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THE SENATE
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March 19, 2020

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

Dear Governor Cuomo:

We are writing to ask you to immediately convene an emergency coronavirus release committee to evaluate all people in custody in state correctional facilities for early release from incarceration. We believe that the coronavirus poses a great risk to correctional staff and incarcerated people, and that prisons could act as a serious disease reservoir for the civilian population. It is imperative to release as many people as possible to avoid a public health disaster in our prison system, which disaster would inevitably serve to greatly hinder and undermine the efforts to contain and control the epidemic in the community.

Anyone who can be safely sent out to the community and who has a family or a stable living situation to go to should be immediately considered for release regardless of the length of his or her remaining sentence, in our opinion. All released prisoners must be able to move into "traditional housing." "Traditional Housing" does not include shelters, group homes or psychiatric facilities. Moving into shelters, group homes, psychiatric facilities, etc. replicates the conditions in prison in terms of exposure to numerous other people and substitutes the contact with one set of state workers with contact with a different group of state workers.

The release mechanism could include medical release to parole supervision, temporary release, release to community supervision, conditional or merit release, expedited parole release, a pardon or commutation, or any other release mechanism that may exist or apply to a particular case. At a minimum, we believe that all people in the following groups who have not been convicted of an additional crime relating to their conduct while in prison should be evaluated for immediate release:

1. Individuals at higher risk for severe COVID-19 disease, such as people over the age of 50, or people who have chronic medical conditions like heart disease, high blood pressure, cancer, diabetes, lung disease, asthma, compromised immunity, or any other chronic illness that can be disabling or effect overall health such as kidney, liver or blood disease. This



group should be considered for release by executive clemency order as soon as possible because of their high vulnerability to the virus.

2. Individuals serving a life sentence who have served their minimum term.
3. Individuals regardless of age or vulnerability who are serving sentences for non-violent crimes and who are:
 - a. within 3 years of their conditional release date if they are serving a determinate term or
 - b. within 3 years of their parole eligibility date if they are serving an indeterminate term.
4. Individuals, regardless of age or vulnerability, who are serving sentences for violent crimes who are within 1 year of their earliest release date.
5. Individuals in custody as a result of a violation of conditions of release (parole, conditional release, or post-release supervision) where the conduct cited in the violation did not result in a new felony conviction and did not involve violence or the threat of violence.

The only group of people we are hesitant to recommend for evaluation for release are those individuals who will be sent to ICE detention. ICE has yet to issue guidance on what safety measures, if any, have been implemented in its detention facilities in response to the COVID-19 outbreak. Of particular concern, New York State NYIFUP and ONA Rapid Response immigration attorneys have reported that the Buffalo Federal Detention Facility (where ICE generally detains people released from DOCCS custody) has so far implemented minimal safety precautions to safeguard the health of ICE detainees, staff, and visitors there. Because of this, we recommend that you release to the custody of ICE only those individuals who have final orders of deportation and who would be immediately deported should they be released to the custody of ICE.

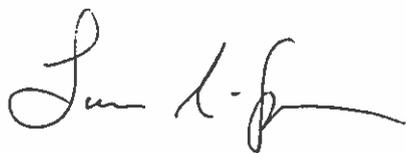
By releasing people from custody, especially older, sicker individuals, the prisons will become safer for everyone. People who remain in custody will be less crowded, mealtimes can be staggered, and social distancing and isolation will be possible. There will be a reduced risk of virus transmission to correctional employees.

If the current prison population is maintained, it is likely that correctional health services will be overwhelmed as older, sicker people become unable to care for themselves or require hospitalization. We urge you to make sure that there are community hospital beds available for the sickest of prisoners who contract the virus. The current estimate by WHO for the population in general is that 14% of coronavirus patients will need oxygen therapy and 5% will require intensive care treatment. We assume people in custody will have greater need than the population in general since they are less healthy as a group.

We also urge you to provide immediate guidance and support for counties to reduce their jail populations in a similar manner. Detainees should be released immediately, as should everyone who might be eligible for release by any mechanism within the next year. New detainees should be allowed to remain at home instead of being sent to jail except in the most egregious of crimes.

Thank you for considering this request. We look forward to working with you to reduce the threat of coronavirus to our incarcerated population and correctional work force.

Very truly yours,

A handwritten signature in black ink, appearing to read "Luis Sepúlveda". The signature is fluid and cursive, with a long horizontal stroke at the end.

Luis Sepúlveda, Chair
Senate Committee on Crime Victims, Crime and Corrections

A handwritten signature in black ink, appearing to read "David Wepin". The signature is bold and cursive, with a prominent initial "D".

David Wepin, Chair
Assembly Standing Committee on Corrections

cc: Honorable Andrea Stewart-Cousins
Honorable Carl Heastie
Honorable Anthony Annucci