

November 10, 2020

The Honorable Charlie Baker
Governor
Commonwealth of Massachusetts
State House, Room 360
Boston, MA 02133

Dear Governor Baker,

We write to urge you to take swift action to protect the lives of individuals who are incarcerated in the Commonwealth of Massachusetts. The COVID-19 pandemic has manifested unprecedented challenges to the health and wellbeing of communities throughout the Commonwealth, including our neighbors and loved ones behind the wall. As Governor, you have significant authority to limit the deadly spread of COVID-19 and reduce the prison population before it is too late. It is absolutely critical that your administration listens to the guidance of public health experts and does all that it can to immediately decarcerate older individuals, individuals with preexisting medical conditions, juveniles, pregnant individuals, and those with less than a year remaining on their sentence.¹

In Massachusetts, COVID-19 has remained a steady burden on daily life since the first known positive diagnosis in February. Since then, there have been at least 158,937 confirmed cases, more than 13,000 hospitalizations, and 9,836 deaths among confirmed cases.² In the Massachusetts' 7th, which includes Suffolk County, COVID-19 has exacerbated inequitable access to affordable health care and racial disparities in chronic health conditions. Communities of color are among the hardest hit during the pandemic due to longstanding policies that have adversely impacted generations of residents. According to the Centers for Disease Control and Prevention (CDC), people who are American Indian, Black, or Latino/a are more likely to contract, be hospitalized, and die from the disease.³ These are the very same communities that are disproportionately criminalized and imprisoned throughout the state.⁴ The comorbidities of race and COVID-19 are a deadly combination.

Individuals who are incarcerated are not immune from the ongoing pandemic. Prisons and jails are petri dishes for COVID-19 spread. Although CDC guidelines encourage physical distancing, sanitary practices, and access to medical professionals, corrections and detention facilities are largely overcrowded, unsanitary, and limited in healthcare.⁵ People who are incarcerated deserve to be treated with dignity and should not be subject to medical cruelty. The Massachusetts prison

¹ Dr. Andalicio et al., *Letter to Baker*, HCSPH (Mar. 31, 2020), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2464/2020/03/HCSPPH-HMS-Faculty-Letter-on-COVID-19-in-jails-3-31-20-FINAL.pdf>.

² *Dashboard of Public Health Indicators*, MASS. DEP'T OF PUBLIC HEALTH (Nov. 4, 2020), <https://www.mass.gov/doc/covid-19-dashboard-november-4-2020/download>.

³ *Hospitalization and death by Race/Ethnicity*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Aug. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

⁴ *Racial and ethnic disparities in prisons and jails in Massachusetts*, PRISON POLICY INITIATIVE (Dec. 2016), https://www.prisonpolicy.org/graphs/disparities2010/MA_racial_disparities_2010.html.

⁵ *Protect Yourself*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

system has the highest percentage of incarcerated elderly individuals, half are over the age of 60 or have an underlying medical condition. As elected officials, the health and safety of our constituents is a top priority. We cannot pick and choose who among us is deserving of being saved but, instead, we must prioritize the safety and wellbeing of as many people as possible. A recent study by the American Civil Liberties Union (ACLU) has found that the failure to aggressively decarcerate and reduce the incarcerated population could add 100,000 fatalities to our nation's overall death count — among people both in and outside of jail.⁶ It is clear, you have a moral and legal obligation to care for the wellbeing of those who are incarcerated while they are in state custody.

Unfortunately, recent data show that ten people have died and over a thousand people have tested positive for COVID-19 in Massachusetts prisons and jails despite the fact that facilities have been locked down for more than six months.⁷ In October alone, two outbreaks were reported at facilities throughout the Commonwealth.⁸ According to the Massachusetts Department of Corrections, 28 of the 97 men who are involuntarily committed at the Massachusetts Alcohol and Substance Abuse Center tested positive, and the Essex County Sherriff revealed there were 25 positive cases among people who are incarcerated, 21 positive cases among employees, and two positive cases among contractors. The number of people who are incarcerated with COVID-19 at MCI-Norfolk are surging: two people tested positive for COVID on Oct. 28, 2020, and as of Nov. 4, 2020, 74 people tested positive. Still yet, media reported on Nov. 7 that 140 people had tested positive at MCI-Norfolk.⁹ While these numbers only capture a glimpse of the public health crisis in our carceral system, they foretell greater devastation in the absence of meaningful actions to decarcerate.

At a recent press conference, you acknowledged the current spike in COVID-19 cases across the state and announced incremental steps to slow the spread of the disease.¹⁰ The new guidelines recognize that the pandemic has not ended and government leaders at all levels must act. Our constituents have demonstrated remarkable compassion and courage. Essential workers are risking their lives to provide necessary services, youth are engaged in unique remote learning environments, and health professionals have developed new methods to care for their patients. We must embody the same heightened compassion and courage in our policy decisions if we aspire to overcome the challenges of the pandemic.

⁶ Udie Ofer and Lucia Tian, *New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us*, ACLU BLOG (Apr. 22, 2020), <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>

⁷ *Tracking COVID-19 in Massachusetts Prisons & Jails*, ACLUM (Nov. 4, 2020), <https://data.aclum.org/sjc-12926-tracker/>.

⁸ Deborah Becker, *Middleton Jail in Essex County Closes to Visitors Amid Outbreak*, WBUR (Oct. 4, 2020), <https://www.wbur.org/news/2020/10/04/covid-outbreak-essex-jail>.

⁹ Deborah Becker, *More COVID-19 Cases In Massachusetts Correctional Facilities*, WBUR (Nov. 6, 2020), <https://www.wbur.org/news/2020/11/06/more-covid-19-cases-in-massachusetts-correctional-facilities>; WCVB, *At least 140 inmates test positive for virus*, Milford Daily News (Nov. 7, 2020), <https://www.milforddailynews.com/news/20201107/at-least-140-inmates-at-mci-norfolk-test-positive-for-covid-19>.

¹⁰ Jaclyn Diaz, *Mass. Governor Announces New Coronavirus Restrictions As State Infections Surge*, NPR (Nov. 2, 2020), <https://www.npr.org/2020/11/02/930464112/mass-governor-announces-new-coronavirus-restrictions-as-state-infections-surge>.

It is incumbent upon your administration to significantly decrease the number of people who are incarcerated. Since the beginning of the crisis, public health experts as well as local, state, and federal policymakers have called for decisive action to reduce prison and jail populations.

In recognition of the disproportionate impact of COVID-19 on communities of color in Suffolk County,¹¹ in April Suffolk County District Attorney Rachael Rollins sent your administration a letter requesting that your staff provide data on how many older and/or medically infirm persons are incarcerated on Suffolk County sentences, urging you to exercise your powers of pardon and commutation to safely release them. In May, Representative Pressley, along with Members of the House of Representatives and Senate representing states with significant spikes in COVID-19 cases in jails and prisons, sent a letter to you and your colleagues at the National Governors Association calling for the use of executive powers to grant release of older, medically vulnerable populations with underlying conditions, pregnant individuals, juveniles and individuals with less than 1 year left on their sentence and who do not pose a reasonable risk to public safety.¹²

More than six months have passed since our respective efforts urging you to take action, and just one hearing has taken place. Meanwhile, state and county prison populations are back on the rise as positive COVID test results in multiple jail and prison facilities throughout the state are spiking.¹³ Over the last six months, one Department of Correction facility has experienced a 93% increase in cases, with 95 confirmed cases just this week. Because Black and Hispanic residents of Massachusetts are eight and five times more likely to be incarcerated than their white counterparts, and because Black and Hispanic residents serve sentences that are on average 168 and 148 days longer than white residents,¹⁴ your continued failure to take action is having a devastating racially disproportionate impact on some of our state's most vulnerable people.

As Governor, you hold the necessary clemency and emergency powers to release individuals back to their families and loved ones. The ongoing pandemic has provided sufficient reason to exercise this authority. However, the Executive Clemency Guidelines fail to include a public health provision and have not been updated since declaring a state of emergency to respond to COVID-19.¹⁵ Although this oversight is having disastrous consequences, you can rectify the problem with the stroke of a pen. It is time for you to prioritize the release of people who are in prison that do not pose a threat to community safety. New Jersey has demonstrated it is possible to decarcerate for public health by releasing more than 2,000 people and making plans to release at least 1,000 more.¹⁶ Your clemency and emergency authorities empower you to do the same.

¹¹ *The impact of COVID-19 on Underserved Communities: Chelsea, MA and Healthy Chelsea*, MASS. GENERAL HEALTH (Oct. 15, 2020), <https://www.massgeneral.org/news/coronavirus/covid-19-impact-underserved-communities-part-1>.

¹² *Rep. Pressley, Colleagues Call on Baker, Cuomo and Other Governors to Decarcerate*, U.S. HOUSE OF REPRESENTATIVES (May 5, 2020), <https://pressley.house.gov/media/press-releases/rep-pressley-colleagues-call-baker-cuomo-and-other-governors-decarcerate-amid>.

¹³ *Tracking COVID-19 in Massachusetts Prisons & Jails*, ACLUM (Nov. 4, 2020), <https://data.aclum.org/sjc-12926-tracker/>.

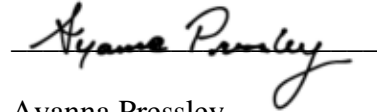
¹⁴ Elizabeth Tsai Bishop et al., *Racial Disparities in the Massachusetts Criminal System*, HARV. L. SCHOOL (Sept. 2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

¹⁵ *Executive Clemency Guidelines*, COMMONWEALTH OF MASS. (Feb. 21, 2020), <https://www.mass.gov/doc/executive-clemency-guidelines-2212020/download>.

¹⁶ Tracey Tully, *2,258 N.J. Prisoners Will Be Released in a Single Day*, N.Y. TIMES (Nov. 4, 2020), <https://www.nytimes.com/2020/11/04/nyregion/nj-prisoner-release-covid.html>.

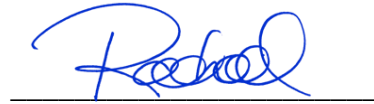
Across the Commonwealth, you should direct prisons and jails to reduce the incarcerated population as quickly and as safely as possible. The lives of Massachusetts residents depend on your compassion and courage, because public health decarceration is literally a matter of life and death.

Sincerely,

A handwritten signature in black ink, reading "Ayanna Pressley", written over a horizontal line.

Ayanna Pressley

Member of Congress

A handwritten signature in blue ink, reading "Rachael", written over a horizontal line.

Rachael Rollins

Suffolk County District Attorney