

Via Email and Certified Mail

June 5, 2020

Sheriff Paul Penzone
Maricopa County Sheriff's Office
550 W. Jackson Street
Phoenix, AZ 85003

*Re: Demand for Universal COVID-19 Testing in Jail and
Public Disclosure of Aggregate Results*



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Dale Baich
President

Alessandra Navidad
Executive Director

Victoria López
Advocacy & Legal
Director

Dear Sheriff Penzone:

On behalf of the ACLU of Arizona, I write with grave concern for the health and wellbeing of those detained in the Maricopa County jail system and for everyone in our larger community. Since May 29, the number of confirmed cases in MCSO's jails has quintupled requiring immediate action.¹ MCSO should have seen this coming. Since the start of the coronavirus pandemic, public health officials have warned that the risk of viral infection and death is particularly high for those detained in jails and prisons.² Yet MCSO has refused to universally test everyone detained in its jails. Although as of June 4, 2020, there have been 30 confirmed cases of coronavirus within MCSO's jail system, this number almost certainly undercounts the total number of those infected as only 426 people have been tested, representing approximately just 8% of the total jail population.

Once an outbreak of COVID-19 occurs in a detention facility, the virus quickly spreads. For example, more than 80% of those incarcerated at Ohio's Marion Correctional Institute tested positive for the virus, a fact only known because of universal testing within the facility.³ Similarly, the number of confirmed cases in New Orleans jail doubled once mass testing was conducted.⁴

¹ Ethan Siegal, "Why 'Exponential Growth' is So Scary for the COVID-19 Coronavirus," *Forbes*, (March 17, 2020) (explaining that "exponential growth is so powerful not because it's necessarily fast, but because it's relentless. Without introducing a factor to suppress it, exponential growth is an infectious disease doctor's nightmare, particularly as more time goes on."), *available at*: <https://www.forbes.com/sites/startswithabang/2020/03/17/why-exponential-growth-is-so-scary-for-the-covid-19-coronavirus/#4bd19e9e4e9b>.

² Oluwadamilola T. Oladeru, Adam Beckman, Greg Gonsalves, "What COVID-19 Means For America's Incarcerated Population – And How to Ensure It's Not Left Behind," *Health Affairs* (March 10, 2020), *available at*: <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/>.

³ Jeremy Pelzer, "Why has Ohio's Marion Prison become the number-one coronavirus hotspot in the United States?," *Cleveland.com* (April 2, 2020), *available at*: <https://www.cleveland.com/coronavirus/2020/04/why-has-ohios-marion-prison-become-the-number-one-coronavirus-hotspot-in-the-united-states.html>.

⁴ Matt Sledge, "Coronavirus cases in New Orleans jail surge after mass testing; 56 inmates test positive," *The Times Picayune* (April 20, 2020), *available at*:

Moreover, once an outbreak occurs in a jail or prison, it can quickly spread to the larger community.⁵

Universal testing is necessary for jails and prisons to take measures to protect those in their custody, including the many medically vulnerable prisoners in such facilities.

For these reasons, the Centers for Disease Control and Prevention (“CDC”) classifies residents in congregate living settings as “high priority” for COVID-19 testing, specifically citing prisons.⁶ The CDC also provides recommendations for facility-wide testing in nursing homes, which is cited by the Maricopa County Department of Public Health, because of the number of medically vulnerable individuals living in close proximity.⁷ These conditions apply to the MCSO’s jail system as well, underscoring the importance of universal testing from a public health perspective.



Despite the obvious need for universal testing, the Maricopa County Sheriff’s Office has so far failed to conduct robust testing of those detained in its jails. To ensure the health and safety of people detained in MCSO’s jails and the public at large, the ACLU of Arizona is demanding (1) MCSO immediately begin universal COVID-19 testing of everyone held in their jails and (2) publicly release the aggregate results of this testing.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared G. Keenan".

Jared G. Keenan
Criminal Justice Staff Attorney, ACLU of Arizona

https://www.nola.com/news/coronavirus/article_7118e7ce-7e6e-11ea-9e3b-0b0c47999d20.html.

⁵ ACLU, “Flattening the Curve: Why Reducing Jail Populations is Key to Beating COVID-19,” (summarizing epidemiological model that finds thousands of additional COVID-19 deaths without social distancing in jails), *available at*:

<https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19?redirect=covidinjails>; Timothy Williams and Danielle Ivory, “Chicago’s Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars,” (April 8, 2020), *available at*: <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁶ Centers for Disease Control and Prevention, “Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19),” *available at*:

<https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>.

⁷ Centers for Disease Control and Prevention, “Performing Facility-Wide SARS-COV-2 Testing in Nursing Homes,” *available at*:

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-facility-wide-testing.html>; *see also* Maricopa Cty Dep’t of Public Health, “COVID-19 Guidance for Long-Term Care Facilities (May 2020), *available at*: <https://www.maricopa.gov/DocumentCenter/View/58659/Long-term-Care-Facility-Guidance?bidId=>.