



# AMERICAN UNIVERSITY

W A S H I N G T O N , D C

Clinical Program

February 3, 2021

Warden Jeffrey Krueger  
MCFP Springfield  
1900 W. Sunshine Street  
Springfield, MO 65807

Dear Warden Krueger:

As a coalition of law school clinics, organizations, law firms, and individuals who work with and on behalf of individuals in the Bureau of Prisons' (BOP), we are dedicated to the humane treatment and rights of incarcerated individuals. We write to express our deep concerns regarding the conditions at Springfield MCFP and the health and safety of individuals incarcerated there during the COVID-19 pandemic.

We are certain that you are aware of the severity of the COVID-19 pandemic and its spread within BOP facilities. We are particularly concerned about Springfield given the unique vulnerability of its medically vulnerable population and the conditions within the facility. According to the publicly available information, Springfield has reported a total of 415 positive cases of COVID-19 among the incarcerated population—more than half of the almost 800 individuals incarcerated in your facility.<sup>1</sup> The vast majority of these cases began arising in October 2020 and have continued to grow. Also, the BOP has reported that eighteen of these individuals have died of COVID-19, which means that Springfield has one of the highest reported death rates of any BOP facility.<sup>2</sup> Springfield also has the highest number of reported positive staff cases of any BOP facility: 230 positive cases over the course of the pandemic.<sup>3</sup> This statistic is deeply concerning considering the vulnerability of the population with whom Springfield staff are interacting.

In addition, because so many individuals incarcerated at Springfield and staff are sick with COVID-19, this jeopardizes the facility's ability to provide medical care for the very conditions that necessitate the incarceration of these individuals at Springfield, a CARE Level 4 facility. Thus, not only are individuals receiving inadequate care when sick with COVID-19, but they are also not receiving adequate care for their underlying conditions.

Based on information from individuals incarcerated at Springfield, the current measures adopted at the facility constitute a violation of the Eighth Amendment to the U.S. Constitution. Under the Eighth Amendment, prisoners are protected from cruel and unusual punishment—giving them the right to be reasonably protected from infectious disease and the right to receive adequate

<sup>1</sup> *COVID-19 Coronavirus*, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus> (last updated Jan. 29, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

medical care while incarcerated.<sup>4</sup> At Springfield, we understand that individuals have received inadequate care, including not providing those infected with COVID-19 with medical treatment, utilizing ineffectual health assessment measures, releasing individuals back into the general population before confirming they are negative for COVID-19, warehousing dozens of individuals sick with COVID-19 together in a confined spaces, and taking inadequate precautions to contain the spread of COVID-19 in the facility. Accordingly, Springfield officials have acted with deliberate indifference to the safety of the medically vulnerable population within the facility in violation of the Eighth Amendment. We ask that you immediately remedy this deliberate indifference using the following measures:

### **1. Increase Testing of Incarcerated Individuals and Staff, Including Asymptomatic Individuals**

The number of those infected with COVID-19 at Springfield is troubling because it only reflects *reported* positive cases, suggesting that the number of infected incarcerated persons and staff could be—and likely is—much higher.<sup>5</sup> Despite recommendations for more widespread testing,<sup>6</sup> the vast majority of facilities, including Springfield, appear to only test symptomatic incarcerated individuals. While the BOP’s plans describe protocols for testing during intakes and transfers between facilities, they lack any mention of systematically testing asymptomatic individuals. Further, it appears that BOP is not testing its staff and relies on external health care providers and individual staff members to report their positive test results.<sup>7</sup> This is especially concerning given BOP’s policy of permitting asymptomatic staff who have reported potential exposure to COVID-19 to continue working, so long as they remain asymptomatic.<sup>8</sup>

In a facility such as Springfield, where the incarcerated population is medically vulnerable and necessarily come into close contact with staff when receiving medical care, Springfield must prioritize more widespread testing. Some medical staff at Springfield also work in local hospitals, which are currently overflowing with COVID-19 patients. These staff, if not adequately tested, pose a risk to the incarcerated individuals they treat and supervise.

Furthermore, Springfield’s management and treatment of incarcerated individuals who are sick with COVID-19 put others at risk of infection. Even symptomatic individuals who test positive and are quarantined are not tested again before being released back into general population. Rather, they are reportedly put in rooms with others who are positive for COVID-19 and given daily temperature checks. If, after fourteen days of “normal” temperature checks, they are considered no longer infected and are released back into general population. This strategy

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<sup>4</sup> See *Farmer v. Brennan*, 511 U.S. 825 (1994); *Hutto v. Finney*, 427 U.S. 678 (1978).

<sup>5</sup> See, e.g., Don Hummer, *United States Bureau of Prisons’ Response to the COVID-19 Pandemic*, 15 *Victims & Offenders* 1262 (2020).

<sup>6</sup> See Liesl M. Hagan et al., *Mass Testing for SARS-CoV-2 in 16 Prisons and Jails—Six Jurisdictions, United States, April-May 2020*, 69 *Morbidity Mortality Weekly Report* 1139, 1139 (2020) (“Case surveillance from symptom-based testing has likely underestimated SARS-CoV-2 prevalence in correctional and detention facilities. Broad-based testing can provide a more accurate assessment of prevalence.”).

<sup>7</sup> Fed. Bureau of Prisons, *Module 11. BOP Employee Management* 4-5 (Sept. 11, 2020), [https://www.bop.gov/foia/docs/Mod\\_11\\_Employee\\_Management\\_of\\_COVID\\_Pandemic\\_Response\\_Plan\\_08312020.pdf](https://www.bop.gov/foia/docs/Mod_11_Employee_Management_of_COVID_Pandemic_Response_Plan_08312020.pdf).

<sup>8</sup> *Id.* at 3.

inadequately prevents further infection as individuals may still be infected and contagious even if they do not present a fever. Additionally, elderly and immunosuppressed individuals are much less likely to have a fever when infected with COVID-19, making reliance on temperature screenings highly unreliable in determining which and for how long individuals should quarantine.<sup>9</sup>

Specifically, and at a minimum, Springfield must stop relying on temperature checks in screening its dialysis patients. As one of only two BOP facilities with full dialysis units,<sup>10</sup> Springfield treats many individuals with varying stages of serious chronic kidney disease—a condition that puts these individuals at a very high risk of complications or death if they contract COVID-19.<sup>11</sup> Research has shown that dialysis patients do not always present with the same symptoms as other COVID-19 patients—most notably many do not present with a fever.<sup>12</sup> The symptoms with which dialysis patients present when sick with COVID-19 could also be easily confused with uremia, a condition common in these patients.<sup>13</sup> Clinicians strongly recommend and we ask you to regularly test Springfield’s dialysis patients to better protect them and other individuals in the facility from the virus.<sup>14</sup>

## **2. Strictly Enforce the Use of PPE and Social Distancing Requirements**

BOP claims it has adopted public health guidelines and requires use of personal protective equipment (PPE), such as face masks and that individuals maintain at least six feet distance from other individuals as often as possible. While we appreciate that social distancing presents challenges in a carceral setting, it is crucially important to slowing the spread of the virus among Springfield’s medically vulnerable population. Thus, we ask Springfield to more strictly enforce these measures, especially with its staff.

Individuals incarcerated at Springfield have reported that they are still sleeping in poorly ventilated dorms with dozens of others where they do not have adequate room to maintain six feet of distance between each other. Though many individuals attempt to wear their face masks while in their dorms, they do not always do so properly or they remove them, especially to sleep. Compounded with the lack of adequate testing, this increases the likelihood of virus spread.

Additionally, there have been reports of BOP staff and guards in Springfield not properly wearing their masks or maintaining six feet of distance. There have also been accounts of staff in

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<sup>9</sup> See Fed. Bureau of Prisons, *Coronavirus Disease 2019 (COVID-19) Inmate Screening Tool* (Feb. 2020), [https://www.bop.gov/coronavirus/docs/covid19\\_inmate\\_screening\\_tool\\_20200202.pdf](https://www.bop.gov/coronavirus/docs/covid19_inmate_screening_tool_20200202.pdf); see also *Older Adults*, Ctr. for Disease Control & Prevention (Dec. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

<sup>10</sup> Alan Ellis, *Health Care in the Federal Prison System*, 23 *Crim. Just.* 43, 43 (2008).

<sup>11</sup> *People with Certain Medical Conditions*, Ctr. for Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Dec. 29, 2020).

<sup>12</sup> See Nieltje Gedney, *Long-Term Hemodialysis During the COVID-19 Pandemic*, 15 *Clinical J. Am. Soc’y Nephrology* 1073, 1073 (2020); see also Jun Wu et al., *Clinical Features of Maintenance Hemodialysis Patients with 2019 Novel Coronavirus-Infected Pneumonia in Wuhan, China*, 15 *Clinical J. Am. Soc’y Nephrology* 1139, 1139 (2020) (reporting a fever in 90% of control group patients as opposed to only 47% of hemodialysis patients).

<sup>13</sup> See Wu et al., *supra*, at 1142.

<sup>14</sup> See Gedney, *supra*, at 1073.

Springfield removing their masks and “vaping” within the facility. Springfield leadership must address this unacceptable behavior immediately, as staff present one of the greatest threats to the incarcerated population as well as their fellow employees.

As noted, we understand that these methods can be challenging to enforce perfectly within a prison and that they are not a panacea to preventing infection. However, if combined with more robust testing and greater utilization of home confinement, the stricter enforcement of these public health recommendations can slow the spread and protect Springfield’s incarcerated population and staff.

### **3. Improve Access to Medical Care for COVID-Positive Patients**

Springfield must provide adequate medical care to those who are infected with COVID-19. We understand from individuals currently incarcerated at Springfield that it has adopted a policy of placing incarcerated individuals infected with COVID-19 in one room, which can contain up to sixty individuals. Those individuals do not receive any medical consultations or care during their infection—instead prison staff merely check their temperatures every morning. Incarcerated individuals are only seeing doctors when their condition worsens to the point of needing intensive medical care and they are taken to a hospital outside of the facility.

The lack of medical treatment for those infected with COVID-19 is particularly galling because Springfield serves medically vulnerable individuals and is “the major kidney dialysis center for the BOP.”<sup>15</sup> As a CARE Level 4 facility, Springfield houses incarcerated persons who are “severely impaired, and may require daily nursing care” for conditions such as cancer, dialysis, strokes, and patients who require or have recently received major surgery.<sup>16</sup> These populations are at a unique risk of serious complications arising from a COVID-19 infection, as is evidenced by the high reported death rates for incarcerated persons infected with COVID-19 at Springfield.<sup>17</sup> By not monitoring the conditions of COVID-19-infected incarcerated persons beyond a cursory temperature check, Springfield endangers the health of those whom it is charged with protecting and falls short of the level of care required by the Eighth Amendment.

### **4. Exercise Discretion and Release to Home-Confinement**

Springfield should also take steps to more aggressively release medically vulnerable incarcerated persons at Springfield to home confinement. In March 2020, Attorney General Barr urged prison officials to increase home confinement for medically-vulnerable individuals to reduce the risks to their health and reduce crowding in carceral facilities.<sup>18</sup> This mandate acknowledged that home confinement was a valuable tool in order to protect those most vulnerable from suffering severe and lethal complications from COVID-19.<sup>19</sup> With Attorney General Barr’s guidance in mind,

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<sup>15</sup> U.S. Department of Justice, *Legal Resource Guide to the Federal Bureau of Prisons* 29, [https://www.bop.gov/resources/pdfs/legal\\_guide\\_march\\_2019.pdf](https://www.bop.gov/resources/pdfs/legal_guide_march_2019.pdf).

<sup>16</sup> *Id.* at 28.

<sup>17</sup> *COVID-19 Coronavirus*, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus> (last updated Jan. 5, 2021).

<sup>18</sup> Memorandum for Director of Bureau of Prisons from Attorney General Barr on the Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic (Mar. 26, 2020), <https://www.justice.gov/file/1262731/download>.

<sup>19</sup> *See id.*

Springfield should immediately release any medically vulnerable individuals eligible for home confinement. Home confinement orders will ensure that medically vulnerable individuals are protected from COVID-19 and enhance Springfield's capacity to contain the spread of COVID-19 within the facility and deliver adequate medical care by decreasing the facility's population.

## **Conclusion**

The measures currently adopted at Springfield to contain the spread of COVID-19 and care for those who have already been infected are inadequate and constitutionally defective. As noted above, this is particularly unacceptable at Springfield because, as a CARE Level 4 facility, the facility's very purpose is to care for incarcerated individuals who are medically vulnerable. Accordingly, Springfield must institute the policies listed above to address the violation of incarcerated persons' Eighth Amendment rights. We request that Springfield MCFP provide information regarding its plans to improve conditions in the facility by March 3, 2021.

Sincerely,

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