

TOP STORY

# ACLU files lawsuit against El Paso County sheriff over record COVID-19 outbreak at jail

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COVID-19 infections jumped to 859 inmates out of 1,246 in custody Sunday -- a significant spike from the day earlier when 658 tested positive, according to the latest numbers from the El Paso County Sheriff's Office.

Courtesy of the El Paso County Sheriff's Office

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As the coronavirus swept through Colorado's penal institutions, El Paso County jail inmates went months without access to masks, even facing threats of discipline if they tried to use bed sheets or underwear as face coverings, the ACLU of Colorado said Sunday in a class-action lawsuit alleging widespread failures at the jail.

A 36-page complaint in U.S. District Court in Denver alleges that Sheriff Bill Elder's "deliberate indifference" to the dangers of COVID-19 set the stage for a late-October outbreak that infected more than 1,000 inmates — more than any other jail or prison in the state.

Elder is the sole defendant in the suit, which seeks improvements — including better medical care for the ill and two free cloth masks for each inmate — rather than monetary damages.

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Among the Sheriff's Office's continuing missteps, the lawsuit alleged, were "disordered, mismanaged" policies that allowed sick and healthy inmates to freely mix, compounding what the ACLU calls a "mammoth, preventable outbreak." The suit says newly arrived inmates weren't properly quarantined and cites spotty availability of masks after the Sheriff's Office began providing them amid the growing outbreak, months after they had become commonplace in state prisons and many jails.

"We have heard from prisoners whose masks get broken or damaged, that they can't get replacement masks," said ACLU Legal Director Mark Silverstein. "They're told, 'We don't have enough masks to give you a replacement. We don't have enough masks to give you two to wear one while the other's being washed.'"

Sheriff's Office spokeswoman Sgt. Deborah Mynatt declined to comment Sunday evening, citing an office policy against discussing pending litigation. Instead, Mynatt referred a reporter to the Sheriff's Office's website, which has information about its coronavirus response.

The lack of protections for inmates came despite the Sheriff's Office receiving \$15.6 million in federal funding under the CARES Act for COVID-19 protection, which the complaint said was spent on "expensive projects," including office renovations and upgraded locker rooms. Sheriff's Cmdr. Joseph Roybal told The Gazette this summer that each of the capital improvements was meant to reduce the risk of coronavirus transmissions at the Sheriff's Office.

The sheriff's alleged failures likewise endangered employees, sickening dozens with COVID-19, including 41-year-old Deputy Jeffrey Hopkins, who died of the

disease in April, the suit said. The Sheriff's Office has said Hopkins contracted the coronavirus from coworkers while assigned to the jail's intake and release section.

The complaint marks the latest pandemic-related legal salvo by Colorado's branch of the American Civil Liberties Union, which has previously sued the state prison system and the Weld County Sheriff's Office in a bid to improve conditions for prisoners and ensure the availability of masks.

The lawsuit asks for a judge's order requiring inmates and guards to wear masks at all times. The jails should be made to better identify and protect medically vulnerable inmates, and to craft individual treatment plans for sick inmates, the complaint said.

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The complaint also requests that inmates infected with coronavirus be separated from those who have tested positive and that any new inmates be properly quarantined before they are housed with others.

In a separate motion, The ACLU asked the judge for "emergency interim relief" and an expedited case schedule, citing urgent health threats.

According to the jail website, 1,073 inmates and 165 workers have contracted COVID-19, most since the outbreak in late October. The sheriff reports that eight workers and 14 inmates remain positive. The ACLU said it intends to seek information about how the office is tabulating its numbers.

Elder has previously defended his office's handling of the coronavirus, saying he has followed El Paso County's public health guidelines meant to reduce the risk of coronavirus, including policies crafted by the county's Deputy Medical Director Dr. Leon Kelly. Elder's office was praised by the ACLU of Colorado early in the pandemic

for efforts to reduce the jail's average monthly population of roughly 1,550, which dropped to less than 1,000 for several months before rising to about 1,200 inmates.


Before the Sheriff's Office began distributing masks to inmates, it called them a potential security threat because of metal in the nose piece — what the complaint calls a “nonsensical” argument given that jails and prisons had for months been distributing cloth masks to inmates.

A judge ordered that Weld County inmates receive masks early in the pandemic, Silverstein said.

“We wrote a letter to all of the other sheriff's offices in Colorado — we sent that in June — listing the basic things that every county jail should be doing, minimal steps, and distributing masks was one of them,” he said.

Elder's early successes made reports of other missteps, such as the medical neglect of those with symptoms, all the more surprising, Silverstein added.

“They're too exhausted to get up and even file a (medical request),” he said of inmates who spoke to the ACLU. “Somebody should be checking on them, taking their vitals, monitoring their symptoms. We've had multiple reports that that's just not happening.”

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The suit was filed by six current inmates, on behalf of the entire jail population. The plaintiffs are all considered medically vulnerable, the ACLU said, including a woman who, at three months pregnant, was allegedly housed within feet of infected inmates. Three other plaintiffs have lung cancer.

Of the six, four are pretrial detainees and two are being held after convictions.

The ACLU said it had received “hundreds” of letters from El Paso County jail inmates, and conducted dozens of interviews with them in preparing the lawsuit.

“Jail staff have told people suffering there, begging for help: ‘We're just going to let the virus run its course,’” the complaint said. “This callous statement sums up the policy of the El Paso County Sheriff's Office.”

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