recommended immediate, emergency steps to protect the safety of incarcerated persons, correctional staff, healthcare

¹⁰ See *Responses to the COVID-19 pandemic*, PRISON POLICY INITIATIVE (last updated Apr. 9, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.

workers and the public. We ask that you work immediately to address this crisis before it is too late.

If you have any questions or would like to discuss, please contact Darrell Hill at dhill@acluaz.org.

Thank you,



A handwritten signature in blue ink that reads "Darrell Hill".

Darrell Hill
Policy Director

A handwritten signature in black ink that reads "Victoria López".

Victoria López
Advocacy and Legal Director