



FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF MISSOURI

FEDERAL PUBLIC DEFENDER
DISTRICT OF KANSAS



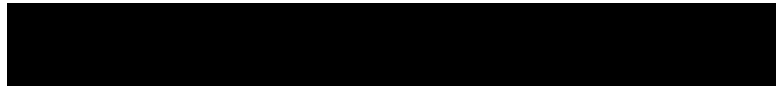
FEDERAL PUBLIC DEFENDER
NORTHERN AND SOUTHERN DISTRICTS OF IOWA

FEDERAL PUBLIC DEFENDER
DISTRICT OF NEBRASKA

September 2, 2021

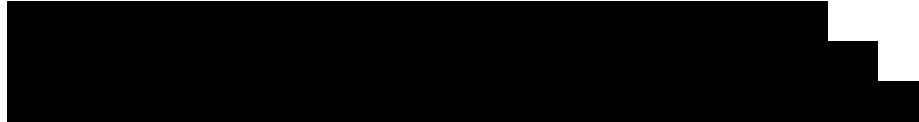
The White House
Domestic Policy Counsel Office
1600 Pennsylvania Avenue
Washington, DC 20500

Via email:



Leavenworth County Commission and Leavenworth County Administrator
300 Walnut Street
Leavenworth, KS 66048

Via email:



Re: Closure of CoreCivic Leavenworth

To the White House Domestic Policy Counsel Office and the Leavenworth County Commission:

We write to urge you to take immediate action to ensure that the Leavenworth Detention Center, a private pre-trial federal detention facility owned and operated by CoreCivic (hereinafter “CoreCivic Leavenworth”), ceases operation by the end of 2021. CoreCivic Leavenworth is dangerously understaffed, poorly managed, and incapable of safely housing its detainee population. Stabbings, suicides, and even homicide have occurred with alarming frequency in the last year, with weapons, drugs, and other contraband now a common occurrence. Amidst all the violence, basic human needs are not being met: food has been restricted, contact with legal counsel and family denied or curtailed, medical care is limited, and showers are infrequent because the facility is too unsafe.

CoreCivic Leavenworth was originally set to close in December 2021. However, CoreCivic continues its campaign to remain in business with the U.S. Marshal by either renewing or

extending CoreCivic’s contract, or entering into a pass-through contract with Leavenworth County, who would then retain CoreCivic to run the facility. Allowing CoreCivic to remain operational, whether by contracting directly with the Department of Justice or with Leavenworth County, places residents and staff at extreme risk of harm.

The undersigned include the heads of the Federal Public Defender offices for districts that incarcerate pre-trial detainees at CoreCivic Leavenworth; CJA Panel representatives from some of those districts; and the Legal Directors for the American Civil Liberties Union affiliates in Kansas, Missouri, Iowa, and Nebraska. In these roles, we hear directly from those who are currently or formerly incarcerated at or employed by CoreCivic Leavenworth. Over the last year, complaints from both groups have increased in both frequency and severity. The people who work and live at CoreCivic Leavenworth are afraid—both of current conditions and of the possibility that they will continue if the U.S. Marshals Service (USMS) renews or extends CoreCivic’s contract in any way, or if the Leavenworth County government takes over management of the facility and engages CoreCivic’s assistance.

We therefore ask that you intervene to prevent any contract extension or pass-through contract from happening. As set forth below, doing so is consistent with President Biden’s Executive Orders; necessary to protect the life and safety of those incarcerated in and employed at CoreCivic Leavenworth; and vital to preventing ongoing constitutional violations and resulting financial liability.

I. President Biden’s Executive Order

One of President Biden’s first acts after being sworn into office was to issue an Executive Order stating that, “The Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities, as consistent with applicable law.”¹ President Biden issued this Executive Order precisely because of the issues inherent in the operation of private detention facilities, which are clearly present at CoreCivic Leavenworth: profit-driven management that leads to unsafe, unsanitary, and unconstitutional conditions of confinement.

Although many advocates argued that President Biden’s Executive Order did not go far enough², it was an important step towards curbing an industry that values profit over human life and public safety. Many contracts with private prison companies have years remaining; the Executive Order will not affect those contracts until they come close to their end date. The federal government’s contract with CoreCivic Leavenworth, however, expires this year, as detailed below. The Executive Order therefore presents a vital opportunity for the White House to swiftly step in and

¹ Press Release, White House, *Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities* (January 26, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities>.

² Madeleine Carlisle, ‘*Much More Work To Be Done.*’ *Advocates Call for More Action Against Private Prisons After Biden’s ‘First Step’ Executive Order*, TIME MAGAZINE (Jan. 29, 2021), available at <https://time.com/5934213/private-prisons-ban-joe-biden>.

cease CoreCivic Leavenworth's operations in order to protect the health and safety of those incarcerated there.

II. Background on CoreCivic Leavenworth

CoreCivic is one of the largest private correctional companies, with 144 facilities in the United States.³ CoreCivic Leavenworth is one such facility, located in Leavenworth County, Kansas, just over the Missouri border and approximately 30 miles from Kansas City. The facility has been operational since 1992 and houses individuals facing federal charges primarily in the Western District of Missouri, District of Kansas, and District of Nebraska. CoreCivic Leavenworth can hold 1,033 individuals, although current population numbers are not publicly reported.⁴

CoreCivic's current contract expires at the end of 2021. Last spring, representatives at CoreCivic began to engage the Leavenworth County Commission in an attempt to keep CoreCivic open, despite President Biden's Executive Order. CoreCivic proposed that USMS could contract with Leavenworth County, rather than CoreCivic itself, to keep the facility running, and that CoreCivic could then lease the facility from the County to keep it operational.⁵ On May 5, 2021, after significant consideration, the County Commissioners declined CoreCivic's proposal. CoreCivic then wrote a letter to County Administrator Mark Loughry asking him to reconsider and for CoreCivic, Leavenworth County, and the USMS to engage in discussions regarding possibilities for keeping CoreCivic open.

It is unclear whether those conversations ever happened, but recent information indicates CoreCivic continues to pressure governmental entities to continue their partnership. For example, in a shareholder call on August 10, 2021, CoreCivic's President and Chief Executive Officer noted that they "continue to explore various options" for keeping the facility open.⁶ This would be a grave mistake, given the ongoing serious constitutional violations occurring at the facility, detailed below.

³ CoreCivic, *Facilities*, available at <https://www.corecivic.com/facilities>.

⁴ Two years ago, the Federal Public Defender for the District of Kansas filed a request for this information and other information, including incidences of violence, pursuant to the Freedom of Information Act. It remains outstanding.

⁵ John Richmeier, *CoreCivic asks county to reconsider decision*, LEAVENWORTH TIMES (May 15, 2021), available at <https://www.leavenworthtimes.com/story/news/2021/05/15/corecivic-asks-leavenworth-county-commission-reconsider-decision/5109434001>.

⁶ Motley Fool Transcribers, *CoreCivic, inc (CX) Q2 2021 Earnings Call Transcript*, THE MOTLEY FOOL (Aug. 10, 2021), available at <https://www.fool.com/earnings/call-transcripts/2021/08/10/corecivic-inc-cxw-q2-2021-earnings-call-transcript>.

III. Ongoing constitutional violations at CoreCivic Leavenworth

A. CoreCivic Leavenworth leadership fails to protect residents and staff from harm

Under the Eighth Amendment, incarcerated individuals have the right to be free from violence—both violence perpetrated by staff as well as violence at the hands of other facility residents.⁷ Prison officials cannot display “deliberate indifference” to the constitutional rights of the incarcerated.⁸

Yet, CoreCivic Leavenworth is doing exactly that. Over the last year, CoreCivic Leavenworth has been the site of extreme and increasing violence. A handful of examples below are demonstrative of the most serious incidents in the last calendar year alone. These examples only begin to describe the danger staff and residents of the facility face on a daily basis.⁹

- On February 6, 2021, a resident was beaten by a group of other detainees and taken to the hospital for life-threatening injuries. The next day, another resident threw hot water on a female correctional officer, then attacked and stabbed her. The resident allegedly also kicked another female correctional officer. As a result of these incidents, both officers were taken to the hospital for severe injuries.¹⁰ Residents intervened to protect and save both officers. Public defenders received reports documenting that a subsequent search occurred, and several weapons were found.
- Two suicides occurred at the facility this spring. In one incident, both the resident and the resident’s family had notified CoreCivic employees that the resident was suicidal and that he should be placed on suicide watch. Nothing was done. When the resident’s cellmate found him hanging in the shower, CoreCivic Leavenworth correctional officers refused to cut him down, and instead waited for outside medics to arrive. On May 22, 2021, another resident hanged himself in the shower. CoreCivic Leavenworth employees required other residents to clean up the feces in the shower following the resident’s death.

⁷ See *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (“prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners”); *Hudson v. McMillan*, 503 U.S. 1 (1992) (abuse by correctional officers can constitute Eighth Amendment violation); *Smith v. Cochran*, 339 F.3d 1205 (10th Cir. 2003) (assault by work release officer violates Eighth Amendment); *Sconiers v. Lockhart*, 946 F.3d 1256, 1266–67 (11th Cir. 2020).

⁸ *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976)).

⁹ Residents and current and former facility staff communicated these examples to us via letters to the ACLU of Kansas and in conversations between federal public defenders and their clients. We have not provided identifying information of the brave individuals who came forward in order to protect them from retaliation within the facility. Notably, many of these incidents were not reported in the local media, signaling a complete lack of transparency regarding what is occurring within CoreCivic’s walls.

¹⁰ John Richmeier, Police investigate incidents at detention facility, THE LEAVENWORTH TIMES (Feb. 9, 2021), available at <https://www.leavenworthtimes.com/story/news/2021/02/09/leavenworth-police-investigate-incidents-detention-facility/4448527001>.

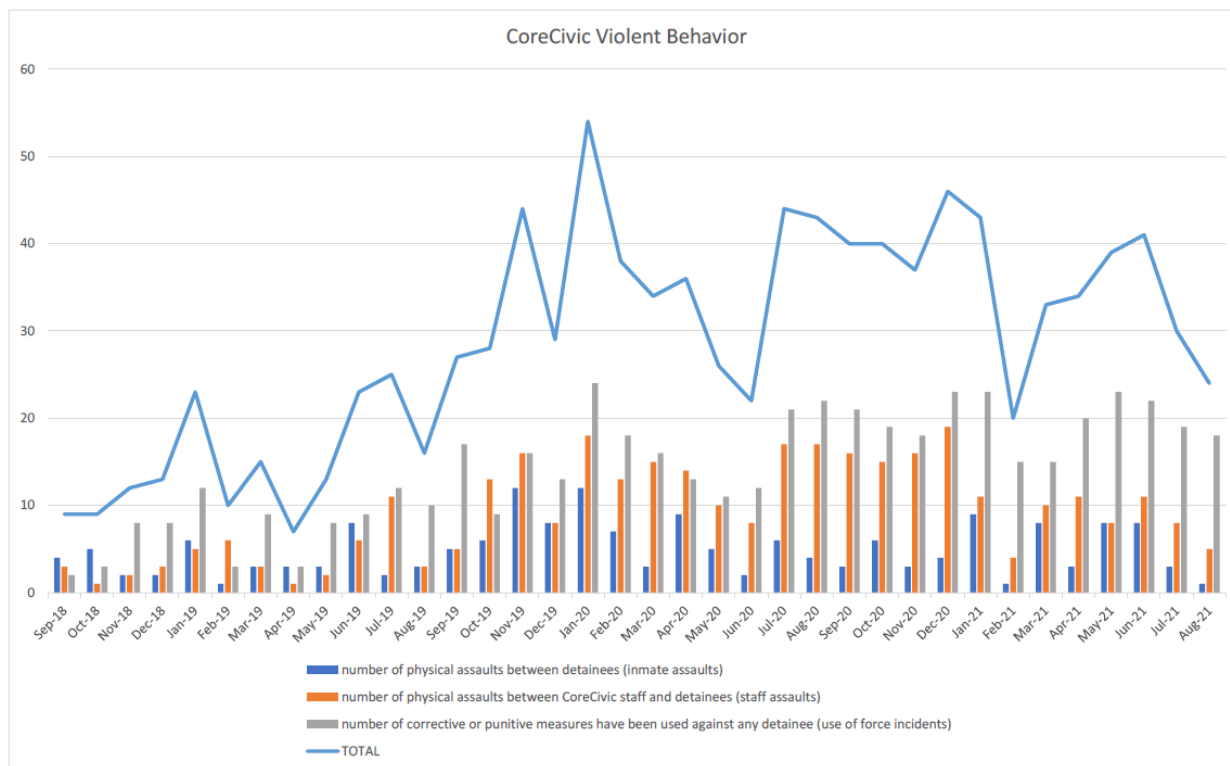
- In early May 2021, one resident attacked another, stabbing him 17 times. Residents of the facility reported that CoreCivic Leavenworth staff were not monitoring the area where this occurred, failed to respond promptly, and lacked the training to intervene.
- In May 2021, a correctional officer digitally anally sodomized a detainee during a middle-of-the-night search by the Special Operations Response Team. When other detainees attempted to come forward to report the incident to the Prison Rape Elimination Act Coordinator, the facility's warden and chief of security threatened and intimidated those residents.¹¹
- In June 2021, there was an incident where 6-8 detainees were stabbed. Federal public defenders with clients inside CoreCivic Leavenworth report that stabbings like this are so routine recently that they are almost unnoteworthy.
- On August 2, 2021, detainee Scott Wilson was kicked, punched, and struck with a tray by another detainee. He suffered a broken rib and punctured lung. He was finally taken to a local hospital where he died two days later. Following this incident, the entire facility was placed on lockdown, and currently remains in lockdown status. Residents are no longer permitted out of their cells except to shower every 3-4 days. Breakfast and two sack lunches are provided to them in their cells, and that is the only food residents receive all day due to the lockdown. Residents have limited access to commissary and are being denied sufficient hygienic supplies, including toothpaste and shampoo.
- Residents of the facility report that some doors do not lock. Perhaps in recognition of this, CoreCivic Leavenworth is currently advertising to hire a locksmith. Regular maintenance personnel at the facility have been unable to complete repairs. Because of this, and the ongoing violence inside the facility, residents routinely barricade themselves into their cells at night for their own protection.
- The ACLU of Kansas also received complaints that the SORT team and other staff routinely lock people in showers with running water as a form of punishment. One individual, a disabled man confined to a wheelchair, wrote to us that he was placed in the shower in his wheelchair and left there.
- Residents consistently report that correctional officers routinely ignore their calls for help or intervention. This is most likely attributable to the lack of staffing, high turnover among staff, and insufficient training to keep residents and staff safe. As a result, residents report feeling the need to carry their own weapons for self-protection, because they cannot rely on the facility's staff to come to their aid.

In each of these incidents, CoreCivic Leavenworth staff either failed to protect residents or other staff from harm, or directly perpetrated that harm. Staff and residents are irreversibly traumatized by what they have witnessed and experienced inside the facility's walls. They live in constant fear;

¹¹ Incident statement, May 20, 2021 (on file with author).

because cell doors do not lock and weapons are rampant, the threat of physical violence is pervasive and ever-present. CoreCivic Leavenworth leadership has abandoned any pretense of order and protection inside the facility.

Data demonstrates that the above-detailed incidents are not mere anomalies. Month over month, CoreCivic Leavenworth continues to see high numbers of physical assaults, both between detainees and between staff and detainees. The graph below details how CoreCivic Leavenworth continues to get more dangerous over time:¹²



Over the last two years there have been only two months where the level of violence decreased—February 2021 and August 2021. In both months, the entire facility was on lockdown. Even in that state, where detainees are purportedly locked in their cells 23-24 hours a day, the facility *still* saw violent incidents.¹³ The violence in recent months has been astronomical. Between May of 2021 and July of 2021, CoreCivic Leavenworth averaged 36.67 violent incidents a month.¹⁴

If CoreCivic remains open, residents and staff will remain at risk; violent incidents will continue and more preventable deaths and severe injuries will result. CoreCivic Leavenworth has abdicated its constitutional responsibility to keep people safe, and it has proven itself incapable of running

¹² Sentencing Mem. Addendum, ECF No. 83, *United States v. Clark*, No. 16-cr-20078 (Aug. 27, 2021, D. Kan.)

¹³ *Id.* at 3.

¹⁴ *Id.*

its facility in a way that protects the life and health of those who live and work there. The federal government should not reward CoreCivic for these failures with a renewed or extended contract, nor should the County proceed forward with considering a pass-through contract.

B. CoreCivic Leavenworth leadership has repeatedly failed to provide the facility with adequate staffing to keep residents and staff safe

Many of the abovementioned incidents occurred because of a serious lack of staffing within the facility. Refusal to adequately staff a correctional facility can contribute to a finding that the facility is deliberately indifferent to a serious risk of harm.¹⁵

Residents of the facility report that entire shifts will pass without them seeing any correctional officers, and that when officers are called, no one responds. Reviews on CoreCivic Leavenworth's employment recruitment page on Glassdoor also indicate that the facility suffers from chronic understaffing, with correctional officers routinely forced to work overtime.¹⁶

CoreCivic has not denied that the facility is understaffed. Although they have restructured management and brought individuals in from other facilities to provide temporary coverage, that has not made the facility safer and nor solved the chronic problems long-term. Turnover exists not just with correctional officers, but also facility leadership. There have been three wardens in the last fifteen months, and the facility is currently advertising for a new assistant warden, who would be the third to hold that position during the same timeframe.

Chronic staffing shortages at CoreCivic Leavenworth are not new. In 2017, a Department of Justice Office of the Inspector General report found that:

Among the issues affecting the safety and security of the LDC was its periodic understaffing, which led to the closure of security posts. Many of the closures occurred at posts CoreCivic had identified as "mandatory," meaning they were required to be filled on each shift in order to run the facility in [a] safe and secure manner. The vacancies also led LDC managers to reassign staff who were not correctional officers to cover security posts instead of performing their normal jobs, sometimes to the detriment of detainee services.¹⁷

Yet the warning presented in the OIG's report went unheeded. As a result, staffing continues to be a significant issue at CoreCivic Leavenworth, resulting in entire units being

¹⁵ See *Ramos v. Lamm*, 639 F.2d 559, 572 (10th Cir. 1980) (inadequate staffing, resulting in increased risk of violence, constitutes deliberate indifference); *Van Riper v. Wexford Health Sources, Inc.*, 67 F. App'x 501, 505 (10th Cir. 2003) ("When prison officials create policies that lead to dangerous levels of understaffing and, consequently, inmate-on-inmate violence, [there is a violation of the Eighth Amendment.]").

¹⁶ Glassdoor, *CoreCivic Leavenworth Reviews*, available at https://www.glassdoor.com/Reviews/CoreCivic-Leavenworth-Reviews-EI_IE1564963.0.9_IL.10.21_IC1151038.htm?filter.iso3Language=eng.

¹⁷ U.S. Department of Justice, Office of the Inspector General, *DOJ OIG Releases Report on USMS Contract with CoreCivic to Operate the Leavenworth Detention Center, Leavenworth, Kansas* (Apr. 25, 2017), available at <https://oig.justice.gov/news/doj-oig-releases-report-usms-contract-corecivic-operate-leavenworth-detention-center>.

unattended for shifts at a time. Staffing shortages continue to worsen as the facility becomes more violent and the future of the facility remains uncertain.

To be clear, the lack of adequate staff directly contributed to the violent incidents described above, and to the ongoing harm facing those who live and work at the facility. One former CoreCivic Leavenworth staff member that we spoke with reports that he was assaulted seven times while on duty; three of those incidents resulted in visits to the emergency room, and one incident required that he receive 14 staples in the back of his head.

Given CoreCivic Leavenworth's history of refusal to follow adequate quality control mechanisms and staffing minimums, and the resulting harm those failures created, this facility must close.

C. Other issues affecting the safety and security of CoreCivic Leavenworth

As a result of the lack of staff and dangerous conditions, CoreCivic Leavenworth staff continue to disregard other fundamental constitutional rights of those incarcerated at the facility.

For example, the ACLU of Kansas received numerous complaints earlier this year regarding a raid of multiple cellblocks to uncover contraband that resulted in the seizure and confiscation of legal mail. The ACLU of Kansas and attorneys with the federal public defenders' offices have also received complaints of, or directly experienced, interference with attorney-client communications. And, of course, one year ago CoreCivic Leavenworth and its phone provider Securus Technologies agreed to pay \$3.7 million dollars as part of a settlement of claims that CoreCivic allowed federal prosecutors to listen in on private attorney-client phone calls.¹⁸ The related criminal litigation continues five years after the first violation was discovered.

We are also concerned about the lack of access to hygienic supplies, commissary, medical care, and recreation time that have resulted from repeated lockdowns due to the violence inside the facility. Recently, the CoreCivic Health Services Administrator sent a notice to all residents stating that, "All routine blood pressure checks, weight checks, EKG's, ear irrigations, lab draws, routine x-rays, eye exams, non-essential treatments and non-urgent or non-emergent sick calls will not be conducted during lockdown. Over the counter medications will not be ordered or administered during the lockdown." Residents of the facility have a right to both safety and security, *and* basic necessities such as medical care, showers and physical activity. If CoreCivic Leavenworth is unable to meet these needs and constitutional minima while still keeping everyone safe, it should not be permitted to continue operations.

¹⁸ Katie Bernard, *Kansas prison operator, phone provider to pay \$3.7 million to settle wiretap lawsuit*, THE KANSAS CITY STAR (Aug. 7, 2020), available at <https://www.kansascity.com/news/local/crime/article244766962.html>.

IV. Risk of Liability

Ending CoreCivic Leavenworth's operations is not only a constitutional imperative, it is also necessary for all parties to avoid financial liability. The White House and USMS have the opportunity to end the federal sanctioning of the abuse at CoreCivic by letting the contract expire and moving all federal pretrial detainees elsewhere in Kansas, Missouri, and Nebraska. But the responsibility for ensuring that detainees do not continue to be at risk also rests with Leavenworth County.

Should the County decide to engage in a pass-through contract with the USMS and CoreCivic, the county would become liable for the myriad constitutional violations described in this letter. In addition to liability for damages in lawsuits brought under 42 U.S.C. § 1983, county governments are subject to investigations and litigation brought by the U.S. Department of Justice pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997a. The Leavenworth County government should be well aware of the fact that by taking control of the detention facility and contracting with CoreCivic to carry out detention operations, the County is opening itself up to intense federal and state scrutiny for any constitutional violations that may occur. Please be advised that, should the County take this step, the ACLU of Kansas will keep close watch on issues occurring in the facility and be ready to intervene.

V. Conclusion

With CoreCivic Leavenworth's contract slated to expire at the end of this year, the White House has the opportunity to step up and put meaning behind President Biden's Executive Order regarding the closure of private detention facilities. We can think of few places worthier of immediate action than this facility, which has proven itself to be increasingly dangerous and incapable of upholding the constitutional rights of those confined therein. We therefore encourage the White House to intervene to ensure that CoreCivic Leavenworth's contract is not renewed or extended, and that the facility shuts down on schedule by the end of 2021.

Respectfully,

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Melody Brannon, Federal Public Defender, District
of Kansas

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Brad R. Hansen, Federal Public Defender, Southern
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Cc: Merrick Garland, Attorney General of the United States
Sharice Davids, U.S. Representative, 3rd District, Kansas
Ron Miller, U.S. Marshalls Service, District of Kansas
Mark James, U.S. Marshalls Service, Western District of Missouri
Steven Rosenbaum, Chief, U.S. Department of Justice, Civil Rights Division,
Special Litigation Section