

Congress of the United States
Washington, DC 20515

May 5, 2020

The Honorable Larry Hogan
Chairman
National Governors Association
444 N. Capitol Street, Suite 267
Washington, DC 20001

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

The Honorable Andrew Cuomo
Governor
New York State
New York State Capitol Building
Albany, NY 12224

The Honorable JB Pritzker
Governor
State of Illinois
State Capitol, 207 Statehouse
Springfield, Illinois 6270

The Honorable Phil Murphy
Governor
State of New Jersey
P.O. Box 001
Trenton, New Jersey 08625

The Honorable Gavin Newsom
Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governors Hogan, Cuomo, Murphy, Baker, Pritzker, and Newsom:

We write to you, the Chairman of the National Governors Association and Governors of the five states that have been hardest hit by the coronavirus pandemic, to express our grave concerns about the impact of this devastating public health crisis within our state correction and detention facilities. Based on the most recent reports, at least 1.18 million people in America have been infected with COVID-19, resulting in over 69,000 fatalities — the highest infection and death rates in the world.¹ Further reporting by the New York Times has identified more than 28,300 infections and 273 deaths among people and staff within our federal, state and local correctional facilities.² Additionally, the Marshall Project has tracked a 50 percent increase in infection rates in state corrections facilities in just the last week alone.³

We commend your leadership in ensuring the safety and wellbeing of the general population and the millions of constituents we collectively represent. However, the health of our nation depends on the health and safety of our most vulnerable communities, particularly those in congregate settings such as corrections facilities where physical distancing is all but impossible. It is

¹ Johns Hopkins Coronavirus Resource Center. May 3, 2020. <https://coronavirus.jhu.edu/map.html>

² New York Times. Coronavirus in the U.S.: Latest Map and Case Count. May 3, 2020. <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage&action=click&module=Spotlight&pgtype=Homepage#states>

³ The Marshall Project. A State-by-State Look at Coronavirus in Prisons. May 1, 2020. https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons?utm_medium=social&utm_campaign=sprout&utm_source=twitter

essential that as we work to urgently defeat this virus, that we ensure the health and safety of *every* community, including people in state and local custody and the staff that work in these facilities. We strongly urge you to use your clemency and emergency powers to reduce the incarcerated population and limit the spread of this virus. With the stroke of a pen, you could help save the lives of tens of thousands of juveniles, elderly and medically vulnerable people held in custody at the state and local level.

As you know, the unprecedented nature of this pandemic has required an unprecedented and compassionate response. The actions taken in states all across the country have undoubtedly saved millions of lives. But those same actions have not been deployed when it comes to our correction and detention facilities. Overcrowding, unsanitary conditions, and inadequate access to medical care have made our prisons and detention centers a petri dish for infectious disease outbreaks. We cannot afford to slow walk our response to this pandemic. Despite conventional wisdom, what happens in our corrections and detention facilities has a significant effect on the health and safety of our broader community.

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.⁴ 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. It is the responsibility of every elected leader, especially our nation's governors, to use every tool available to prevent COVID-19 from robbing us of any more lives.

The Centers for Disease Control and Prevention's (CDC) social distancing guidelines have helped to "flatten the curve" of the outbreak and prevent our health care systems from being overwhelmed. While evidence shows we have been relatively effective in limiting the spread of the virus at the community level, our nation's corrections systems have not. In fact, according to the New York Times, 8 of the top 10 clusters of the coronavirus are located in state correctional facilities.⁵ As states ramp up their testing capacity, these numbers have only gotten worse.⁶ Physical and social distancing in compliance with CDC guidelines is virtually impossible in prison and jail. The conditions as they stand simply don't allow for individuals to be easily distant from one another and constituent calls from people behind the wall have identified that many prisons are unable to implement these policies in a meaningful way.

Moreover, the racially disparate tragedies associated with COVID-19 are not lost on any of us. Data by the CDC and state and local public health departments has laid bare the reality that Black and Latinx communities are disproportionately affected by serious illness and death when it comes to COVID-19.⁷ Decades of structural racism and inequality have predisposed

⁴ Udie Ofer and Lucia Tian. New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us. ACLU blog. April 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/>

⁵ New York Times. Coronavirus in the U.S.: Latest Map and Case Count. May 3, 2020.

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage&action=click&module=Spotlight&pgtype=Homepage#states>

⁶ Deborah Backer. Coronavirus Infections Double Among Prisoners At MCI-Shirley. WBUR. April 28, 2020.

<https://www.wbur.org/commonhealth/2020/04/28/shirley-prison-coronavirus-infections>

⁷ Center for Disease Control and Prevention. Coronavirus Disease 2019: Cases in the US. May 3, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

communities of color to underlying health conditions like diabetes, asthma, and hypertension and ultimately led to a heightened vulnerability to this disease. The racial composition of our nation's carceral system, which disproportionately locks up Black and brown people, further amplifies our concerns regarding the scale of devastation of COVID-19 in our prisons, jails, and detention centers.

As New York, New Jersey, Massachusetts, Illinois and California continue to experience high infection rates due to this pandemic, it should not be surprising that the prisons in your states have been incubators for COVID-19. Recent reporting has identified tragic and preventable cases of incarcerated people who could have been released but weren't due to inaction. In New York, Darlene "Lulu" Benson-Seay became the first woman to die of COVID-19 in the state's correctional system, days after the first woman, Andrea Circle Bear, died in federal custody after giving birth while on ventilator.⁸ In Massachusetts, more than 70 women at Massachusetts Correctional Institute - Framingham have contracted the virus, accounting for an infection rate of 35 percent, and putting these individuals at greater risk for serious illness.⁹ It should be noted that nearly 80 percent of women in jail are mothers and often the primary caretakers of minor children, making the likelihood of serious illness even more devastating as it could potentially leave many children without a parent.¹⁰ Even more worrisome, in California, the number of COVID-19 cases has nearly tripled over the last two weeks.¹¹ It is also crucial that we take the personal health and safety of correctional staff into consideration when it comes to decarceration as the current conditions have caused many to contract the virus and placed their families and communities at risk as they come in and out of these facilities each day.

Additionally, this pandemic has already had a devastating effect on our economy — an effect felt most acutely by frontline workers and low-income communities. Like you, we are eager to restart the economy, but we also know it would be irresponsible to allow businesses to reopen until we have successfully flattened the curve. The reality is that we cannot flatten the curve while we continue to allow overcrowded prisons, jails, and detention centers to be vectors of infections. Our economic well-being is tied directly to controlling the spread of the coronavirus within these facilities and we cannot control the spread unless and until we decarcerate.

As Governors you have the power to take immediate steps to avert further tragedy from taking root in our state corrections systems. **We call on you to immediately use your executive clemency and emergency powers to grant release of adults aged 50 and older, medically vulnerable populations with underlying conditions such as HIV/AIDS, diabetes, asthma, and heart disease, pregnant individuals, juveniles, and individuals with less than 1 year left on their sentence,** irrespective of the offense and who don't pose a reasonable risk to public safety. You are uniquely situated to intervene on behalf of the communities we serve, and to exemplify the values of humanity and compassion that motivate us and that our constituents look to us to uphold. Decarceration is not just the most meaningful preventive measure, but an urgent

⁸ Nick Charles. US Black female inmates and COVID-19: Medically compromised, vulnerable and neglected. NBC News. April 24, 2020. <https://www.nbcnews.com/news/nbcblk/black-female-inmates-covid-19-medically-compromised-vulnerable-neglected-n1189086>

⁹ Beth Healy, Deborah Becker, Christin Willmsen. Mass. Prisons And Jails Among Hardest Hit By Coronavirus In U.S. April 28, 2020. <https://www.wbur.org/investigations/2020/04/28/coronavirus-prisons-jails-massachusetts-deaths-cases>

¹⁰ Nissa Rhee. Keeping Women Out of Jail, One Mother at a Time. Vera Institute of Justice, September 2018. <https://www.vera.org/blog/keeping-women-out-of-jail-one-mother-at-a-time>

¹¹ Lara Bazelon and Kyle Barry. Gov. Newsom can save lives from COVID-19 by reducing California prison population. Sacramento Bee, April 30, 2020. <https://www.sacbee.com/opinion/op-ed/article242380281.html#storylink=cpy>

necessity to avoid suffering and death for numbers of elders and other vulnerable incarcerated people.

As the chief executives of our nation's state prison systems, which account for about 90 percent of the incarceration population, you are more suited than any and all other public officials in the United States to promote life-saving solutions to curb this pandemic's impact on vulnerable members of our society.¹² We strongly urge you to start commuting sentences immediately as a measure to protect all of us, including the most vulnerable. The COVID-19 pandemic doesn't need to be a death sentence for the individuals and staff in our state corrections and detention systems. Each of you has the power to stop this preventable tragedy from being even more devastating and we implore you to do so with the urgency necessary to match the scale of this unprecedented public health crisis.

Sincerely,

Ayanna Pressley
United States Representative, MA-07

Cory Booker
United States Senator, New Jersey

Alexandria Ocasio-Cortez
United States Representative, NY-14

Nydia M. Velázquez
United States Representative, NY-07

Jan Schakowsky
United States Representative, IL-09

Karen Bass
United States Representative, CA-37

Barbara Lee
United States Representative, CA-13

¹² Mary Bassett, Eric Gonzalez and Darren Walker. Andrew Cuomo, Stop a Coronavirus Disaster: Release People from Prison. The New York Times, March 30, 2020. <https://www.nytimes.com/2020/03/30/opinion/nyc-prison-release-covid.html>