

ACLU drops its coronavirus lawsuit against Utah's county jails, but not the prison

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May 14, 2020

Salt Lake Tribune

<https://www.sltrib.com/news/2020/05/14/aclu-drops-its/>

Most counties in Utah are taking adequate measures to keep the coronavirus out of its jails, the American Civil Liberties Union of Utah says, which is why it has asked the Utah Supreme Court to dismiss a lawsuit.

But the ACLU says it will continue to sue the Utah Department of Corrections and the parole board, saying the processes they have put in place aren't enough.

The ACLU jointly filed a petition on April 1 with the Utah Disability Law Center and the Utah Association of Criminal Defense Lawyers, asking the state Supreme Court to step in and order officials to reduce the jail population and do more to keep the incarcerated population safe during the COVID-19 pandemic.

In a joint statement released Thursday, the three groups say they didn't know what measures were underway before filing their lawsuit — despite their efforts to request that information from jailers across the state prior to litigation. Those efforts became more clear after counties filed their responses in court.

"This decision [to dismiss the counties from the lawsuit] is based on new information related to COVID-19 policies and practices provided to the court that demonstrates that most counties in Utah are now in substantial compliance with the petition's requested relief," the statement reads, "which included releasing prisoners and taking additional safety measures."

State and local officials responded to the ACLU-backed lawsuit in late April, saying they were proud of their response to the pandemic and they shouldn't be forced to release more inmates — noting the numbers of people incarcerated are already at historic lows.

"The counties should be lauded, not sued, for their heroic actions," wrote attorney Frank Mylar, who represents 21 counties that are named defendants in the lawsuit.

Mylar, who called the lawsuit "offensive" and "recklessly filed" in his response, did not immediately respond to a request for comment Thursday.

Salt Lake County District Attorney Sim Gill said the county will file a response to the ACLU motion Friday, noting that the high court does have the option to deny the request to dismiss. He said the lawsuit was "without substance, evidence and merit."

"To imply this litigation is somewhat responsible [for how the jail responded to the coronavirus] without having done their homework and gathered the facts is utterly disingenuous," Gill said. "This petition has been flawed from its inception, was flawed through the process and is flawed right up to the end. Asking the court to dismiss a case that had no chance just speaks for itself."

Gill said Salt Lake County replied to ACLU inquiries about how it was dealing with the virus behind bars in two letters, but said that the lawsuit slowed how the county responded to public inquiries about jail conditions.

"We wasted time and resources while we're trying to address this pandemic and serve the rest of the county," he said. "It was an unnecessary distraction driven by a desire to score points without merit." Paul Cassell, a University of Utah law professor who represents several crime victims seeking to weigh in on the lawsuit, was also critical of the ACLU.

“Remarkably, after touting its lawsuit against all counties across the entire state — and soliciting donations to fund this litigation — the ACLU now admits that it never had any case against any of Utah’s counties,” Cassell said. “One can only hope that in the future the ACLU will more carefully investigate its allegations before it files them in court.”

ACLU legal director John Mejia defended the decision to file the lawsuit, saying Cassell “grossly misrepresent[ed]” the nature of the dismissal request.

“To claim we admit we never had a case ignores how every county has acted in response,” he said. “Our intention is to protect the health and lives of people held in state and county custody, and jail employees and their families, as serious outbreaks of coronavirus threatens people in Utah correctional facilities and have led to deadly results in other states.”

So far, the Salt Lake County jail is the only one in Utah that has had inmates test positive for the virus. Attorneys for the county wrote in its response in April that its facility was free of COVID-19, but did have 15 cases involving current or former inmates. COVID-19 has returned to the jail since then, and two inmates who are currently incarcerated have tested positive. Twenty-eight are being quarantined as of Tuesday.

The ACLU-led lawsuit will continue against the state, targeting its prison system. Mejia wrote in a Wednesday filing that while prison officials have undertaken “meaningful, commendable work” in response to the pandemic, the group doesn’t believe the measures go far enough.

He said that the process for prisoners to make complaints or file grievances about jail conditions is too burdensome and slow for how fast the virus can spread, and added the compassionate release process is also sluggish and difficult for inmates to work through if they don’t have money to hire an attorney. He further argued that the number of people at the prison is still far too high, and it’s impossible for inmates to space out and stay 6 feet from one another.

Mejia also noted that prison officials have not provided any information about how they are protecting the more than 1,400 inmates who they are paying to house at county jails.

“The conditions inherent to incarceration, especially in a large facility like the prisons which have dorm-style housing for the most medically vulnerable in the Draper prison, make incarceration more dangerous than the conditions for society at large,” the filing reads. “Even in nursing homes, which have communal living, residents are not sleeping 30 people to a room and they are not sharing shower and bathroom facilities with about 30 people.”

As of Thursday, Utah prison officials have tested 61 inmates for the coronavirus — 51 have tested negative, and 10 tests are still pending.

Erin Middleton, an attorney with the Utah Attorney General’s Office, wrote in the state’s response to the lawsuit that the prison and Board of Pardons have worked to release more than 800 inmates early, a mix of those who were near their parole dates and some who had applied for a “special attention” review or compassionate release.

She argued that the decision on who should be released should remain with the parole board, and that the ACLU’s lawsuit should be dismissed.

Prison officials have already taken multiple steps in response to the pandemic, Middleton argued, including canceling visitation, waiving medical copays for COVID-19-related care and giving inmates soap, cleaning supplies and masks.