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JENNIFER CIULLA VAN ORT, ALBANY

March 25, 2020

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

Re: Protection and release of older, immuno-compromised and parole eligible inmates

Dear Governor Cuomo:

We are writing on behalf of the New York State Association of Criminal Defense Lawyers, the largest organization of criminal defense attorneys in New York State, in the context of the unprecedented public health crisis caused by the rapid spread of COVID-19.

Given the dangers of COVID-19, New York has adopted policies eliminating or reducing close contact between people as much as possible. These measures have thus far not dealt with the risks of COVID-19 outbreaks in state correctional facilities. We are writing to urge that you take immediate measures aimed at reducing the spread of the highly contagious COVID-19 virus to correctional officers, other prison staff and inmates who work and live in the densely populated environment of correctional facilities, where social distancing is not possible, on-site medical facilities and quarantine measures are inadequate, and sanitizing products are not readily available, and given that COVID-19 is especially dangerous to individuals who are elderly, have compromised immune systems, or underlying health conditions.

New York has a responsibility and legal duty to safeguard the health of people in the custody or employ of the state's correctional facilities. Given that the pandemic requires immediate action and given current limits of the court system's ability to make individualized determinations in individualized court proceedings, we urge that you invoke and utilize your emergency powers to order release under supervision of older, immuno-compromised and parole eligible inmates.

Specifically, pursuant to your powers during this public health crisis and consistent with your authority to grant executive commutations and clemency, we urge that to reduce spread of COVID-19 among staff and inmates in state correctional facilities and to protect individuals particularly vulnerable to mortality from the virus, you grant expedited commutations and temporary release of persons who are incarcerated who are currently parole-eligible or will be within 2 years, and to persons who have one of the following conditions: (1) 55 years of age or older; (2) chronic respiratory disease; (3) cancer; (4) heart disease; (5) lung disease; (6) diabetes; or (7) who are otherwise immuno-compromised – unless upon expedited review your office determines commutation of a particular individual would pose an immediate and direct threat to public safety.

Individuals so released with commuted sentences pursuant to such an order should be discharged from custody subject only to parole, probation or other conditions of supervision as would bind them had they completed the full remaining term of that portion of their sentence

that was to be served in incarceration. Individuals granted temporary release under such an order should be subject to whatever conditions the relevant supervising state authority deems appropriate to ensure public safety and their return to custody on such date as deemed safe.

Other jurisdictions have recently taken similar important steps. The State of New Jersey recently ordered the release of 1,000 inmates due to these concerns. Once again, New York can seize an opportunity to protect the safety and well being of our communities, our correctional workers and their families, and inmates who are the most at-risk.

We understand and appreciate how hard you and your staff have been working during this difficult time. It is because of our concern regarding the potential for catastrophic numbers of infections and loss of life among staff and inmates – and the likelihood that the statewide rate of infection will be impacted by inattention to this segment of the population – that we bring this urgent matter to your attention and urge implementation of these steps. We believe that release of these populations under appropriate conditions is a necessary step in limiting the spread of COVID-19 for the safety of those who live or work in correctional facilities and for the public at large.

Thank you for your ongoing efforts to limit the spread of the disease and to keep all New Yorkers safe from the pandemic.

Respectfully yours,



Timothy W. Hoover

President

New York State Association of Criminal Defense Lawyers