

Maine

March 11, 2020

State of Maine
Governor Janet Mills
1 State House Station
Augusta, ME 04330

RE: COVID-19 Response Planning

Dear Governor Mills,

As Maine prepares for the likely introduction of COVID-19 within its borders, we hope that you will consider the ACLU of Maine as a resource in your work to develop a response plan that protects the health, safety, and rights of all Mainers. We know this situation is unprecedented, and it will take many of us working together and utilizing our collective expertise to respond appropriately, effectively, and fairly. To that end, we are reaching out with a list of essential civil liberties issues that must be kept in mind.

We recognize and understand that during a disease outbreak, there will be calls for individual rights to give way to the greater good. But, the use of measures that deprive individuals of their liberty must be scientifically supported and proportional. And, individuals must never be deprived of their due process rights—in essence, the right to fair treatment from the government—which include the right to an opportunity to challenge the legality of any government action, include compulsory quarantines.

As you may know, last week a group of over 800 public health experts and organizations signed a public letter warning that widespread transmission of Covid-19 within the United States is “inevitable.”¹ This letter includes recommendations to federal, state, and local leaders on achieving a fair and effective response to the coronavirus outbreak.

The recommendations stress the need to protect vulnerable populations, and we wish to reiterate that emphasis here. In particular:

People in prisons and jails are *highly vulnerable* to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. Without the active engagement of jail and prison administration, they have little ability to inform themselves about preventive measures, or to take such measures if they do manage to learn of them. We are particularly concerned as health care in Maine’s prisons and jails has largely been contracted away to private for-profit corporations, which are not necessarily as responsive to public needs as government officials are. It is unlikely those contracts included any specific requirements concerning

¹ Gregg S. Gonsalves, et al., *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, Mar. 2, 2020, available at https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

testing and treatment for COVID-19; nonetheless, all prison and healthcare providers are obligated to ensure that such testing and treatment are available. The planning to ensure such availability needs to start now.

COVID-19 does not care about a person's immigration status and whether they are documented or not. Health care facilities must be declared "immigration enforcement-free zones"—and that declaration must be well-publicized and well-enforced. Maine's response must dismantle all barriers to testing and treatment, including the fear within immigrant communities that an individual could be picked up by ICE if they seek medical help. The zeal of some in our state to root out any possible immigration law violation cannot be allowed to put all our health and safety at risk.

Maine must support people who cannot afford to miss work or who lack paid sick leave. All Mainers face increased risk if people hide their condition and go to work because they cannot afford to miss a paycheck. The government must work with employers to ensure that workers are supported in voluntarily staying home when sick, even if they're not sick enough to go to the hospital.

When people are unable to afford testing and treatment, all Mainers are at greater risk. Diseases like COVID-19 do not distinguish between people with comprehensive health insurance policies and those without. To limit the transmission of the virus, responses to COVID-19 must ensure that all people have access to testing and treatment.

Information regarding COVID-19 must be transparent and timely. Political leaders will be more likely to maintain public trust and cooperation if their public statements are accurate and based in science.

Finally, whenever possible, voluntary isolation measures are preferable to coercive measures. While the use of a mandatory quarantine may be justified if it is scientifically supported and proportional, the most effective way to get people to stay home is for the government to provide the support necessary to do so.

Above all, government officials should enlist and follow the recommendations of a broad range of experts, in order to craft a response plan that protects the health, safety, and civil liberties of all.

We are available to meet and discuss your COVID-19 response planning; if you have any questions at all about the civil liberties implications of any measures you are considering, please don't hesitate to reach out. Together, we can help ensure a response that is scientifically justified and no more intrusive upon civil liberties than absolutely necessary.

Thank you for your time and consideration.

Sincerely,



Alison Beyea, Executive Director