



San Diego County Sheriff's Department



William D. Gore, Sheriff

*Michael R. Barnett
Undersheriff*

January 14, 2021

Bardis Vakili
Senior Staff Attorney
bvakili@aclusandiego.org
ACLU Foundation of San Diego and Imperial Counties
PO Box 87131
San Diego, CA 92138-7131

Dear Mr. Vakili,

The Sheriff's Department is in receipt of your letter dated December 21, 2020. In addition to requesting records under the California Public Records Act (CPRA), the letter contained a lengthy discussion of the ACLU's perception of the Sheriff's Department's jail practices, the Sheriff's handling of the COVID-19 outbreak in the jails, and the *Campbell v. Barnes* litigation in Orange County. As we indicated to you earlier, the Sheriff's Department will be responding separately to the two components of your letter. This letter is intended to address the issues raised in your letter separate from the Sheriff's Department's CPRA response.

In your letter you expressed concern regarding the population of inmates in San Diego County Sheriff's custody stating, in part, *"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."*

Addressing first the issue of inmate releases, the Sheriff's Department is actively working, and has been actively working since the start of this pandemic, to reduce the inmate population to levels that allow for greater "distancing" of inmates. But as you are undoubtedly aware, the number of people in the jails is to a large extent, outside of the control of the Sheriff. The Sheriff has a legal obligation to receive all individuals committed to him by lawful authority (California Penal Code section 4015(a)). Such lawful authority includes those arrested by peace officers, as well as those ordered into our custody by the Superior Court, either through pre-trial commitments or as a post-trial sentence. Additionally, the management of the jail population during the pandemic has been particularly challenging due to the fact that 1) There have been (understandably) far fewer trials that have taken place during the pandemic, which has caused many cases not to be resolved; and 2) The California Department of Corrections and Rehabilitations has, with some sporadic periods of exception, stopped accepting new inmates who have been sentenced to their custody, resulting in many inmates remaining in Sheriff's custody long after they should have been transferred to state prison.

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Despite these challenges, we have, with the help of the Superior Court, the District Attorney's Office, the San Diego City Attorney's Office, and the Office of the Public Defender (collectively, "Justice partners")¹ managed to significantly reduce our inmate population, allowing for greater distancing. We have sought and received from the Superior Court orders allowing for accelerated release credits for eligible inmates. We have worked, and continue to work, with the District Attorney and Public Defender to identify those inmates deemed as medically high-risk, and who therefore may be an appropriate subject for a stipulated release order. We have also worked with the Justice partners on modifications to the bail schedule, which includes the reduction of many offenses to zero bail. In addition, we have implemented and continue to refine our "emergency booking criteria" to reduce not only the number of people being booked into our custody, but the number of people who need to be brought to a jail facility for a "book and release." Many of these offenses are now handled as a "cite and release", in which a Notice to Appear may be issued out in the field by an arresting agency.

This approach has been successful. As of January 12, 2021, the combined number of inmates in our seven jail facilities is just over 3,600. Compare this to our population on March 1, 2020, which exceeded 5,400.

Addressing the issue of social distancing, the Sheriff's Detention Services Bureau, in response to recent regional COVID-19 increased positive cases, on December 14, 2020 implemented more restrictive social distancing measures as described in Phase Three of the COVID-19 Continuity of Operations Phase Plan (included in the CPRA request).

Similar to that of the nation, throughout the past ten months the Sheriff's Department response to the COVID-19 pandemic has evolved and shifted as additional response resource information became available. The Sheriff's Detention Services Bureau, following the advice of our Chief

¹ In your letter, you reference Government Code section 8658, which grants the Sheriff the unilateral authority "[i]n any case in which an emergency endangering the lives of inmates... has occurred or is imminent" to "remove them to a safe and convenient place... to avoid the danger" or "if that is not possible, may release them." You also reference the *Campbell v. Barnes* litigation in Orange County, and state that the Orange County Sheriff "did not take into account whether someone had a disability that rendered them medically vulnerable to COVID-19 in making housing and custody determinations." The San Diego County Sheriff's Department has been identifying and separately housing those most vulnerable to COVID-19 since the earliest days of the pandemic, as well as attempting to work with Justice partners to secure their release, where appropriate. I am well-aware of the authority under Government Code 8658 to release inmates in cases where it is necessary to do so to avoid imminent danger. However, I believe the best approach to managing the jail population during the COVID-19 pandemic, while also preserving public safety, is to work with the Justice partners on collaborative solutions (as described in this letter). We note that the *Campbell v. Barnes* case, in which the Superior Court issued an order that appeared to control the Sheriff's discretion under Government Code 8658, is presently before Division Three of the Fourth Appellate District Court of Appeal. (sub nom *Barnes v. Superior Court of Orange County*, Case No. G059764)

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Medical Officer, Dr. John Montgomery, have enacted several protective protocols recommended by the Center for Disease Control (CDC), as well as national and local health organizations, to ensure both our staff and those in our custody stay safe and healthy. We have enacted administrative and engineering safeguards for our staff and in custody population. We have established policies on quarantine and personal protective equipment (PPE) use for both staff and inmates, adjusted ventilation airflow and placed protective barriers to better safeguard our staff and in custody population. Additional safeguards are in place to identify inmates during the intake process with underlying chronic medical conditions or complications that would place them at a higher medically adverse risk due to COVID-19.

We have been following each of the below five mitigation strategies as laid out by County of San Diego Health and Human Services Agency (HHSA) Public Health Officer and Director, Dr. Wilma Wooten.

- Track and notify any receiving Facilities upon the transfer of COVID-19 positive individuals, as appropriate.
- Safely isolate COVID-19 positive individuals.
- Safely quarantine individuals who have been exposed.
- Ability to access staffing agencies if and when staff shortages related to COVID-19 occur.
- The development of policies and procedures to appropriately train your workforce in infection prevention and control procedures

Additionally, significant sanitation measures of housing, inmate common areas, and staff workspaces have been in place since the onset of the COVID-19 pandemic, including ongoing advancements in sanitation equipment available to both staff and inmates.

Your letter expressed concern regarding our individual facility populations. Our seven jail facilities work collectively as one system, with three facilities designated as "intake" facilities. All inmates brought into custody will begin their incarceration at one of the three intake facilities but may be moved fluidly within the system as their individual housing needs dictate. Our Jail Population Management Unit (JPMU) is constantly reassessing the inmate population and designating COVID-19 housing accordingly. The housing of inmates within our system is determined by several variables. With relation to COVID-19, our system has housing specific for High-Risk Housing (described in your letter as "*medically vulnerable*"), 7-day Intake Quarantine, COVID-19 Positive, Suspected COVID-19 (SPUI), and Quarantine. As population numbers for each group fluctuate, housing areas may be re-designated to accommodate, therefore your comparison of population and positive COVID-19 cases by facility does not accurately represent our jail system.

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Your letter expressed concern regarding the COVID-19 testing. As of December 31, 2020, 10,963 voluntary COVID tests had been administered throughout our jail system. The Sheriff's Department continues to collaborate with HHSA and other San Diego County health facilities to expand voluntary testing of inmates and employees. In addition to offering expansive testing to both inmates and staff, we have begun administering COVID-19 vaccinations as per the designated tier protocols.

Our staff has worked diligently to ensure the continued safety and well-being of our inmate population, and we will continue to look for ways to minimize the spread of the virus in our jail facilities. We recognize the impact the COVID-19 pandemic has had on the world and are committed to keeping the community and inmate population safe from exposure and infection to the best of our ability.

We continue to evaluate additional strategies to maintain safe jails. Our Medical Services Division is working closely with the Department of Public Health concerning our ongoing COVID-19 response and clinical trends. The Sheriff's Department is committed to the safety, security, health and well-being of people in our custody. Visit www.sdsheriff.net and scroll down to our COVID- 19 Response section to learn about all the safeguards we have in place to limit the spread of the virus.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Gore".

William D. Gore, Sheriff

WDG:DP:aeb