



## PENNSYLVANIA INSTITUTIONAL LAW PROJECT

718 Arch Street, Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
F: 215-925-5337  
www.pailp.org

December 23, 2020

**Via First-Class mail and Email (info@bop.gov)**

Michael Carvajal  
Director  
Federal Bureau of Prisons  
Central Office HQ  
320 First Street, NW  
Washington, DC 20534

**Via First-Class Mail and Email (LOR-ExecAssistant@bop.gov)**

Warden Vicky Moser  
FCI Loretto  
772 Saint Joseph Street  
Loretto, PA 15940

**RE: COVID-19 at FCI Loretto**

Dear Director Carvajal and Warden Moser:

We are writing to convey our serious concerns regarding the severe outbreak of COVID-19 at the Federal Correctional Institution Loretto (FCI Loretto). In addition to media accounts, we have received numerous troubling reports from incarcerated people and their families regarding the conditions at FCI Loretto that contributed to this outbreak. We ask that you immediately take steps to protect the population at FCI Loretto that have not tested positive for COVID-19, mitigate against the possibility of re-infection, and do everything in your authority to assist those people with COVID-19 in obtaining medical care, including making plans for the potential need for hospital care in a timely and efficient manner.

The Pennsylvania Institutional Law Project is a legal aid organization dedicated to representing incarcerated and institutionalized people in civil rights and other civil matters through litigation in federal and other courts and through advocacy. We seek to ensure the health, safety, and humane treatment of incarcerated individuals, especially during this critical and unprecedented time. All Rise Trial & Appellate is an organization that represents individuals and groups in public interest cases, including people in prisons and jails who have or have been exposed to COVID-19.

As you know, COVID-19 is a highly contagious disease and has spread rapidly throughout the state, the country and the world since first being detected in the United States in March 2020. As of December 18, 2020, there have been 538,655 total cases in Pennsylvania and

13,608 deaths. According to the Bureau of Prison's (BOP) COVID tracking, 740 incarcerated people at FCI Loretto (out of approximately 860) have tested positive. This infection rate is significantly higher than that of the community and poses grave risks for the individuals incarcerated there, the staff, and the rest of the community.

The Eighth Amendment of the U.S. Constitution requires that incarcerated people be protected from conditions of confinement that create a serious risk to their health or safety.<sup>1</sup> This includes protection from the risks of exposure to a deadly infectious disease like COVID-19.<sup>2</sup> Failing to take necessary measures to protect even asymptomatic individuals from the risks of exposure to COVID-19 is likely a violation of the U.S. Constitution.<sup>3</sup>

***Crowded conditions increase the risk of spread.***

The CDC advises that social distancing – maintaining at least six feet in between people at all times - is the best way to prevent transmission of the Coronavirus.<sup>4</sup> This tool is especially important given the fact that people who have been infected with COVID-19 can spread the infection even without displaying symptoms.<sup>5</sup> However, in a congregate setting such as prison, many people live in and share a cramped space as well as materials and equipment, making social distancing impossible.

These difficulties are amplified in a facility such as FCI Loretto, which contains semi-dorm style housing for 4-6 people in a “cell” with some “cells” only having half-walls between them. Given the extremely crowded conditions at FCI Loretto, we ask that all individuals who have not tested positive for COVID-19 be placed in a separate building from those that have tested positive. They should also be housed in a manner that allows them practice social distancing, such as no more than two individuals per 4-6 person “cell.”

***Lack of effective quarantine and isolation procedures for people suspected and/ or confirmed of having COVID-19 increase the risk of transmission.***

Effective quarantine and medical isolation systems and procedures are critical in a correctional facility, given the impossibility of social distancing. Numerous reports from incarcerated people lead us to believe that there are no meaningful quarantine or isolation

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<sup>1</sup> See, e.g., *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

<sup>2</sup> See *Helling v. McKinney*, 509 U.S. 254, 33 (1993).

<sup>3</sup> See *id.* (stating that prison officials are prohibited from being “deliberately indifferent to the exposure of inmates to a serious, communicable disease” even where the complaining inmate shows no serious current symptoms” and that “[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them”).

<sup>4</sup> See <http://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID 19) in Correctional and Detention Facilities,” updated July 22, 2020, hereinafter “Interim Guidance,” at \*5

<sup>5</sup> See *id.*

procedures in effect at FCI Loretto.

The CDC defines “medical isolation” as “separating someone with confirmed or suspected COVID-19 infection to prevent their contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical, time-based, and/ or testing criteria for release from isolation, in consultation with clinical providers and public health officials.”<sup>6</sup> “Quarantine” involves separating people who are suspected of having COVID-19 but who have not been confirmed to have the disease, away from other people.<sup>7</sup> The purpose of imposing a quarantine is to determine whether a person develops symptoms or tests positive for COVID-19.<sup>8</sup> Quarantines are supposed to be done for the “close contacts” of people who are suspected of having COVID-19 or who have tested positive for the disease. A “close contact” is defined as someone who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic clients, 2 days prior to positive specimen collection) until the time the patient is isolated.<sup>9</sup> Under these definitions, cellmates and people living in congregate housing would clearly qualify as “close contacts.”

From the reports we received, there appears to have been a breakdown in any isolation or quarantine system in place at FCI Loretto. This outbreak appears to have begun shortly before Thanksgiving, at least in part with kitchen workers. Initially, one person out of a 14-person work crew tested positive, that person was potentially medically isolated and the remaining members of his work crew were then relocated to a new housing unit. However, in the days that followed, any separation between individuals who had tested positive, those that had tested negative, and close contacts, disappeared. The unit quickly became overcrowded, with 4-6 people per cell, mixing together individuals from different incidents of exposures on different days in different units.

As people on the unit became symptomatic, efforts were not made to separate people who had been in close contact with those individuals. It is our understanding that similar issues occurred in many of the housing units. Such a practice is explicitly disapproved by the CDC's guidance, which provides that “while cohorting those with confirmed COVID-19 is acceptable, cohorting individuals with suspected COVID-19 is not recommended due to high risk of transmission from infected to uninfected individuals” and “Do not cohort those with confirmed COVID-19 with those with suspected COVID-19, or with close contacts of individuals with confirmed or suspected COVID-19.”<sup>10</sup> This lack of effective medical isolation and quarantine

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<sup>6</sup> See Interim Guidance at \*5 “Medical Isolation.”

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See Operational Considerations for Adapting a Contact Tracing Program to Respond to the COVID-19 Pandemic, Updated December 9, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/global-covid-19/operational-considerations-contact-tracing.html#:~:text=Close%20contact%20is%20defined%20by,by%20local%20risk%20assessments>, last visited December 18, 2020.

<sup>10</sup> See Interim Guidance at \*4 “Cohorting,” and \*19.

procedures undoubtedly contributed to the near universal spread of COVID-19 within your facility.

Similarly, we have received reports that staff members have been permitted to travel freely to and from units with positives and close contacts and other parts of the prison – sometimes without wearing appropriate PPE (Personal Protective Equipment) to prevent the spread of the virus. This runs counter to CDC guidance which recommends that correctional facilities “make every possible effort to modify staff assignments to minimize movement across housing units and other areas of the facility. For example, FCI Loretto should ensure that the same staff are assigned to the same housing unit across shifts to prevent cross-contamination from units where infected individuals have been identified to units with no infections.”<sup>11</sup> With the high infection rate at FCI Loretto, it is especially important that no staff who work in or have been in direct contact with individuals who have tested positive be allowed to work on the units with incarcerated people who have tested negative.

### ***Face masks***

Because COVID-19 is spread mostly between people who are within six feet of each other, the CDC urges the use of face masks in such environments.<sup>12</sup> We acknowledge that the prison has distributed face masks to incarcerated people. However, there are several issues with the face masks system that need to be corrected in order for the masks to be effective. First, it is our understanding that individuals are only given a single mask to last for up to three weeks without an opportunity to launder the mask. The CDC recommends that disposable masks be worn only once, and that cloth masks be washed on a daily basis with laundry detergent or soap.<sup>13</sup> Further, the enforcement of mask wearing by incarcerated people and staff is not uniform and individuals often do not wear their masks. Given that face masks can be one of the most effective tools for preventing the spread of COVID-19, we ask that you address these issues immediately.

### ***Insufficient cleaning of common areas and shared objects and limited access to cell-cleaning supplies.***

CDC guidance recommends that intensified cleaning and disinfecting procedures be implemented, such as cleaning and disinfecting surfaces and objects that are frequently touched, especially in common areas. The CDC recommends cleaning such surfaces several times per day. Such surfaces may include objects/ surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, counter tops, toilets, toilet handles, recreation equipment, kiosks, telephones and computer equipment).<sup>14</sup> Contrary to this guidance, we have received numerous reports that little to no cleaning is happening and that there are insufficient cleaning supplies.

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<sup>11</sup> See Interim Guidance, at \*10.

<sup>12</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.

<sup>13</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wash-cloth-face-coverings.html>

<sup>14</sup> See Interim Guidance at \*11.

CDC guidance also advises that bunks must be cleaned thoroughly if assigned to a new occupant.<sup>15</sup> Such cleaning is obviously even more important when an infection has been confirmed in one of the occupants. Contrary to this guidance, we have received disturbing reports that groups of people were moved into units that had recently been vacated by people who tested positive, without any cleaning in between occupants. Those same groups of people were then unable to obtain cleaning supplies to clean their dirty cells for a day or more. We ask that additional cleaning supplies be purchased so that all staff and incarcerated people at FCI Loretto have access to adequate cleaning supplies. Further, we ask that all cells be fully cleaned between occupants.

***Lack of adequate soap supplies for good hand hygiene.***

Hand hygiene is very important in a prison setting to help prevent the spread of the virus from surfaces. The CDC recommends that hand hygiene supplies be well-stocked in all areas of the facility.<sup>16</sup> As with cleaning supplies, we have received numerous reports that there is a lack of soap for handwashing. We ask that the amount of soap given to incarcerated people be increased and that soap be made freely available.

***Staff Testing***

It is our understanding that not only has FCI Loretto not mandated testing of staff, but that it does not make any testing available to staff who wish to be tested. As staff move into and out of the facility daily, this is exceedingly alarming for the health and safety of the people incarcerated at FCI Loretto, the staff, and the surrounding community.

A recent CDC study demonstrated that mass testing of prison staff and incarcerated people, irrespective of symptoms, along with periodic retesting can be an effective tool in mitigating spread of COVID-19.<sup>17</sup> As most cases of COVID-19 are asymptomatic, mass testing is the only method to identify and isolate every person who could spread the virus. Simply put, without mass testing and ongoing surveillance testing of staff, those most likely to serve as a vector bringing COVID-19 into and out of the prison, all other preventative measures lose their effectiveness. The BOP and FCI Loretto should immediately make arrangements to provide for the testing of all staff who wish to be tested, and consider implementing policies for ongoing mandatory testing.

***The BOP and FCI Loretto Must Take Additional Measures to Ensure that Incarcerated People and Staff are Safe***

The fact that the majority of individuals at FCI Loretto have now tested positive for COVID-19 does not mean that the administration of FCI Loretto or the BOP can rely on notions

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<sup>15</sup> See *id.* at \*13.

<sup>16</sup> See Interim Guidance at \*17.

<sup>17</sup> See CDC Morbidity and Mortality Weekly report, “Mass Testing for SARS-CoV-2 in 16 Prisons and Jails – Six Jurisdictions, United States, April – May 2020.

of herd immunity and not take additional steps to prevent the spread of COVID-19 and the re-infection of those who have already contracted the disease. There is now evidence that suggests prisoners can get COVID-19 again months later.<sup>18</sup> Given the severity of the outbreak at FCI Loretto, we ask that no incarcerated people be transferred into or from FCI Loretto for at least 30 days, or until there are no further active cases of COVID-19 at FCI Loretto. Similarly, staff from FCI Loretto should not be assigned to other facilities or transferred to other assignments. To take either action would place the lives of thousands more people incarcerated nationwide at risk.

We further ask that the BOP learn from the mistakes that occurred at FCI Loretto and reevaluate the policies in place at all BOP facilities nationwide. Each institution should have a detailed contingency plan in place to properly isolate and quarantine individuals in the event of a large scale outbreak, enforce mask wearing requirements for incarcerated people and staff, and immediately provide adequate access to cleaning supplies, hand soap and clean masks. Throughout this pandemic facilities operated by the BOP have suffered large outbreaks and high numbers of deaths. As we move into the worst surge of COVID-19 thus far, the BOP must adapt and take greater precautions.

Lastly, we also write to express our deep concern regarding the BOP's current plan for distributing the COVID-19 vaccine. Public health officials recommend that "people in carceral systems receive the *same priority* for receipt of a vaccine as both their peers in other congregate settings, such as long-term care facilities, and staff working in the facilities in which they are housed."<sup>19</sup> (emphasis added) The BOP's plan to initially vaccinate staff, but not incarcerated people, during the initial phase of vaccine distribution is unacceptable, and places the lives of incarcerated people at even greater risk. Incarcerated people are among the most vulnerable to contracting and dying of COVID-19 and thus should be similarly prioritized for receiving the vaccine. Additionally, making the vaccine available to staff and incarcerated people at the same time will likely encourage more incarcerated people to agree to take the vaccine and improve the efficacy of vaccine distribution.

Given the urgency of this situation, we request a written response by close of business on January 6, 2020 with an explanation of the steps you intend to take to respond to issues we have raised in this letter, as well as the other measures you are taking to ensure that all people with COVID-19 at FCI Loretto receive adequate medical care. We request that FCI Loretto ensures that a plan is in place for access to hospital care for incarcerated people with COVID-19, if it becomes necessary.

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<sup>18</sup> Angie Jackson, *State reviewing possible COVID-19 reinfections after 115 prisoners test positive twice*, Detroit Free Press (Dec. 12, 2020), available at: <https://www.freep.com/story/news/local/michigan/2020/12/12/covid-coronavirus-reinfection-michigan-prisoners/3876185001/>

<sup>19</sup> Emily Wang, MD, MAS, Lauren Brinkley-Rubinstein, PhD, Lisa Puglisi, MD, Bruce Western, PhD, *Recommendations For Prioritization and Distribution of COVID-19 Vaccine in Prisons and Jails, White Paper* (Dec. 16, 2020), [https://justicelab.columbia.edu/sites/default/files/content/COVID\\_Vaccine\\_White\\_Paper.pdf](https://justicelab.columbia.edu/sites/default/files/content/COVID_Vaccine_White_Paper.pdf)

If you have any questions or concerns, you may contact Su Ming Yeh at smyeh@pailp.org or (267) 457-4790 or Alexandra Morgan-Kurtz at amorgan-kurtz@pailp.org.

Thank you for your time and attention to this matter during these trying times on the community beyond the walls of the prison.

Sincerely,



Executive Director  
Pennsylvania Institutional  
Law Project

/s/ Alexandra Morgan-Kurtz /s/ Jim Davy

Managing Attorney  
Pennsylvania Institutional  
Law Project

Jim Davy  
All Rise Trial & Appellate  
P.O. Box 15216  
Philadelphia, PA 19125  
609-273-5008  
[jimdavy@allriselaw.org](mailto:jimdavy@allriselaw.org)

Cc: Gene Beasley, Deputy Director, Federal Bureau of Prisons (*via email*)  
Nicole English, Regional Director ([NERO/ExecAssistant@bop.gov](mailto:NERO/ExecAssistant@bop.gov)), Federal Bureau of  
Prisons, RO Northeast Regional Office, U.S. Custom House, 7th Fl, 200 Chestnut  
Street, Philadelphia, PA 19106  
Frank Bailey, President, Local 3951 FCI Loretto