



March 18, 2020

Honorable Virginia A. Phillips, Chief District Judge
 Honorable Paul L. Abrams, Chief Magistrate Judge
 Nicola T. Hanna, United States Attorney for the Central District of California

Michelle Carey, Chief United States Probation Officer
 Heriberto H. Tellez, Warden of the Metropolitan Detention Center
 David M. Singer, United States Marshall

Dear Central District of California Leadership,

Institutions around the country are rapidly taking steps to address the COVID-19 pandemic. Our major universities suspended classes, employees are telecommuting, and consumers are stocking their homes to survive a multi-week quarantine. Two weeks ago, California declared a state of emergency in response to California's first COVID-19 death. The number of people infected with the virus in the Central District of California continues to rise. Just yesterday, there was an arrestee detained at the Edward E. Roybal Federal Building and United States Courthouse who was taken to the hospital after demonstrating COVID-19 symptoms.

Given the urgency of this situation, we are calling on **the United States District Court, Central District of California, United States Attorney's Office for the Central District of California, Federal Bureau of Prisons Metropolitan Detention Center, United States Probation Office, and United States Marshal's Office** to act immediately to protect the lives of the people impacted by the federal detention system. This includes individuals in custody and prison and jail staff, as well as their family members and communities. With COVID-19 threatening the

health and lives of untold numbers of members of the Central District of California, confinement in any detention facility for even a few hours, could turn into a death sentence for many.

Individuals who are being detained pre-trial in the Central District are housed into the Metropolitan Detention Center, San Bernardino County jails, or Orange County jails. Many of these individuals are medically vulnerable and held in close contact with each other, without frequent and adequate access to water and soap. In a context where medical care is deficient, housing conditions are squalid, and individual needs, medical and otherwise, are neglected, *see, e.g., Turner, et al. v. County of San Bernardino*, 5:16-CV-00355-VAP, Dkt Entry 106 (Dec. 14, 2018) (approving consent decree to, in part, “ensure the provision of constitutional medical . . . care”), action is needed now. These conditions are a recipe for the rapid spread of disease and puts our entire district at risk. Each day, MDC and the county jails that house federal prisoners see a large number of people arrested and confined, while many others are released back to their community. The revolving door of incarcerated individuals, coupled with the daily influx of staff, vendors and medical professionals who return home, provides multiple avenues for COVID-19 to enter MDC and the county jails and exit back into our neighborhoods and homes.

These are the same concerns that led the National Association of Immigration Judges (NAIJ), the American Federation of Government Employees (AFGE) Local 511 (the Immigration and Customs Enforcement (ICE) Professionals Union), and the American Immigration Lawyers Association (AILA) to advocate for the “clos[ure of] the nation’s 68 Immigration Courts for two to four weeks, to protect the health and safety of the Immigration Judges, the Immigration Court staff, and the public” Position on Health and Safety of the Immigration Courts During the COVID-19 Pandemic (Mar. 15, 2020), *available at* <https://www.naij-usa.org/images/uploads/newsroom/2020.03.15.00.pdf>.

COVID-19 poses the greatest risk to the elderly and those who are immunocompromised because of preexisting medical conditions. The elderly are at the greatest risk for COVID-19, yet pose the least public safety risk to our communities. By keeping vulnerable individuals behind bars, we are increasing the likelihood that COVID-19 will not only spread throughout the jail system, but that the virus will be routinely transmitted to even larger populations outside these facilities. Finally, when vulnerable individuals are released from MDC or county jail facilities, it is imperative that we ensure that they are not forced into houselessness. Our houseless community is at heightened risk of not only contracting COVID-19, but of dying from the virus. We are calling on all of the above referenced federal agencies and actors to act immediately to protect the lives of the people impacted by the federal detention system.

To this end, we urge the United States District Court, Central District of California, United States Attorney’s Office for the Central District of California, Federal Bureau of Prisons Metropolitan Detention Center, United States Probation Office, and United States Marshal’s Office to act in accordance with the recommendations below:

Honorable Virginia A. Phillips, Chief District Judge & Honorable Paul L Abrams, Chief Magistrate Judge:

1. Pretrial Release: Eliminate overcrowding to create the space and infrastructure needed to care for the sick by immediately releasing any and all individuals who are pretrial, who are not charged with a serious violent felony pursuant to 18 USC § 3559(c)(2), and whose release does not pose a court designated serious and specific physical safety risk to the community. *See* 18 USC § 3142(i) (A “judicial officer may . . . permit the temporary release of the person . . . for another compelling reason”).

2. Encourage Executive branch agencies to suspend new arrests except in case of individuals charged with a serious violent felony pursuant to 18 USC § 3559(c)(2).

3. Limit Initial Appearances: Encourage coordination between arresting federal agencies, the United States Attorney’s Office, the Federal Public Defender’s Office, and other federal agencies to limit initial appearances to one day out of the week.

4. Sentencings: Continue sentencing proceedings for individuals who are out on bond pending sentencing when requested by the defendant.

5. Default to noncustodial sentences wherever possible, including resolutions that avoid immigration detention where outbreak potential is highest.

6. Reduce number of in-person court appearances for non-essential issues and low-level cases. If requested by defense counsel, agree to waive clients’ appearance for status conferences or other non-substantive court proceedings (for people both in and out of custody).

7. Decline to issue “failure to appear” warrants or “bench warrants.”

8. Cancel all court-ordered classes, in-person drug testing, collection of court debt, and modify all reporting conditions to phone-reporting.

9. Cancel supervised release revocation hearings based on non-violent conduct upon request of defense counsel and release those held in custody pending hearings on signature bonds.

10. Require that prosecutors provide public health/COVID-19-informed justification for any actions/requests that would bring people into courthouses, jails, and prisons. Ensure those justifications are on the record for public accountability.

11. Require magistrate judges to consider and give weight to the health risk posed to defendants if detained when making a detention determination and to do so on the record: magistrate judges should heavily consider the significant risk of mortality and spread of COVID-19 inside custodial facilities and follow these guidelines for keeping the community safe, both in and out of prisons, when considering bond requests and post-conviction motions to modify sentences. Magistrate judges should make a record of that consideration.

12. Recommend that the Bureau of Prisons reassess under 18 U.S.C. § 3621(b) every person with sixteen months or less remaining on a sentence to determine if service of that last year could be accomplished in community corrections and home confinement rather than in the correctional institution.

Nicola T. Hanna, United States Attorney for the Central District of California:

1. Immediately suspend filing new criminal cases that do not implicate a serious violent felony pursuant to 18 USC § 3559(c)(2). For charges not declined, reduce as many as possible to summons or non-warrant, non-arrest charges, with return dates that are at least 6 months from the date of the alleged incident. Recalling any pending warrants that have not been served if a summons could be substituted. Reducing these unnecessary incarcerations would reduce the risk of transmitting a virus between the various detention facilities and holding areas and the community, and vice versa. This would in part mirror recommendations issued by prosecutors around the country, *see* Joint Statement From Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody (March 2020), and precautions taken by the Los Angeles County Sheriff who announced on March 16th that in response to COVID-19 pandemic he is dropping daily booking from 300 to 60 and raising the cite and release policy to include anyone with \$50,000 bail and under.

2. Request that the U.S. probation office review the housing options of anyone in halfway houses to see if home confinement would equally serve the needs of the defendant and the community.

3. Request that the Bureau of Prisons reassess under 18 U.S.C. § 3621(b) every person with sixteen months or less remaining on a sentence to determine if service of that last year could be accomplished in community corrections and home confinement rather than in the correctional institution.

4. Limit Initial Appearances: Consolidate initial appearances to one day out of the week by coordinating arrests with federal arresting agencies.

5. Limit Requests for Detention: Limit requests for detention to only those individuals who are being charged with a serious violent felony pursuant to 18 USC § 3559(c)(2), and who pose a specific and serious physical risk to the community.

6. Release of Medically Fragile Defendants: Advocate for the release of all medically fragile adults and adults over the age of 55 in the interest of justice: MDC and the San Bernardino and Orange County jails house large numbers of pretrial federal detainees with chronic illnesses and complex medical needs, who are more vulnerable to becoming seriously ill and requiring more medical care with COVID-19. Older adults in these detention centers are at higher risk for serious complications from a viral infection like COVID-19. Releasing these

vulnerable groups from detention will reduce the need to provide complex medical care or transfers to hospitals where staff will be stretched thin.

7. Release of Nonviolent Pretrial Defendants: Advocate for the immediate release of anyone who is still pretrial and charged with an offense other than a serious violent felony pursuant to 18 USC § 3559(c)(2), in the interest of justice. This includes supervised release violations regardless of the underlying offense. This will reduce overcrowding as well as the risk of transmitting a virus between the facilities and the community, and vice versa.

8. Immediately implement a pretrial policy that requires all prosecutors to advocate for the pretrial release of all individuals, unless there is clear evidence that release would present an unreasonable risk to the physical safety of the community.

9. Require prosecutors to provide a public health/COVID-19-informed justification for any actions/requests that would require detention. Ensure those justifications are on the record for public accountability.

10. Refuse to ask the court to issue “failure to appear” warrants or, “bench warrants” and agree, if requested by defense counsel, to jointly waive the appearance of people who are out-of-custody.

11. Work with defense attorneys and courts to ensure that people in custody receive constitutionally-mandated speedy trials. Ensure that any actions taken impinging on an individual’s Speedy Trial Act rights are made part of the record.

12. Default to noncustodial sentences wherever possible.

13. Stop coordinated arrests with the Immigration and Customs Enforcement: The potential for outbreaks in immigration detention centers is high. Immediately stop coordinated arrests with ICE for violations of 8 U.S.C. §1326, illegal reentry, where non-citizens would be transferred between immigration detention centers and federal detention facilities.

Michelle Carey, Chief United States Probation Officer:

1. Immediately suspend filing violations and/or arrests of individuals suspected of supervised release violations that do not involve a serious physical risk to the community. Again, reducing these unnecessary incarcerations would reduce the risk of transmitting a virus between the detention facilities and the community, and vice versa.

2. Cancel all court-ordered classes, in-person drug testing, collection of court debt, and modify all reporting conditions to phone-reporting.

3. Review the housing options of anyone in halfway houses to see if home confinement would equally serve the needs of the defendant and the community.

Heriberto H. Tellez, Warden of the Metropolitan Detention Center:

1. Address Care Inside: Release information regarding the exact steps that will be taken to prevent infections, and the steps being planned to care for those who become sick. A thorough preparation plan should include the frequent and deeper cleaning of transportation vehicles, facilities, clothing, and bedding in all shared and private spaces, as well as the use of more effective disinfectants.

2. Testing: MDC needs to immediately develop and implement testing protocols for all people who live, work and visit. There is currently no accurate reporting on whether or not COVID-19 is present inside MDC, San Bernardino County jails or Orange County jails housing federal pretrial detainees. In order to accurately assess the presence of COVID-19 and prevent infection, MDC must immediately develop protocols for screening / testing of staff, people in custody and visitors. MDC must publish departmental COVID-19 protocols and provide regular online updates for the public, officials and media on the impact of COVID-19 on people inside MDC, including data on both incarcerated people and staff. MDC should allocate funding from its current budget to implement this protocol and supply sufficient testing kits.

3. Institute a daily briefing call with accurate information on the existence and spread of the coronavirus within each detention facility. At a minimum this requires information on the number of detainees with the flu; the number who have been tested for COVID-19; the number of positive tests; and the isolation and treatment methods in place.

4. Decline to admit any new arrestee without first screening for fever and other symptoms of coronavirus.

5. Reassess, under 18 U.S.C. § 3621(b), every person with sixteen months or less remaining on a sentence to determine if service of that last year could be accomplished in community corrections and home confinement rather than in the correctional institution.

6. Reinstate access to visiting and guarantee access to phone calls, mail, legal resources and court hearings: Incarcerated people already experience prolonged isolation from their families and communities. Fear of exposure should not be justification to further isolate incarcerated people, nor keep them from their right to due process. MDC should provide safe and accessible no contact visitation options to families and defense counsel, such as no-cost virtual visitation and visitation behind glass, continue to provide access to mail, and institute free phone calls to provide reassurance to families worried about their loved ones inside and increase access to defense counsel including by providing free email correspondence with defense counsel. If these technologies are not already in place, they must immediately be put into place. In the interest of justice, incarcerated people should continue to have access to legal resources and court hearings.

7. Provide free soap and disinfectants to all incarcerated people and increase laundry service.

David M. Singer, United States Marshall

1. Increase transportation vehicles to allow for appropriate social distancing.
2. The U.S. Marshal’s Office should work with the Department of Health Services Correctional Health Services in Orange County and San Bernardino jails to immediately identify medically vulnerable federal pretrial detainees in those facilities, then coordinate with the United States Attorney’s Office to petition the court for their immediate release. This includes, but is not limited to, people age 55 and older, pregnant people, people with chronic lung conditions such as COPD, hepatitis C, HIV, diabetes mellitus, hypertension, and/or cardiac disease who will be most vulnerable to COVID-19 infection.
3. Ensure that federal detainees housed at Orange County and San Bernardino County jails receive free soap and disinfectants and that laundry service is increased in those facilities.
4. Decline to admit or transfer any new arrestee without first screening for fever and other symptoms of coronavirus.

We cannot wait for confirmation that COVID-19 has entered detention centers before making the decision to act. We urge the United States District Court, United States Attorney’s Office, Metropolitan Detention Center, United States Probation Office, and United States Marshal’s Office to take immediate and decisive steps now to save lives. We also urge each federal entity to work with corresponding county enforcement partners to ensure that the same plans and protocols are being implemented throughout the Central District of California. We will support you in taking the bold, but necessary, action to protect the health of every resident of the Central District of California, particularly the most vulnerable.

Sincerely,

Lex Stepling

Director of Policy and Campaigns, Dignity and Power Now

ACLU of Southern California

A New PATH

Albuquerque SURJ

Bend the Arc: Jewish Action

Alliance for Boys and Men of Color

Black Jewish Justice Alliance

All Of Us Or None, Riverside Chapter

Black Lives Matter LA

American Indian Movement So Cal

Black Lives Matter Long Beach

California Coalition for Women Prisoners	The Leadership Conference on Civil and Human Rights
Californians United for a Responsible Budget	Leo Baeck Temple
Civil Rights Corps	Media Mobilizing Project
Color of Change	Memphis SURJ
Council on American-Islamic Relations – California	Me Too Survivors' March International
Creating Justice	MomsRising
Decarcerate Sacramento	National Council For Incarcerated and Formerly Incarcerated Women and Girls
Dignity and Power Now	National Lawyers Guild
Drug Policy Alliance	Occupy/Abolish ICE L.A.
Ella Baker Center for Human Rights	Prison Policy Initiative
Equal Justice USA	Public Counsel
Essie Justice Group	Reform L.A. Jails
Fair Chance Project	REVOLVE Impact
Families United to End LWOP (FUEL)	Rural SURJ of NorCal
Freedom for Immigrants	Showing Up for Racial Justice (SURJ)
Frontline Wellness Network	Starting Over, Inc
Ground Game LA	Strength United
Homies Unidos	SURJ Central PA
Immigrant Legal Resource Center	SURJ Chicago
Initiate Justice	SURJ Contra Costa
JusticeLA	SURJ Contra Costa County CA
Koreatown Immigrant Workers Alliance (KIWA)	SURJ-Dallas-Fort Worth
La Defensa	SURJ Louisville
Latino Justice	SURJ Marin
LA Voice	SURJ Methow Valley
	SURJ Middlebury VT

SURJ North County San Diego

SURJ Santa Barbara

SURJ South County

SURJ Southwest FL

SURJ Western MA

Texas Organizing Project

The Bail Project

The Church Without Wall

The Justice Collaborative

Vashon-Maury SURJ

White People 4 Black Lives

WORTH Rises

Youth Justice Coalition