



June 23, 2020

SENT VIA Email

Re: Sheriffs' duty to protect high risk inmates from COVID-19

Dear Sheriffs:

We write first and foremost to acknowledge and express gratitude for your collective efforts at lowering the jail population in Colorado to mitigate the spread of COVID-19. We also write to ensure you are aware of both the Colorado federal court order outlining sheriffs' obligations to take aggressive protective action on behalf of medically vulnerable incarcerated people, and the correlating imperative to maintain lower jail populations while COVID-19 remains a threat.

I. Sheriffs have been key to lowering jail populations during COVID-19.

Since March, we know that sheriffs across the state have worked hard to bring jail populations down to protect correctional staff, incarcerated people, and the community at large from COVID-19. We know sheriffs have taken these actions with an eye toward public safety, and have focused on reserving jail beds only for people who pose a risk to the physical safety of others, which was precisely the ask of the Governor in his Guidance to local law enforcement.¹ We know many sheriffs have worked actively with prosecutors, public defenders, judges, DOC and Parole to decrease the number of people housed in jails, with a particular focus on avoiding incarceration of medically vulnerable people whenever possible. To that end, many sheriffs have adopted policies of refusing to admit into their jail individuals charged with offenses that do not raise an immediate public safety threat and to ensure individuals are summonsed rather than arrested for these same offenses.

Sheriffs' efforts have been impactful. Colorado jail populations are the lowest they have been in decades, with jails across Colorado averaging more than a 40% decrease in the number of incarcerated people, and jail occupancy averaging less than 50%.² These decarceration efforts mean that jails are better able to allow incarcerated people and jail staff to practice social distancing; jails are better able to provide single cells for medically vulnerable people; and jails are better able to isolate people at intake, as well as those incarcerated people who are positive, suspected positive or have been exposed to COVID-19. Colorado sheriffs are to be commended for their efforts to prioritize public health while also fulfilling their public safety obligations.

¹ See *Guidance to Counties, Municipalities, Law Enforcement Agencies and Detention Centers* (Mar. 24, 2020), available at <https://drive.google.com/file/d/1q7wkqi-NeU5nmuFcBQwn-6CryTKdYJ5P/view>

² Jail population data collected weekly by the ACLU through open records requests to all Colorado jails.

II. The COVID-19 crisis behind bars has not abated.

We are grateful that, among non-incarcerated Coloradoans, COVID-19 has been on the decline, and life is beginning to move closer to normalcy. The same cannot be said for correctional facilities, and one of the primary reasons we write is to urge sheriffs not to be lulled into false sense of security by these community trends. While the COVID-19 curve has been trending downward among free Coloradoans, the crisis is ongoing and – in many cases – escalating in Colorado’s correctional settings. Jails remain a hotbed for COVID-19 infection and, once an outbreak occurs, conditions of confinement make it very difficult to bring that outbreak under control.

During a recent press conference, Governor Jared Polis cited jails and prisons as likely breeding grounds for COVID-19.³ Jails and prisons remain among the country’s largest outbreaks of COVID-19. By June 16, at least 46,249 people in prisons throughout the country had tested positive for COVID-19, a 5 percent increase from the week before. Nationally, at least 548 people incarcerated in prison have died from COVID-19. By June 16, the total number of deaths had risen by 5% in a week.⁴

We understand that most Colorado jails have still not performed comprehensive testing, but – for those that have – the results have been alarming. Data from county jails in Colorado reveals that COVID-19 continues to spread. At the Denver County Jail, there are 27 incarcerated people with COVID-19 and 2 staff with COVID-19. An additional 43 incarcerated people have probable COVID-19 cases. At the Van Cise-Simonet Detention Center in Denver, there are 190 COVID-19 cases amongst incarcerated people, 3 cases amongst staff and a further 162 incarcerated people with probable COVID-19.⁵ At the Jefferson County Detention Facility, there are 53 incarcerated people with confirmed COVID-19 cases, 28 incarcerated people with probable COVID-19 and 11 staff with confirmed cases of COVID-19.⁶ At the Weld County Jail, there are 35 incarcerated people with COVID-19 and 22 staff with COVID-19.

There are reported COVID-19 outbreaks at the Adams Transitional Center, Advantage Treatment Center in Alamosa, Arapahoe Community Treatment Center, Commerce Transitional Center in Adams, Douglas County Jail, Intervention Community Corrections Services in Weld and at the Washington County Justice Center.⁷ In other county jails without confirmed positive cases, such as El Paso, Mesa, Larimer and La Plata, dozens of inmates remain in isolation with COVID-19 symptoms.⁸ Thus, despite the limited testing

³ Michael Roberts, *COVID-19: Colorado’s Next Virus Time Bombs?*, WESTWORD (May 12, 2020), <https://www.westword.com/news/covid-19-likely-colorado-outbreak-sites-11709325>

⁴ *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (June 18, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

⁵ *Outbreak Data*, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (June 17, 2020), <https://covid19.colorado.gov/data/outbreak-data>

⁶ *Id.*

⁷ *Id.*

⁸ Data provided in response to records requests from the ACLU of Colorado.

taking place in jails in Colorado, it is clear that COVID-19 remains a severe threat to people who work and are incarcerated in Colorado jails.

Given these realities, we urge you not to let up on your COVID-related decarceration policies and to maintain a lower jail population at least until there is a cure or vaccine for COVID-19.

III. Sheriffs have ongoing constitutional obligations to protect medically vulnerable inmates from COVID-19.

While maintaining lower jail population numbers is the right thing to do in terms of public health, it is also a prerequisite for sheriffs to be able to provide constitutionally adequate conditions of confinement in the age of COVID-19.⁹ If you have not already read the preliminary injunction ordered against Weld County Sheriff Steven Reams on May 11, 2020 by federal Chief Judge Brimmer, we have attached it here.¹⁰ The order provides important guideposts, which we discuss below, that are applicable for all sheriffs so long as COVID-19 remains a threat in correctional settings. In short, the order requires all sheriffs to take aggressive protective action on behalf of medically vulnerable incarcerated people.

In the ruling, Judge Brimmer granted a preliminary injunction against Weld County Sheriff Reams in a class action lawsuit filed by the ACLU and a team of civil rights attorneys. The lawsuit sought an order for heightened protections – including social distancing – for all people incarcerated in the Weld County Jail who, due to age or medical vulnerability, face a heightened risk of serious illness or death from COVID-19. The injunction followed expedited litigation, two jail inspections, and an all-day evidentiary hearing in which multiple witnesses testified and Sheriff Reams was cross-examined. In granting the injunction, the Court concluded that Sheriff Reams violated the Constitution when he failed to identify all medically vulnerable people within the jail, and then “failed to take adequate measures to protect members of the plaintiff class from COVID-19 given that they face a heightened risk of serious illness or death from the virus.” Order at 37.

To ameliorate the constitutional violation, the Court ordered Sheriff Reams to take the following emergency actions: (1) Compile and provide to the court and plaintiffs a list of all medically vulnerable inmates, identifying their risk categories, and explaining the process used to identify these inmates; (2) Institute a policy ensuring social distancing of medically vulnerable inmates to the maximum extent possible, including potentially housing all such inmates separately on one or more pods; (3) Institute an intake procedure where medically vulnerable inmates are single-celled or otherwise socially distanced; (4) Institute a policy of enhanced sanitation where medically vulnerable inmates are housed; (5) Institute a plan to obtain sufficient and adequate masks; and (6) Institute a policy providing increased monitoring of medically vulnerable inmates. Order, at 37-39.

⁹ This letter follows up on the ACLU’s May 26 [letter](#) to all Colorado sheriffs that underscored their constitutional and societal obligation to both decrease their jail populations in order to facilitate social distancing and to provide heightened protections to medically vulnerable inmates

¹⁰ See *Attach. 1*, Order in *Carranza, et al. v. Reams*, Case No. 1:20-cv-977-PAB, Doc. No. 55 (D. Colo. May 11, 2020).

The directives in Chief Judge Brimmer’s order apply with equal force to every jail in Colorado so long as COVID-19 remains a threat. **Required actions by all sheriffs should include, at minimum:**

- (1) Perform a thorough medical screening of all people at booking, before they have any contact with other inmates, to determine if, based on public health guidelines, they are at high risk of serious illness or death from COVID-19.¹¹
- (2) Isolate all medically vulnerable inmates at intake for at least two weeks before they are placed in a general population environment;
- (3) Once in general population, ensure physical distancing in cells and common spaces for medically vulnerable inmates;
- (4) Provide single cell-housing in general population for all medically vulnerable inmates to the greatest extent possible;¹²
- (5) Isolate in a single cell all individuals who are positive or symptomatic for COVID-19 for at least two weeks and until they have tested negative at least twice for the virus;
- (6) Ensure common spaces and communal items – most particularly toilets, sinks, showers and phones – are properly cleaned between uses wherever medically vulnerable inmates are housed;
- (7) Ensure there are adequate and free cleaning and hygiene supplies available to all inmates at all times;
- (8) Provide sufficient and adequate masks for all inmates;
- (9) Provide enhanced medical monitoring of medically vulnerable inmates; and
- (10) Ensure inmates and staff are well-educated about the virus and public health guidelines related infection prevention.

Failure to take these steps risks the health of incarcerated people, correctional staff and the community and exposes your county to legal liability.

¹¹ Dr. Franco-Paredes charts the risk factors for developing serious disease or death from COVID-19 on pages 2-3 of his declaration. *Attach. 2*.

¹² To be clear, while social distancing is required, any isolation or single-celling must be non-punitive and allow social interaction to the greatest extent possible while following public health guidelines.

Keeping your jail's occupancy rate low is essential to meeting your constitutional obligations.

In granting the injunction, Chief Judge Brimmer relied heavily on the testimony of Plaintiffs' expert, leading Colorado epidemiologist Dr. Carlos Franco-Paredes, whose declaration is attached to this letter. As Dr. Paredes explains: "**Reducing the inmate population to allow for social distancing is the cornerstone of reducing the impact of this highly transmissible viral pathogen.**" *Declaration*, at 10. Indeed, in the weeks before the evidentiary hearing, the jail population dropped substantially, which created the necessary conditions in the jail to facilitate compliance with the court's order to socially distance medically vulnerable inmates.

To protect all inmates, but most particularly the medically vulnerable, there must be ample space in the jail not only to isolate incarcerated people who are infected, but also to hold medically vulnerable people in a non-punitive, single cell environment in order to protect them from infection. The most effective protection of vulnerable inmates, and one that will conserve resources and help keep jail populations down, is to do everything in your power to avoid incarcerating medically vulnerable people who do not pose a risk to the physical safety of others. You can and should do this by identifying medically vulnerable people at booking (as well as those currently in your custody) and immediately working with prosecutors, public defenders judges, DOC and/or Adult Parole to find a safe alternative to incarceration whenever possible.

We hope this letter is helpful to you and your county attorney as you consider what further actions are necessary to ensure you are meeting your constitutional obligations. We welcome further discussion on this matter.

Sincerely,



Rebecca Wallace
Senior Staff Attorney and Senior Policy Counsel
ACLU of Colorado



Mark Silverstein
Legal Director, ACLU of Colorado

Enc. Attach. 1 – May 11, 2020 Weld County Preliminary Injunction Order
Attach. 2 – Expert declaration of Dr. Carlos Franco-Paredes