

May 8, 2020

Dear Governor Polis,

We write to call upon your administration to take immediate and bold action to protect the lives of Coloradans living and working in prisons by safely and substantially reducing the prison population. **Without your leadership, needless suffering and death due to COVID-19 is certain to occur, both behind bars and in the community.** While Colorado's COVID-19 curve is flattening, the public health crisis is only ramping up in our prisons, which are set to become the epicenter of Colorado's fight against the virus. Sterling Correctional Facility is now the site of the 2nd largest COVID-19 outbreak in Colorado.¹ At least 278 people there — 266 incarcerated people and 12 staff members — have tested positive for the virus.² Several of those people have been hospitalized, and an 86-year-old incarcerated man just died of the virus.³ His death is virtually certain to be the first of many from COVID-19 in Colorado prisons. It is clear that Sterling is far past the point at which containment is possible - over 50% of those tested are positive and most are asymptomatic.⁴ As public health experts have urged since the start of this crisis, only substantial depopulation that allows for social distancing has any real chance of mitigating the massive spread of the virus through Colorado's prisons.⁵ The public understands. In a recent poll, sixty-six percent of likely voters, including 59% of those who identified as "very conservative," said that elected officials should be considering measures to reduce overcrowding in prisons as a response to COVID-19.⁶

We recognize and appreciate that, on March 25, you took action intended to push for safe prison depopulation by providing substantial authority to the CDOC to release incarcerated people.⁷ This measure has proven plainly inadequate to address the "coming prison plague" that is COVID-19.⁸ Although the Executive Order you signed allowed CDOC to consider release of over 7,000 incarcerated people, as of April 30, over a month after the order was issued, the CDOC had utilized that authority to release only around 200 people.⁹ With over 16,000 remaining behind bars, Colorado's prisons are still at almost 90% capacity.¹⁰ In the meantime, the number of confirmed cases, symptomatic people and people held in isolation in Colorado's prisons are rising every day.¹¹ **It is clear that the Executive Order was insufficient to address the crisis and that further action is needed now, before more deaths come.** We urge you to exercise your substantial power to safely release as many incarcerated people as possible, most particularly incarcerated people who, due to their age and/or medical conditions, are at serious risk of sickness or death from COVID-19. Without your actions, widespread illness, hospitalizations and deaths are inevitable.

The Need for Urgent Action

There is broad consensus by public health officials that COVID-19 transmission in custodial facilities poses an enormous and potentially catastrophic risk.¹² In a [letter](#) sent to your office on March 17, 2020, a subset of this coalition detailed the reasons Colorado's correctional facilities are the ideal breeding ground for the spread of COVID-19, including the heightened vulnerability and health challenges of incarcerated people, the close confinement and lack of social distancing, limited availability of quality healthcare, poor hygiene conditions and dangerous overcrowding. Former Colorado Department of Corrections (CDOC) Executive Director Rick Raemisch underscored the urgency and severity of the current crisis when, on March 25, he soberly relayed: **"These prisons are bacteria factories. I don't think people**

understand the gravity of what's going to happen if this runs in a prison, and I believe it's inevitable. You're going to see devastation that's unbelievable."¹³ Yet, the CDOC squandered weeks during late March and early April when COVID-19 was allowed to spread essentially unchecked inside our state's prisons, and while we in the free world were diligently practicing social distancing under stay-at-home orders. As a result of this inaction, Colorado prisons are a tinderbox, and they are about to ignite in a deadly way.

Although few prisons have conducted comprehensive testing, the results of those that have should act as a dire warning for Colorado.¹⁴ In Ohio, for example, 3,837 incarcerated people have tested positive for COVID-19, for more than 20% of the state's cases.¹⁵ At least 37 people incarcerated in Ohio and one correctional officer have died of the virus, and the numbers are rising.¹⁶ Sterling Correctional Facility is the only Colorado prison that has undergone substantial testing. Over 50% of those tested were positive.¹⁷ There is every reason to believe that further testing of other Colorado facilities would reveal high infection rates as well.

Incarcerated people who are infected by the virus are much more likely to become seriously ill or die than individuals living free in the community. Much like nursing home residents, incarcerated people are disproportionately likely to have serious medical conditions that make them vulnerable to catching, spreading and dying from the virus.¹⁸ Nearly 6,000 (or about 35 percent of) Colorado's incarcerated population has moderate to severe medical issues.¹⁹ Further, Colorado's prison population is aging, with "[o]ffenders over 50 years of age are one of the fastest-growing prison populations."²⁰ This is despite research showing that recidivism plummets with age and that older incarcerated people are not a public safety risk.²¹ Public health experts agree that incarcerated people age 55 and older face a heightened risk of serious illness or death if infected by COVID-19. For these vulnerable populations, public health experts have found a likely death rate of 20%.²²

The death rate, of course, does not tell the personal stories of people who will suffer behind bars. Anthony Martinez's story underscores the need to take action now.



Anthony Martinez's family.

Anthony Martinez

84 year old in renal failure with pending clemency petition

Anthony Martinez is 84 years old and suffering from renal failure and dementia, as well as other serious medical conditions. He is currently incarcerated in Sterling Correctional Facility, the site of Colorado's 2nd largest COVID-19 outbreak. He and his family are understandably terrified that he will catch and die from the virus. Mr. Martinez has spent over 30 years behind bars for a series of robberies. He has paid a substantial debt to society for these crimes. With his age and infirmity, no one can argue he is public safety risk, but he has at substantial risk of becoming seriously ill or dying from COVID-19 if he remains incarcerated. Mr. Martinez's niece, Kelly, is waiting for his release. She has a room in her home waiting for him to spend his final years. Mr. Martinez has applied for clemency, but he has heard nothing. Particularly, in the wake of this crisis, he could and should be immediately released under your authority.

Colorado just abolished the death penalty. We cannot keep elderly and medically vulnerable Coloradans incarcerated in prisons that are likely to become their death traps.

In prison, as in the broader community, people of color will suffer the most from COVID-19. Black people account for less than 4% of Colorado’s population and yet, account for 7.6% of all COVID-19 cases and 7% of all deaths.²³ Colorado’s Latinx population is similarly disproportionately impacted. Latinx people represent just over 21% of Colorado’s population, but account for 35% of COVID-19 cases.²⁴ Because of historic and systemic racism in our criminal legal system and historic disinvestment in communities of color, Black, Latinx, and Indigenous people are dramatically overrepresented in prisons.²⁵ Thus, infections, serious illness, and deaths among incarcerated people will inevitably fall most heavily upon incarcerated people of color, who are also disproportionately represented among vulnerable populations with diabetes, heart disease, respiratory disease, and other conditions with COVID-19 comorbidity.²⁶

Of course, it is not just people living behind bars who risk sickness and death in crowded correctional facilities; it is the people who work behind bars who will die as well. The New Jersey Department of Corrections reports that 427 workers in state prisons have been diagnosed with COVID-19. At least three have died.²⁷ In the Marion Prison in Ohio, 109 staff members have tested positive, and one has died.²⁸ Rikers Island jail in New York has emerged as one of the most infected and deadly workplaces in the country, with over 8 deputies dead from COVID-19 and more than 800 corrections employees testing positive for the virus.²⁹ As of March 22, 9 CDOC staff have tested positive for COVID-19 and 126 are suspended from work, in quarantine, or in isolation related to possible symptoms of or exposure to COVID-19.³⁰ These numbers almost certainly are a dramatic undercount of the number of infected staff members.

Public health experts are universal in their view that the only way to stem the tide of illness and death in crowded prisons is by substantially decreasing the number of incarcerated people so that social distancing is possible.³¹ As Dr. Carlos Franco-Paredes, infectious disease expert at University of Colorado Anschutz, explains in a [letter](#) he sent to you, Director Williams and other state officials on March 22, 2020:

To contain the spread of the disease, infection prevention protocols must be meticulously followed. These infection prevention protocols include “social distancing” measures, where individuals maintain a distance of at least six feet from each other and frequent hand-washing and other good hygiene practices. . .
In a carceral setting, these protocols would require, for example, that individuals sleep one person per cell, rather than in bunk beds.³²

Thus, the goal of safe depopulation of Colorado’s prisons should be a reduction in the prison population that is adequate to allow for single-cell occupancy, or the equivalent if the prison unit is dorm style, with a prioritization of releasing or single-celling vulnerable incarcerated people. With Colorado prisons operating at around 90% capacity, and many people locked in small cells with one or more cellmates and no possibility of social distancing, the population reduction efforts to date are woefully insufficient to mitigate spread of the virus.³³

Without substantial prison depopulation, we can be virtually certain that the number and percent of infected incarcerated people and staff will grow exponentially, as will serious illness

and death in Colorado's prisons. The further spread of COVID-19 in Colorado's prisons will significantly prolong the time needed to bring the virus under control, overwhelm existing medical capacity inside the prisons, and will be potentially catastrophic for the people incarcerated who disproportionately include populations the CDC has identified at increased risk of mortality from COVID-19.³⁴

While even the most urgent action will not protect incarcerated people and staff from the spread of this virus, you can act now to decrease the number of deaths -- as has been your most singular focus for people living outside of prisons in Colorado. The one way you can meaningfully flatten the curve and save lives inside prisons is to exercise your executive authority and clemency powers to bring down the prison population. **Given that both in absolute numbers and per capita, the United States, and Colorado, incarcerate more people than any other nation in the world, it cannot be doubted that we can release thousands of incarcerated people without compromising the safety of others.**³⁵ We can and we must.

Governors Across the Country are Taking Necessary Action to Save Lives

In using your authority to lower the prison population, you will join the ranks of Governors from a dozen states who have worked to release thousands of incarcerated people on an emergency basis to mitigate the worst outcomes of this crisis. For example, the Governor of New York's executive order will release around 1,100 people incarcerated for parole violations, while the Governor of Kentucky's executive order will lead to the release of 900 incarcerated people.³⁶ The Governor of Arkansas suspended a parole requirement that made 1,233 incarcerated people eligible for early release.³⁷

Governors are appropriately prioritizing the release of medically vulnerable incarcerated people. The Governor of Michigan signed an executive order to release incarcerated people who are elderly, chronically ill, pregnant, have a behavioral health problem, are nearing their release date or are incarcerated for a traffic violation or failure to appear or pay.³⁸ The Governor of Maryland signed an executive order to expedite the release of incarcerated people eligible for release within four months and to accelerate parole considerations for individuals convicted of nonviolent crimes who are older than 55. These actions will result in the release of almost 800 people.³⁹

Governors are also prioritizing the release of people nearing their scheduled release date. The Governor of Ohio recommended the release of around 300 people who were within 90 days of release, the Governor of New Mexico's executive order will release incarcerated people who were scheduled for release in 30 days and the Governor of Pennsylvania's executive order could lead to the release of between 1,500 and 1,800 vulnerable people nearing their scheduled release date.⁴⁰

Finally, governors are using their executive authority to commute sentences and expand the use of home detention in lieu of a prison sentence. The Governor of Oklahoma commuted the sentences of over 450 incarcerated people.⁴¹ The Governor of New Jersey signed an executive order which allows some at-risk incarcerated people and incarcerated people whose sentences are set to expire within three months or who were denied parole within the last year, to be moved to home confinement for the duration of the pandemic.⁴²

Under your leadership, Colorado has joined the Western Pact to help fight the COVID-19 outbreak. As part of this pandemic response, Governors of states in the Western Pact are taking action to decarcerate state prisons. The Governor of Washington commuted the sentences of up to 950 vulnerable incarcerated people, while the Governor of California announced the early release of 3,500 people who were scheduled for release within the next 60 days.⁴³ These gubernatorial actions from across the country are a model for Colorado and provide a clear consensus that safe prison decarceration is a necessary part of any state response to the pandemic.

Planning for successful re-entry of released individuals.

People need to be released now, but we must also address what happens to them when they return to their communities. Our collective efforts relating to reentry should be aimed at ensuring safe transitional or permanent (where possible) housing, food and basic necessities, appropriate mental and physical health services, and financial support for individuals and communities to which newly released people will return. However, attempting to address the substantial array of reentry issues implicated in these goals must not impede efforts to immediately reduce the prison population and release vulnerable incarcerated people. Numerous resources from nonprofits across the country and here in Colorado serve as models for appropriate reentry planning including how to manage the release of vulnerable incarcerated people, and how to uphold public health and safety throughout the process.⁴⁴ Despite these challenges, the Governor's immediate priority, in order to reduce prison density and save lives, must be to safely release as many incarcerated people as possible.

Urgent Recommendations.

As of April 30, the CDOC has exercised its authority to release only around 200 people.⁴⁵ To maximize the number of lives saved, those numbers must be in the 1000s and should be focused on the release of vulnerable people. Here are five steps you have the power to take right now to forcefully address the COVID-19 pandemic and limit the spread of COVID-19 among some of our most vulnerable communities:

- 1. Expedited Presumptive Commutation for vulnerable people.** Within the next 30 days, consider for commutation, with a presumption of release (parole or ISP-I) absent evidence the person poses a “clear risk of physical harm to others or the community,” all incarcerated people who are 55 years or older or who have an underlying health condition that renders them high-risk of serious illness or death according to the CDC (“vulnerable populations”)⁴⁶ and:
 - a. Have a currently pending commutation application; or
 - b. Have been determined by CDOC to have a CARAS score of “low risk” or “very low risk”; or
 - c. Have lived in a CDOC incentive unit for at least the past two consecutive years; or
 - d. Are serving a sentence for crime committed at age 20 or younger; or
 - e. Have a parole eligibility date and have served at least 20 years of their sentence.

- 2. Issue an Executive Order to immediately increase releases as follows:**
 - a. **Reduce new admissions.** Temporarily suspend prison as a sentencing option for lower level non-violent crimes or technical probation revocations or Community

Corrections terminations whose underlying conviction is also for a lower level non-violent crime.

- b. Presumptive parole for vulnerable people past or near their parole-eligibility date.** All “vulnerable populations” who are or will be statutorily eligible for parole within 180 days must be considered (or reconsidered) for parole within the next 30 days, with a presumption of release on parole absent evidence the person poses a clear risk of physical harm to others or the community.
- c. Required parole for people near release date.** Require that all persons that have a mandatory release date within the next 18 months be reviewed by the parole board within the next 90 days and be released to parole or ISP-I with appropriate conditions.
- d. Improve parole board efficiency.**
 - i.** Modify 17-1-119.7 to allow the parole board to better utilize the prison population management measures, including:
 - 1.** Suspend the requirement in (2)(a) that the enumerated prison population management measures may only be used when the vacancy rate is 3% or less for 30 consecutive days. In other words, allow the Parole Board to use these measures regardless of vacancy rate.
 - 2.** Modify (2)(a)(II) to allow the parole board to also review a list of incarcerated people that are within 90 days of their parole eligibility date. Suspend the requirement that people have to have an approved parole plan prior to review. Also allow people who require victim notification to be eligible for file review – but still require victim notification and compliance with other VRA requirements pursuant to section 24-4.1-203.5(1)(j).
 - 3.** Modify (2)(a)(IV)(D) to allow people to be considered for release if they have been regressed from community corrections or parole no less than 60 days, not 180 days.
 - ii.** Suspend the requirement in 17-2-201(9)(a)(I) that the parole board is required to conduct an interview whenever an incarcerated person initially applies for parole and allow the parole board to conduct a review in lieu of a hearing, without the presence of the incarcerated person.
 - iii.** Modify 17-2-201(4)(f)(I)(D) to allow the parole board to conduct a file review in lieu of a hearing, without the presence of the incarcerated person, if the incarcerated person is assessed to be medium or below risk (not just low or very low risk) on the validated assessment instrument developed pursuant to 17-22.5-404(2) and meets readiness criteria established by the board. Also allow people who require victim notification to be eligible for file review – but still require victim notification and compliance with other VRA requirements pursuant to section 24-4.1-302.5.

3. Improve health outcomes and support successful reentry.

- a.** Allocate to CDOC substantial federal COVID-19/FEMA resources to transitional housing for people being released.
- b.** Ensure that people who are over 65 have health insurance upon release.

4. **Timeliness/Staff Resources/Victim Notification.**

- a. Require that CDOC, parole and Governor office staff be re-assigned /properly allocated to expeditiously process parole requests/commutation requests and plan for release so that the deadlines herein can be met. Additional COVID-19 temporary parole board appointees may be required.
- b. Temporarily change time frames for victim input, so that District Attorneys and victims will have 14 days from notification to provide input on parole decisions.
- c. Suspend the requirement under CRS § 16-11-308 that CDOC can only conduct intake at Denver Reception and Diagnostic Center for those individuals who CDOC already has previously conducted an intake.

5. **Provide for further testing.** Provide CDOC or CDPHE with adequate resources to ensure that all state and private prisons are conducting COVID-19 prevalence rate testing on a routine basis. Further prevalence testing is urgently needed at additional corrections facilities including Limon Correctional Facility, Denver Women’s Correctional Facility, Territorial Correctional Facility and Crowley Correctional Facility. Testing should be available for all incarcerated people, especially at risk populations.

Conclusion

To protect the public health and safety of thousands of incarcerated people and the staff that work in these prisons, as well as the health of the broader Colorado public, we urge you to act immediately to mitigate the rising public health catastrophe in Colorado’s prisons. By expanding commutations and parole, you will be taking the bold, but necessary, steps to save lives.

Sincerely,



- ¹ Ryan Osborne, *138 inmates test positive for COVID-19 at Colorado prison*, DENVER 7 (Apr. 24), <https://www.thedenverchannel.com/news/coronavirus/138-inmates-test-positive-for-covid-19-at-colorado-prison>
- ² *JBS meatpacking plant has top COVID-19 infection total in Colorado with 287 cases, 7 deaths*, THE DENVER CHANNEL 7 (May 6, 2020), <https://www.thedenverchannel.com/news/coronavirus/jbs-meatpacking-plant-has-top-covid-19-infection-total-in-colorado-with-287-cases-7-deaths>.
- ³ *Colorado inmate, 86, dies after showing COVID-19 symptoms*, SENTINEL (May 4, 2020), <https://sentinelcolorado.com/news/nation-world/covid19/colorado-inmate-86-dies-after-showing-covid-19-symptoms/>;
- ⁴ *Id.*
- ⁵ Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus*, <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Letter-C-Franco-Paredes-MD.pdf>
- ⁶ *Memo: Fighting the Coronavirus with Decarceration: Policies and Polling, Data for Progress*, DATA FOR PROGRESS, <https://www.dataforprogress.org/memos/fighting-coronavirus-with-decarceration>
- ⁷ See <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/Gov-EO-re-DOC-and-Comm-Corr.pdf>
- ⁸ Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus*, <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Letter-C-Franco-Paredes-MD.pdf>
- ⁹ Data provided from CDOC in response to records request from Senator Pete Lee.
- ¹⁰ *Monthly Population and Capacity Report as of April 30, 2020*, COLORADO DEPARTMENT OF CORRECTIONS, <https://drive.google.com/file/d/1k7k2-oQctPRxRnjrAYL3YiVluOIUTFva/view>
- ¹¹ Ryan Osborne, *138 inmates test positive for COVID-19 at Colorado prison*, DENVER 7 (Apr. 24), <https://www.thedenverchannel.com/news/coronavirus/138-inmates-test-positive-for-covid-19-at-colorado-prison>
- ¹² Kelan Lyons, *Elderly prison population vulnerable to potential coronavirus outbreak*, CT MIRROR (Mar. 11, 2020), <https://ctmirror.org/2020/03/11/elderly-prison-population-vulnerable-to-potential-coronavirus-outbreak/> (“Prisons push people into the path of epidemics. It’s the nature of close confinement and tight social networks.”) Amanda Holpuch, *Calls Mount to Free Low-Risk US Inmates to Curb Coronavirus Impact on Prisons*, THE GUARDIAN (Mar. 13, 2020), <https://www.theguardian.com/usnews/2020/mar/13/coronavirus-us-prisons-jails> (“The more people behind bars, the more transmissions you are going to have. And because we have so many ill people behind bars, it’s going to get there, it’s going to spread like wildfire.”) Madison Pauley, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, MOTHER JONES (Mar. 12, 2020), <https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/> (“For jails and prisons that are already filthy and have, generally speaking, a low standard of clinical care and are trained to take care of one person at a time (a COVID-19 outbreak) will be a very, very difficult process.”) Anne C. Spaulding, *Coronavirus COVID-19 and the Correctional Facility For the Correctional Healthcare Worker*, EMORY CENTER FOR THE HEALTH OF INCARCERATED PERSONS (Mar. 9, 2020), https://www.ncchc.org/filebin/news/COVID_for_CF_HCW_3.9.20.pdf (“Prisons and jails are enclosed environments, where individuals dwell in close proximity. Incarcerated persons sleep in close quarters, eat together, recreate in small spaces. Staff are close by. Both those incarcerated and those who watch over them are at risk for airborne infections.”) Stef W. Kight, *Coronavirus behind bars*, AXIOS (Mar. 14, 2020), <https://www.axios.com/coronavirus-prison-jail-immigrant-detention-0a7c4320-7cc0-490e-a8ce-c3ff2b0fc21.html> (Detention and correctional spaces are the “perfect environment for the spread of COVID-19. So when we talk about social distancing, it’s almost impossible in prisons.”) Oluwadamilola T. Oladeru, Adam Beckman & Gregg Gonsalves, *What COVID-19 Means For America’s Incarcerated Population — And How To Ensure It’s Not Left Behind*, HEALTH AFFAIRS (Mar. 10, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/> (“Our nation’s experience with tuberculosis, HIV and the ongoing hepatitis C epidemic has taught us that correctional settings are reservoirs of infectious diseases.”) Marc F. Stern, *Washington State Jails Coronavirus Management Suggestions in 3 “Buckets”*, WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS (Mar. 5, 2020), <https://www.themarshallproject.org/documents/6796536-Suggestions-for-Jails-3-5-20>; Brad Lander, *Doctors in NYC Hospitals, Jails and Shelters Call on the City to Take More Aggressive Action to Combat the Spread of Coronavirus*, MEDIUM (Mar. 12, 2020), <https://medium.com/@bradlander/doctors-in-nyc-hospitals-jails-and-shelters-call-on-the-city-to-take-more-aggressive-action-to-fb75f0b131c2>; Expert Declaration of Dr. Jonathan Louis Golob, https://www.aclu.org/sites/default/files/field_document/5_declaration_of_dr._jonathan_louis_golob.pdf; Expert Declaration of Robert B. Greifinger, M.D., https://www.aclu.org/sites/default/files/field_document/4_declaration_of_robert_b._greifinger_1.pdf; Expert Declaration of Dr. Marc Stern, <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>; see Declaration of Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus* (Mar. 22, 2020), <https://acluco-wp-content/uploads/2020/05/Carlos-Franco-Paredes-Expert-Declaration.pdf>; *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>
- ¹³ David Montgomery, *‘Prisons Are Bacteria Factories’; Elderly Most at Risk*, PEW (Mar. 25, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/03/25/prisons-are-bacteria-factories-elderly-most-at-risk>
- ¹⁴ Ames Alexander, *As massive COVID-19 outbreak hammers prison, NC sends reinforcements*, THE CHARLOTTE OBSERVER (Apr. 20, 2020), <https://www.charlotteobserver.com/news/coronavirus/article242133306.html>; Linda So & Grant Smith, *In 4 U.S. state prisons, nearly 3,300 inmates test positive for coronavirus -- 96% without symptoms*, REUTERS (Apr. 25, 2020), <https://uk.reuters.com/article/uk-health-coronavirus-prisons-testing-in/in-4-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUKKCN2270RY?il=0> (“In one North Carolina prison, more than 450 incarcerated people — about 60% of the prison’s population — and eight staff members, tested positive for COVID-19. In four state prison systems — Arkansas, North Carolina, Ohio and Virginia — 3,277 incarcerated people have tested positive for COVID-19. In the seven state prison systems conducting mass tests, 49 incarcerated people have died.”)
- ¹⁵ Bill Chappell, *73% Of Inmates At An Ohio Prison Test Positive For Coronavirus*, NPR (Apr. 20, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/83894321/73-of-inmates-at-an-ohio-prison-test-positive-for-coronavirus>; Linda So & Grant Smith, *In 4 U.S. state prisons, nearly 3,300 inmates test positive for coronavirus -- 96% without symptoms*, REUTERS (Apr. 25, 2020), <https://uk.reuters.com/article/uk-health-coronavirus-prisons-testing-in/in-4-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUKKCN2270RY?il=0>
- ¹⁶ *Coronavirus cases climb in Ohio prisons, juvenile facilities*, 10TV WBNS (Apr. 5, 2020), <https://www.10tv.com/article/coronavirus-cases-climb-ohio-prisons-juvenile-facilities-2020-may>; Bennett Haerberle, *Officials: Corrections officer at Marion Correctional Institution dies from*

COVID-19, 10TV WBNS (Mar. 29, 2020), <https://www.10tv.com/article/officials-corrections-officer-marion-correctional-institution-dies-covid-19-2020-apr>

¹⁷ Ryan Osborne, *138 inmates test positive for COVID-19 at Colorado prison*, DENVER 7 (Apr. 24),

<https://www.thedenverchannel.com/news/coronavirus/138-inmates-test-positive-for-covid-19-at-colorado-prison>

¹⁸ See Declaration of Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus* (Mar. 22, 2020), <https://aclu-co.org/wp-content/uploads/2020/05/Carlos-Franco-Paredes-Expert-Declaration.pdf>.

¹⁹ *Statistical Report FY 2018*, COLORADO DEPARTMENT OF CORRECTIONS, https://drive.google.com/file/d/1Sbiu6bl7NVZ7BL-ij3u_TyrbUOAOwKS/view

²⁰ *Id.* (“Between 1999 and 2018, the number of offenders over the age of 50 grew by more than seven times the rate of the overall general prison population. During the last 10 years, the number of offenders aged 50 and over increased from 3,059 to 4,019 (31.4%), while the total population experienced a 13.1% decrease (from 22,964 to 19,961) during the same time.”)

²¹ Rebecca Silber, Alison Shames & Kelsey Reid, *Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations*, VERA INSTITUTE (Dec. 2017), <https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations>. (“The cost of incarcerating older people is double that of housing younger ones due to health care expenses, and recidivism research demonstrates that arrest rates drop to just more than 2 percent in people ages 50 to 65 years old and to almost zero percent for those older than 65.”)

²² See <https://aclu-co.org/wp-content/uploads/2020/05/Carlos-Franco-Paredes-Expert-Declaration.pdf>.

²³ Jordan Chavez, *Colorado leaders taking more steps to address racial disparities during COVID-19 pandemic*, 9 NEWS (Apr. 29, 2020), <https://www.9news.com/article/news/health/coronavirus/colorado-addressing-racial-disparities-amid-covid-19-pandemic/73-1000411f-55d0-4cb6-bcf6-420d17367c5d>; Jessica Seaman, *People of color in Colorado disproportionately impacted by coronavirus, state’s first racial data shows*, DENVER POST (Apr. 14, 2020), <https://www.denverpost.com/2020/04/13/colorado-coronavirus-covid-racial-breakdown/>

²⁴ Jordan Chavez, *Colorado leaders taking more steps to address racial disparities during COVID-19 pandemic*, 9 NEWS (Apr. 29, 2020), <https://www.9news.com/article/news/health/coronavirus/colorado-addressing-racial-disparities-amid-covid-19-pandemic/73-1000411f-55d0-4cb6-bcf6-420d17367c5d>

²⁵ *Colorado Profile*, PRISON POLICY INITIATIVE, <https://www.prisonpolicy.org/profiles/CO.html>

²⁶ Fabiola Cineas, *Covid-19 is disproportionately taking black lives*, VOX (Apr. 8, 2020),

<https://www.vox.com/identities/2020/4/7/21211849/coronavirus-black-americans>

²⁷ Anthony G. Attrino, *3rd NJ correctional police officer dies from COVID-19*, NJ ADVANCE MEDIA GROUP (Apr. 24, 2020),

<https://www.correctionsone.com/coronavirus-covid-19/articles/3rd-nj-correctional-police-officer-dies-from-covid-19-cwbyZxpW2cBmY3nQ/>

²⁸ Bill Chappell, *73% Of Inmates At An Ohio Prison Test Positive For Coronavirus*, NPR (Apr. 20, 2020),

<https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/83894321173-of-inmates-at-an-ohio-prison-test-positive-for-coronavirus>

²⁹ Deanna Paul & Ben Chapman, *Rikers Island Jail Guards Are Dying in One of the Worst Coronavirus Outbreaks*, THE WALL STREET JOURNAL (Apr. 22, 2020), <https://www.wsj.com/articles/rikers-island-jail-guards-are-dying-in-one-of-the-worst-coronavirus-outbreaks-11587547801>

³⁰ Data provided from CDOC in response to records request from Senator Pete Lee.

³¹ See, e.g., Declaration of Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus* (Mar. 22, 2020), <https://aclu-co.org/wp-content/uploads/2020/05/Carlos-Franco-Paredes-Expert-Declaration.pdf>.

³² See <https://acluco-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/COVID-19-Letter-C-Franco-Paredes-MD.pdf>

³³ As a result of the virus, many incarcerated people are spending their days on lockdown, rarely permitted to leave their cells. With more than one incarcerated person to a cell, the virus will still spread. Regardless, cell confinement lockdown is a cruel, unworkable and -- after the passage of some time -- illegal way to manage this crisis.

³⁴ See Declaration of Carlos Franco-Paredes, MD, MPH, *University of Colorado Anschutz Medical Campus* (Mar. 22, 2020), <https://aclu-co.org/wp-content/uploads/2020/05/Carlos-Franco-Paredes-Expert-Declaration.pdf>.

³⁵ See <https://aclu-co.org/column-how-covid-19-underscores-the-consequences-of-mass-incarceration/>

³⁶ Brendan J. Lyons, *NY to release 1,100 parole violators as coronavirus spreads*, TIMES UNION (Mar. 27, 2020),

<https://www.timesunion.com/news/article/Deaths-surge-again-in-New-York-from-coronavirus-15160973.php>;

Kentucky plans to release more than 900 prisoners because of the COVID-19 outbreak, WDRB (Apr. 2, 2020),

https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html

³⁷ Scott Carroll, *Arkansas suspends parole requirement, makes 1,244 inmates eligible for early release*, KATV (Apr. 24, 2020),

<https://katv.com/news/local/arkansas-suspends-parole-rule-makes-1244-inmates-eligible-for-early-release>

³⁸ *Governor Whitmer Signs Executive Order Protecting Jail, Juvenile Detention Center Populations*, OFFICE OF GOVERNOR GRETCHEN WHITMER (Mar. 29, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-523423--,00.html

³⁹ Luke Broadwater, *With coronavirus spreading, Maryland Gov. Hogan signs order for expedited release of hundreds of prisoners*, BALTIMORE SUN (Apr. 19, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-pol-hogan-prisoners-20200419-7mzvooaxfbnygowb2xdeucrme-story.html>

⁴⁰ Jessie Balmert, *Coronavirus in Ohio: Gov. Mike DeWine plans to release some prison inmates due to COVID-19*, THE ENQUIRER (Apr. 7, 2020), <https://www.cincinnati.com/story/news/2020/04/07/coronavirus-ohio-gov-mike-dewine-give-update-covid-19-response-prison-population/2961390001/>;

Elise Kaplan, *Gov. orders early release of some inmates*, ALBUQUERQUE JOURNAL (Apr. 6, 2020),

<https://www.abqjournal.com/1440938/gov-orders-early-release-of-some-inmates-from-prison.html>;

Matt Miller, *Gov. Wolf issues order to free up to 1,800 non-violent, at-risk Pa. prison inmates over coronavirus fears*, PENNSYLVANIA REAL-TIME NEWS (Apr. 10, 2020),

<https://www.pennlive.com/news/2020/04/gov-wolf-issues-order-to-free-up-to-1800-non-violent-at-risk-pa-prison-inmates-over-coronavirus-fears.html>

⁴¹ Hicham Raache, *Gov. Stitt approves hundreds of prison commutations to mitigate coronavirus spread*, OKLAHOMA NEWS 4 (Apr. 10, 2020),

<https://kfor.com/health/coronavirus/gov-stitt-approves-hundreds-of-prison-commutations-to-mitigate-coronavirus-spread/>

⁴² Eric Kiefer, *More NJ Prisoners To Be Released Amid Coronavirus: Gov. Murphy*, PATCH (Apr. 10, 2020), <https://patch.com/new-jersey/newarknj/more-nj-inmates-be-released-prison-coronavirus-murphy>

⁴³ Alfred Charles, *State to release nearly 1,000 nonviolent prison inmates early to limit COVID-19 spread*, KOMO NEWS (Apr. 13, 2020),

<https://komonews.com/news/local/state-to-release-nearly-1000-inmates-early-to-limit-coronavirus-spread>;

Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, LOS ANGELES TIMES (Mar. 31, 2020),

<https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>

⁴⁴ For example, see Benjamin A. Howell et al., *Protecting Decarcerated Populations in the Era of COVID19: Priorities For Emergency Discharge Planning*, HEALTH AFFAIRS: BLOG (Apr. 13, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200406.581615/full/>, Angela Hawken et al., *Recommendations for Rapid Release and Reentry: During the COVID-19 Pandemic*, NYU: MARRON INST. URB. MGMT. (Apr. 13, 2020), <https://marroninstitute.nyu.edu/papers/recommendations-for-rapid-release-and-reentryduring-the-covid-19-pandemic/>; *Getting On After Getting Out: A ReEntry Guide for Colorado 5th Edition*, COLORADO CRIMINAL JUSTICE REFORM COALITION, <https://www.cjrc.org/find-help/go-guide/>

⁴⁵ Data provided from CDOC in response to records request from Senator Pete Lee.

⁴⁶ *Are You at Higher Risk for Severe Illness?* CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>; *About COVID-19*, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, <https://covid19.colorado.gov/about-covid-19>