

## VIEWPOINT

# COVID-19 and Detention: Respecting Human Rights

JOSEPH J. AMON

The world is increasingly focused on COVID-19. By March 23, 2020, according to the World Health Organization (WHO), 332,935 people had been diagnosed with COVID-19 in 190 countries and territories around the world and 14,510 had died.<sup>1</sup> In the United States, 35,530 people have been diagnosed with the disease and 473 people have died.<sup>2</sup> These numbers are likely an underestimate, due to the lack of availability of testing, and will, without a doubt, rise.

COVID-19 is a serious disease, ranging from no symptoms or mild ones to respiratory failure and death. There is no vaccine to prevent COVID-19. There is no known cure or anti-viral treatment at this time. Those most at risk, according to WHO, include those over 60 years of age and those with cardiovascular disease, diabetes, chronic respiratory disease, and cancer.<sup>3</sup> WHO further states that the risk of severe disease increases with age starting from around 40 years. The US Centers for Disease Control and Prevention (CDC) identifies additional categories at risk, including individuals with blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders, including diabetes, metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy.<sup>4</sup> That means that a large proportion of people are at risk, especially in middle- and upper-income countries which have aging populations.

Recognizing the importance of physical distancing as the main strategy for preventing transmission, public health officials have recommended extraordinary measures to combat the spread of COVID-19. Schools, courts, sports and cultural spaces, and other congregate settings have been closed. In the US, 50 states, seven territories, and the District of Columbia have taken some type of formal executive action in response to the COVID-19 outbreak.<sup>5</sup> As of March 23, 2020 five states (California, Illinois, New Jersey, New York, and Ohio) prohibit gatherings of any size; nine states prohibit gatherings of more than 10 individuals (Colorado, Hawaii, Louisiana, Maine, Maryland, Texas, Utah, Vermont, and Wisconsin); four states prohibit gatherings of more than 25 individuals (Alabama, Massachusetts, Oregon, and Rhode Island) and eight states prohibit gatherings of more than 50 individuals.<sup>6</sup>

This summary presents a picture of extraordinary numbers already affected and at risk and unprecedented response. However, one area where there has been too limited of a response to date is action to prevent transmission in detention centers, including jails, prisons, and immigration detention facilities. All of these institutions are closed environments, much like the cruise ships that were the site of early concentrated outbreaks of COVID-19. Detention facilities are particularly of concern because of crowding, the proportion of vulnerable people detained, and often limited medical care resources. People in detention facilities cannot achieve the physical distancing needed to effectively prevent the spread of COVID-19.

---

JOSEPH J. AMON is Director of Global Health and Clinical Professor in the Department of Community Health and Prevention at the Drexel Dornsife School of Public Health, and Senior Editor, Health and Human Rights Journal.

This Viewpoint was originally published on the Journal website on 24 March 2020 and can be viewed here: <https://www.hhrjournal.org/2020/03/covid-19-and-detention-respecting-human-rights/>.

Showers, toilets, and sinks are shared. Food preparation and food service is communal. Staff arrive and leave, providing a link between the community and the detention center, often—because of limited testing and asymptomatic infection—without adequate screening. Yet, more than three months since COVID-19 emerged, the US CDC lists guidance for schools, childcare centers, colleges, workplaces, faith-based organizations, community events, homeless shelters, healthcare professionals and retirement communities but not for jails, prisons, or immigration detention centers.<sup>7</sup>

Police, first responders, and correctional officers are also at risk as they are less able to practice physical distancing in their official duties. Unsurprisingly, we are starting to see this population affected and their colleagues who are exposed to them, ordered into quarantine. For example, in Kirkland, Washington, 27 firefighters and two police officers were in quarantine along with four King County, Washington, paramedics. In San Jose, California 77 firefighters were in quarantine.<sup>8</sup> More than 140 firefighters were quarantined in Washington DC.<sup>9</sup> Six New Jersey police officers tested positive for COVID-19 and another 20 officers were under self-quarantine, as of March 19.<sup>10</sup>

So far, two state prison employees tested positive for COVID-19 in California, two in Michigan, a county jail officer in Washington state, and one Georgia Department of Corrections employee tested positive.<sup>11</sup> A corrections officer at Rikers Island (NY) and an inmate have tested positive; an investigator with NYC's department of corrections died of COVID-19.<sup>12</sup> In Wisconsin, a prison doctor tested positive.<sup>13</sup>

In New Jersey, a member of the medical staff at Elizabeth Detention Center in New Jersey a private immigration detention center tested positive for coronavirus.<sup>14</sup> A correctional officer at Bergen County Jail (NJ), which contracts with Immigration and Customs Enforcement (ICE), also tested positive for COVID-19.<sup>15</sup> As a result of these cases, hunger strikes have broken out in three ICE detention centers in New Jersey “as detainees protest what they describe as deteriorating conditions and

a failure to adequately address the potential spread of COVID-19.”<sup>16</sup>

If police, first responders, and corrections officers are significantly affected by COVID-19, whether through being infected, exposed by detainees, their fellow officers, or in the community, large numbers will be unavailable to work due to self-quarantine or isolation, at the same time that large numbers of detainees who are potentially exposed will need to be put into individual isolation or transferred to advanced medical care, putting tremendous stress on detention facilities.

States have an obligation to ensure medical care for prisoners at least equivalent to that available to the general population. According to the United Nations Committee on Economic, Social and Cultural Rights, “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”<sup>17</sup> The UN Human Rights Committee has also interpreted the International Covenant on Civil and Political Rights as requiring that governments provide “adequate medical care during detention” and the Committee Against Torture has found that failure to provide adequate medical care can violate the Convention Against Torture’s prohibition of cruel, inhuman or degrading treatment.<sup>18</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) provide further protections.<sup>19</sup>

To address the risk in detention settings, detention centers must first and foremost have plans in place to prevent or limit the outbreak of COVID-19, to protect the health of all detainees, and to treat the disease should any detainee acquire it. Beyond this, to achieve physical distancing and protect individuals at high risk, detention centers should release individuals in detention who are arbitrarily detained as well as asylum seekers, those in pre-trial detention, and migrant children. Detention centers should also consider reducing their populations through appropriate supervised or ear-

ly release of detainees whose release may be soon or who are in pre-trial detention for non-violent and lesser offenses or whose continued detention is in an equivalent manner unnecessary or unjustified. Finally, individuals who are considered at high risk for severe disease or death should be released or put into alternative forms of custody if facilities cannot ensure their protection or care.

These are not impossible steps and some national and local governments are beginning to take action. In Spain, immigration authorities began releasing people held in immigration detention centers on March 18.<sup>20</sup> In Belgium, federal authorities released an estimated 300 migrants from detention on March 19 because detention conditions did not allow for safe physical distancing.<sup>21</sup> The UK government released 300 people from detention centers following legal action which argued that the government had failed to protect immigration detainees and failed to identify which detainees were at particular risk of serious harm or death if they do contract the virus due to their age or underlying health conditions. In the United States, in Alabama, prison officials announced that they are halting intake of inmates from the state's county jails for the next month.<sup>22</sup> In Chicago, Illinois, the Cook County Jail released several detainees deemed "highly vulnerable to" COVID-19.<sup>23</sup> In Maine, the court system vacated all outstanding warrants (numbering over 12,000) for unpaid court fines and fees and for failure to appear for hearings, to reduce jailing.<sup>24</sup>

However, like everything related to this pandemic, more needs to be done faster. And in lower-income countries which have yet to see a large number of cases, now is the time to act. While these countries may have relatively fewer people incarcerated per capita than middle- and upper-income countries, conditions are often worse, with severe overcrowding, lack of medical facilities, and a high proportion of detainees who are in pre-trial detention and who fall in high risk categories for severe COVID-19 disease or death.<sup>25</sup> Releasing detainees is a critical part of the COVID-19 response and is both good public health and human rights policy.<sup>26</sup>

## References

1. World Health Organization. Coronavirus disease (COVID-19) Pandemic (webpage). Available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> accessed March 21, 2020.
2. Johns Hopkins University. COVID-19 Global Map. Available at: <https://coronavirus.jhu.edu/map.html> Accessed March 23, 2020.
3. World Health Organization. Coronavirus disease 2019 (COVID-19) Situation Report – 51. March 11, 2020. Available at: [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_4) accessed March 21, 2020.
4. US Centers for Disease Control and Prevention. Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission. (fact sheet) Available at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf> accessed March 21, 2020.
5. Association of State and Territorial Health Officials (webpage). Available: <https://www.astho.org/COVID-19/> accessed March 21, 2020.
6. Kaiser Family Foundation. State Actions to Mitigate the Spread of COVID-19. (webpage). Available at: <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/#socialdistancing> accessed March 23, 2020.
7. US CDC. Coronavirus 2019 (webpage). Available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html> access March 23, 2020.
8. PoliceOne. How long to quarantine COVID-19 exposed police officers, firefighters, EMTs and paramedics. March 18, 2020. Available at: <https://www.policeone.com/coronavirus-covid-19/articles/how-long-to-quarantine-covid-19-exposed-police-officers-firefighters-emts-and-paramedics-XJnE4W-GakSF1wtSo/> accessed March 21, 2020.
9. FireRescue1. More than 140 DC firefighters quarantined after third positive COVID-19 test. March 20, 2020. Available at: <https://www.firerescue1.com/coronavirus-covid-19/articles/more-than-140-dc-firefighters-quarantined-after-third-positive-covid-19-test-rHWizzNkyiEbtc6C/> accessed March 21, 2020.
10. NJ.com. 6 officers test positive for coronavirus, 20 others self-quarantined, N.J. police union says. March 20, 2020. Available at: <https://www.nj.com/coronavirus/2020/03/6-officers-test-positive-for-coronavirus-20-others-self-quarantined-nj-police-union-says.html> accessed March 21, 2020.
11. Atlanta Journal Constitution. DOC employee contracts COVID-19 amid calls for prison depopulation. March 18, 2020. Available at: <https://www.ajc.com/news/crime-law/employee-inside-prison-tests-positive-for-covid/>

a4obWvX7LFFERMjoeLggyH/ accessed March 21, 2020.

12. CorrectionsOne.com. CO working on Rikers Island tests positive for COVID-19. March 19, 2020. Available at: <https://www.correctionsone.com/coronavirus-covid-19/articles/co-working-on-rikers-island-tests-positive-for-covid-19-wwL1NlfQhp03lfRA/> accessed March 21, 2020.

13. Fox6.com. Doctor at Waupun prison positive for COVID-19; ACLU asks policymakers to consider release. March 19, 2020. Available at: <https://fox6now.com/2020/03/19/employee-or-client-at-waupun-prison-tested-positive-for-covid-19/> March 21, 2020.

14. The Marshall Project. First ICE Employee Tests Positive for Coronavirus. March 19, 2020. Available at: <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus> accessed March 21, 2020.

15. Insider NJ. Bergen County Jail Corrections Officer Tests Positive for COVID-19. March 19, 2020. Available at: <https://www.insidernj.com/bergen-county-jail-corrections-officer-tests-positive-covid-19/> accessed March 21, 2020.

16. Vice News. Immigrants Are Now on Hunger Strike in 3 ICE Detention Centers Over Coronavirus Fears. March 20, 2020. Available at: [https://www.vice.com/en\\_us/article/pkew79/immigrants-are-now-on-hunger-strike-in-3-ice-detention-centers-over-coronavirus-fears](https://www.vice.com/en_us/article/pkew79/immigrants-are-now-on-hunger-strike-in-3-ice-detention-centers-over-coronavirus-fears) accessed March 21, 2020.

17. CESCR, General Comment No. 14 on the Right to the Highest Attainable Standard of Health, UN Doc E. C 12/2000/4 (General Comment 14), para. 34.

18. Rubenstein LS, Amon JJ, McLemore M, Eba P, Dolan K, Lines R, Beyrer C. HIV, prisoners, and human rights. *The Lancet*. 2016 Sep 17;388(10050):1202-14.

19. UN General Assembly. United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules). UN GA Res. 2015;70:175.

20. La Vanguardia. Interior abre la puerta a liberar a internos en los CIE por el coronavirus. March 19, 2020. Available at: <https://www.lavanguardia.com/politica/20200319/474263064358/interior-abre-puerta-liberar-internos-cie.html> accessed March 23, 2020.

21. DeMorgen (Belgium). 300 people released under pressure from coronavirus. March 19, 2020. Available at: <https://www.demorgen.be/nieuws/300-mensen-zonder-papieren-vrijgelaten-coronavirus-zet-dvz-onder-druk-bf3d626d/> accessed March 23, 2020.

22. AL.com. State prison officials halt intake of new inmates amid COVID-19. March 20, 2020. Available at: <https://www.al.com/news/2020/03/state-prison-officials-halt-intake-of-new-inmates-amid-covid-19.html> Accessed March 23, 2020.

23. Chicago Sun Times. Cook County Jail releases several detainees 'highly vulnerable' to coronavirus. March 17, 2020. Available at: <https://chicago.suntimes.com/coronavirus/2020/3/17/21183289/cook-county-jail-coronavi->

[rus-vulnerable-detainees-released-covid-19](#) accessed March 23, 2020.

24. Bangor Daily News. Maine courts vacate warrants for unpaid fines and fees. March 17, 2020. Available at: <https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid-fines-and-fees>.

25. Telisinghe L, Charalambous S, Topp SM, Hecce ME, Hoffmann CJ, Barron P, Schouten EJ, Jahn A, Zachariah R, Harries AD, Beyrer C. HIV and tuberculosis in prisons in sub-Saharan Africa. *The Lancet*. 2016 Sep 17;388(10050):1215-27.

26. Todrys KW, Amon JJ. Criminal justice reform as HIV and TB prevention in African prisons. *PLoS medicine*. 2012 May;9(5).