



December 21, 2020

**San Diego and
Imperial Counties**

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Via E-Mail

Re: California Public Records Act Request for Records Concerning San Diego County Jails
and COVID-19

Dear Sheriff Gore, Mr. Faigin, Mr. Toyen, and Mr. Dronenburg,

In light of recent reports regarding a COVID-19 outbreak in the San Diego County jails, I write on behalf of the ACLU Foundation of San Diego & Imperial Counties ("ACLU-SDIC") to express concern and seek documents regarding the San Diego Sheriff's Department's handling of the COVID-19 pandemic in its jail facilities. A significant cause of the outbreak appears to be the Department's refusal to release sufficient people to permit social distancing or consistently enforce reasonable prevention policies. As described in more detail in Section I below, the situation has become urgent and requires immediate action – most notably a dramatic reduction in the San Diego jail population as the Orange County Superior Court recently ordered for Orange County jails.

This letter is sent pursuant to the California Public Records Act (CPRA), Govt. Code §§ 6250 – 6277 and Article I, Section 3(b) of the California Constitution. As described in Section II below, we respectfully request copies of records in the possession, custody, or control of San Diego County and/or the San Diego County Sheriff's Department related to the County's policies and practices for addressing and ameliorating the risks of COVID-19 for people incarcerated in San Diego County jails.

I. Current Conditions Regarding COVID-19 in San Diego County Jails

A. COVID-19 in Detention

COVID-19 is a disease caused by the novel Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a highly contagious virus that, as of this writing, has claimed more than 315,000 lives in the United States. There is no cure, and although vaccine distribution is underway, it will be months or longer before sufficient vaccine is available to all in the United States who want it and particularly to incarcerated people in San Diego County jails.

The most effective ways to mitigate the risk of serious illness or death from COVID-19 are to practice social distancing and scrupulous hygiene, including wearing appropriate face coverings. The virus “most commonly spreads between people who are in close contact with one another” through respiratory droplets “produced when an infected person coughs, sneezes, sings, talks, or breathes,” though “[d]roplets can also land on surfaces and objects and be transferred by touch.”¹ Critically for incarcerated people, there is also “growing evidence that droplets and airborne particles can remain suspended in the air and be breathed in by others, and travel distances beyond 6 feet.... In general, indoor environments without good ventilation increase this risk.”² For this reason, it has become common knowledge that congregate environments like jails – where people live, eat, and sleep in close proximity and with poor ventilation – heighten the risk of COVID-19 transmission because social distancing is normally impossible.

Jail staff, vendors, contractors and others who enter and exit facilities on a daily basis and who routinely come into close contact with incarcerated people after being among the general public may be asymptomatic carriers of the virus and create some of the most obvious vectors for entry of the virus into any jail system. New admissions to jail facilities also create substantial risk of introducing the virus.

B. Current COVID-19 Outbreak in San Diego Jails

An active COVID-19 outbreak is underway in San Diego County jails. As of December 18, 2020, the San Diego County Sheriff’s Department (“Sheriff”) reports that there are 388 active coronavirus cases among individuals incarcerated in San Diego County jails, 106 additional incarcerated individuals who are isolated due to COVID-like symptoms or possible exposure,³ and 105 active positive cases among Sheriff’s employees.⁴ With approximately 4,000 people incarcerated in San Diego jails, the nearly 10% active infection rate is a grave concern. The dramatic increase in jail cases is especially troubling because it comes at a time when the number

¹ See CDC COVID-19 Frequently Asked Questions, “Basics,” <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics> (last accessed Dec. 17, 2020)

² *Id.*

³ San Diego County Sheriff’s Department, COVID-19 Jail Status Report (“Jail Status Report”) <https://www.sdsheriff.net/newsroom/links/dsb-covid19.pdf> (last accessed Dec. 21, 2020).

⁴ San Diego County Sheriff’s Department, COVID-19 Employee Status Report (“Employee Status Report”) <https://www.sdsheriff.net/newsroom/links/dsb-covid19-2.pdf> (last accessed Dec. 21, 2020).

of available Intensive Care Unit capacity is at or approaching 0% in hospitals throughout the County,⁵ and County health officials have reported that regardless of bed availability, sufficient medical staffing of those beds is severely limited.⁶ The situation is particularly dire for medically vulnerable incarcerated people and those of advanced age, who face heightened risk of serious harm or death from contracting the virus. Studies regularly demonstrate that when compared to the general population, people incarcerated in jails and prisons are more likely to have conditions that make them vulnerable to COVID-19.⁷

The San Diego County Jail system consists of seven facilities located across the county: San Diego Central Jail, George Bailey Detention Facility (“George Bailey”), East Mesa Reentry Facility (“East Mesa”), South Bay Detention Facility (“South Bay”), Vista Detention Facility, Las Colinas Detention & Reentry Facility (“Las Colinas”), and Facility 8 Detention Facility (“Facility 8”). In the third quarter of 2020, San Diego jails were the third most populous jail system in California, behind only Los Angeles and San Bernardino.⁸

After initially decreasing the population of the jails from a little over 5,200 on March 16, 2020⁹ to closer to 3,500 later that summer, the Sheriff has allowed those numbers to creep back up, climbing to nearly 4,000 by the end of November. However, overall detention numbers in a jail system comprised of seven facilities tells preciously little about how full each individual facility is and whether social distancing is possible in any particular facility. Thus, while the capacity of the overall jail system was at about 69% on November 23, 2020, creating the impression of significant depopulation across the system, this is largely attributable to lower populations in only three facilities, with Las Colinas and East Mesa operating at about 40% of capacity and Facility 8 operating at about 52% of capacity on that date. Meanwhile, that same day, George Bailey, San Diego Central, South Bay, and Vista Jail continued to operate at about 92%, 86%, 88%, and 77% of their respective capacities. Social distancing is not possible at these population levels.

Public information shared on the Sheriff’s website regarding the current outbreak is also limited, providing only the total number of active cases in custody without breaking it down by facility. For example, while the “Jail Status Report” on the Sheriff’s website shows 388 active

⁵ Jeff McAdam, *ICU Capacity Plummets Amid COVID-19 Surge*, FOX 5 NEWS – CITY NEWS SERVICE, Dec. 18, 2020, <https://fox5sandiego.com/news/coronavirus/icu-capacity-plummets-amid-covid-19-surge/>.

⁶ Paul Sisson, *Intensive care units struggle to staff growing COVID-19 caseloads*, SAN DIEGO UNION-TRIB., Dec. 14, 2020, <https://www.sandiegouniontribune.com/news/health/story/2020-12-14/intensive-care-units-struggle-to-staff-growing-covid-caseloads>

⁷ U.S. Dept. of Health and Human Services, Office of Disease Prevention and Health Promotion, Social Determinants of Health, Incarceration, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/incarceration> (citing studies) (last accessed Dec. 17, 2020).

⁸ Cal. Board of State and Community Corrections, Jail Profile Survey at 5-6, <https://bscc.ca.gov/wp-content/uploads/Jail-Pop-Trends-Through-Q3-2020.pdf>

⁹ This is consistent with previous years’ average daily population of above 5,500. *Id.* at 77.

cases as of December 18, 2020,¹⁰ it does not show the proportion of cases in each facility so that the public can effectively monitor the impact of COVID-19 in jail facilities across the County or any differences in the effectiveness of the Sheriff’s response by facility.

However, the Sheriff does appear to report this information to the California Board of State and Community Corrections (“BSCC”). As indicated in the following table, according to the most recent BSCC data, which is current as of December 5, 2020, rather than embrace social distancing as the pandemic has raged on, the Sheriff has *increased* the population of most San Diego jail facilities since this summer.¹¹

Facility	BSCC-Rated Capacity	Population, 7/25/20 (% capacity)	Population, 12/5/20 (% capacity)	# of Incarcerated People Tested, 11/29/20 – 12/5/20)	# of Incarcerated People who Tested Positive, 11/29/20 – 12/5/20
San Diego Central	944	614 (65%)	815 (87%)	152	Between 1 and 11
George Bailey	1,380	1,104 (80%)	1,206 (87%)	255	65
South Bay	386	329 (85%)	361 (93%)	0	0
Vista	825	603 (73%)	599 (73%)	58	17
Facility 8	200	97 (49%)	179 (90%)	0	0
East Mesa Re-Entry	760	412 (54%)	273 (36%)	44	Between 1 and 11
Las Colinas	1,270	467 (37%)	469 (37%)	71	0

These numbers paint a troubling picture. When the Sheriff’s efforts should have been focused on reducing the population in every San Diego jail facility to protect the incarcerated people entrusted to his care from COVID-19, he has instead decided to keep the facilities packed and even increase their populations heading into the winter. As a result, the 388 active cases in San Diego jails as of December 18, 2020 represents more than half the 637 cumulative cases from the last nine months combined. This is a dramatic and sudden increase in recent months that will only continue to grow through the winter if the Sheriff’s custody policies do not change.

Descriptions of the current outbreak only heighten concerns about the Sheriff’s pandemic abatement practices in County jails. A November 16, 2020 press release indicated that the previous week, nine people confined in Module 1C of George Bailey presented with respiratory symptoms and subsequently tested positive for COVID-19.¹² This “triggered” testing of the other 61 people

¹⁰ Jail Status Report, *supra* n.3.

¹¹ See BSCC, COVID-19 Data Dashboard, “COVID-19 Excel Data File – Adult,” linked at <http://www.bscc.ca.gov/covid-19-data-dashboard-landing-page/> (last accessed Dec. 17, 2020).

¹² San Diego Sheriff’s Department News Release, “COVID-19 at George Bailey Detention Facility,” Nov. 16, 2020, <https://www.sdsheiff.net/newsroom/links/gbaileycovid.pdf> (last accessed Dec. 17, 2020).

in Module 1C, and 46 were confirmed positive on November 14, 2020.¹³ Thereafter, Module 1C was “emptied” and all 55 individuals who tested positive were moved into isolation in “cell style housing units,”¹⁴ and three were subsequently hospitalized.¹⁵ Had the Sheriff isolated the individuals in Module 1C from each other earlier in accordance with guidance from the Centers for Disease Control and Prevention (“CDC”), rather than wait until after their test results came back, the mass infection of nearly the entire module might have been avoided or significantly mitigated. As the CDC notes, “cohorting individuals with suspected COVID-19 is not recommended due to high risk of transmission from infected to uninfected individuals,”¹⁶ yet that appears to be what the Sheriff did prior to the test results coming back.

Further underscoring the inability to socially distance in George Bailey, testing of one of the neighboring housing units, Module 1B, yielded four additional positive tests.¹⁷ However, the Sheriff appears not to have tested the whole facility, despite the CDC’s recommendation that “if there is concern for widespread transmission following identification of new-onset SARS-CoV-2 infection” in a jail, “facility management should consider a broader testing strategy, beyond testing only close contacts within the facility, to reduce the chances of a large outbreak.”¹⁸

The Sheriff’s handling of the George Bailey outbreak raises other concerns. For instance, the CDC strongly discourages transfers and recommends that facilities “[s]uspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities, . . . unless necessary for medical evaluation, medical isolation/quarantine, health care, extenuating security concerns, release, or to prevent overcrowding.”¹⁹ However, in explaining that the 55 people who tested positive were moved to isolation cells, there is no mention whether any transfers or movement of incarcerated people was necessary to accommodate the change in housing of the 55 individuals. The fact that George Bailey was at 96% capacity on November 14, with 1,323 people incarcerated inside, likely leaving little room for isolation of 55 people, raises questions about whether transfers occurred.²⁰ It is notable that on the same day, Facility 8 – just next door – was at 32% capacity,

¹³ *Id.*

¹⁴ *Id.*

¹⁵ San Diego County Sheriff’s Department, “Update: COVID-19,” Nov. 20, 2020, <https://www.sdsheriff.net/newsroom/links/covid19response.pdf> (last accessed Dec. 17, 2020).

¹⁶ CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (updated Dec. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last accessed Dec. 17, 2020).

¹⁷ “Update: COVID-19,” *supra* n. 15.

¹⁸ CDC Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities (updated Dec. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html> (last accessed Dec. 17, 2020).

¹⁹ CDC Interim Guidance, *supra* n. 16, “Preparedness,” <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Preparedness> (last accessed Dec. 17, 2020).

²⁰ “COVID-19 Excel Data File – Adult,” *supra* n. 11.

with 63 people confined inside.²¹ By December 5, Facility 8’s population had swollen by 116 people to 179, while over the same time period George Bailey’s population decreased by 117 people to 1,206. This raises concerns whether the Sheriff simply shuffled people around facilities in the vast San Diego jail system, flouting the CDC’s recommendation against transfers.²² Indeed, transfers contrary to CDC guidance need not even be inferred in some cases. A November 20, 2020 press release stated that an individual had been transferred from Module 1C at George Bailey to the Vista Detention Facility prior to the George Bailey outbreak coming to the Sheriff’s attention.²³ Unsurprisingly, that individual and “eight others” in the Vista jail then also tested positive.²⁴ Although the CDC recommends that “[i]f a transfer is absolutely necessary” jail administrators should “[e]nsure that the receiving facility has capacity to properly quarantine or isolate the individual upon arrival,”²⁵ that appears not to have been done in this case.

In addition, rigorous testing is also critical in protecting the safety of incarcerated people. However, there does not appear to be universal testing in San Diego County jail facilities. Although a July 2, 2020 press release indicates that it is the Sheriff’s policy to “test every person who arrives in our jails,”²⁶ there is no mention of similar testing of people already detained. Moreover, it does not appear that staff who arrive to work are subject to mandatory testing. As the CDC notes, “[b]ecause staff move between the facility and the community daily, the risks of introducing infection into the facility from the community and/or bringing infection from the facility back into the community is ongoing.”²⁷ Without adequate testing of staff, it was only a matter of time before the virus was introduced, and because social distancing is impossible, it will continue to spread like wildfire now.²⁸ That is why the CDC recommends that jails “strongly consider a program that includes testing for both [incarcerated people] and staff.”²⁹

The Sheriff’s cohorting strategies are also questionable. Reportedly, all new bookings are “automatically placed into quarantine for seven days”³⁰ in groups of “five to seven” that “were booked on the same day” in “7-Day Quarantine Housing,” which appears to be a dedicated

²¹ *Id.*

²² Even if any such transfer was necessary for medical isolation due to the crowding at George Bailey, it likely would not have been necessary if the population had been lower in the first place.

²³ “Update: COVID-19,” *supra* n. 15.

²⁴ *Id.*

²⁵ CDC Interim Guidance, “Preparedness,” *supra* n. 19.

²⁶ San Diego Sheriff’s Department, “COVID-19 Testing at County Jails,” July 2, 2020, <https://www.sdsheriff.net/newsroom/links/covid-jail-testing.pdf> (last accessed July 17, 2020).

²⁷ CDC Interim Considerations, *supra* n. 18.

²⁸ With 105 active cases and 175 others who have recovered among Sheriff’s employees as of December 18, 2020, jail staff themselves are also at risk from the Sheriff’s practices, and one staff member has reportedly already passed away from COVID-19. *See* Jeff McDonald, *New COVID-19 outbreak forces transfer of dozens of county jail inmates*, SAN DIEGO UNION-TRIB., Nov. 16, 2020, <https://www.sandiegouniontribune.com/news/watchdog/story/2020-11-16/new-covid-19-outbreak-forces-transfer-of-dozens-of-county-jail-inmates>.

²⁹ CDC Interim Considerations, *supra* n. 18.

³⁰ “COVID-19 Testing at County Jails,” *supra* n. 26.

“quarantine housing module” with only limited time out of their cell.³¹ However, at current population levels, it is questionable whether the San Diego jail system has adequate space to separately quarantine all new arrivals in each facility on a particular day, with a separate quarantine unit for each of the seven days of the week that new bookings may arrive. Even if such space does exist at each facility, the policy amounts to the cohorting of individuals arriving on the same day who have had no previous interaction with each other. For anyone who is medically vulnerable to COVID-19, being trapped in a cohort with individuals who may have been exposed or are positive for the virus could be a death sentence. However, there does not appear to be any mention in the intake policy for promptly identifying and separately housing medically vulnerable individuals, much less for accommodating them in custody and housing decisions to protect them against the substantial risk of serious harm from COVID-19.

The problematic nature of these policies is apparent from the account of a 51-year-old diabetic man with no prior criminal history who spent ten days in San Diego Central jail in October, who indicated that deputies working in the jail frequently do not wear masks or have them dangling below their noses as they interact with incarcerated people.³² As a new admission to the facility, he was reportedly cohorted together with an elderly man suffering from dementia in a three-person cell without access to the day room for days, while garbage piled up in their cell. Rather than demonstrate a desire to reduce the jail population, the Sheriff’s Department reportedly set his bail at \$30,000, virtually ensuring he remained in custody. Once he was able to see a judge, the court reportedly overruled that determination and released him on his own recognizance, but not until after he had spent an unnecessary ten days in custody.

Finally, the publicly available numbers do not reveal other important metrics, most notably (1) the number of medically vulnerable people in custody impacted by COVID-19, and (2) the racial and ethnic breakdown of the population impacted by COVID-19. Medically vulnerable people are at substantial risk of significant complications from COVID-19, while racial and ethnic minority groups are disproportionately represented in the jail system generally,³³ and with regard to negative COVID-19 outcomes in particular.³⁴ Understanding how the Sheriff’s pandemic practices impact these populations is essential to the public’s understanding of the effectiveness of those practices.

³¹ San Diego Sheriff’s Department, “The Importance of 7-Day Quarantine When Booked into County Jails,” July 2, 2020, <https://www.sdsheriff.net/newsroom/links/quarantine-importance.pdf> (last accessed Dec. 17, 2020).

³² Kelly Davis, Jeff McDonald, *One inmate’s story: Cells piled with trash, violence, and a pervasive fear of COVID-19*,” SAN DIEGO UNION-TRIB., Dec. 13, 2020, <https://www.sandiegouniontribune.com/news/watchdog/story/2020-12-13/one-inmates-story-cells-piled-with-trash-deputies-and-fear-of-covid-19>.

³³ Zhen Zeng, U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Jail Inmates in 2018* at Table 2, March 2020, <http://www.bjs.gov/content/pub/pdf/ji18.pdf>.

³⁴ CDC COVID-19 Hospitalizations and Death by Race/Ethnicity (updated Nov. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last accessed Dec. 17, 2020).

C. Similar Practices in Orange County Jails Have Been Ruled Illegal.

On December 11, 2020, the Orange County Superior Court determined that similar practices employed by the Orange County Sheriff's Department violated the California Constitution and Government Code §11135 based on disability discrimination and ordered a reduction in the Orange County jail population "by 50%" at minimum, and potentially "in excess of [50%] if necessary to achieve" the goal of "proper social distancing." *Campbell v. Barnes*, Case No. 30-2020-1141117, Order on Writ of Habeas Corpus and Writ of Mandate (Dec. 11, 2020) ("Order") at 29.³⁵ Notably, the 50% reduction was to apply within "all dormitory and barracks style housing and multi-person cells," not solely to the jail system as a whole. *Id.* That is because "[t]here is, and can be, no dispute that if the virus is transmitted to one person in the group setting of a barracks or dormitory, nothing would prevent its transmission to all others in the group," when social distancing is not possible. *Id.* at 18.

The court's ruling was based on factual findings of practices that exacerbated the risk of harm for medically vulnerable people confined in the jails. For instance, bunks were closer than six feet apart. Order at 9. Cells had inadequate ventilation and were exposed to the day room, where people routinely congregated in close proximity. *Id.* Crowded conditions were prevalent in transportation to court and in holding tanks while waiting for court. *Id.* at 18.

Jail staff did not take into account whether someone had a disability that rendered them medically vulnerable to COVID-19 in making housing and custody determinations. *Id.* at 13. In addition, the Orange County Sheriff "abused his discretion in failing to consider for release all medically vulnerable inmates, including those with disabilities," pursuant to his authority under Govt Code § 8658. *Id.* at 27. That provision provides that "[i]n any case in which an emergency endangering the lives of inmates... has occurred or is imminent," the custodian "shall, if possible, remove them to a safe and convenient place... to avoid the danger" or "if that is not possible, may release them." Govt Code § 8658. By choosing "not to include all medically vulnerable inmates" in his release planning, while simultaneously refusing to institute a "drastic reduction of the jail population," the Orange County Sheriff placed all medically vulnerable people at unreasonable risk of significant harm. Order at 27.

The court noted other problematic practices. Testing of incarcerated people for COVID-19 was conducted only on new admissions to the jails and symptomatic or quarantined individuals, and testing of staff occurred only when requested by staff. *Id.* at 9–10, 13. Staff are expected to self-report symptoms, even though they may be asymptomatic carriers. *Id.* at 13. As many as 350 staff members and other workers at the jail might walk in and out of a facility, potentially bringing the virus in with them, on any given day. *Id.* at 13–14, 18 (noting the "inmate population comes

³⁵ The order is available on the Orange County Superior Court's website. <https://www.occourts.org/media/pdf/CampbellvsBarnes.pdf>. The Court later clarified that it intended a 50% reduction in the actual population, not a reduction to 50% of facility capacity. See Order re Respondent's Ex Parte Application for Order Clarifying the Court's December 11, 2020 Order (Dec. 15, 2020), https://www.occourts.org/media/pdf/Campbell_v_Barnes_EPS.pdf. Because the actual population was 5,303 – far above the capacity of 3,980 – a 50% reduction would result in 2,651 people in custody, or about 66% of the rated capacity. *Id.*

into contact with hundreds of members of Respondent’s staff on a daily basis, any one [of] whom may be an unwitting carrier of the virus.”)

Isolation of people in custody occurred only after they received a positive COVID-19 test result, rather than after they were identified as close contacts of an infected person. *Id.* at 10. The court noted that failing to isolate potentially infected close contacts until after their test results came back increased the risk of infection to other close contacts with whom they remain detained but who had not yet been infected. *Id.*

The fact that the Orange County “Sheriff released thousands” of incarcerated people “at the very outset” or the pandemic did not alter the court’s analysis, especially in light of a “subsequent increase” in the population after that initial reduction. *Id.* at 10-11, 22. Nor was the court swayed by the fact that Orange County jails isolated new admissions for 14 days upon admission and instituted other precautions, *id.* at 10-11, because the protective measures instituted on paper had “inconsistent application” in reality, including with regard to mask usage by deputies. *Id.* at 11-12. The court found that whatever “measures [were] taken,” they “lack the very cornerstone of a successful abatement plan, namely a sufficient reduction in Jail population to enable proper social distancing.” *Id.* at 17. At the time the court ruled, there was “a COVID-19 outbreak occurring” in Orange County Jails, with 74 incarcerated people currently positive, and 75 others with test results pending. *Id.* at 28 n.3.

Based on these findings, the court concluded that the Orange County Sheriff’s “deliberate indifference to the substantial risk of serious harm from COVID-19 infection” to medically vulnerable people “violates their rights under the California Constitution, Article I, sections 7 and 17.” *Id.* at 28. The court noted that deliberate indifference does not require “improper motive” or an intent to harm, only intentional decisions with respect to conditions that place incarcerated people “at substantial risk of suffering serious harm” and a failure to take reasonable alternative measures. *Id.* at 16.

The court also concluded that the “failure to provide reasonable accommodations” to incarcerated people “who have disabilities that make them medically vulnerable to serious harm from COVID-19 infection violates their rights under Government Code section 11135.” *Id.* at 28. Such individuals are entitled to reasonable accommodations to ensure they “do not face greater harm than others in the jail,” including consideration for release, assurances of the ability to social distance, and strict enforcement of mask-wearing for all staff who interact with incarcerated people. *Id.* at 24 (citing 28 C.F.R. § 35.130(b)(7)(i)). Without such protections, medically vulnerable people face “disproportionate—potentially deadly—harm....” *Id.*

In addition to the 50% reduction in each facility and housing unit, the Court also required the Orange County Sheriff to:

- maintain the reduced populations “to the fullest extent necessary to continue to maintain proper social distancing, until the current COVID-19 emergency is declared terminated”;

- “identify all persons identified as medically vulnerable” to COVID-19 in the Orange County jails, whether they will be released in the reduction effort, and for any who are to remain in custody, “the measures taken or to be taken to protect the health of such persons” in light of COVID-19 including how the Sheriff will assure social distancing; and
- enforce a “strict policy of facemask wearing compliance by all staff” whenever “such staff are within 6 feet of any” incarcerated person.

Id. at 29-30.

As noted above, most if not all of the problematic practices identified by the Orange County Superior Court are likely also in place in the San Diego County jail system, and the 74-person Orange County outbreak pales in comparison to the 388-person outbreak currently running amok through San Diego jails. Thus, it appears likely that the San Diego Sheriff’s Department is similarly violating the rights of medically vulnerable people in San Diego County jails. Accordingly, we seek records explaining the Sheriff’s policies and continue to encourage San Diego County officials to institute an abatement plan for the jails that will protect the lives of the individuals incarcerated in its jail system until the pandemic is over.

II. Document Request

In light of our concerns regarding the Sheriff’s policies and practices, or absence thereof, regarding protecting people incarcerated in San Diego jails from COVID-19, we respectfully request copies of the following records:

A. Medically vulnerable people

1. Records consisting of or describing current policies or procedures in San Diego County jails for identifying people who are of an advanced age or have medical conditions that the CDC has identified as placing them at increased risk of severe illness or death from COVID-19,³⁶ (collectively “medically vulnerable people”);
2. Records consisting of or describing current policies or practices in San Diego County jails for housing, making custody determinations for, and protecting medically vulnerable people, including consideration for release, assurance of social distancing, and provision of personal protective equipment (“PPE”) and hygiene products;
3. Records identifying the total number of medically vulnerable people currently in San Diego Jails, broken down by facility.

³⁶ CDC, “People with Certain Medical Conditions” (updated Dec. 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last accessed Dec. 21, 2020).

B. Social Distancing

1. Records consisting of or describing any policies, procedures, or plans since March 1, 2020 to reduce the population in the San Diego Jail system as a whole and in each facility within the San Diego Jail system;
2. Records consisting of or describing policies and procedures for making decisions to remove someone from the San Diego jails or a facility within those jails pursuant to Govt Code § 8658, as well as any records describing the total number of people removed under § 8658 since March 1, 2020;
3. Any and all communications or recommendations since March 1, 2020 from people working in correctional health or San Diego County health to San Diego County Sheriff's staff regarding a reduction in the San Diego County jail population in response to the COVID-19 pandemic;
4. For each facility in the San Diego Jail system, records explaining or describing the current physical structure of the housing units within the facility, including whether the facility or housing unit within the facility has dormitory, barracks, or cell style housing, location of day rooms in relation to sleeping areas, and any outdoor recreation spaces;
5. For each facility in the San Diego Jail system, records explaining or describing the current number of beds in each housing unit and/or module, the current layout of beds in the housing units and/or modules, and the current distance between beds in each unit and/or module;
6. For each facility in the San Diego Jail system, records explaining or describing the current population in each facility and housing unit, both in terms of the actual census and any general custody level assigned to the facility or housing unit;
7. Records that explain how or why the Average Daily Population in facilities can be higher than the BSCC rated capacity, including where individuals above the capacity limit sleep or are confined;³⁷
8. Records consisting of or describing changes in policies or procedures for administering meals, distributing medicine, receiving mail, or making calls since March 1, 2020 in light of the COVID-19 pandemic;

³⁷ For instance, according to the Sheriff's website, San Diego Central Jail has an Average Daily Population of 974, but a BSCC capacity of 944. <https://www.sdsheriff.net/DetentionFacilities/SDCJ.html>. The website further states that George Bailey has an Average Daily Population of 1,774, but a BSCC rated capacity of 1,380. <https://www.sdsheriff.net/DetentionFacilities/GBDF.html>.

9. Records consisting of or describing the current provision of social distancing to incarcerated people during transport to court and/or while housed at court waiting for court appearances.

C. Testing and Treatment:

1. Records consisting of or describing current policies or procedures for testing individuals incarcerated in San Diego County jails, including new admissions to the jails and those already in custody;
2. Records consisting of or describing current policies or procedures for testing individuals who regularly work in San Diego County jails, including County employees, jail staff, contractors, and vendors;
3. Records identifying the number and types of COVID-19 tests administered to individuals in San Diego jails, broken down by facility, race of the person tested, and month administered;
4. Records identifying the number of positive tests, broken down by facility, race of the person who tested positive, medical vulnerability of person who tested positive, and month of positive test;
5. Records identifying the number of tests currently available on-site, broken down by facility;
6. Records describing any plans or procedures for obtaining and administering vaccines to staff and incarcerated people in the San Diego County jails.

D. Transfers and New Admissions

1. Records consisting of or describing policies or procedures for transfers within the San Diego Jail system or housing movement within any facility in the San Diego Jail system during the COVID-19 pandemic;
2. Communications regarding the transfer or housing of the 55 or more people from Module 1C who tested positive for COVID-19 at George Bailey in the week prior to and including November 14, 2020;
3. Records identifying the number of transfers of incarcerated people to different facilities within the San Diego Jail system since March 1, 2020, broken down by month and by sending and receiving facility.
4. Records consisting of or describing policies and procedures for quarantining new admissions to each facility within the San Diego Jail system during the COVID-19 pandemic;

5. For each facility within the San Diego Jails system, records identifying the housing units or modules that are dedicated to quarantining new admissions to each facility during the COVID-19 pandemic, as well as the capacity in each housing unit or module;
6. Records identifying the number of people currently in custody in the San Diego Jail system on misdemeanor charges only, broken down by facility, by race, and by medically vulnerable status;
7. Records identifying the number of people currently in custody in the San Diego Jail system serving misdemeanor sentences only, broken down by facility, by race, and by medically vulnerable status.

E. PPE and Sanitation

1. Records consisting of or describing current policies or procedures for provision and replacement of soap and PPE for individuals incarcerated in San Diego County jails during the COVID-19 pandemic;
2. Records consisting of or describing current policies or procedures for cleaning and sanitation of living and sleeping areas in San Diego County jails during the COVID-19 pandemic;
3. Records consisting of or describing current policies and procedures regarding wearing of PPE by jail staff, vendors, contractors, or others who maintain a regular presence in the San Diego jails, as well as directives, communications, reprimands, or requests for corrective measures provided to such persons for violating those policies and procedures.

F. Staff Assignments

1. Records consisting of or describing current policies or procedures for staff assignments to limit the movement of staff across housing units or across jails during the COVID-19 pandemic;
2. Records indicating the number of San Diego County employees, staff members, contractors, or vendors who regularly come into contact with incarcerated people in San Diego County jails during the COVID-19 pandemic, broken down by facility to show how many enter each facility on a daily or weekly basis.

G. Hospitalizations due to COVID-19

1. Records identifying or describing how many people have been hospitalized or died due to COVID-19 contracted while in the San Diego County Jail system, broken down to show the number of hospitalized and deceased people by race and by whether they were identified as medically vulnerable.

When a person requests records by describing their content, rather than asking for specific documents by name, an agency must “search for records based on criteria set forth in the search request.” *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159, 165-66 (1998). The CPRA applies to all documents in the County of San Diego’s possession or control, regardless of who authored or prepared them, including emails, video and audiotapes, and other electronic records. Govt. Code § 6252(e). Please provide records maintained in electronic format in that same format. Govt. Code § 6253.9.

Please respond to this request within ten days, either by providing all the requested records or by providing a written response setting forth the legal authority on which the County of San Diego relies in withholding any document and stating when the documents will be made available. Govt. Code §§ 6253(c), 6255. If necessary, please specify a future date by which your office will respond to the request, or state whether there are no responsive records to any portion of this request.

If the County of San Diego intends to raise objections based on privacy limitations, please state the objections supported by legal authority in writing and provide redacted versions of the requested documents.

Because ACLU-SDIC is a nonprofit civil rights organization, I ask that your office waive any applicable fees. However, if your office is unable to do so, the ACLU-SDIC will cover reasonable fees allowed by law. If you estimate that fees will exceed \$50, please inform us before proceeding.

Please contact me at bvakili@aclusandiego.org if have any questions. Thank you for your time and attention to this matter.

Sincerely,



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