



March 31, 2020

VIA ELECTRONIC MAIL

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RE: COVID-19 AND VULNERABLE POPULATIONS INCARCERATED

Dear Directors of Pennsylvania ICE ERO and Pennsylvania DOC:

The spread of COVID-19 is a national emergency that threatens millions of people across the state of Pennsylvania. We urge the Pennsylvania Immigration & Customs Enforcement, Enforcement & Removal Operations (ICE ERO), the Pennsylvania Department of Corrections (DOC), sheriff's offices, and police departments across Pennsylvania to protect the lives of our most vulnerable community members by immediately releasing all people from incarceration and ending the flow of new people into jail, prison, and immigration detention systems.

We write on behalf of Pennsylvania-based organizations Juntos, Casa San Jose, Asian Americans United (AAU), VietLead, and Advancement Project National Office, a national racial justice organization based in Washington, D.C. Juntos is a Latinx-led immigrant rights organization based in Philadelphia. Casa San Jose is a community resource center that advocates for and empowers Latinos by promoting integration and self-sufficiency in Pennsylvania. Asian Americans United is

a community organization that works primarily in the Chinatown community to advocate for the needs of the larger Chinese and other AAPI communities of Philadelphia. VietLead is a community organization that supports the Vietnamese community in Philadelphia and South Jersey. Advancement Project National Office, through both its Immigrant Justice Project and Justice Project, supports grassroots organizations in building power to end the racist criminalization of migration as well as the mass incarceration system writ large. Previously, Advancement Project together with Juntos and Casa San Jose conducted a stakeholder visit of York County Prison in April 2019. We documented our findings on conditions inside York in a letter we sent to both ICE and York County Prison officials on July 31, 2019. In that letter, we shared many grave concerns that we either witnessed ourselves or heard about from interviews with people who were detained at the time regarding hygiene, access to medical care, food quality and access to information. These issues were present at the York facility in “normal” times – we are seriously concerned about the health and wellbeing of everyone who is still detained at York and other facilities throughout the state in this time of crisis.

The COVID-19 pandemic has put all of our communities in danger and filled us all with unfathomable worry and uncertainty. We know that these stressors are exacerbated for our most vulnerable communities – people currently incarcerated, including in immigrant detention. The only legitimate response to the COVID-19 pandemic is decarceration. Pennsylvania has a higher incarceration rate than the national average – the state incarcerates 725 per 100,000 people, compared to the national average of 698 per 100,000.¹ There are about 96,000 people incarcerated in Pennsylvania.² As for people detained in immigration facilities, there are nearly 40,000 people in ICE custody nationwide,³ and in Pennsylvania the vast majority of people detained for immigration matters are incarcerated in facilities that also serve the criminal legal system, like York County Prison.⁴ Incarcerated people are at an increased risk of exposure and death, and the consequences of foregoing the responsibility to protect their lives will be devastating.

Dr. Homer Venters, an epidemiologist and the former chief medical officer on Rikers Island who helped oversee efforts to contain the outbreak of the H1N1 virus inside New York City’s jails,⁵ argues that jails and prisons are uniquely vulnerable to an outbreak of COVID-19. First, they are “full of people who are at higher risk than the general public”.⁶ Our prisons are filled with people who have multiple medical diagnoses, are older than the general population, and more impoverished as well.

In jails, the situation is even worse according to Dr. Venters because of the structures and practices inherent to jails. After people are arrested, they transfer from room to room with groups of people

¹ Prison Policy Initiative, Pennsylvania Profile, available at <https://www.prisonpolicy.org/profiles/PA.html> (last accessed Mar. 27, 2020).

² *Id.*

³ Shoichet, Catherine E., What coronavirus means for tens of thousands of people in ICE custody, CNN, Mar. 19, 2020, available at <https://www.cnn.com/2020/03/19/us/coronavirus-ice-detention/index.html>.

⁴ U.S. Immigration and Customs Enforcement, Detention Facility Locator, available at <https://www.ice.gov/detention-facilities> (last accessed Mar. 27, 2020).

⁵ Gonnerman, Jennifer, How Prisons and Jails Can Respond to the Corona Virus, The New Yorker, Mar. 14, 2020, available at <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

⁶ *Id.*

larger than ten, creating the ideal environment for viruses to spread. “The jails are built to operate this way: big pens, big groups of people coming in. Five, ten, fifteen, twenty at a time going in blocks through cells. They start out in one cell, then they go to a second cell. They might go through six or eight cells. They don’t really have hand-washing access built in. That is basically a system designed to spread communicable disease.”⁷

Because of the inherently dangerous conditions Dr. Venters highlights, officials around the country are taking steps to reduce the threat to the people they currently detain, the guards and staff they employ, and the general public. Officials in Cuyahoga County reduced their jail population by 17% in 8 days because of the public health and safety threats of COVID-19.⁸ Similarly, in Tampa Bay, officials have released 164 people awaiting trial because of COVID-19.⁹ In Los Angeles, Sheriff Alex Villanueva has reduced his jail population by 600 since February and decreased arrests in an effort to protect public safety.¹⁰ Finally, more than 30 prosecutors from across the country have called on public officials to release people from jail and prison, issue summonses instead of making arrests, suspend new detentions of non-citizens, and release all people under the age of 21 from immigration detention unless there are specific, articulable, and compelling public safety concerns.¹¹

In Pennsylvania, the ACLU of PA recently filed a lawsuit calling for the immediate release of 13 people being held in immigration detention at three jails, including York County Prison.¹² As we saw firsthand, the issues highlighted in that lawsuit also apply to people incarcerated for criminal matters in the state. At York County Prison, there is no differentiation between people incarcerated for immigration or for criminal matters – the infrastructure is the same, and the access to medical as well. The abysmal conditions of incarceration are present across the state – and the only solution to preventing a COVID-19 outbreak would be to release people so they can practice social distancing and help stop the spread of the virus.

The COVID-19 pandemic emphasizes a fundamental truth: mass criminalization and incarceration must be understood as a public health crisis. The Centers for Disease Control and Prevention

⁷ *Id.*

⁸ Shaffer, Cory, Courts, Attorneys Reduce Cuyahoga County Jail Population by 300 inmates in ‘Herculean’ Eight Days Prompted by Coronavirus, [cleveland.com](https://www.cleveland.com/court-justice/2020/03/courts-attorneys-reduce-cuyahoga-county-jail-population-by-300-inmates-in-herculean-eight-days-prompted-by-coronavirus.html), Mar. 17, 2020, available at <https://www.cleveland.com/court-justice/2020/03/courts-attorneys-reduce-cuyahoga-county-jail-population-by-300-inmates-in-herculean-eight-days-prompted-by-coronavirus.html>

⁹ Marrero, Tony, Hillsborough Sheriff Releases 164 County Jail Inmates to Reduce Coronavirus Risk, *Tampa Bay Times*, Mar. 19, 2020, available at <https://www.tampabay.com/news/hillsborough/2020/03/19/hillsborough-sheriff-releases-164-county-jail-inmates-to-reduce-coronavirus-risk/>

¹⁰ Mulraney, Frances, California, Ohio and Illinois Release Hundreds of Inmates Early to Decrease the Prison Population During Coronavirus Crisis While Some Districts Say They Will Not Pursue Prosecutions for ‘low level’ Crimes, Mar. 17, 2020, available at <https://www.dailymail.co.uk/news/article-8121651/Los-Angeles-County-release-600-inmates-cuts-daily-arrests-300-60-against-coronavirus-spread.html>

¹¹ Fair and Just Prosecution. “Joint Statement From Elected Prosecutors on Covid-19 and Addressing the Rights and Needs of Those in Custody” Mar. 18, 2020, available at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>

¹² Dylan Segelbaum, ACLU of Pennsylvania seeks release of 5 York County immigration detainees amid coronavirus, *York Daily Record* (Mar. 26, 2020), available at: <https://www.ydr.com/story/news/local/2020/03/26/aclu-of-pennsylvania-files-lawsuit-immigration-detention-three-jails-york-county-prison/2910215001/>.

(CDC) recommends physical distancing, which is impossible for incarcerated people who live in incredibly close quarters and lack freedom of movement. The people incarcerated in Pennsylvania's prison system have suffered from its longstanding failure to fund health care in prisons, ranking near the bottom third of states,¹³ and the alarming rise of deaths and disease in ICE facilities is tied to medical neglect, unsanitary conditions, and inadequate resources for the people detained. These conditions throughout the carceral systems in Pennsylvania heighten the risk of both a viral outbreak and a wholly inadequate medical response in the midst of this global crisis.

This heightened risk of harm is multiplied by the fact that the criminal legal system, which includes the state's immigration enforcement and incarceration systems, targets and ensnares the most vulnerable members of our community. The imprisonment crisis is disproportionately felt by communities of color, namely Latinx, Black, and Native communities in Pennsylvania.¹⁴ We have witnessed firsthand the lack of medical attention for people incarcerated in immigrant detention centers. During the stakeholder visit to York County Prison, we met with people who were detained who shared with us recurring stories about the lack of medical attention, with several people sharing how it would often take repeated requests over several days to get attention from medical staff. This pandemic further exacerbates the already abysmal conditions in these facilities. Due to inaction and lack of care, multitudes of people – including incarcerated and detained people, legal advocates, jail workers, and the broader public – will be cruelly placed on the frontlines of this crisis. Their protection warrants immediate emergency action.

The preventative actions recently announced by the Department of Corrections (DOC)¹⁵ and ICE¹⁶ in response to community and legal advocacy remain inadequate. Responses such as lockdowns, solitary confinement, and the elimination of visits from loved ones are punitive and dangerous to the mental and physical health of people, and the limited access within DOC and ICE facilities to sanitation supplies, phone calls, and medical care is insufficient. Much more must be done to protect the lives endangered by the carceral systems in our state.

Continued incarceration will be a death sentence. To protect our most vulnerable community members, we demand the following actions:

- Release all people who are incarcerated or detained. In particular, immediately release individuals over the age of 50 and all populations identified by the CDC as vulnerable.¹⁷
- Provide good time credits and release all people who have release dates in 2020 or 2021.

¹³ Taylor Allen, Pennsylvania near the bottom for prison health care spending, Delaware near top, WHYY (Oct. 18, 2017), available at: <https://whyy.org/articles/pennsylvania-near-bottom-prison-health-care-spending-delaware-near-top/>.

¹⁴ Prison Policy Initiative, *supra* note 1.

¹⁵ Pennsylvania Department of Corrections, Coronavirus and the DOC (Mar. 25, 2020), available at <https://www.cor.pa.gov/Pages/COVID-19.aspx> (last accessed Mar. 27, 2020).

¹⁶ Shoichet, *supra* note 3.

¹⁷ Centers for Disease Control and Prevention. Coronavirus Disease 2019 (COVID-19), "If You Are At Higher Risk," 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

- End all immigration enforcement throughout the state.
- Eliminate ICE check-ins and mandatory court appearances.
- Stop holding people for or releasing people into ICE custody.
- Issue a moratorium on new bookings and carceral sentences.
- Release people from incarceration with a holistic release plan, including connecting them to emergency housing, Medicaid or Medicare enrollment, access to food, and mental health care.
- Treat any people who remain incarcerated with the dignity they deserve. Provide unlimited free phone and video calls, universal free COVID-19 testing, and unlimited free soap and other sanitation supplies (including hand sanitizer, which should no longer be deemed contraband). Corporation and vendors should not be allowed to profit from this pandemic.
- Eliminate punitive measures, such as solitary confinement or further restrictions on people's mobility. Such measures cannot replace adequate healthcare measures.
- Loosen restrictions on electronic monitoring, supervised release, or house arrest so people are able to move freely to access medical care, food, or to provide care for loved ones in need during this crisis. All requirements for in-person check-ins, including drug testing or other mandatory appearances, must be waived.
- Release all individuals who are being detained solely because they cannot afford cash bail.
- Eliminate Parole and Probation Revocations for Technical Violations. In 2016, approximately 60,000 people nationwide were returned to state prison (and a larger number were arrested), not because they were convicted of a new criminal offense, but because of a technical violation of probation and parole rules, such as breaking curfew or failing a drug test. States should cease locking people up for behaviors that, for people not on parole or probation, would not warrant incarceration. Reducing these unnecessary incarcerations would reduce the risk of transmitting a virus between the facilities and the community, and vice-versa.

In this time of unprecedented uncertainty and crisis, we believe that implementing these changes immediately are necessary in order to protect the health and wellbeing of the entire community in Pennsylvania. Please do not hesitate to contact us with any questions or concerns. Please direct your questions or concerns to LJimenez@advancementproject.org and Lupita@vamosjuntos.org or (202) 728-9557. Thank you for your time and attention to this matter.

Sincerely,

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