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Suit Filed to Drastically Reduce Number of People in U.S. Marshals' Custody at Otay Mesa Detention Center

SAN DIEGO – The [National Immigration Project](#) (NIP-NLG), [American Civil Liberties Union Foundation of San Diego & Imperial Counties](#) (ACLUF-SDIC), [American Civil Liberties Union](#) (ACLU National) and [Ropes & Gray, LLP](#), filed late yesterday a [class-action lawsuit](#) in U.S. District Court demanding a drastic reduction in the number of people in U.S. Marshals Service's custody at the Otay Mesa Detention Center during the COVID-19 pandemic. This litigation follows another lawsuit [filed earlier this week](#) by ACLUF-SDIC on behalf of U.S. Immigration and Customs Enforcement (ICE) detainees at the Otay and Imperial detention centers.

Plaintiffs in yesterday's lawsuit are pretrial and postconviction (presentence) detained persons held in U.S. Marshals' custody. They are applying to the court for an [emergency temporary restraining order](#) calling for the immediate release of all people in U.S. Marshals' custody at the facility. This includes people ages 45 and over and those with underlying medical conditions that place them at a heightened risk of serious illness or death due to COVID-19.

“Continuing to detain people at Otay Mesa in the current circumstances is cruel and irresponsible,” said Sirine Shebaya, executive director of NIP-NLG. “In the midst of a rapidly worsening COVID-19 outbreak, the facility is failing to take basic steps to protect the people in its custody, and in doing so, is exposing hundreds to serious illness or death.”

Otay Mesa is the site of one of the largest detention center COVID-19 [outbreaks](#) in the United States. The disease is spreading rapidly among both detention center staff and detained people. As of today, [111 people in custody](#), 17 CoreCivic staff (the private company that runs the facility), eight medical staff and eight ICE employees at the facility are reported to have tested positive for COVID-19. Despite clear guidance from the U.S. Centers for Disease Control and Prevention (CDC), U.S. Marshals have failed to develop, much less implement, a plan of action sufficient to protect detained people, employees, and employee's families and communities from this dangerous virus. Immediate court intervention is necessary to save lives and avert a public health disaster.

“Otay Mesa and the U.S. Marshals are abdicating their constitutional duty to safeguard the basic health and safety of the people in their custody,” said Mitra Ebadolahi, senior staff attorney at ACLUF-SDIC. “The U.S. Marshals’ failure to adopt even the most basic public health recommendations has accelerated the spread of COVID-19 within the facility, endangering everyone in it and the larger San Diego community.”

Helen Gugel, an associate at Ropes & Gray, said: “Releasing people who are awaiting trial or a sentence is an important step to reduce incidence of infection and, in serious cases, death. In filing this litigation, our aim is to prevent COVID-19 from continuing to spread through Otay Mesa Detention Center and the greater San Diego community.”

Public health officials and medical authorities have said that maintaining a social distance of at least six feet is crucial to preventing the spread of COVID-19. But conditions at Otay Mesa, where hundreds of people are detained, make social distancing impossible.

The lead plaintiffs include people with serious underlying medical conditions that place them at risk of severe illness or death if they contract COVID-19.

The Otay Mesa Detention Center is structurally unfit to protect the health of detained persons and staff. For example:

- People live in “pods” that consist of roughly 70 to 100 individuals each, housed in close quarters. Cellmates share tight spaces and lack the minimum six feet of distance from one another that the CDC recommends.
- People share sinks, toilets and showers, which are not disinfected after each use. Likewise, detained people must share telephones, which are also not disinfected after each use.
- The soap supply is inadequate and refills are inconsistent, forcing detained people who cannot afford to buy soap to go without.
- Mealtimes are communal, with detained people forced to line up closely to receive their meals and choose between eating at overcrowded tables or in their cells, close to others and toilets.

The U.S. Marshals have put people imprisoned at the Otay Mesa Detention Center at heightened risk of exposure to COVID-19. This is not only inhumane, it also violates the U.S. Constitution – including the Fifth Amendment, which forbids the government from confining people under conditions that unreasonably risk their health and safety; and the Eighth Amendment, which prohibits the government from inflicting “cruel and unusual punishment.”

In addition to the immediate release of the medically vulnerable subclasses, the lawsuit proposes a system for reducing the detention center's overall population, beginning with the most vulnerable, through the orderly release of people. The suit also seeks an order requiring the U.S. Marshals to immediately implement public health measures that conform with the Centers for Disease Control and Prevention and other health officials' guidance to mitigate the risks of people from contracting and/or dying from COVID-19.

Read the lawsuit filings here: <https://www.aclusandiego.org/wp-content/uploads/2020/04/Alvarez-v.-LaRose-TRO-PAs.pdf>; <https://www.aclusandiego.org/wp-content/uploads/2020/04/Alvarez-v.-LaRose-TRO-PAs.pdf>

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