



CHIEF DEFENDERS ASSOCIATION OF NEW YORK



Monroe County  
Public Defender's Office



April 3, 2020

The Honorable Andrew M. Cuomo  
Governor of the State of New York  
New York State Capitol Building  
Albany, New York 12224

*“We are going to fight every way we can to save every life that we can. That’s what it means to be an American and that’s what it means to be a New Yorker.”*

*“If ever there is a time to practice humanity—it is now.”*

—Governor Andrew Cuomo (on Twitter)

Dear Governor Cuomo:

Throughout this unprecedented public health crisis, you have never wavered in your goal of protecting New York’s most vulnerable. You have been willing to take extraordinary measures to minimize the loss of life among the elderly and those with underlying health conditions. Now, you are turning your attention to two other at-risk populations: the nearly 44,000 individuals incarcerated in New York state prisons and the thousands of correction officers who oversee them. To stem the spread of COVID-19 in the state’s prisons, you and your administration have courageously decided to explore ways to reduce the burgeoning prison population.<sup>1</sup>

<sup>1</sup> [Rush Transcript of Governor Cuomo’s Interview with MSNBC’s “All in with Chris Hayes.”](#) March 27, 2020 (“[W]herever we can get people out of jails, out of prisons now we are.”); [Transcript of Governor Cuomo’s March 28, 2020 Coronavirus Press Briefing](#) (stating that your administration is “actively looking” at releasing incarcerated individuals).

We write to provide a blueprint for a structured release program that will not compromise public safety, and to offer the pro bono assistance of our extensive network of law firm partners and public defenders who stand ready to provide legal and logistical assistance to implement a program that you approve. It would be our privilege to work side-by-side with you to help save the lives of incarcerated individuals, correction officers and the family members of correction officers across the state.

### **Reducing the Prison Population Is a Public Safety Necessity**

As you know, COVID-19 has already begun spreading through the cramped and crowded confines of the state's prisons. Dozens of corrections officers in New York have tested positive, and hundreds more are presumptively positive and quarantined.<sup>2</sup> The fear is rapidly rising within these tense institutions. "I have never experienced this level of panic coming from our families, corrections staff, [and the] government," one incarcerated individual reports.<sup>3</sup>

There is good reason to worry about the possibility of a large-scale outbreak of COVID-19 in the state's prisons. The Centers for Disease Control and Prevention (CDC) has explained that there is "heighten[ed] . . . potential for COVID-19 to spread once introduced" into a prison because incarcerated individuals "live, work, eat, study, and recreate within congregate environments."<sup>4</sup> The CDC has emphasized the importance of social distancing as "a cornerstone of reducing transmission of . . . COVID-19."<sup>5</sup> But as one individual incarcerated in New York notes, "[i]t is absolutely impossible to practice social distancing in prison."<sup>6</sup>

The CDC has observed that it can be difficult for incarcerated individuals even "to exercise [other basic] disease prevention measures (e.g., frequent handwashing)."<sup>7</sup> Moreover, if an incarcerated individual contracts the disease, he or she "may hesitate to report symptoms of COVID-19 or seek medical care due to . . . fear of isolation."<sup>8</sup> Segregating infected incarcerated individuals may not even be feasible, as "[o]ptions for medical isolation of COVID-19 cases are limited and vary depending on the type and size of the facility."<sup>9</sup> These challenges with identifying and isolating infected incarcerated individuals can make it difficult to control the spread of the disease. And the consequences may be deadly because the prison population

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<sup>2</sup> Bernadette Hogan, "[NY state prison guards beg Cuomo to protect workers from coronavirus](#)," *New York Post*, March 30, 2020.

<sup>3</sup> Daniel A. Gross, "[‘It Spreads Like Wildfire’: The Coronavirus Comes to New York’s Prisons](#)," *The New Yorker*, March 24, 2020 (quoting Victor Garcia, an individual incarcerated at Great Meadow).

<sup>4</sup> [Interim Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities](#), Centers for Disease Control and Prevention ("CDC Prison Guidance").

<sup>5</sup> *Id.*

<sup>6</sup> "[‘It Spreads Like Wildfire.’](#)" *supra* n. 3 (quoting Laron Rogers, an individual incarcerated at Sing Sing).

<sup>7</sup> CDC Prison Guidance, *supra* n. 4.

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

<sup>9</sup> *Id.*

“disproportionately suffers from chronic illnesses and other health conditions that could exacerbate COVID-19.”<sup>10</sup>

Experts agree that immediate and large-scale reductions in the prison population are essential for limiting the spread of COVID-19.<sup>11</sup> The United Nations High Commissioner has urged government authorities to “act now” to reduce prison populations.<sup>12</sup> Across the country, state and local officials have taken dramatic steps to reduce jail and prison populations in recent weeks.<sup>13</sup> Even United States Attorney General William P. Barr has directed the federal Bureau of Prisons to transfer certain elderly and at-risk incarcerated individuals to home confinement.<sup>14</sup> He cautioned, “We want to make sure our institutions don’t become petri dishes and [COVID-19] doesn’t spread rapidly through an institution.”<sup>15</sup>

### **A Blueprint for Safely Reducing New York’s Prison Population**

The United States Supreme Court has recognized that it is “possible to reduce the prison population ‘in a manner that preserves public safety and the operation of the criminal justice system.’”<sup>16</sup> Your administration has proven this. During your Governorship, you have facilitated

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<sup>10</sup> German Lopez, “[A coronavirus outbreak in jails or prisons could turn into a nightmare](#),” *Vox*, March 17, 2020. See also [Testimony of Jack Beck, Director, Prison Visiting Project, Correctional Association of New York](#), before the New York State Assembly Committees on Correction and Health re: Healthcare in New York State Prisons, Oct. 30, 2017 (testifying that “the NYS prisons have a population that has significant health needs that are more challenging than those existing in the general population”).

<sup>11</sup> See, e.g., Mary Bassett, Eric Gonzalez and Darren Walker, “[Andrew Cuomo, Stop a Coronavirus Disaster: Release People from Prison](#),” *The New York Times*, March 30, 2020 (“We have little time to curb the spread of the virus within our state’s jails and prisons . . . For this reason, we and a number of public health experts call on Mr. Cuomo to release as many people as possible from New York’s correctional facilities . . .”); Jennifer Gonnerman, “[How Prisons and Jails Can Respond to the Coronavirus](#),” *The New Yorker*, March 14, 2020 (“From the standpoint of responding to this outbreak, one of the most important questions is: How can we have fewer people in these places—in jails and prisons?”) (quoting Dr. Homer Venters, former head of Correctional Health Services for New York City Health + Hospitals); Peter Wagner and Emily Widra, “[Five ways the criminal justice system could slow the pandemic](#),” *Prison Policy Initiative*, March 27, 2020 (recommending that authorities “[r]educe the number of people in state and federal prisons” and arguing that this “can be done . . . most dramatically by increasing releases”).

<sup>12</sup> Merrit Kennedy, “[U.N. Calls for Countries To Reduce Prison Populations](#),” *npr*, March 25, 2020.

<sup>13</sup> See, e.g., Tracey Tully, “[1,000 Inmates Will Be Released from N.J. Jails to Curb Coronavirus Risk](#),” *The New York Times*, March 23, 2020 (citing [Consent Order, In the Matter of the Request to Commute or Suspend County Jail Sentences](#), No. 084230 (N.J. Sup. Ct. Mar. 22, 2020)); [Executive Order No. D 2020 016](#), Governor of the State of Colorado, March 25, 2020 (granting the Colorado Department of Corrections “the discretion to make awards of earned time credits as it deems necessary and appropriate to safely facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons”).

<sup>14</sup> “[Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic](#),” Memorandum from the U.S. Attorney General to the Director of the federal Bureau of Prisons, March 26, 2020.

<sup>15</sup> Philip Ewing, “[Barr: Federal Prisons Mustn’t Become ‘Petri Dishes’ for Coronavirus](#),” *npr*, March 26, 2020.

<sup>16</sup> *Brown v. Plata*, 563 U.S. 493, 534 (2011) (discussing and affirming the district court’s findings).

“a drastic reduction in mass-incarceration, while simultaneously enhancing public safety.”<sup>17</sup> Your administration has overseen the closure of 26 correctional facilities—more than any governor in the state’s history. “At the same time, New York State has remained the safest large state in the country with the lowest crime rate and incarceration rate among the most populous states.”<sup>18</sup>

It is incumbent on your administration to once again take significant action to reduce the state’s prison population, this time in response to a growing public health emergency. To assist you in this effort, we have given careful thought to the categories of prisoners who could be safely released into the community. We urge you to conduct an expedited review and consider immediately releasing individuals in the following categories:

1. Individuals who have less than one year remaining before their conditional release dates;
2. Individuals who were granted parole and whose release is pending;
3. Individuals over the age of 50;
4. Individuals who have significant underlying health conditions that exacerbate the risks of COVID-19, including lung disease, asthma, heart conditions, diabetes, cancer or a weakened immune system; and
5. Individuals incarcerated for technical parole violations.<sup>19</sup>

We recognize that there will be tremendous work involved with individualized release planning for each of these incarcerated individuals. Together with our extensive network of law firm partners and public defenders, we are prepared to coordinate such a program with the assistance of volunteer pro bono lawyers. We can also connect incarcerated individuals with the nonprofit reentry organizations that have already committed to providing post-release supportive services, including links to health care, jobs, education, training, and long-term housing.<sup>20</sup>

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<sup>17</sup> [Criminal Justice Reform: Creating a fairer, safer, and more just system for all New Yorkers](#), Official website of Governor Andrew M. Cuomo.

<sup>18</sup> *Id.*

<sup>19</sup> The New York City Board of Corrections has called for the immediate release from the City’s jails of individuals over the age of 50 and individuals with significant underlying health conditions. The New York City Board of Corrections has urged the City to “drastically reduce the number of people” in order to “minimize a potential outbreak.” [New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19](#), March 17, 2020.

<sup>20</sup> In an email to your office dated March 20, 2020, the following organizations committed to providing reentry support to individuals released from incarceration: Alliance of Families for Justice, Bard Prison Initiative, Buffalo Urban League, Center for Community Alternatives, Center for Employment Opportunity, The Doe Fund, Exodus Transitional Community, Fortune Society, Hudson Link for Higher Education, Legal Action Center, Osborne Association, Prisoner Reentry Institute at John Jay College, and Women’s Prison Association.

As you have said, we New Yorkers all have a “duty to do what [we] can, when [we] can” in order to assist with the “rescue mission” of saving lives during this pandemic.<sup>21</sup> We in the legal services community are answering your call to action. Please allow us to contribute our time and our skills to help safely reduce New York’s prison population, in order to minimize the risks to incarcerated individuals, correction officers and the families of correction officers.

Sincerely,

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<sup>21</sup> [Transcript of Governor Cuomo’s March 27, 2020 Coronavirus Press Briefing.](#)

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