

Governor Lujan Grisham
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501

22 June 2020

Re: Immediately Stop Transfers into the Custody of Immigration and Customs Enforcement (ICE) Contract Detention Facilities in New Mexico

Dear Governor Lujan Grisham,

We the undersigned write to request your assistance and leadership in preventing transfers and book-ins to Immigration and Customs Enforcement (ICE) contract immigration detention centers in New Mexico, with a particular focus on the Otero County Processing Center (OCPC) in Chaparral. We raise concerns about clearly stated profit motives behind transfers, explain the reasons why transfers in the context of the COVID-19 pandemic are dangerous, and request that you take action.

Problems with ICE Detention Facility Transfers During COVID-19
Pandemic

The Center for Disease Control and Prevention's (CDC) guidance on the management of Coronavirus Disease 2019 (COVID-19) in correctional and detention facilities acknowledges that incarceration facilities are indoor congregate spaces that present optimal conditions for the transmission of COVID-19, and that transfer between facilities is a key vector of disease spread. In three locations, the **CDC's guidance on the management of COVID-19 in detention settings specifically instructs carceral facility managers to "[r]estrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding."**¹ ICE's COVID-19 Pandemic Response Requirements recognize the potential for transfers to spread the disease.² However, ICE guidelines only call for restrictions on transfers of "detained non-ICE populations." ICE's response falls miserably short of the CDC's clear guidelines to restrict transfers of the detained population, and places both communities and detained populations at risk.

Transfers of sick individual for medical reasons so that they can get the care they need are consistent with CDC guidelines. Transfers of individuals out of facilities where they are

¹ CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities," 6, 9, 14.

² ICE ERO, "COVID-19 Pandemic Response Requirements."

experiencing harassment or assault may also be necessary. However, in both of these circumstances individuals should really be released on their own recognizance on humanitarian grounds.

MTC's Profit Motives for Transfers

On March 31, 2020 Management and Training Corporation (MTC) Senior Vice President of Corrections Bernie Warner wrote to Otero County officials informing them that due to a "significant decrease in the detainee population" at OCPC, MTC "has no choice but to exercise its right to terminate" its contract for the ICE facility.³ In plain language, Mr. Warner states that MTC "had hoped that the United States Department of Homeland Security Immigration and Customs Enforcement ("ICE") [sic] would keep the OCPC facility full." Mr. Warner goes on to state that MTC enjoyed their "business relationship" with Otero County, that MTC "remain[s] hopeful that the detainee population will increase," and that MTC is keen to work with state and federal agencies "to co-locate detainees or inmates at the OCPC in order to increase the overall population at the facility" so that the facility will be "financially viable" for MTC. Stated simply, Mr. Warner wants to work with state and federal agencies to transfer people into OCPC to increase the population to make money for MTC. This runs counter to ICE's transfer policy,⁴ but unfortunately as we show seems consistent with their practice.

Furthermore, in an event filing notice dated April 8, U.S. Bank, the trustee of the bond issued by Otero County to finance the construction of OCPC, wrote:

"Officials of the Issuer [referring to Otero County] believe, based upon information provided by MTC, that this significant decrease in the detainee population is the result of actions of the U.S. Government, as temporarily allowed by the United States Supreme Court, permitting immigration enforcement officials to turn away at the United States border those seeking to emigrate [sic] to the United States, **combined with the effects of the COVID-19 novel coronavirus, which prevents ICE from transferring detainees between detention facilities, including the OCPC**" (emphasis added).⁵

MTC falsely claimed to Otero county that the lack of transfers during the pandemic was harming their business. Though it runs counter to CDC guidelines, ICE has not halted transfers. ICE transferred numerous individuals into and between immigration detention centers located in New Mexico.

³ Warner to Heltner, "MTC Termination Letter to OCPC," March 31, 2020.

⁴ Morton, "Policy 11022.1: Detainee Transfers."

⁵ US Bank, "MTC Contract Termination Event Notice."

In a May 4 letter, Representatives Escobar and 17 other members of the House wrote that “ICE is culpable for spreading COVID-19” because “[r]eporting indicates that ICE transferred a COVID-19 positive migrant to the El Paso Service Processing Center (EPPC) who then spread the disease to other migrants.”⁶ After COVID-19 was already present at EPPC, ICE transferred people from EPPC to Tarrant County Detention Facility. Prior to this transfer, there were no positive cases at TCFD. Shortly after the transfer, COVID-19 positive cases were first reported. Furthermore, ICE transferred people from Otay Mesa to OCPC. For months, Otay Mesa has the largest number of COVID-19 positive cases and the outbreak there shows no signs of coming under control (Figure 1). These irresponsible transfers contributed to the unnecessary spread of COVID-19 in detention in New Mexico.

Despite MTC’s rosy rhetoric about caring for people in detention, their letter to Otero county makes MTC’s financial motivations for high detention numbers both plain and obvious. They want to pressure the county to help transfer people into OCPC to keep detention numbers, and thus profits high. This runs counter to the health and safety of the detained population and the public.

Local Hot Spots and Ongoing Transfers Continue During Pandemic

Preventing the spread of COVID-19 is an urgent public health matter, one that is particularly pressing for New Mexico, and of great concern in the southern part of the state. COVID-19 infection rates are objectively higher in low income areas.⁷ The Otero County Prison Facility (OCPF) and OCPC carceral complex, both managed by MTC, constitute a raging hot spot of COVID-19 infection in New Mexico. The combined carceral building area at OCPF and OCPC is a mere 6.8 acres. Yet on this tiny plot of razor wired land, in one of the poorest regions of the state, there are more positive COVID-19 cases than are presently reported for most other New Mexico counties.⁸

Ironically, on April 28, MTC released a smug promotional video lauding their program directing inmates at OCPF to produce hundreds of masks, because as the video relates, it was extremely difficult to find masks in the region.⁹ It is a fact that there is a lack of medical resources in and around Chaparral and is one of the key reasons that allowing transfers that spread the disease is both risky and dangerous. On May 2, there were still no confirmed COVID-19 cases at OCPF, though the rate of testing was extremely low.¹⁰ On May 12 New Mexico Department of Health

⁶ Moore, April 24, and 2020, “6 Women, Including 1 Who Tested Positive for COVID-19, Sue ICE to Be Released from El Paso Detention.”

⁷ Esquivel, “2 New COVID-19 Deaths Reported in Doña Ana County.”

⁸ Parker, “Doña Ana County Virus Deaths Double in 2-Days, Otero Prison Cases Now Outnumber Most NM Counties.”

⁹ *Otero County Prison Facility-Coronavirus Masks.*

¹⁰ Proctor and Depth, “Failure of Prison Coronavirus Testing in NM Begs Scrutiny.”

(NMDHO) first reported 17 confirmed COVID-19 cases at OCPF.¹¹ Creating such a promotional video while an outbreak was underway at the adjacent ICE facility, and just two weeks before the start of what has become a massive outbreak in this facility, illustrates where MTC's interests lie—marketing their image and extracting profits through caging people. Since that time, COVID-19 cases at OCPF continue to explode (541 cases) and now include two deaths. While failing miserably to protect those in the facilities they manage, MTC promotes themselves as a “leader in social impact.”

At the OCPC ICE facility, the first positive COVID-19 case was announced on April 9, 2020,¹² a full month before any known cases at OCPF. At OCPC, the number of cases increased rapidly and yet on May 26, at 92 confirmed cases, the growth curve amazingly went completely flat and remained that way for over two weeks (Figure 1). Whether this flattening of the curve is a real sign that the infection was brought under control by MTC (which seems dubious), or an artifact of insufficient testing (which seems likely), it is a period during which people detained at the facility reported that there were very limited transfers.

On May 29, Senator Martin Heinrich spearheaded a letter, signed by 17 other Senators including Tom Udall, directed to Department of Homeland Security (DHS) Acting Director Chad Wolf calling on DHS and ICE to immediately halt transfers between facilities.¹³ The letter observes that transfers increase the spread of the disease, and that this “places the communities surrounding detention facilities at a heightened risk of a COVID-19 outbreak.” The letter specifically mentions OCPC as a “hot spot,” and expresses concerns that the outbreaks in OCPC place “the small community of Chaparral at a higher public health risk of an accelerated outbreak amidst already limited health-care resources.”¹⁴ These concerns were both well founded and prophetic.

Unfortunately, **around the weekend of June 6-7 individuals detained in OCPC reported that ICE made new transfers into the facility.** We received reports that there are now as many as 600 individuals incarcerated at OCPC. This is up from prior reports of around 400 individuals at the facility. Based on this change, we suspect transfers around June 7 were sizeable.

¹¹ “Updated New Mexico COVID-19 Cases.”

¹² Gould, “Two People at ICE Facility in New Mexico Have COVID-19, Udall Says.”

¹³ Heinrich et al. to Wolf, “Letter Urging the Department of Homeland Security to Take Immediate Steps to Halt Transfers of Individuals in Immigration and Customs Enforcement Custody,” May 29, 2020.

¹⁴ Heinrich et al. to Wolf, 2.

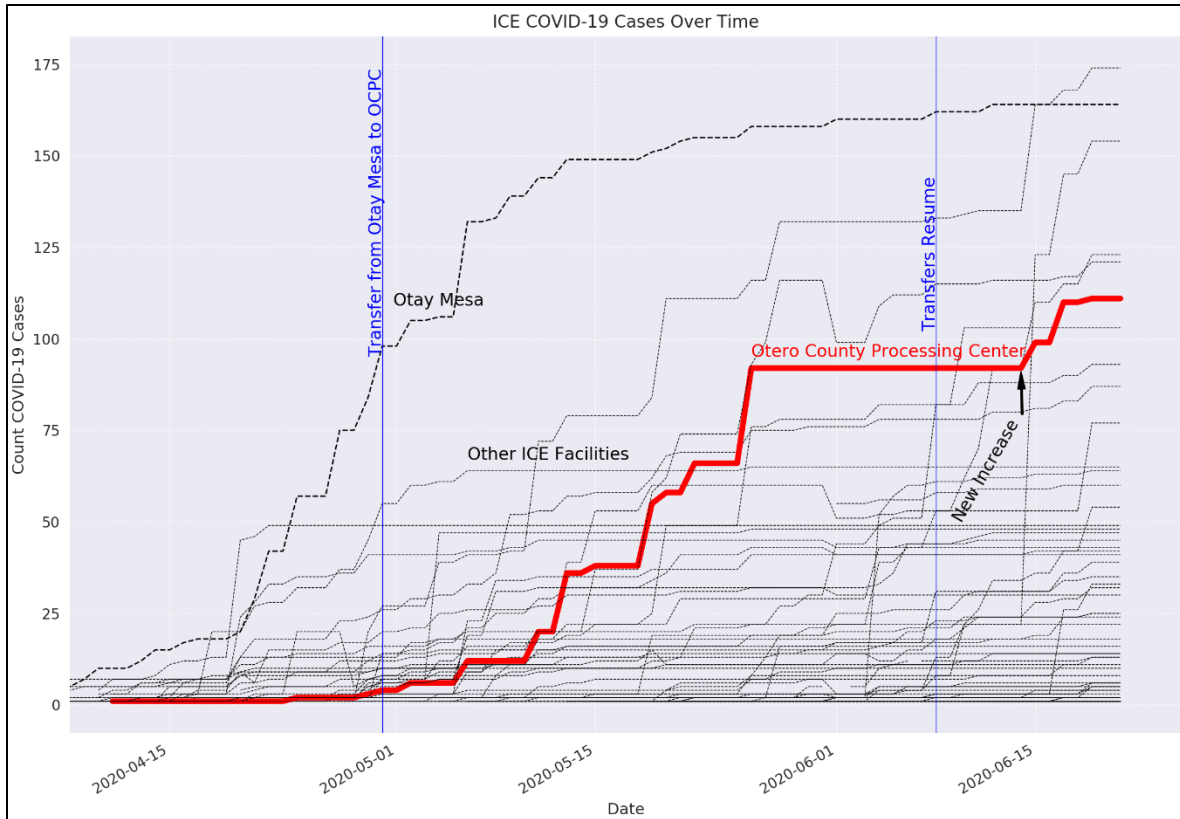


Figure 1 Number of Confirmed Cases in ICE detention facilities highlighting OCPC and key transfers.
Source: <https://www.ice.gov/coronavirus> via Wayback Machine

As of June 14, the ICE COVID-19 website still reported 92 cases at OCPC. Yet, by as early as June 12, less than a week after the large transfer, your official website reported 98 cases, and on June 13 NMDOH reported 108 cases. Thus, within a week of transfers into the facility the number of confirmed cases at OCPC is now rising again after having been completely flat for a 17-day period. This is further evidence that transfers lead to the spread of COVID-19, and that ICE and MTC are slow to respond to new cases that result from these reckless transfers. If MTC had indeed achieved zero positive cases, then it is likely the new cases were introduced through transfers. The timing of these transfers comes a week after U.S. Bank issued a Notice of Faults and Events of Default on the bond issued by Otero County.¹⁵ These recent transfers appear to be about fulfilling MTC's hopes that ICE will keep OCPC full.

In the 88081 area code, 92% of the positive COVID-19 cases are at these facilities. Transfers open up additional vectors for transmission to those detained by ICE, to staff, their families, and the surrounding communities. It seems likely that MTC and ICE masked the true extent of the problem at the ICE facility so that they could transfer in more individuals, to keep the facility

¹⁵ Marshall to Otero County and Management and Training Corporation, "Notice of Defaults and Events of Default," May 29, 2020.

profitable for MTC. The differences in the trajectories of the outbreaks at the two facilities begs an investigation.

Our Request to the Governor's Office

During your May 13 COVID-19 press conference you described a “huge failure in the federal system,” emphasized a states rights issue regarding enforcing health safety, and raised concerns about private prison contractors specifically MTC.¹⁶ Even before the COVID-19 pandemic you wrote multiple letters expressing “extreme concern” regarding “persistent reports of inhumane treatment of individuals in the custody of ICE” at facilities managed by private prison contractors.¹⁷ Given persistent inhumane treatment and grave public health concerns, it is time to start working in earnest on long term legislative solutions to ending private profit driven incarceration in New Mexico.

In the immediate term, we are deeply concerned that for financial motivations that Mr. Warner bluntly articulated in plain language, MTC is lobbying ICE as well as state and county officials to have people transferred into OCPC as this is the scenario that Mr. Warner explicitly suggests. The recent transfers run counter to health experts and to CDC guidelines. Our state's Senators called for a halt to ICE transfers and made specific reference to OCPC in issuing that request.

- **We the undersigned, urge you in the strongest terms possible, to use your power as the state's highest executive official operating during a time of emergency to prevent ICE from continuing to transfer individuals into OCPC. This includes transferring people from jail or prison contexts to ICE detention.**
- **Having authority over NM Bureau of Prisons we ask that you halt the transfer of people from local and state prisons to ICE custody.**

Preventing these transfers during the COVID-19 pandemic is a matter of public health not only to those caged by ICE but to the surrounding communities that are not equipped for a large outbreak of this novel and deadly disease.

Sincerely,
The undersigned

¹⁶ D'Amassa, “Federal Inmate Describes COVID-19 Procedures at Otero County Prison Facility” see also <https://www.facebook.com/GovMLG/videos/263693308339431/>.

¹⁷ Lujan Grisham to Kevin K. McAleenan, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE at Detention Facilities in My State,” October 25, 2019; Lujan Grisham to Cuffari, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE in My State,” October 25, 2019.

Signatory Organizations

American Immigration Council (AIC)
American Immigration Lawyers Association (AILA)
AVID in the Chihuahuan Desert
Catholic Charities of Southern New Mexico
Center for Civic Policy
Detained Migrant Solidarity Committee
Detention Watch Network
El Calvario Immigrant Advocacy Center
Holy Cross Retreat Center
Indigenous Women Rising

Innovation Law Lab
La Plaza de Encuentro Gathering Place
Las Americas Immigrant Advocacy Center
Mariposa Fund
NM CAFé
NM Dream Team
Southwest Environmental Center
Tewa Women United
The Southwest Women's Law Center
You Are Not Alone (YANA)

Signatory Individuals

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cc:

New Mexico Attorney General Héctor
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Jennie Lusk, New Mexico Attorney
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of Health Kathyleen Kunkel
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U.S. Senator Tom Udall
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Las Cruces,
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U.S. Senator Martin Heinrich
Edward Tabet-Cubero, State Director, Office
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U.S. Representative Xóchitl Torres-Small
Nayomi Valdez, Office of Representative
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U.S. Representative Verónica Escobar
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Appendix: Recent Letters from Members of the New Mexico Delegation Regarding ICE Detention

June 5, 2020 Representatives Xóchitl Torres Small and Veronica Escobar wrote to DHS Acting Secretary Wolf and ICE Acting Director Albence expressing concerns regarding the significant barriers to telephone access among persons detained by ICE at the El Paso Service Processing Center and OCPC. Days following the release of this letter phone service was completely out at OCPC.

May 19, 2020 a letter signed by 83 members of congress, including both New Mexico Senators, was sent to the acting directors of DHS and ICE urging them to fulfill ICE's promise to provide 520 free phone call minutes per detained person per month.¹⁸ Reports from detained persons indicate that individuals are receiving far fewer than 520 minutes per month.

On April 10, 2020 in a letter addressed to Acting Director Albence, the entire New Mexico Delegation expressed serious concern about ICE's preparation and ability to contain COVID-19.¹⁹ The delegation raises specific concerns about the presence of COVID-19 at OCPC, and they call on ICE to be "fully transparent and publicly disclose all relevant information" regarding their preparations and procedures.

April 28, 2020 a letter signed by 26 members of Congress called on ICE to review conditions in ICE detention because a growing number of positive cases of COVID-19 in detention.²⁰ These members of Congress expressed specific concerns about congregate settings in detention, that many people in detention have preexisting conditions that place them at greater risk for health complications and mortality, and that outbreaks impact employees which places a burden on the surrounding community. The letter calls on DHS and ICE to follow CDC's guidelines cited earlier.²¹ ICE is still not following CDC guidelines, or are ICE's guidelines compliant with the recommendations of the CDC.

¹⁸ Klobuchar et al. to Wolf and Albence, "Letter Urging DHS to Ensure ICE Detention Centers Implement Agency's Recent Commitment to Provide 520 Free Phone Call Minutes Per Month for Detainees During the Covid-19 Pandemic," May 19, 2020.

¹⁹ Tom Udall et al., "Letter Expressing Serious Concern Regarding Reports That ICE Detention Facilities in New Mexico Are Unprepared to Manage COVID-19 at OCPC.," April 10, 2020.

²⁰ Udall et al., "Letter Calling for Immediate Review of Concerns with Current Conditions in ICE Detention Facilities," April 28, 2020.

²¹ Udall et al., 3.

On March 26, 2020 Senator Martin Heinrich issued a statement calling for an immediate investigation of the conditions in ICE detention facilities, particularly in New Mexico.²²

Even before the COVID-19 pandemic, we know that you are already aware of and have expressed “extreme concern” regarding “persistent reports of inhumane treatment of individuals in the custody of ICE” in your state.²³ Following your letters of extreme concern, on November 15, 2019 Senators Heinrich and Udall also wrote letters expressing concerns about inhumane treatment in ICE detention facilities and specifically mention the Otero County Processing Center. Unfortunately, the inhumane treatment of concern to you continues and is now compounded by the pandemic.

²² Heinrich, “Heinrich Calls For Investigation Into ICE Preparedness For Dealing With COVID-19 | U.S. Senator Martin Heinrich of New Mexico.”

²³ Lujan Grisham to Kevin K. McAleenan, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE at Detention Facilities in My State,” October 25, 2019; Lujan Grisham to Cuffari, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE in My State,” October 25, 2019.

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