



**Advocate Visitors with Immigrants in Detention (AVID)
in the Chihuahuan Desert**

P.O. Box 214, Las Cruces, NM 88004

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May 26, 2020

Re: Continued negligence by ICE and private contractors requires the immediate release of those held in ICE detention in New Mexico and El Paso, Texas

Dear County, State and U.S. Federal officials:

We write to demand immediate action by the county commissioners of New Mexico; the New Mexico Governor, Attorney General and Secretary of the Department of Health; the New Mexico U.S. Congressional Delegation; the TX-17 Congressional Office; and the Mayors of El Paso, Texas and Las Cruces, New Mexico, to secure the release of people from ICE detention facilities under the jurisdiction of the El Paso ICE Field Office. We write to share details regarding continued negligence by staff at the Otero County Processing Center (OCPC) and the Torrance County Detention Facility (TCDF), as well as a concerning development regarding Management & Training Corporation's (MTC) agreement with Otero County.

At OCPC, as of today ICE still only reports 66 confirmed cases, yet today New Mexico Department of Health reports 92 cases of COVID-19 (see Figure 1).¹ Since our last letter dated March 14, the number of positive cases at OCPC has nearly tripled. The El Paso Service Processing Center (EPSPC) now has 21 positive cases. TCDF and Cibola County Correctional Center (CCCC) now report 2 positive cases each. New Mexico reports 7,130 COVID-19 cases, and neighboring El Paso now has 2393. There is growing concern for a rise in cases, particularly along the southern New Mexico/Texas border near Chaparral, where one of the largest outbreaks in New Mexico is occurring. In addition to the 92 COVID-19 cases at OCPC, there are 94 cases at the adjacent Otero County Prison Facility, also “managed” by MTC.

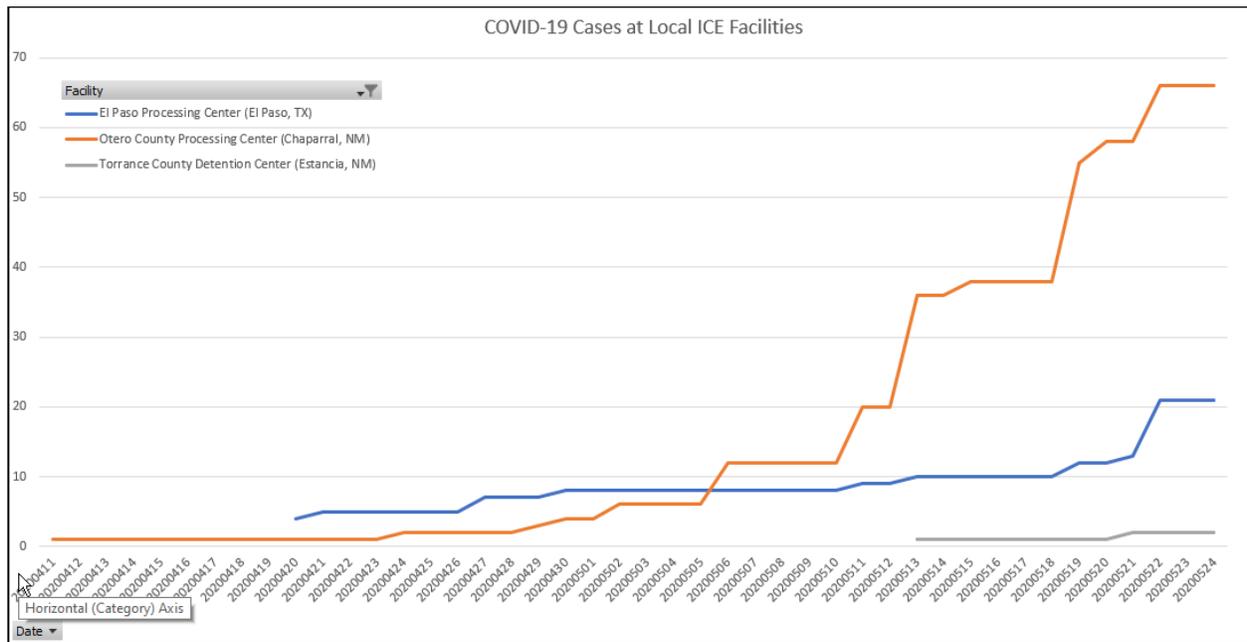


Figure 1 Confirmed COVID-19 cases at local detention facilities as reported by ICE as of May 24, 2020. Note, that as of May 26, ICE has not updated their data since May 22. Given this lag, at OCPC ICE is under reporting as many as 26 cases confirmed by NM DOH.

Despite increased scrutiny by state and federal officials, both ICE and the private contractors who manage ICE facilities such as MTC and CoreCivic continue to ignore the guidelines of the New Mexico Department of Health and the U.S. Centers for Disease Control (CDC).

- We received reports that nearly all solitary confinement cells in OCPC are full because those who test positive for COVID-19 are placed there. We raised concerns about this in our last letter. Now we learn that while in solitary confinement, many individuals are not taken to shower. And though detained individuals are responsible for cleaning their own cell, they are rarely given materials to do so, only occasionally being given rags to clean.

¹ “Updated New Mexico COVID-19 cases: Now at 7,130; five additional deaths” Office of the Governor Michelle Lujan Grisham; New Mexico Department of Health, May 26, 2020.

- Some masks given to people at OCPC appear to be made of old pant rags, and provide minimal protection for those surrounding the individuals who wear them.
- At TCDF some individuals are being held >40 people to a dorm, and in some cases beds are 30-40 cm apart from each other. Measures for social distancing are not being taken. Repeatedly advocates pointed out that such measures are impossible to practice in these congregate settings.²
- Individuals at TCDF also must clean their own dorms, but they are not being provided with adequate materials to do so.

In neither facility are people able to wipe-down frequently touched surfaces, such as shared phones, toilets, sinks, or drinking taps. This flies in the face of the Cleaning and Disinfecting Practices outlined by the CDC.³ Individuals in quarantine are unable to breathe fresh air, as they are in lockdown nearly 24 hours a day. And for those not in quarantine, moving through corridors and encountering others outside of their dorms has become a high-risk activity. They are in their dorms for most of the day with very little fresh air circulation. Lack of circulation and sunlight are two additional factors that increase risk of infection.

These pandemic-related problems are layered on top of extant, well-documented problems such as medical neglect and poor nutrition, contributing to a low state of health and well-being that makes everyone in detention more vulnerable to falling ill. Poor quality and insufficient food continue to be common reports from people detained both in OCPC and TCDF. In addition, individuals report delays in responses to requests for medical attention. Those in detention are not being given a fighting chance to try to stay healthy.

Even more concerning, there were multiple reports at TCDF that facility staff used tear gas against detained individuals who were practicing their protected right to protest by peacefully refusing food.⁴ Because ICE officials do not communicate with those in their custody, this group of individuals was prompted to initiate a hunger strike just to open lines of communication with the ICE officers overseeing their cases. In retaliation, guards responded by subjecting them to tear gas, and placing several individuals in solitary confinement for more than ten days. Individuals in ICE custody are supposedly not being punished but rather

² See for example Margaret Brown Vega and Nathan Craig, "Commentary: Continued ICE Detention Risks Spread of COVID-19 in El Paso Region," *El Paso Matters* (blog), April 5, 2020, <https://elpasomatters.org/2020/04/05/commentary-continued-ice-detention-risks-spread-of-covid-19-in-el-paso-region/>.

³ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," Centers for Disease Control and Prevention (CDC), March 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁴ <https://www.freedomforimmigrants.org/map>

administratively held while their immigration cases proceed.⁵ Yet though individuals are held captive by ICE, to facilitate and ensure access to them, ICE officials ignore and fail to provide them basic information, or even communicate with them. There is no reason to detain these individuals, especially when doing so puts their lives at extreme risk for contracting COVID-19. Their continued detention is due to other motives that include enforcement through deterrence because detention is punishment in practice,⁶ and carceral profiteering.⁷

On March 31 MTC sent a letter to Otero County lamenting the decrease in numbers of people detained in the facility, and indicating that they intended to end their contract to manage the facility unless the situation changed to become more financially viable.⁸ Otero County officials who were briefed on the motives for this decision referenced a document that cited two reasons, provided by MTC, for decreased numbers: 1) government policies that reduced the number of asylum seekers being admitted to the U.S., and 2) the inability to transfer people between ICE facilities due to the pandemic.⁹ The second reason is false. It is an established fact that transfers between facilities continued and played a central role in the spread of COVID-19 in ICE facilities across the country.¹⁰ Notwithstanding this gross misrepresentation, this letter reveals that detaining asylum seekers and transfers are critical to MTC's business. These are two activities that during a global pandemic cannot be permitted without significantly

⁵ ICE, "Performance Based National Detention Standards 2011" (Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, 2016), i, <https://www.ice.gov/detention-standards/2011>.

⁶ César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking up Immigrants* (New York: The New Press, 2019).

⁷ Carl Takei, Michael Tan, and Joanne Lin, "Shutting Down the Profiteers: Why and How the Department of Homeland Security Should Stop Using Private Prisons" (New York: American Civil Liberties Union (ACLU), 2016), https://www.aclu.org/sites/default/files/field_document/white_paper_09-30-16_released_for_web-v1-opt.pdf; Mariela Olivares, "Intersectionality at the Intersection of Profiteering & Immigration Detention," *Nebraska Law Review* 94 (2016): 963–1027; Monsy Alvarado et al., "'These People Are Profitable': Under Trump, Private Prisons Are Cashing in on ICE Detainees: Private Prison Companies Have Detained Immigrants for Decades, but That Business Has Exploded under President Trump," December 20, 2019, <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-detention-private-prisons-expands-under-trump-administration/4393366002/>; Denise Gilman and Luis A. Romero, "Immigration Detention, Inc.," *Journal on Migration and Human Security*, May 3, 2018, 2311502418765414, <https://doi.org/10.1177/2311502418765414>.

⁸ MTC Termination Letter to OCPC dated 3/31/2020.

<https://emma.msrb.org/Security/Details/A735EC24A520211CA7E698DB2FEA62B2F#tabDisclosureDocuments>.
Municipal Securities Rulemaking Board website

⁹ Board of County Commissioners for the County of Otero, Special Meeting Minutes dated 3/31/2020. <https://agendasuite.org/iip/otero/file/getfile/19148>; MTC Contract Termination event notice dated 4/8/2020. <https://emma.msrb.org/Security/Details/A735EC24A520211CA7E698DB2FEA62B2F#tabDisclosureDocuments>.
Municipal Securities Rulemaking Board website

¹⁰ COVID-19 In ICE Custody, Biweekly Analysis and Update April 29, 2020. Freedom for Immigrants. <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5ea9b7c7774c731ba9a19892/1588180936750/FFI+April+29+COVID-19+Updated.pdf>; COVID-19 In ICE Custody, Biweekly Analysis and Update, May 14, 2020, Freedom for Immigrants. <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5ebd6a8c9aa19c6124c917ab/1589471884617/FFI+May+14+COVID-19+Update+%281%29.pdf>

increasing the danger to public health. In fact, the CDC clearly states that transfers should be restricted “unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.”¹¹ It does not state that transfers should be done to ensure enough people are detained in a facility to make a profit. In fact, such a justification for transfers runs explicitly counter to ICE’s own transfer directive (Policy 11022.1) and detention standards.¹² ICE and its private contractors are exacerbating a public health threat when they purportedly fall under the Department of Homeland Security (DHS), tasked with keeping us safe.

Of additional concern, in their letter MTC invites Otero County officials to work with them to find other ways to maintain detention numbers high enough to make managing OCPC financially viable. This letter clearly indicates the profit-motive behind MTC’s decisions. It is in MTC’s best interest to keep the facilities filled despite the risk to those detained, or to New Mexico and El Paso area communities. At all costs, MTC desires to maintain congregate settings in which they have already demonstrated empirically that they cannot protect the health of those forced to be in those settings, whether it’s those in ICE, Bureau of Prisons, or U.S. Marshals custody, or their own employees. MTC’s profit motive is directly contributing to a growing public health disaster. There is no reason to believe CoreCivic operates differently, and every reason to believe they are governed by the same perverse logic that puts profit over people. This situation lays bare the fundamental problems with a profit-driven incarceration industry that is structured around an economy of scale.

To stop the spread of the virus from further accelerating in detention facilities you must demand that ICE empty the facilities by releasing people from their custody. Community-based alternatives to detention exist that are less costly, and that do not expose us all to greater risk. County officials must decide whether they are willing to risk our communities so that companies like MTC can profit, only to offer veiled threats at closure when their bottom line is jeopardized. These for-profit prison companies aren’t community partners, but are self-interested exploitative predators. **We encourage Otero County officials to end their contract with MTC, and ask Cibola and Torrance County officials to end their contracts with CoreCivic. It is time to work with communities, and not with ICE or DHS, to repurpose detention facilities for non-carceral ends that provide genuine, stable economic benefits to us all while doing no harm.**

¹¹ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.”

¹² John Morton, “Policy 11022.1: Detainee Transfers” (Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), January 4, 2012), <https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf>; ICE, “Performance Based National Detention Standards 2011,” sec. 7.4.

We ask you to contact Corey Price, the El Paso ICE Field Office Director, to insist on the release of everyone in ICE custody. In doing so, the following steps should be taken:

- systematic testing of all individuals in all ICE detention facilities, and the immediate release of anyone who tests negative for COVID-19. All releases should be on orders of supervision, parole, or humanitarian parole with no bond required. And ICE must coordinate with community groups to facilitate orderly releases.
- an immediate halt to all deportations. Thus releases must include individuals who are awaiting deportation. These individuals should not be stuck in detention awaiting infection and possible death as happened to Mr. Santiago Baten-Oxlag¹³ who recently died after contracting COVID-19 while detained in Stewart Detention Center in Georgia.
- immediate medical care in a non-detention setting to treat anyone who tests positive for COVID-19 in ICE custody. These individuals must immediately be taken out of solitary confinement, cared for appropriately, and promptly released when recovered.
- immediate testing of all staff at all detention facilities, and paid time off for any staff who test positive so they may self-quarantine and recover.
- systematic and mandatory use of appropriate protective measures by detention staff who test negative for COVID-19. They must wear protective gear and follow protective measures inside and outside of the facilities during the depopulating of the facilities, during which time they should be paid hazard pay.
- free commissary and phone calls for all of those in detention until they can be released, to be paid for by MTC, CoreCivic, or ICE.
- an immediate halt to all custody transfers between any ICE detention facility.
- a halt to ICE enforcement activities and to transfers of individuals to ICE custody who have been released from jails or prisons, so that there are no new detentions.
- investigations of use-of-force incidents at these facilities, especially the recent incident against individuals detained at TCDF practicing their protected right to free speech.
- the permanent closure of these ICE detention facilities once emptied.

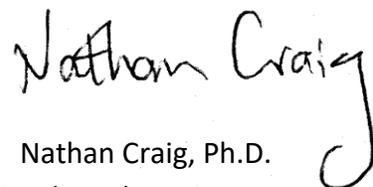
We welcome your response to our letter in the next week. More importantly, we await your immediate action.

Sincerely,



Margaret Brown Vega, Ph.D.

Advocate Visitors with Immigrants in Detention (AVID)



Nathan Craig, Ph.D.

¹³ Hamed Aleaziz, "An Immigrant Man in ICE Custody Died After Contracting the Coronavirus," May 24, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-ice-coronavirus-death>

Cc:

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