



Northern
California

Mid Peninsula Chapter



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North Peninsula Chapter

April 14, 2020

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Sheriff Carlos Bolanos

Undersheriff Mark Robbins

District Attorney Steve Wagstaffe

Hon. Jonathan E. Karesh, Presiding Judge of the San Mateo County Superior Court

CC: San Mateo County Board of Supervisors

Lisa Maguire, Esq., Chief Private Defender

RE: COVID-19 Policy in San Mateo County Jails

Dear Sheriff Bolanos, Undersheriff Robbins, District Attorney Wagstaffe, and Judge Karesh,

We write with urgent concern about the potential impact of COVID-19 on San Mateo County residents incarcerated in jails and the juvenile detention center. We appreciate the significant efforts your offices have already undertaken to protect the public. We note the court's guidance to the public regarding courthouse activity and the sheriff's transparency regarding steps taken to reduce spread of COVID-19 in county jails. You can take further action to decrease the transmission of COVID-19 by addressing jail cooperation with ICE, conditions in the jails, as well as judicial and prosecutorial decisions.

Decreasing the Spread of COVID-19 by Suspending Cooperation with ICE:

We urge you to: (1) immediately stop facilitating ICE arrest of people in county custody, including but not limited to transferring people to federal immigration authorities or providing ICE with

information regarding a person's release date and (2) inform the detained individual's private defender of any detainers you receive from immigration authorities.

Federal immigration authorities are continuing to detain individuals, placing them in detention centers that have a history of medical neglect so extreme that in some cases, it has resulted in death.¹ California detention centers have already received their first confirmed cases of COVID-19.² These facilities are ill equipped for basic medical care let alone a pandemic of COVID-19 proportions. Most recently, despite their sensitive locations memorandum that claims no enforcement operations will occur in hospitals, there are reports of the agency arresting an individual in a hospital.³ If San Mateo community members are transferred to ICE who will likely choose to detain them, their health and even lives are unquestionably at risk during the most serious health crisis in modern history.

Medical experts have recommended meticulous personal hygienic practices and social distancing as the most effective tools to combat the spread of COVID-19, none of which is practical in immigration detention centers. Experts recommend staying at least six feet away from someone who coughs or sneezes, avoiding or limiting all physical contact, washing your hands regularly with soap and water, and using alcohol-based hand sanitizer to clean your hands after coughing, sneezing, or coming into contact with potentially exposed surfaces, objects, or people. None of this is possible at an effective level in detention, where there is overcrowding and some individuals are required to buy their own soap. Public health experts have clearly stated that preventing the harm inflicted by COVID-19 can become immensely more difficult for people involved in incarcerated settings. Even more, there is the likelihood that an individual (including detained people and employees) may become, unknowingly or otherwise, infected while in detention and then be released into the community, causing COVID-19 to spread.

Transfers to immigration authorities are purely voluntary. In order to avoid the spread of this infectious disease that is already predicted to wreak havoc on our already burdened health facilities, we strongly urge your office to stop all voluntary transfers to federal immigration authorities, unless it is pursuant to a judicial warrant. This includes custodial transfers and any time your office turns someone over to immigration authorities in nonpublic areas of your facility or otherwise facilitates

¹ Andrea Castillo, ICE provides 'deplorable' healthcare to detained immigrants, advocates allege in massive lawsuit, Los Angeles Times, August 19, 2019, <https://www.latimes.com/california/story/2019-08-19/immigrant-detentionmedical-care-lawsuit>; *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, Department of Homeland Security Office Inspector General, September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf>.

² <https://www.kpbs.org/news/2020/apr/07/6-detainees-5-employees-positive-coronavirus-otay-/>

³ Noah Lanard, *The Right and Wrong Lessons to Take from that Viral Photo of an ICE Arrest at a Hospital*, Mother Jones, March 13, 2020, <https://www.motherjones.com/politics/2020/03/the-right-and-wrong-lessons-to-take-from-that-viral-photo-of-an-ice-arrest-at-a-hospital/>

that person's arrest. We note that in 2018, San Mateo County Sheriff's Office transferred 51 immigrants to ICE, ranking this county #9 out of 58 counties for the highest number of transfers; meanwhile our neighboring counties of Santa Clara and San Francisco made no such transfers.⁴ The practice of turning people over to immigration authorities is completely discretionary and, in this moment of unprecedented crisis, must stop.

Furthermore, we strongly recommend that upon receipt of an immigration detainer, that your office immediately provide the individual's private defender a copy of the detainer via electronic mail. Knowing whether an individual has an immigration detainer is critical to private defenders in advising their clients of potential immigration consequences they may face for criminal conviction. Further, it enables the private defenders to prepare for what, if anything, might happen to their clients after being released from your custody.

Decreasing the Spread of COVID-19 within Local Jails:

- **Early release:** We encourage you, Sheriff Bolanos, to accelerate your efforts to assess sentenced individuals who are particularly vulnerable to COVID-19 for immediate release, unless there is clear evidence that release would present an unreasonable risk to the physical safety of the community. We understand that you are prioritizing such releases based on medical condition, age, and pregnancy. In the interest of greater specificity, we urge you to define age-based releases as those 50 and older.⁵ Medical conditions must include those with asthma, cancer, diseases of the heart, lung, kidney, or liver, diabetes, and the immunocompromised.⁶ To further reduce the population, we also urge you to continue the release of all individuals who have 60 days or fewer of their sentence remaining.

- **Reduce arrests and bookings:** We recommend that deputies use greater discretion when choosing whether or not arrest someone. For example, deputies should favor using verbal warnings. When deputies do arrest someone, they should use cite-and-release whenever possible.

- **Education of the people in your custody:** While we note your assurance that cleaning and sanitizing supplies are readily accessible in the jails, it also is essential that people housed in the jails be educated about COVID-19 and the measures they should take to minimize their risk of contracting or spreading it. They must be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent they can. Information about the spread of COVID-19, the risks associated with it, and prevention and treatment measures must be based on the best available science. Education should be reiterated upon release to best inform individuals on how to prepare for a healthy return to the public.

⁴ <https://openjustice.doj.ca.gov/data>

⁵ <https://www.usnews.com/news/health-news/articles/2020-03-30/odds-of-hospitalization-death-with-covid-19-rise-steadily-with-age-study>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

- **Staffing plans:** Regardless of how many staff stay home because they are sick, the jails will have to continue maintaining a staffing level to ensure adequate and humane functioning. There must be a plan for how necessary functions and services will continue if large numbers of staff are unable to work because they (or a family member) have COVID-19.

- **Staffing plans for services provided by jail staff:** Many tasks in jails, such as food preparation and basic sanitation, are performed by jail staff. The plans for an outbreak must also address how necessary tasks performed by jail staff will continue if large numbers of jail staff are unable to work because they (or a family member) have COVID-19.

- **Housing of persons exposed to COVID-19:** We recommend that your plan for isolating inmates in the event of a COVID-19 outbreak be continually reevaluated in consultation with the County Health Department to ensure compliance with continually evolving health policy.

- **Treatment:** Courses of treatment must be evidence-based, available immediately, and in compliance with current County Health Department protocols.

- **Vulnerable Populations:** For those who cannot be safely released, we urge additional precautions for those who are at high risk of serious illness if they are infected. Such individuals include older and medically vulnerable populations and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.

- **Release Planning:** For anyone who is about to be released, we urge you to consult with local health and human services officials to: ensure final screening so that COVID-19 is not transmitted into the community from within the facility; and, secure community-based quarantine care and support for any who test positive for COVID-19. We also request that you consult with local human services officials to ensure that resources are available for housing and support to minimize the risk that newly released people become unhoused.

- **Broad Community Support:** Because of the risk to any incarcerated population, we uplift and underscore the requests submitted to your office on April 1, 2020 by San Mateo County Participatory Defense and over 45 organizations, calling for decarceration efforts for adults and youth in San Mateo County Jails and Juvenile Hall.

Judicial and Prosecutorial Action to Decrease the Spread of COVID-19 :

- **Release of pre-trial detainees:** The California Constitution allows courts to release individuals on their own recognizance “in the court’s discretion.” Article 1, Section 12. Section 1275 of the California Penal Code states the considerations in setting bail, and makes clear that “[i]n setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public” and that “public safety shall be the primary consideration.” We therefore encourage presumptive release on recognizance for as many people as possible, particularly for vulnerable populations, including people over the age of 50 and people with special health vulnerabilities.

On April 6th, 2020, the Judicial Council adopted recommendations for new Emergency Rules during the pandemic, which included a statewide bail schedule and required consent of defendants for remote appearances in criminal cases. In criminal cases, Rule 4 imposes a statewide bail schedule with bail of \$0 for most misdemeanors and lower-level felony offenses.”. Rule 5 sets procedures for video/remote appearances in criminal cases, including a requirement of consent by the defendant before any remote appearance. Courts and jails are given until April 10th to apply the new rules to all pre-trial inmates. We urge this court to adopt the new recommendation immediately.

- **Minimizing the use of detention:** To reduce crowding, courts should default to noncustodial sentences wherever feasible. We urge District Attorney Wagstaffe to make noncustodial sentencing recommendations to the greatest possible extent.

- **Charging Decisions:** We urge District Attorney Wagstaffe to use his discretion to decline to charge probation or parole violations unless the conduct at issue endangers other persons.

- **Reducing court appearances and other in-person meetings:** Courts should reduce the risk to their staff and to the general public by declining to issue “failure to appear” warrants or “bench warrants.” If requested by defense counsel, courts should agree to waive clients’ appearance for status court dates (for people both in and out of custody). Courts should also cancel all probation, parole, and pretrial meetings; court-ordered classes; in-person drug testing; collection of court debt; and modify all reporting conditions to phone-reporting.

Thank you for your time and attention. Please respond by April 17, 2020, to share how you will further protect the community against the transmission of COVID-19. We would also be amenable to a videoconference to discuss these issues in more detail. Please contact me at mromani@aclunc.org with any questions or comments.

Sincerely,

Maria Romani
Immigrants’ Rights Project Attorney*
ACLU Foundation of Northern California

*Not admitted in California; admitted to practice law in New York

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