

September 17, 2020

VIA EMAIL

Governor Kay Ivey
State Capitol
600 Dexter Avenue
Montgomery, AL 36130-2751

Jefferson S. Dunn, Commissioner
Alabama Department of Corrections
301 S. Ripley Street
P.O. Box 301501
Montgomery, AL 36130-1501

Re: Current Conditions at Draper Quarantine Intake Facility

Dear Governor Ivey and Commissioner Dunn:

As you are aware, unhealthy and inadequate conditions of confinement exist at Draper Quarantine Intake Facility (“Draper”), a previously decommissioned prison that the Alabama Department of Corrections (“ADOC”) reopened during the pandemic to house people entering ADOC from county jails. The conditions at Draper were made much worse, however, when, in or around July 2020, ADOC reportedly began to use at least one of the buildings on Draper’s campus for a different purpose—to house incarcerated men who have tested positive for COVID-19 (“COVID-19 patients”) from Staton Correctional Facility (“Staton”) and Elmore Correctional Facility (“Elmore”).

Our offices have received multiple, credible reports from COVID-19 patients transferred to Draper—most of whom exhibited symptoms of the respiratory disease upon their arrival—that ADOC confined them to a classroom in a building with no toilets, no running water, and repeated power outages. They were forced to urinate in styrofoam cups and plastic water bottles, deprived of regular showers, and routinely denied access to phones, grievances, writing materials, and their regular medications.

These conditions fail to meet the most basic constitutional standards and present a substantial risk of serious harm to people already suffering from a potentially fatal disease. We therefore request that you immediately cease using Draper to house and/or quarantine COVID-19 patients, and instead house them in medically appropriate settings in accordance with Eighth Amendment standards.

I. **Draper Has a History of Dangerous and Unsanitary Conditions.**

Draper's history of disrepair and squalid conditions cannot be disputed. After its investigation of poor conditions and violence in ADOC, the U.S. Department of Justice ("DOJ") described Draper as exceptionally "dangerous and unsanitary."¹ Specifically, DOJ officials observed "open sewage" near the entrance to the facility and received reports of rat and maggot infestations, malfunctioning toilets and sinks, and "standing sewage water on the floors."² Toxic fumes in the prison kitchen prompted one DOJ expert to leave the area to avoid illness.³ In October 2017, DOJ officials "informed ADOC of their shock at the state of the facility."⁴ One month later, ADOC's own engineers concluded that Draper was "no longer suitable to house inmates, or to be used as a correctional facility."⁵ ADOC announced Draper's official closure soon thereafter.⁶

In deciding to reopen portions of the decommissioned prison earlier this year to house intake arrivals from county jails, ADOC represented that "[a]ppropriate health and security modifications" would be made at Draper.⁷ ADOC failed to indicate, however, that it would also use the Draper campus to house COVID-19 patients from other state prisons in a classroom lacking basic essentials like running water,⁸ toilets, and adequate medical care. Yet this is precisely what ADOC has done.

II. **ADOC Is Housing COVID-19 Patients at Draper in Deplorable Conditions.**

It is our understanding that ADOC is housing COVID-19 patients from Staton and Elmore (and potentially other institutions) in a makeshift quarantine room at Draper. Located in a multi-purpose building adjacent to Draper's intake facilities, the room is a former classroom that measures approximately 500 square feet. Reportedly, the classroom contains 15 cots that are less than two feet apart. At any given time, between 5 and 13 patients are quarantined in the classroom.

A. *Lack of Bathroom Access*

We have reason to believe that the Draper quarantine classroom where COVID-19 patients from Staton and Elmore are held lacks bathrooms and showers. The only facilities available to the men are portable bathroom and shower units located outside of the building. In order to use the bathroom, the men have to bang on the classroom windows to get officers' attention. Though officers sometimes escort the men when asked, they decline at other times and fail to maintain a schedule; thus, the men do not have access to bathroom facilities when needed. It is our

¹ United States Dep't of Justice, Civil Rights Division, *Investigation of Alabama's State Prisons for Men* (Apr. 2, 2019), available at <https://www.justice.gov/crt/case-document/file/1149971/download>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Ala. Dep't of Corr., *COVID-19 Update* (Apr. 16, 2020), available at <http://www.doc.state.al.us/COVID19NewsFeed>.

⁸ It is our understanding that a cooler of drinking water is provided in the classroom, but it is empty for days at a time.

understanding that the men are generally not permitted to use the outdoor bathrooms between 10:00 p.m. and 6:00 a.m., regardless of their needs.

We have further reason to believe that one man was permitted to use the bathroom only three times during a 13-day quarantine. Another man was not taken to the bathroom until his third day at Draper, while another was forced to urinate on himself on multiple occasions after being denied bathroom access. One man suffering from diarrhea was forced to wait hours to use the restroom to defecate. Many others could only relieve themselves into styrofoam cups, plastic bottles, portable urinal containers, or trash cans. They had to hold onto urine-filled bottles for hours at a time until they were allowed to leave the classroom to empty them. It is also our understanding that some men held in these conditions did not receive bottles at all; correctional officers simply told these men that they were “out of luck.”

B. Denial of Showers

Many COVID-19 patients at Draper have little to no access to the showers located outside of the building. We have reason to believe that over the course of 13 days, at least two men were allowed to shower only once, and another was allowed to shower only twice. On the rare occasions the men were permitted to shower, they were given very little time. It is our understanding that when this time expired, which was often ten minutes or less, officers sometimes threatened to spray the patients with mace.

It is also our understanding that the conditions of the portable toilet-showers are highly unsanitary because ADOC does not consistently drain the toilet tanks in the units, causing the portable bathrooms to emit a terrible stench. We have reason to believe that at least one man contracted an infection from using the portable toilet-shower. Additionally, because there is often no hot water in the portable shower unit, the men shower in cold water. When they return to the classroom, they are forced to dry themselves with washcloths and hand towels because they do not have access to traditional bath towels.

C. Denial of Hygiene Items

We have reason to believe that the air conditioner in the classroom is often on, but men are reportedly not allowed to use their blankets until 5:00 p.m.; if they try to do so before that time, correctional staff punish them with disciplinary reports.

We further understand that some COVID-19 patients at Draper often go days without essential hygiene items like toothbrushes and toothpaste. One man waited over two days for a toothbrush and toothpaste. Another man never received a toothbrush. It is also our understanding that some men did not receive any other clothes beyond the ones they wore upon their arrival at Draper. At least one man wore the same soiled clothing for about ten days and could only wash his undergarments in the portable shower, with cold water, under a time limit imposed by correctional staff.

III. ADOC Is Depriving COVID-19 Patients at Draper of Adequate Medical Care.

We have reason to believe that COVID-19 patients receive only cursory medical care while confined to the classroom at Draper. Although nurses come by a few times per day to take the men's temperatures and measure their oxygen levels, they do not provide the patients with sanitary, safe facilities for individualized examinations. It is also our understanding that ADOC fails to consistently distribute the patients' prescribed medications. For instance, one man did not receive his blood pressure medicine, and a diabetic patient went without his medication for four days. Another man was sent to Jackson Hospital with heart attack symptoms after not receiving his heart medication for several days.

We also have reason to believe that at least three men previously held at Draper required oxygen tanks and were in poor condition throughout their time in quarantine. On two occasions, the power went out at the facility, and the alarms on the men's tanks began beeping from lack of air. One man had a consistent fever, and another experienced incontinence. Eventually, all three men were reportedly removed from the Draper classroom by paramedics.

We are not aware of any COVID-19 patients at Draper who were tested for coronavirus before being returned to Staton and Elmore. However, we have reason to believe that men returning to Staton or Elmore from Draper frequently encountered people with COVID-like symptoms after returning to the two prisons. We also have reason to believe that many of the symptomatic men at Staton and Elmore have not reported their symptoms to prison staff for fear of being held at Draper in the deplorable conditions described above.

IV. COVID-19 Patients at Draper Have Inadequate Access to Grievances, Phones, and Writing Materials.

It is our understanding that COVID-19 patients at Draper were threatened and berated when they attempted to address their concerns with prison staff. Some guards have taunted the men, noting that the men could try to report the conditions, but nothing would happen. While at Draper, the men had no access to any grievance process to communicate their concerns with prison administrators.

COVID-19 patients in the Draper classroom also had little to no access to phones, writing materials, or other means of contacting their loved ones. Although there are reportedly two telephones located in or right outside of the classroom, many men are not permitted to use them. Officers also refuse them access to pens and paper. Indeed, one patient at Draper sent correspondence scribbled on toilet paper because he did not have access to traditional writing materials.

V. Urgent Action Is Required to Prevent Further Suffering.

When recently asked why some incarcerated people at Draper had little to no access to medical care, telephones, the grievance process, bathrooms and showers, ADOC responded in part that:

[I]nmates remanded to our custody have been convicted of a crime and handed a sentence to serve time as determined by a court. The unfortunate reality is that he or she, as a result of the crime committed and subsequent conviction, loses his or her freedoms.⁹

This response is unacceptable as a matter of principle, and inadequate as a matter of law.

As ADOC knows, the fact of a criminal conviction does not strip incarcerated people of their rights under the Eighth Amendment, nor does it relieve ADOC of its constitutional obligations to the people in its custody, which are to provide them with “humane conditions of confinement,”¹⁰ “adequate food, clothing, shelter, and medical care,”¹¹ and “reasonable safety.”¹² Although the conditions outlined above would be intolerable under any circumstances, during a global pandemic causing serious illness and death, they present an “objectively ‘unreasonable risk of serious damage to [the men]’s future health.”¹³ Even a narrow reading of the Eighth Amendment does not countenance abandoning vulnerable COVID-19 patients in a condemned prison with no bathrooms, showers, or running water; denying them access to prescribed medications; and knowingly allowing men on oxygen tanks to decompensate to the point of hospitalization. These conditions constitute a denial of the “minimal civilized measure of life’s necessities” in violation of the Eighth Amendment.¹⁴

Urgent action is required to correct these violations. Specifically, we request that ADOC immediately cease housing COVID-19 patients from other state prisons at Draper. We also insist that ADOC provide all COVID-19 patients with medically appropriate care, as well as access to hygiene products, cleaning supplies, and functioning toilets, showers, sinks.

To be clear: we believe ADOC must meet these obligations immediately, and we oppose ADOC’s plan to build any new facilities as a stopgap measure. This plan will *not* solve the present crisis and will instead divert ADOC’s attention and resources away from ensuring that its existing

⁹ Samantha Rose, Ala. Dep’t of Corr., *Full Alabama Department of Corrections Response to AL.com* (Sept. 2, 2020), available at <https://www.al.com/news/2020/09/dont-let-me-die-inside-the-alabama-prison-systems-covid-19-ward.html>.

¹⁰ *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

¹¹ *Id.*

¹² *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

¹³ *Brooks v. Warden*, 800 F.3d 1295, 1303 (11th Cir. 2015) (quoting *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004)).

¹⁴ *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010) (quoting *Farmer*, 511 U.S. at 834).

prisons comport with the Eighth Amendment and with guidelines from the Centers for Disease Control and Prevention.¹⁵

We consider this to be an urgent matter. On September 14, 2020, ADOC reported 401 positive COVID tests and 21 COVID-related deaths among people incarcerated in state prisons.¹⁶ Every week, cases and deaths continue to rise. **We therefore ask that you respond to this letter by September 30, 2020, with the steps ADOC is taking to implement the measures recommended here.**

Sincerely,

/s/Tish Gotell Faulks

Tish Gotell Faulks
Legal Director
ACLU of Alabama

/s/Atteeyah Hollie

Atteeyah Hollie
Managing Attorney
Southern Center for Human Rights

/s/Carla Crowder

Carla Crowder
Executive Director
Alabama Appleseed

/s/Arthur Ago

Arthur Ago
Director, Criminal Justice Project
Lawyers' Committee for Civil Rights Under Law

/s/Daniel Schwartz

Daniel Schwartz
Senior Counsel
Bryan Cave Leighton Paisner LLP

¹⁵ See e.g., Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (July 22, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹⁶ Ala. Dep't of Corr., *ADOC COVID-19 Testing* (Sept. 14, 2020), available at <http://www.doc.alabama.gov/COVID19NewsFeed>.

cc: Carrie McCollum, General Counsel, Department of Corrections
Mark Fassel, Deputy Commissioner and Inspector General, Department of Corrections
Scott Harris, State Health Officer, Department of Public Health
Mary G. McIntyre, Chief Medical Officer, Department of Public Health
Brian Hale, General Counsel, Department of Public Health
Ron Dawsey, Deputy Director, Bureau of Environmental Services
Cam Ward, State Senator
Chris England, State Representative
Prim F. Escalona, U.S. Attorney, Northern District of Alabama
Louis V. Franklin, Sr., U.S. Attorney, Middle District of Alabama
Richard W. Moore, U.S. Attorney, Southern District of Alabama