

Congress of the United States
Washington, DC 20510

March 19, 2020

President Donald J. Trump
White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Trump:

We write to you in the midst of this global health pandemic, as coronavirus disease 2019 (“COVID-19”) is rapidly spreading throughout the United States, to urge you to consider the needs of the millions of people in jails, prisons, and detention centers across this country for whom an uncontained outbreak would be fatal. Based on the most recent reports, at least 10,755 people have been infected with COVID-19, resulting in 164 deaths.¹ Already two Federal Bureau of Prisons staffers have tested positive, and 34 incarcerated individuals and staff at a facility managed by GEO Group, Inc. were quarantined after an employee tested positive for COVID-19.^{2,3} Throughout the country, symptomatic corrections and immigration officials are being tested for the disease. We have grave concerns that without urgent action it is just a matter of time before our nation’s correctional facilities and detention centers, and the detainees and correction officers who live and work in them, are devastated by this pandemic.

In recent weeks, public health experts and elected officials have emphasized the urgent need to “flatten the curve” to slow the spread of the virus and make sure that we do not overburden our healthcare system. We must address, as part of that effort the impact of an outbreak in the prison and detention system. Governors and Mayors across the country have rightly taken unprecedented steps to ensure the safety of the American people, particularly the elderly and those with underlying health conditions who are most at risk for severe complications as a result of the virus. In the interest of public health and public safety, we must make those same considerations when it comes to those in federal, state and local custody. Nearly 20 percent of individuals incarcerated in federal prisons are over the age of 50 and many have underlying health conditions.⁴ The men and women in prisons, jails, and detention centers are people’s loved ones and family. In fact, nearly 80 percent of women in

¹ John Hopkins Coronavirus Resource Center. (March 19, 2020). <https://coronavirus.jhu.edu/map.html>

² Forbes. First Cases Of Coronavirus In Federal Prisons Confirmed, As Two Staffers Test Positive. (March 18, 2020). <https://www.forbes.com/sites/mattperez/2020/03/18/first-cases-of-coronavirus-in-federal-prisons-confirmed-as-two-staffers-test-positive/#1224bce54a7d>

³ CBS Philly. 34 George W. Hill Correctional Facility Employees, Inmates Being Self-Quarantined After Employee Tests Positive For COVID-19. (March 14, 2020). <https://philadelphia.cbslocal.com/2020/03/14/george-w-hill-correctional-facility-employee-tests-positive-for-covid-19/?utm=newsbreak>

⁴ Federal Bureau of Prisons. Inmate Age. Last updated March 7, 2020. https://www.bop.gov/about/statistics/statistics_inmate_age.jsp

jail are mothers and, often, the primary caretakers of minor children.⁵ Moreover, thousands of correctional staff work with these prisoners and detainees and return to their families every day. The actions the federal government takes today can mitigate harm and devastation for millions of people across this country and ensure that America is acting in the best interest of all of our nation's families.

Preventing the rapid spread of COVID-19 is the country's top priority and ensuring the safety and wellbeing of people in prisons, jails, and detention facilities is a critical part of that effort. As we prepare to defeat this virus, it is the duty of every elected leader at every level of government to use their power to prevent COVID-19 from claiming lives. As President, that duty and responsibility falls even more squarely within your purview. Under the Constitution, you have unrestricted executive power to pardon or commute the sentence of any person in federal custody, regardless of offense, and you should use it to vigorously respond to this pandemic. As such, **we urge you to adopt and release decarceral guidelines** and use your clemency power to reduce the population of people in federal custody whose release poses no risk to public safety. Further, we urge your administration to encourage state leaders to follow a similar course of action.

Earlier this week, the Centers for Disease Control and Prevention (CDC) and your administration released updated guidelines recommending that people avoid gatherings larger than 10 people.⁶ There are almost 2.3 million people in United States prisons, jails and detention centers, and many of these facilities hold thousands of people who are often triple- or quadruple- banded in a large crowded dormitory or small cell. As public health officials have warned, the carceral system is a breeding ground for an infectious outbreak.⁷ As we saw in China, overcrowded prisons will only exacerbate the spread of COVID-19.^{8,9} Furthermore, the prison population is one of the most at risk for both getting sick and for becoming a hub for spreading the virus in the broader community. Vendors, staff, and correction officers coming into and leaving the facilities pose a considerable risk of spreading the coronavirus infection.

People incarcerated in federal prisons live in close proximity to each other, and safety measures provided by the CDC such as staying six feet away from other people is nearly impossible.¹⁰ In a Seattle-area nursing home, we saw an example of how vicious the spread of COVID-19 can be in an environment where people are confined in close quarters, and how it can affect both people who live and work there as well as their families. The effect of an outbreak in a prison could be even worse, both for the people incarcerated but also the

⁵ Rhee, N. 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>

⁶ Centers for Disease Control and Prevention. Interim Guidance for Coronavirus Disease 2019 (COVID-19). (March 15, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>

⁷ Rich, J, Allen, S, Nimoh, M. We must release prisoners to lessen the spread of coronavirus. (March 17, 2020). <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lesser-spread-coronavirus/>

⁸ Mendell, E. Coronavirus Outbreaks at China Prisons Spark Worries About Unknown Clusters. Wall Street Journal. (February 2020). <https://www.wsj.com/articles/coronavirus-outbreaks-at-china-prisons-spark-worries-about-unknown-clusters-11582286150>

⁹ Cole, B. Coronavirus Could Cause 'public Health Catastrophe' In Overcrowded Jails Warns Prison Reform Group The Sentencing Project. Newsweek. (March 2020). <https://www.newsweek.com/coronavirus-sentencing-project-jails-democrats-1491771>

¹⁰ Pavlo, W. Handling Coronavirus In Federal Prison. Forbes. (March 2020). <https://www.forbes.com/sites/walterpavlo/2020/03/04/handling-coronavirus-in-federal-prison/#3d8394802094>

staff and surrounding community, especially given that recommendations for frequent use of hand soap and alcohol-based sanitizers are often not consistent with prison regulations.

Moreover, prisons are not closed environments. Again, vendors, staff, and correction officers coming into the facilities and returning home pose a considerable risk of spreading COVID-19. Many prisons are in rural areas, far from hospitals and with limited access to medical care, and are unable to self-quarantine. During the H1N1 epidemic in 2009, the number of cases of the swine flu within prisons was widespread proving the swiftness with which an outbreak can affect this particular population.¹¹

You must act with urgency. Reducing the federal prison population by enacting decarceral guidelines and sensibly commuting sentences, will assist federal prisons to implement commonsense public health and sanitary measures that will both prevent the spread of COVID-19 within prisons and mitigate potentially devastating outcomes.

We strongly urge you to adopt the following decarceral guidelines in response to COVID-19:

- **Maximize the use of your clemency power to commute the sentences of elderly individuals who do not pose a current and substantial safety risk.** While the COVID-19 virus infects people of all ages, the World Health Organization (WHO) has stated that older people are at a heightened risk of contracting a severe case of COVID-19 and dying.¹² In fact, the risk of severe infection gradually increases with age starting from around 40 years. There is overwhelming consensus among correctional experts, criminologists, and the National Institute of Corrections that 50 years of age is the appropriate point marking when a prisoner becomes “aging” or “elderly.”¹³ In addition, studies show that older people who are released from prison pose little risk to public safety, and those over 65 have the lowest rates of reoffending among all demographics of formerly incarcerated individuals.¹⁴ Moreover, studies show that “arrest rates among older adults decline to a mere 2 percent by age 50 and are close to zero percent by age 65.”¹⁵ It is crucial for the public health and safety of all that we prioritize this group in any and all COVID-19 decarceral guidelines.
- **Maximize the use of your clemency power to commute the sentences of medically vulnerable individuals who do not pose a current and substantial safety risk.** The WHO advises that persons suffering from cardiovascular disease, diabetes, chronic respiratory disease, asthma, or cancer are at heightened risk.¹⁶ In addition to the

¹¹ Reutter, D. Swine Flu Widespread in Prisons and Jails, but Deaths are Few. Prison Legal News. (February 2010). <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>

¹² World Health Organization. Coronavirus disease 2019 (COVID-19) Situation Report – 51. (March 11, 2020). <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf>

¹³ ACLU. At America’s expense: The Mass Incarceration of the Elderly. (June 2012). https://www.aclu.org/sites/default/files/field_document/elderlyprisonreport_20120613_1.pdf

¹⁴ Vera Institute of Justice. Aging Out. (December 2017). <https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations>

¹⁵ The Florence V. Burden Foundation. The High Costs of Low Risk: The Crisis of America’s Aging Prison Population. July 2014. <http://www.osborneny.org/resources/resources-on-aging-in-prison/osborne-aging-in-prison-white-paper/>

¹⁶ *Ibid.*

elderly, the WHO has identified persons with these underlying medical conditions to be at greater risk for contracting severe COVID-19. While there is still little known about the effects of COVID-19 on pregnant women, the CDC explains that with viruses from the same family as COVID-19, and other viral respiratory infections, such as influenza, pregnant women have had a higher risk of developing severe illness.¹⁷ Almost 40 percent of individuals in corrections and detention settings have underlying health conditions and it is crucial that we take steps proactively to ensure their safety.

- **Establish streamlined procedures to release individuals who have not been convicted of any crimes and are awaiting trial in prison or jail, and maximize the use of your clemency power to commute the sentences of individuals who have one year or less remaining on their sentence, if these individuals do not pose a current and substantial safety risk.** On any given night in America, there are a half a million people in pre-trial detention who have not been convicted of any crimes.¹⁸ Many of these individuals are held but simply cannot afford to post bail. It is critical that we support tools to support the release of these individuals at the state and local level, in an effort to reduce overcrowded conditions and prevent the spread of COVID-19.

People in prisons, jails, and detention facilities must not be overlooked during this crisis. We still have time to prevent more devastating outcomes, but we must act quickly. Already counties in Ohio and California have taken steps to halt arrests and release people from jail and prisons, and we already know that early release policies like those created under the First Step Act enjoy significant bipartisan support. We must bring those policies to scale and release as many healthy people who do not pose any serious safety risks back into the community during this outbreak as possible.

We strongly urge you to start commuting sentences immediately as a measure to protect all of us, including the most vulnerable, and to set an important example for state and local governments to follow. Last week, during testimony before the House Committee on Oversight and Reform, Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci said that the White House had not yet considered action to release incarcerated people.¹⁹ We urge you to take action and prioritize this vulnerable population.

This is an opportunity to set an example, so that state and local officials will understand the importance of taking similar actions in their jails and prisons, to start saving lives and doing

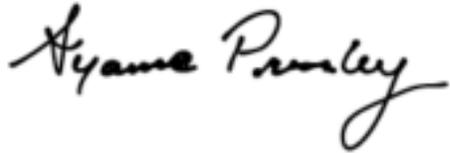
¹⁷ Centers for Disease Control and Prevention. Pregnancy & Breastfeeding: Information about Coronavirus Disease 2019. https://www.cdc.gov/coronavirus/2019-ncov/prepare/pregnancy-breastfeeding.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpregnancy-faq.html

¹⁸ Prison Policy Institute. Mass Incarceration: The Whole Pie 2019. <https://www.prisonpolicy.org/reports/pie2019.html>

¹⁹ House Committee on Oversight and Reform. Hearing on Coronavirus Preparedness and Response. (March 12, 2020). <https://www.youtube.com/watch?v=qoqnStj3hE4&feature=youtu.be>

all that we can, as public officials, to protect our communities. For millions of incarcerated people, COVID-19 should not be a death sentence.

Sincerely,

A handwritten signature in black ink that reads "Ayanna Pressley". The signature is written in a cursive style with a large, sweeping "A" and a long, trailing "y".

Ayanna Pressley
Member of Congress

A handwritten signature in black ink that reads "Elizabeth Warren". The signature is written in a cursive style with a large, sweeping "E" and a long, trailing "n".

Elizabeth Warren
United States Senator