

ORIGINAL ACTION No. 20200281-SC

IN THE UTAH SUPREME COURT

IN RE: PETITION FOR EXTRAORDINARY RELIEF PURSUANT TO RULE 65B
OF THE UTAH RULES OF CIVIL PROCEDURE

**SALT LAKE COUNTY’S AND SALT LAKE COUNTY SHERIFF ROSIE RIVERA’S
RESPONSE IN OPPOSITION TO PETITIONER ORGANIZATIONS’
“MOTION FOR VOLUNTARY DISMISSAL OF REMAINING COUNTY RESPONDENTS”**

Sim Gill
OFFICE OF THE SALT LAKE COUNTY DISTRICT
ATTORNEY
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*Attorneys for Respondents Salt Lake County
and Salt Lake County Sheriff Rosie Rivera*

Salt Lake County and Salt Lake County Sheriff Rosie Rivera

(collectively, “Salt Lake County”) oppose Petitioner Organizations’ May 13, 2020 motion to voluntarily dismiss, which if granted, will preclude Salt Lake County and Sheriff Rivera from further participation in this proceeding and deprive them of a decision on the merits. Petitioner Organizations’ motion is not well-taken, but is a last-minute attempt to deflect from the Petition’s legal and factual deficiencies by avoiding this court’s review of Salt Lake County’s myriad (and thus far successful) efforts to address the risks related to COVID-19 for those involved in the criminal justice system, particularly those individuals housed at the Salt Lake County Jail Facilities. As to Salt Lake County, the motion should be denied.

The Motion is a Misguided Attempt to Avoid Review on the Record.

The May 13 motion is objectionable—among other reasons¹—because it seeks unilaterally to dismiss Salt Lake County from this action “without prejudice” and without the benefit of court review and analysis of Salt Lake County’s extensive efforts (and successes) regarding COVID-19 in the Salt Lake Jail Facilities. As shown by Salt Lake County’s April 25, 2020 opposition, Petitioner Organizations brought this case on April 1, 2020,

¹ Several of those reasons are highlighted in the opposition filed by twenty-one other counties, which, along with Salt Lake County, are co-Respondents in this matter. Salt Lake County will not repeat, but joins, the procedural arguments made by its sister counties in the opposition filed earlier today.

without conducting even the most basic investigation into the County's already-existing efforts to address COVID-19 throughout the criminal justice system.² Indeed, Salt Lake County was already discussing publicly the measures it was taking to ensure inmate health and safety even before the Petition was filed. In fact, the only interruption in the free flow of COVID-19-related information from Salt Lake County and its Jail resulted from this litigation.³ Petitioner Organizations' claim they had to resort to litigation to

² Those efforts included: (1) maximizing good-time credits, expanding OCR criteria, and conducting individualized case reviews (which in seven, short weeks resulted in a more than 35% decrease in inmate population) (SLCo Opp. at 30-33; Declaration of Chief Deputy Matt Dumont, ¶¶ 4-16 (dated April 24, 2020)); (2) reducing or eliminating contact visits and implementing mandatory health screens for anyone entering the Salt Lake Jail Facilities (SLCo Opp. at 33-35); increasing sanitation and hygiene protocols and communications (*id.* at 35-36); and adopting strict quarantine measures for anyone testing COVID-positive or at risk of exposure (*id.* at 36-39; Dumont Decl. at ¶¶ 19-33).

³ In fact, Sheriff Rivera was raked over the proverbial coals when she declined to immediately respond to media inquiries due, as is common, to pending litigation. *E.g.*, Robert Gehrke, The Salt Lake County Jail is Refusing to Give the Public Access to Coronavirus Information We're Entitled To (April 22, 2020), available at: <https://www.sltrib.com/news/2020/04/22/robert-gehrke-salt-lake/> (last visited May 15, 2020) (criticizing Sheriff Rivera for speaking through counsel, DA Gill; erroneously reporting the jail's "attack rate" for COVID-19 in the Salt Lake Jail Facilities was "seven times" the rate in Salt Lake County when, as the Opposition and sworn declarations filed two days later conclusively established, it was closer to twice the county rate (0.39%-0.42% as opposed to roughly 0.19%)). It is sadly ironic that litigation that falsely claims a lack of communication was the cause in fact of a break in communication. Both before and after this litigation, Sheriff Rivera has been open and transparent and has hosted regular media briefings, including prompt disclosure of every staff member and inmate who has tested COVID-

gain information is demonstrably false. The ACLU’s legal director acknowledged, in correspondence exchanged little more than a week before commencing litigation, Salt Lake County’s prompt responses to lengthy form letters the organization sent in mid-March 2020, noting he “d[id]n’t know all of the efforts already underway.” (*See generally* SLC_o Opp. Ex. B (correspondence with ACLU)).⁴

The position of the other Petitioners fares no better. Namely, the Disability Law Center’s first attempt to obtain a factual predicate for its claims was a public records request sent on April 6, 2020—five days after the Petition was filed.⁵ (*See* SLC_o Opp. Ex. C (DLC GRAMA request)). And sadly, the collective Petitioner Organizations’ reluctance to communicate with Salt Lake County has continued with the filing of this very motion.

Petitioner Organizations had the benefit of Salt Lake County’s opposition—and the myriad facts that support it— for more than two weeks

positive, and issued real-time updates on social media, the Sheriff’s Office website, and directly to inmates and their families throughout the pandemic.

⁴ To this end, Salt Lake County’s prompt response was not anomalous. But even during this litigation, the County has continued to respond quickly to ACLU’s information requests. (*See* Ex. N hereto (correspondence with the ACLU dated April 13, 2020, resolving request within roughly 30 minutes of receipt)).

⁵ Equally ironic, the requested records were compiled and the DLC notified the records were available by e-mail sent on April 27, 2020 (*see* Ex. O hereto (letter to the DLC))—and yet the DLC still has not retrieved them.

before seeking the County's dismissal. Rather than timely acknowledge the strength of those facts and seek Salt Lake County's stipulation to a dismissal of the claims against it, on the day Petitioner Organizations' reply would otherwise have come due, Petitioners actually sought an enlargement of time, based on a supposed need to guard against the release of confidential information—of which Salt Lake County submitted none—and to properly respond to cases Salt Lake County provided by way of a notice of supplemental authority. Surely, Petitioner Organizations should have known on May 11 the strengths of Salt Lake County's case that would ultimately lead them to seek the County's dismissal two days later. That they chose to forego a proposed resolution at that time—or at any time after Salt Lake County's opposition was filed on April 25—demonstrates the weakness of their arguments.

Having generated a media firestorm and caused widespread public concern about the criminal justice system in Salt Lake County, based on little more than hyperbole and demonstrably false assumptions, Petitioner Organizations' eleventh-hour attempt to thwart this court's review of the facts (including the fact the case against Salt Lake County was filed without sufficient factual predicate) should not be tolerated. Because Petitioner Organizations have sown the seeds of a false narrative, the public deserves assurance regarding Salt Lake County's efforts to protect them and their

families and friends in this time of crisis. A published decision and order dismissing this case with prejudice, and on the merits, is the only objective way to achieve that.

The Motion is Based on a False Premise.

Equal to Petitioner Organizations’ artificial refrain about the need to sue in order to be informed, is their suggestion the Respondents cloaked their information in secrecy, causing Petitioner Organizations to have to wade through documents marked “Attorneys Eyes Only” to discern the facts. Respecting Salt Lake County none of that is true.

Salt Lake County has consistently and transparently communicated the months’-long efforts of Sheriff Rivera, DA Gill, the courts, and other criminal justice stakeholders have taken to address the impact of COVID-19 on the criminal justice system to Petitioners, the public, and also this court. Salt Lake County did so through press releases and the Jail’s dashboard even before this litigation began. Salt Lake County did so in the public documents it filed with this court. And Salt Lake County has continued to make public its efforts to combat COVID-19 since opposing the Petition on April 25. There was simply no need for Petitioner Organizations to have to review with care materials designated “Attorneys’ Eyes Only” when—as it has throughout this pandemic— Salt Lake County chose to file nothing under seal.

Also lacking credibility is Petitioner Organizations’ suggestion that dismissal is appropriate because—due only to the Petition—Salt Lake County (and others) is now in compliance with Petitioners Organizations’ demands. As to Salt Lake County that is objectively untrue. Salt Lake County began in February 2020 to extensively prepare for the possibility that COVID-19 would enter the Salt Lake Jail Facilities. Those preparations and the successes that have resulted are not something for which Petitioner Organizations may now retroactively claim credit. Rather, Petitioner Organizations belatedly conceived of the so-called need to file an ill-considered pleading some six weeks after the County’s preparations began. It is thus unconscionable that Petitioner Organizations now seek—simultaneous to their self-congratulation—to deprive Salt Lake County, its leaders and residents of a determination by this court that Salt Lake County has acted, and will continue to act, in a manner that far exceeds constitutional minimums and “best practices” for the protection of individuals and their families and friends in Salt Lake County and beyond.

Petitioner Organizations would have this court and the public believe the motion to dismiss is appropriate because Salt Lake County, and others, have only now “seen the light” by having “substantially compli[ed]” with Petitioner Organizations’ demands, rather than acknowledge—as they should—that dismissal is warranted by Petitioner Organizations’ own failure

to investigate Salt Lake County’s wide-ranging foresight and diligence in preparing and executing a comprehensive plan for COVID-19 beginning over a month before the Petition was even filed.

The May 13 motion appears solely intended to bolster Petitioner Organizations’ false narrative in the media, and elsewhere, that Salt Lake County’s myriad responses to the COVID-19 pandemic, both in- and outside the Salt Lake Jail Facilities, were somehow positively influenced—rather than needlessly hindered—by a legally and factually baseless action that Petitioner Organizations now impliedly concede was wholly unnecessary as to Salt Lake County.⁶

In summary, Petitioner Organizations’ motion seeking Salt Lake County’s dismissal is an affront to this court, the public, and the County and its elected leaders. By seeking to “voluntarily” dismiss Salt Lake County without prejudice, Petitioner Organizations falsely attempt to claim “victory” at the expense of Salt Lake County and its residents rather than risk what even Petitioner Organizations recognize is the likely adverse court decision on the merits of their claims that Salt Lake County should instead enjoy.

⁶ While Salt Lake County does not presently intend to seek costs or sanctions in connection with the Petition, the County expressly notes this court may sua sponte investigate and impose sanctions or discipline on any attorney who violates Utah Rules of Appellate Procedure 33 or 40.

Petitioner Organizations' motion to dismiss Salt Lake County without prejudice should be denied. The Petition should be addressed on the merits, or lack thereof, and the relief requested by Petitioner Organizations should also be denied and the case against Salt Lake County and Sheriff Rivera dismissed with prejudice.

Respectfully submitted:

Sim Gill
OFFICE OF THE SALT LAKE COUNTY DISTRICT
ATTORNEY

/s/ Bridget K. Romano
Bridget K. Romano
Darcy M. Goddard
LaShel Shaw
William Garbina
Deputy District Attorneys
35 East 500 South
Salt Lake City, Utah 84105

*Attorneys for Respondents Salt Lake County
and Salt Lake County Sheriff Rosie Rivera*

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2020, I filed the foregoing Salt Lake County’s and Salt Lake County Sheriff Rosie Rivera’s Response in Opposition to Petitioner Organizations’ “Motion for Voluntary Dismissal of Remaining County Respondents” by e-mail sent to supremecourt@utcourts.gov, with a copy sent and served contemporaneously on Petitioner Organizations and Intervenors by e-mail sent to counsel below:

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|---|---|
| <p>John M. Mejia (jmejia@acluutah.org) Jason M. Groth (jgroth@acluutah.org) Sara R. Wolovick (swolovick@acluutah.org) Leah Farrell (lfarrell@acluutah.org) ACLU OF UTAH FOUNDATION, INC. 355 N. 300 West Salt Lake City, Utah 84103 Telephone: 801.521.9863</p> <p>Petitioner</p> | <p>Aaron M Kinikini (akinikini@disabilitylawcenter.org) Nicolas H.K. Jackson (njackson@disabilitylawcenter.org) DISABILITY LAW CENTER 205 North 400 West Salt Lake City, Utah 84103 Telephone: 801.363.1347</p> <p>Petitioner</p> |
| <p>Steven Burton (director@uacdl.org) UTAH ASSOCIATION OF CRIMINAL DEFENSE ATTORNEYS P.O. Box 3254 Salt Lake City, Utah 84110 Telephone: 801.363.2976</p> <p>Petitioner</p> | <p>Paul G. Cassell (cassellp@law.utah.edu) UTAH APPELLATE PROJECT S.J. Quinney College of Law 383 S. University Street Salt Lake City, Utah 84112</p> <p>Counsel for Intervenors</p> |

| | |
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| Heidi Nestel (heidi@utahvictimsclinic.org) Bethany Warr (bethany@utahvictimsclinic) UTAH CRIME VICTIMS LEGAL CLINIC 404 East 4500 South Salt Lake City, Utah 84107 Counsel for Intervenors | |
|--|--|

I further certify that on the 15th day of May, 2020, I served the foregoing Salt Lake County’s and Salt Lake County Sheriff Rosie Rivera’s Objection and Response in Opposition to Petitioner Organizations’ “Motion for Voluntary Dismissal of Remaining County Respondents” by e-mail sent to each listed counsel of record, on all Co-Respondent organizations and individuals identified in Exhibit G to Salt Lake County’s and Salt Lake County Sheriff Rosie Rivera’s Response in Opposition to Petition.

Signed: /s Darcy M. Goddard

Salt Lake County
Exhibit N

ACLU of Utah, et al. v. State of Utah, et al., No. 20200281-SC

Darcy Goddard

From: Leah Farrell <lfarrell@acluutah.org>
Sent: Monday, April 13, 2020 6:12 PM
To: Darcy Goddard
Subject: RE: Inmate transfer policy

Thank you Darcy.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Darcy Goddard <DGoddard@slco.org>
Date: 4/13/20 6:01 PM (GMT-07:00)
To: Leah Farrell <lfarrell@acluutah.org>
Subject: RE: Inmate transfer policy

Dear Leah:

I spoke with Chief Dumont, who confirmed with the individual over inmate transfers that we are not planning to transfer any inmate to Weber tomorrow. The only possible exception we could think of would be if the individual is a federal inmate and the U.S. Marshals are considering a transfer, but, again, that would be news to us.

We will check first thing in the morning if any of our seven in-house inmates who have tested positive for COVID-19 are federal inmates. Until then, unless you have more information we could use to track down the source of the rumor, it appears unfounded.

I'll update you in the morning if we learn anything else.

Thanks.

Darcy M. Goddard

Chief Policy Advisor (Civil) & Deputy District Attorney

Office of the Salt Lake County District Attorney

35 East 500 South

Salt Lake City, Utah 84111

T: 385.468.7761

C: 917.684.8010

PLEASE NOTE NEW STREET ADDRESS

From: Leah Farrell <lfarrell@acluutah.org>

Sent: Monday, April 13, 2020 5:28 PM

To: Darcy Goddard <DGoddard@slco.org>

Subject: Inmate transfer policy

Hi Darcy,

We have heard that an inmate who has tested positive for COVID-19 in Metro jail is being transferred to Weber County Corrections tomorrow to be housed in their new quarantine unit. This hasn't been independently verified but I felt that it warranted that I follow up with you. Do you know if Salt Lake County would transfer someone to another jail who has tested positive? So far there have been no confirmed cases in Weber.

I will forward any answer to the rest of the litigation attorneys on our side, but felt like it would be quickest to bring to your attention and find out if it is completely unfounded.

Thanks

Leah

Leah Farrell

she or they
Senior Staff Attorney

Salt Lake County
Exhibit O

ACLU of Utah, et al. v. State of Utah, et al., No. 20200281-SC

Rosie Rivera
Sheriff

Jake Petersen
Undersheriff

Matthew Dumont
Chief Deputy

**Salt Lake County
Sheriff's Office**



Corrections Bureau

Lieutenant Kathy Berrett
Records and Reporting
3415 South 900 West
Salt Lake City, UT 84119
Office: (385) 468-8685
Fax: (385) 468-88797
TTY: 711
e-mail: kberrett@slco.org

Division • 3415 South 900 West • Salt Lake City, UT 84119 • (385) 468-8400

April 27, 2020

Craig Blake, Staff Attorney
Disability Law Center
205 North 400 West
Salt Lake City, Utah 84103
801-363-1347 ext.3203
cblake@disabilitylawcenter.org

Dear Mr. Blake,

The following is in response to the GRAMA Request received on April 6, 2020:

1. Current number of individuals incarcerated at each jail facility who have tested positive for COVID 19.
2. Current number of individuals incarcerated at each jail facility who have been tested for COVID 19, independent of the test results.
3. Current number of individuals incarcerated at each jail facility showing symptoms of COVID 19 but have not been tested.
4. Current number of employees, staff, and administrators at each jail facility who have tested positive for COVID 19.
5. Current number of employees, staff, and administrators at each jail facility who have been tested for COVID 19, independent of the rest results.
6. Current number of employees, staff, and administrators at each jail facility who are showing symptoms of COVID 19 but have not been tested.
7. Current number of employees, staff and administrators at each jail facility who have been placed on leave due to showing symptoms or testing positive for COVID 19.
8. Information regarding the current access each jail facility has to COVID 19 testing, how many tests are available, procedures in place to determine who receives a test, and what organization provides testing kits.

9. Other methods currently employed at each jail facility to screen for COVID 19 infection in inmates, employees, staff, administrators, and visitors.
10. Access to respirators and how many respirators are immediately available for use at each jail facility.
11. Policies and procedures put in place in response to COVID 19, or the lack thereof, regarding the following:
 - a. Visitation policies for inmates, including any increase in phone, video, and other digital communication.
 - b. The frequency of cost to inmates of any phone, video, or digital communication mentioned in paragraph 8(a).
 - c. Inmate access to personal hygiene supplies including hand sanitizer and soap and the cost of these supplies.
 - d. Any increased usage of cleaning supplies and disinfectants, which specific supplies are being used, and procedures for their use.
 - e. Policies or procedures aimed at reducing exposure for inmates at a higher risk of harm in the event of COVID 19 infection on account of age, disability, or health condition.
 - f. Intake procedures for newly arrived inmates aimed at minimizing COVID 19 infection.
 - g. Social distancing procedures currently in effect within the facility.
 - h. Response procedures in the event that an inmate, employee, staff member, or administrator tests positive and/or shows symptoms of COVID 19.
 - i. Quarantine and treatment provisions in the event that an inmate tests positive for COVID 19 or exhibits symptoms.
 - j. Any other policies or procedures which have been altered or added in response to COVID 19.

Because each of the agencies for which this information is being requested are non-profit entities, a fee waiver has been requested citing §63G-2-203(4) as the basis for granting such a waiver. The request for a fee waiver is denied as information contained in the documents has been openly communicated by Sheriff Rivera and/or is available for public viewing through a recent filing by Salt Lake County in the Utah Supreme Court Case 20200281 and the following websites and media sources:

Facebook (SLSheriff)
Sheriff's Office Website (SLSheriff.org)
Twitter (slcometrojail)
Utah Supreme Court (utahcourts.gov)
Fox 13 News (fox13now.com)
KSL (ksl.com)
2 News (kutv.com)
KUER (NPR) (juer.org)
KSL- Dave and Dujanovic (kslnewsradio.com)
Salt Lake County Council (slco.org/council/)

In response to 1, 2, 3, 4, 5, 6 and 7, the information as specifically requested, is classified as protected as defined in §63G-2-305(22). The electronic spreadsheets used to track and monitor the

information are updated regularly. These are considered living documents and until such time as the information contained therein becomes static, the document will not be made available.

In response to 8:

1. Information regarding the current access each jail facility has to COVID 19 testing and how many tests are available? Daily inventories are not formally conducted / recorded and the number on site fluctuates as used. This portion of the request is neither approved nor denied as no document exists that contains the requested information as supported by §63G-2-201(8)(a) which states that a governmental entity is not required to create a record in response to a GRAMA Request.
2. Test kits are provided by Intermountain Laboratory Services under Salt Lake County contract number 1058. A copy of the contract may be provided upon the submission of a GRAMA Request Form to Salt Lake County Contracts and Procurement.

Information in response to numbers 9, 10, and 11a have been located and will be made available.

11(b) seeks information that is not contained in a Salt Lake County Sheriff's Office record. The prisoner phone services are contacted to Centurylink™.

11(c) requests information concerning inmate access to personal hygiene supplies including hand sanitizer and soap and the cost of these supplies. Documents regarding access to personal hygiene items have been located and will be made available. Costs associated with personal hygiene supplies will need to be more specific regarding time period and type as supported in §63G-2-204(1)(ii).

11(d) requests information concerning any increased usage of cleaning supplies and disinfectants, which specific supplies are being used, and procedures for their use. Documents associated with the availability of cleaning supplies and encouragement to use them frequently will be made available. The request for information about what supplies are being used and the procedures for their use will need to be more specific. The Salt Lake County Sheriff's Office utilizes a number of cleaning supplies purchased from a variety of vendors. You may submit a new GRAMA request identifying the information you are seeking with reasonable specificity as stated in §63G-2-204(1)(ii).

11(e) asks for policies or procedures aimed at reducing exposure for inmates at a higher risk of harm in the event of COVID 19 infection on account of age, disability, or health condition. Documents have been located and will be made available.

11(f) requests intake procedures for newly arrived inmates aimed at minimizing COVID 19 infection. Documents containing the requested information will be made available.

11(g) inquires about social distancing procedures currently in effect within the facility. Documents and video footage containing the requested information will be made available.

11(h) asks for response procedures in the event that an inmate, employee, staff member, or administrator tests positive and/or shows symptoms of COVID 19. Documents containing the requested information will be made available.

11(i) requests information concerning quarantine and treatment provisions in the event that an inmate tests positive for COVID 19 or exhibits symptoms Documents containing the requested information will be made available.

11(j) asks for any other policies or procedures which have been altered or added in response to COVID 19. Documents containing the requested information will be made available. However, there are several documents regarding emergency operations and response plans that would contain information relevant to this request. These documents are classified as protected under §63G-2-305(13) which states in part “records that, if disclosed, would jeopardize the security or safety of a correctional facility...”

In an effort to be good community partners, and in consideration of the organization’s non-profit status, I recommend the records be reviewed by a representative of the Disability Law Center to ensure unnecessary costs are not incurred. A significant number of the documents are available publicly and may be accessible at no cost.

The current fees for records is \$90.50 for documents and \$70.00 for compact discs totaling \$160.50.

If you disagree with this response to your GRAMA request, you have the right to submit an appeal pursuant to Countywide Policy 2040, 2.1 within 30 days. I have attached a copy of this policy for your convenience. Appeals may be sent to:

Chief Dumont
c/o Jail Records and Reporting
3415 South 900 West
South Salt Lake City, Utah 84119

Please contact me if you have any questions or to make arrangements to review documents and materials associated with this request.

/S/ Lieutenant K. Berrett



Lieutenant Kathy Berrett
Records and Reporting
Salt Lake County Sheriff's Office
(385) 468-8685 Office TTY: 711
kberrett@slco.org