



**Jerome Wright on behalf of the
NYCAIC #HALTsolitary CAMPAIGN**

Testimony before the New York State Senate and Assembly Hearing on:
Exploring solutions to the disproportionate impact of COVID-19 on minority communities
May 18, 2020

**Releasing People from Prison and Ending Solitary Confinement Are Central to Addressing
the Racially Disproportionate Impact of COVID-19**

With the current pandemic causing death, social and economic calamity, and utter devastation on a massive scale in New York, and with Black People and other People of Color disproportionately suffering these grave consequences, it is indeed imperative that the Senate and Assembly identify and legislate solutions to the racially disproportionate impact of COVID-19. As an integrated part of that effort, there is no way for the Governor and legislature to effectively address these racially disparate impacts without taking action for New Yorkers in prison and jail and their families.

Most obviously, Black and Latinx People, and other People of Color, are disproportionately locked in prisons, jails, youth detention facilities, forensic facilities, and other sites of detention¹ - institutions widely recognized as hotspots for COVID-19 contagion. Recent data show that Black and Latinx People in particular, and People of Color more generally, in prison are getting sick and dying in prison at vastly disproportionate rates, even higher than the grossly

¹ This testimony will focus primarily on New York state prisons, though much of what is addressed applies to local jails, youth detention facilities, and forensic psychiatric facilities, all of which disproportionately hold People of Color and all of which are facing severe challenges with COVID-19 outbreaks, use of solitary confinement, and a failure to release large numbers of people. See, e.g., Rosa Goldensohn, *Covid-sick At Rikers On \$1 Bail — And A Parole Violation*, The City, April 27, 2020, available at: <https://thecity.nyc/2020/04/rikers-island-early-release-sought-amid-coronavirus-soread.html>; Gabrielle Fonrouge, *Upstate inmates forced to clean up after coronavirus patients: 'We're scared'*, The New York Post, April 17, 2020, available at: <https://nypost.com/2020/04/17/ny-inmates-forced-to-clean-up-after-coronavirus-patients/>; Eileen Grench, *Covid Kills Staffer At Juvenile Center Where Youth Are Being Sent For Safety*, April 9, 2020, available at: <https://thecity.nyc/2020/04/covid-staff-death-rocks-juvenile-center-for-virus-free-youth.html>; Ethan Geringer-Sameth, *10 Dead, Hundreds Infected as State Psychiatric Facilities Become Another Crisis Point in Coronavirus Outbreak*, April 17, 2020, available at: <https://www.gothamgazette.com/state/9321-ten-dead-hundreds-infected-new-york-state-psychiatric-facilities-crisis-coronavirus-outbreak>.

disproportionate rates in the community. Specifically, 81% of people who have died during a surge of COVID-19 related deaths in the prisons are People of Color, compared to 62% in outside communities in New York City.

It is indisputable by the numbers that Black and Brown people are fodder for an incarceration system that is hell-bent on watching us die, with or without formal death sentences. That is why we must address the systemic racism, torture, and death inherent to the punishment paradigm. The same system that was willing to sweep under the rug the lynching of Ahmaud Aubrey and the murder of Breonna Taylor is just as cavalier with the disproportionate loss of Black and Brown lives in prison during COVID-19. Our demand is simple: We want accountability and we want urgent, life-saving measures, including mass clemency and ending the torture of solitary confinement.

Moreover, although prison, jail, and detention walls attempt to divide people incarcerated from the rest of our state, New York's incarceration system is fully intertwined with outside communities and the policies that impact all New Yorkers, particularly New Yorkers of Color and low-income families. It is impossible to understand the racially disproportionate impact of COVID-19 on Black and Latinx communities and other communities of Color without understanding how decades of racist incarceration policies have decimated our communities and made them more vulnerable to the virus. **All of the other factors that have made People of Color more vulnerable to COVID-19 - such as disparities in access to health care, housing, employment, and more - are directly interconnected with decades of racist policing, prosecution, sentencing, and caging of Black and Brown people.**

Particularly during this pandemic, the legislature has a duty - as does the Governor - to take action to protect and uplift Black and Brown women and men—transgender and cisgender people—and gender non-conforming people, and that must include people in New York prisons, jails, and detention facilities, and their families. COVID-19 is ravaging New York's prisons, jails, and detention facilities. According to data from the state Department of Corrections and Community Supervision, thousands of staff and incarcerated people are confirmed to have COVID-19 in close to half of the New York State prisons.² New York State prisons have a high rate of infection despite only testing less than two percent of incarcerated people. Medical and public health experts have predicted that if not properly addressed the spread of COVID-19 in prisons and jails, and the porous interplay with outside communities, could lead to a doubling of the total number of deaths by the virus in the whole community (inside and out), on the order of adding an additional 100,000 deaths nationwide.³

² DOCCS COVID-19 Report, New York State Department of Corrections and Community Supervision, *available at*: <https://doccs.ny.gov/doccs-covid-19-report>

³ ACLU Analytics and Researchers from Washington State University, University of Pennsylvania,

Thus far, the state's response to the rapid spread of COVID-19 in prisons, jails, and detention centers has reportedly included: (a) the release of only four-tenths of one percent of people in prison despite health experts calling for thousands or tens of thousands of people to be released; (b) the massive infliction of solitary confinement in contravention of health experts' recommendations; (c) using prison slave labor to make products - under threat of solitary - that people in prison could not themselves use until there was extensive public and media pressure to change course (including making hand sanitizer⁴ and masks⁵), as well as coffins⁶; (d) stopping all programming and visitation, without providing free phone calls and emails; (e) locking down almost the entire women's Bedford Hills prison in solitary confinement,⁷ denying women adequate food,⁸ and failing to release vulnerable women (other than only eight pregnant women under a very narrow criteria)⁹; (f) conducting minimal testing and failing to provide adequate medical care; and (g) failing to provide comprehensive data or information about COVID-19 in the prisons or the response, not to mention the (h) the impending increased pre-trial jailing due to the rolling back of bail reform and (h) continued and increased policing and incarceration of predominantly Black and Brown people, including violent policing to purportedly enforce social distancing¹⁰ as well as to remove homeless people from the subways without providing them adequate supports¹¹.

and University of Tennessee, *COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures to Reduce Jails*, available at:

https://www.aclu.org/sites/default/files/field_document/aclu_covid19-jail-report_2020-8_1.pdf.

⁴ Christopher Robbins, *Where Hand Sanitizer Is Contraband: Are NY Prisons Ready For Coronavirus?*, The Gothamist, March 12, 2020, available at:

<https://gothamist.com/news/where-hand-sanitizer-contraband-are-ny-prisons-ready-coronavirus>.

⁵ Samantha Michaels, *New York Prisoners Are Sewing Masks for Hospitals—But Most Don't Have Their Own*, Mother Jones, May 6, 2020, Available at:

<https://www.motherjones.com/crime-justice/2020/05/new-york-prisoners-are-sewing-masks-for-hospitals-but-most-dont-have-their-own/>

⁶ Teri Weaver, *Coronavirus in NY: Prisoners ramp up coffin production to 1,400 pine boxes a week*, Syracuse.com, April 24, 2020, available at:

<https://www.syracuse.com/coronavirus/2020/04/coronavirus-in-ny-prisoners-ramp-up-coffin-production-to-1400-pine-boxes-a-week.html>.

⁷ Lyra Walsh Fuchs, *The Pandemic Inside the Only Women's Maximum-Security Prison in New York*, Dissent Magazine, April 20, 2020, available at:

https://www.dissentmagazine.org/online_articles/the-pandemic-inside-the-only-womens-maximum-security-prison-in-new-york.

⁸ Kevin Gosztola, *New York Is Denying Incarcerated Women Food, Says Grassroots Coalition*, Shadow Proof, May 1, 2020, available at:

<https://shadowproof.com/2020/05/01/new-york-is-denying-incarcerated-women-food-says-grassroots-coalition/>

⁹ Angelina Chapin, *Cuomo's Order to Release Pregnant Women From Prison Is a Sham*, The Cut, May 1, 2020, available at: <https://www.thecut.com/2020/05/governor-andrew-cuomo-coronavirus-women-pregnant-prison.html>

¹⁰ See, e.g., Kim Bellware, *Violent arrest in New York raises questions about police enforcement of social distancing orders*, The Washington Post, May 5, 2020, available at:

<https://www.washingtonpost.com/nation/2020/05/05/donni-wright-nyc-arrest/>.

¹¹ See, e.g., Miranda Bryant, *Closing New York subway will have 'devastating' impact on homeless, experts warn*, The Guardian, May 6, 2020, available at:

<https://www.theguardian.com/us-news/2020/may/06/new-york-city-subways-closed-homeless-coronavirus>.

The legislature must immediately reconvene remotely and pass a slate of long overdue measures to mitigate the devastating racially disproportionate harms, including the HALT Solitary Confinement Act (which has majority support in both houses), Elder Parole, and Fair and Timely Parole, as well as legalizing marijuana and ending the war on drugs, ending incarceration for parole violations, strengthening family connections through visiting and free electronic communication, ending prison slave labor, and more.

1) It is Outrageous that Incarceration is Excluded from this Hearing and More Importantly from New York's COVID-19 Response as a Whole

It is truly outrageous that the legislature could purport to have a hearing on the racially disproportionate impact of COVID-19 and not include the incarceration system as part of it. It is not, however, surprising because tragically prisons have almost entirely been excluded from New York State's response to COVID-19 as a whole. This neglect stems from a general disregard for people in prison as human beings worthy of recognition let alone compassion.

As an individual incarcerated in an Ohio prison whose letter Michelle Alexander reproduced in the New York Times stated, "Herein lies the cause of the profound spread of the virus throughout the institution: the collective sense of the undeservingness of [incarcerated people]. A vaccination would be nice. Proper P.P.E. would help. But the real cure for our woes is an affirmation of the inalienable entitlement to life for people in prisons and jails."¹²

Both the devastating, racially driven, impact of COVID-19 inside the prisons and jails, and the devastating, racially driven role that incarceration plays in making Black and Brown people in outside communities more vulnerable to the virus, make it clear that the legislative solutions arising from this hearing must include HALT, Elder Parole, Fair and Timely Parole, and other measures to address the racist abuse and neglect in New York's prisons and jails.

a) COVID and the Longstanding Crisis of Abuse and Neglect in New York State Prisons have Led to a Surge in Deaths Behind Bars, and Black People, and All People of Color, are Dying at Extremely Disproportionate Rates

Newly released data, recently reported on in the Daily News,¹³ shows that there has been a surge in deaths in New York prisons due to COVID-19 and that 81% of people who died behind bars

¹² Michelle Alexander, "Let Our People Go," *The New York Times*, May 13, 2020, available at: <https://www.nytimes.com/2020/05/13/opinion/coronavirus-prison-outbreak.html>.

¹³ Noah Goldberg, *NY prisons see sharp spike in deaths since coronavirus outbreak, Black [people] hit hardest behind bars*, New York Daily News, May 14, 2020, available at: <https://www.nydailynews.com/coronavirus/ny-coronavirus-prison-deaths-blacks-disproportionate-20200514-xjk4v5wovrhfpil5gevbgyui-story.html>.

amidst this outbreak of COVID-19 were People of Color, a racial disparity even higher than that of deaths in New York City and State as a whole. The vast racial disparities in deaths continue a longstanding “[scourge of racial bias](#)” in New York State prisons -- from violent interpersonal racism by staff, to the torture of solitary confinement, to parole release denials.¹⁴

For months, public health experts, people in prison, people with loved ones inside, formerly incarcerated people, and allied advocates have demanded that Governor Cuomo grant mass clemencies, end solitary confinement, conduct mass testing, and provide proper medical care to people in his prisons. It has been nearly impossible for people to carry out social distancing or proper hygienic practices in New York prisons, or receive adequate medical care. Now, outbreaks of COVID-19 and a longstanding crisis of abuse and neglect have taken the lives of Black and Brown New Yorkers at rates exceeding the already appalling racial disparities in the broader community.

ANALYSIS OF DOCCS DEATHS 1/1/20 - 5/5/20				
	3/30/20-5/5/2020		1/1/20-3/29/2020	
	Number	%	Number	%
Black People	16	59.26%	9	45.00%
Latinx People*	4	14.81%	3	15.00%
Asian & Native Am.	2	7.4%	1	5.00%
Total People of Color	22	81.48%	13	65.00%
White People	5	18.52%	7	35.00%
Total	27		20	
Median Age	62		52	
55 and above	21	77.78%	8	40.00%
65 and above	12	44.44%	5	25.00%
75 and above	5	18.52%	0	0.00%

*NYS DOCCS classifies Latinx people as “Hispanic”

The harms caused by COVID-19 and the responses by the state behind the walls certainly go beyond deaths to include other severe medical harm, the psychological and physical harm of solitary confinement, the devastation of being cut off from family, the trauma of seeing others suffering or knowing or not knowing about loved ones in the outside community suffering, not being able to attend deathbed visits or funerals of loved ones, and more. At the same time, this

¹⁴ Michael Schwartz, Michael Winerip and Robert Gebeloff, The Scourge of Racial Bias in New York State’s Prisons, The New York Times, Dec. 3, 2016, available at: <https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html>.

new data provides further proof that taking dramatic action vis-a-vis the prisons is both a matter of life and death and an essential component of racial justice.

More specifically, on March 30, 2020 Juan Mosquero, a Latinx person, died of COVID-19 at Sing Sing Correctional Facility. He was the first incarcerated person in the New York State prison system to die from the virus. Since Mr. Mosquero's death, there has been a surge of deaths in New York prisons. Data obtained from state agencies through Freedom of Information Law requests shows that the rate at which people have died in NY prisons is 3.24 times higher than for the first three months of the year.

The 2020 data on deaths includes the 15 incarcerated people confirmed by DOCCS to have died due to COVID-19 in the period from March 30 to May 5, as well as 12 additional people for whom the cause of death has not been confirmed. (At least one person has died of COVID-19 since then). For months, advocates have called into question DOCCS' tracking and reporting of COVID-19 deaths and infection rates. For the 16 people who have been reported by DOCCS to have died of COVID-19, they died in a total of eight prisons. Those eight prisons accounted for 18 of all deaths between March 30 and May 5; by contrast only 3 people died in these prisons during the first three months of 2020, further showing the surge in deaths.

Most relevant to this hearing, this devastating death toll has hit Black People and other People of Color hardest. As noted above, the data shows that 59% of all people who died are Black New Yorkers, and over 81% of all incarcerated people who have died are People of Color.

One of the people who died was Darlene "Lulu" Benson-Seay, a 62-year-old Black woman who, like nearly all women incarcerated in New York State, was a survivor of physical and sexual abuse.¹⁵ She had endured horrific trauma as a child and throughout her life. As Beth Richie, author of *Arrested Justice: Black Women, Violence, and America's Prison Nation*, wrote about Lulu: "Our society gave up on her long before Covid-19, long before her sentence started. She was probably a uniquely wonderful person, but she is also tragically typical of the way that black women's lives are considered disposable and our humanity is undermined, both by the ways she had to witness horrific violence as a child and then figure out how to survive within the context of structural racism and the mean-spirited carceral state."¹⁶ At the time Lulu died, she was seeking release through various mechanisms, including clemency as a survivor of gender-based violence, re-sentencing under New York's Domestic Violence Survivors Justice Act, and medical parole because of a range of debilitating health conditions, including "chronic

¹⁵ Justine Van Der Leun, *Death of a Survivor*, The New Republic, May 3, 2020, Available at: <https://newrepublic.com/article/157589/death-survivor>.

¹⁶ *Id.* (quoting Ritchie).

obstructive pulmonary disease, hepatitis C, seizure disorder, and stage-five chronic kidney disease. She also had a heart attack and open heart surgery in January.”¹⁷

Another individual who died, Benjamin Smalls, was a 72-year-old Black man who had already served over 20 years in prison at the time he died. As reported in the Daily News, his daughter recalled him saying, “I can’t ask for anything more right now other than to be free.” Despite repeated attempts to get him released, Benjamin was denied medical parole, leaving his daughter to wonder, “Are they even looking at the paperwork being sent in by people? Is it a waste of time? There are a lot of people in this situation.”¹⁸

Meanwhile, Leonard Carter, a 60-year-old Black man, had already been granted parole before he died but still he had not been released. He had already spent over 24 years in prison and was just six weeks away from being able to go home.¹⁹

We ask the legislature to reflect deeply on each of these individuals and their family members and on all the people whose names and experiences will not garner media coverage. We also ask you to reflect deeply on the high rates of death in the prison system, the predicted possibility of deaths continuing to increase, and the extreme racial disproportionately - far exceeding the horrific disproportionality in the outside community at large. For these and other reasons, it is beyond problematic that the incarceration system is not included in this hearing. The legislature must act now to pass legislation to address this crisis, including HALT, Elder Parole, and Fair and Timely Parole, and the Governor must grant clemency to thousands of people.

b) The Incarceration System Drives Racial Disparities in the Community

In addition to the racially disproportionate harm being inflicted by COVID-19 on people in prison and their families, decades of incarceration policies significantly contribute to all of the other factors that make Black, Brown, and other marginalized communities especially vulnerable to COVID-19. Through prisons and jails locking up and removing large and unprecedented numbers of people, police terrorizing and surveilling whole communities, so-called collateral consequences when people return home from prison, and the intersection of these policies with redlining, gentrification, food policies, environmental injustice, lack of education and

¹⁷ Van Der Leun, *Death of a Survivor*.

¹⁸ Chelsia Rose Marcus, *NY prisoner with coronavirus, 72, dies with bid for medical parole pending*, New York Daily News, May 7, 2020, Available at: <https://www.nydailynews.com/coronavirus/ny-coronavirus-new-york-medical-parole-20200507-i7tr6ginbnfupizijzp5lmykjm-story.html>.

¹⁹ David Brand, *Advocates plan vigil for inmate who died in Queens state prison*, Queens Daily Eagle, April 23, 2020, available at: <https://queenseagle.com/all/vigil-queensboro-prison-leonar-carter-died>.

employment opportunities, health care disparities, and more, the mass incarceration of predominantly Black and Brown people has driven mass racialized inequality.

As renowned sociologists Bruce Western and Becky Pickett have long documented: “The social inequality produced by mass incarceration is sizable and enduring for three main reasons: it is invisible, it is cumulative, and it is intergenerational. The inequality is invisible in the sense that institutionalized populations commonly lie outside our official accounts of economic well-being. [Incarcerated people], though drawn from the lowest rungs in society, appear in no measures of poverty or unemployment. As a result, the full extent of the disadvantage of groups with high incarceration rates is underestimated. The inequality is cumulative because the social and economic penalties that flow from incarceration are accrued by those who already have the weakest economic opportunities. Mass incarceration thus deepens disadvantage and forecloses mobility for the most marginal in society. Finally, carceral inequalities are intergenerational, affecting not just those who go to prison and jail but their families and children, too.”²⁰

In turn, the particularly vulnerabilities to COVID-19 that Black and Brown New Yorkers face are a direct result of the incarceration system and the long legacy of racist institutions that preceded it. Fabiola Cineas recently reported in Vox that “Hundreds of years of slavery, racism, and discrimination have compounded to deliver poor health and economic outcomes for black people — heart disease, diabetes, and poverty, for starters — that are only being magnified under the unforgiving lens of the coronavirus pandemic.”²¹ Cineas goes on to document how people who are incarcerated are especially vulnerable to COVID-19, how Black people are overrepresented amongst people incarcerated, and how including people in prison is essential to understanding the scale of the pandemic’s impact.

Moreover, incarceration is fully intertwined with the lives of New Yorkers, particularly Black and Brown New Yorkers. Nearly one out of every two people in this country has had an immediate family member who has been incarcerated, and Black people are 50% more likely to have had a family member incarcerated and three times more likely to have had a family member incarcerated for more than a year.²² Nearly one in two Black women currently has a family member incarcerated (44%) and nearly a third of Black men do, compared to 12% of white women and 6% of white men.²³ There are an estimated 105,000 children in New York with an

²⁰ Bruce Western and Becky Pettit, *Incarceration & Social Inequality*, Daedalus, American Academy of Arts and Sciences, Summer 2010, available at: <https://www.amacad.org/publication/incarceration-social-inequality>.

²¹ Fabiola Cineas, *Covid-19 is disproportionately taking black lives*, Vox, April 8, 2020, available at: <https://www.vox.com/identities/2020/4/7/21211849/coronavirus-black-americans>.

²² *Every Second: The Impact of the Incarceration Crisis on America’s Families*, FWD.us, Dec. 2018, <https://everysecond.fwd.us/downloads/EverySecond.fwd.us.pdf>.

²³ Hedwig Lee, Tyler McCormick, Margaret T. Hicken and Christopher Wildeman, *Racial Inequalities In Connectedness To Imprisoned Individuals In The United States*, Du Bois Review: Social Science Research on Race, Volume 12, Issue 2, Fall 2015, pp. 269-282,

incarcerated parent.²⁴ Upwards of 80% of women in prison are parents,²⁵ and large numbers of men as well.

To ignore the incarceration system at this hearing, or more generally in the response to COVID-19, is to ignore the daily lived experiences of Black and Brown people in this state and a major structural reason for the disparities in COVID-19 outcomes in New York State. Relatedly, to deny people who have been in prison the opportunity to testify before this hearing is in many ways to define us solely by the fact of our incarceration, act as if we are not part of the broader Black and Brown community, and determine that being formerly incarcerated somehow disqualifies us from being able to speak about the disproportionate harm of COVID-19 on our communities as a whole. Yes, we are experts on the prison system and are leading campaigns to transform or dismantle it. Yes, we have people who we love who are still locked up and facing the racially disproportionate harm as COVID-19 ravages the prisons. Yes, people in prison are an integral part of our communities and must be recognized as such. *And*, we are also members of the broader Black and Brown community and tragically know all too well how COVID-19 is devastating our family members, loved ones, and community members on the outside as well. As many of us provide food, PPEs, and other aid and assistance to people in the outside community and as many of us bury loved ones whose lives have been taken by COVID-19 - both in prisons and on the outside - we embody the falsity of extricating people in prison from the broader community and the reality that we are all one.

2) Failure to Release People from Prison is Driving Racially Disproportionate Harm

The racially disproportionate harm in New York's prisons and jails are driven in large part by the state's failure to release large numbers of people from prisons and jails. Health experts have been crying out for state officials to release thousands, if not tens of thousands, of people from New York's prisons to save lives and stop the spread of COVID-19 in prisons and in turn in outside

<https://www.cambridge.org/core/journals/du-bois-review-social-science-research-on-race/article/racial-inequalities-in-connectedness-to-imprisoned-individuals-in-the-united-states/D015904ED108B3B0A18454450104845A>.

²⁴ New York State Office of Children and Family Services, https://ocfs.ny.gov/main/incarcerated_parents/default.asp.

²⁵ Cary Aspinwall, Keri Blakinger and Joseph Neff, *What Women Dying In Prison From COVID-19 Tell Us About Female Incarceration*, The Marshall Project, May 14, 2020, available at: <https://www.themarshallproject.org/2020/05/14/what-women-dying-in-prison-from-covid-19-tell-us-about-female-incarceration>.

communities.²⁶ Governor Cuomo has had thousands of clemency petitions on his desk, many from well before the coronavirus, and yet he continues to fail to act.

The failure to release people has already directly led to suffering and death, particularly of People of Color, and will continue to do so. The data referenced above shows that the vast majority of people who have died since the COVID-19 outbreak are older people - individuals who pose the least risk of anyone who could be released and who in fact pose little to no risk to society if released. Specifically:

- 78% of people who died since March 30 were older adults--aged 55 and older (compared to 40% in 2020 prior to this date).
- The median age of those who have died since March 30 is 62 years old (compared to a median age of 52 years in 2020 prior to this date).
- 1 in 5 people who died since March 30 were over age 75 and 44% were over age 65 (compared to 0% over 75 and 25% over 65 in 2020 prior to this date).
- The oldest person who died was 85 years old.

According to allies at the Release Aging People in Prison (RAPP) campaign and Parole Preparation Project, who are leading the charge to demand mass releases from prison, of the 43,801 New Yorkers who are currently in custody, 72% are Black or Latinx, 10,200 are over 50, and 3,500 have been behind bars for more than 20 years, including 800 people who have served over 30 years. There are countless people who have transformed their lives, pose no risk to society, are mentors and community leaders, and even before the pandemic should have been released.²⁷ There are countless people who are aging or have serious medical issues that even before the pandemic could not be addressed in prison.²⁸ There are countless people particularly susceptible to the virus, including elderly people, people with chronic illnesses from cancer to heart disease, pregnant women and new mothers, people with mental health needs, and others.

²⁶ See, e.g., David Leonhardt, *What Cuomo Hasn't Done: Protect elderly prisoners*, The New York Times, March 25, 2020, available at: <https://www.nytimes.com/2020/03/25/opinion/coronavirus-prisons-cuomo.html>; Dr. Homer Venters, *Coronavirus behind bars: 4 priorities to save the lives of prisoners*, The Hill, March 23, 2020, available at: <https://thehill.com/opinion/criminal-justice/488802-coronavirus-behind-bars-4-priorities-to-save-the-lives-of-prisoners>; Dr. Ross MacDonald, March 18, 2020, <https://twitter.com/RossMacDonaldMD/status/1240455800591732737>; Dr. Mary Bassett, Eric Gonzalez, Darren Walker, *Andrew Cuomo, Stop a Coronavirus Disaster: Release People From Prison*, The New York Times, available at: <https://www.nytimes.com/2020/03/30/opinion/nyc-prison-release-covid.html>.

²⁷ See, e.g., Jose Saldana, *Clemency is needed for incarcerated New Yorkers vulnerable to coronavirus*, USA Today, Lohud, March 18, 2020, available at: <https://www.lohud.com/story/opinion/2020/03/18/clemency-needed-new-york-prisoners-exposed-covid-19/2865285001/>; Steven Zeidman, *The Governor's Clemency Negligence*, Gotham Gazette, April 29, 2020, available at: <https://www.gothamgazette.com/opinion/9344-governor-cuomo-clemency-negligence-coronavirus-prisons>.

²⁸ *Id.*

Yet, Governor Cuomo is still refusing to grant clemency to incarcerated elders and others who are vulnerable to the virus, and releases by other mechanisms have reportedly only led to just over 160 people being released - or only four tenths of one percent of the 40,000+ people incarcerated in New York prisons.

In comparison to New York's lack of action to release people, since the outbreak of COVID-19, at least 15 state prison systems and the federal prison system have recognized that preventing massive suffering and death behind bars necessitates significant reductions in prison populations, and have reduced their incarcerated populations by more than one percent.²⁹ Governors and state prison systems in Kentucky, California, Wisconsin, Utah, Maine, and Vermont, have all reduced their prison populations by more than four percent. New York State prisons have more COVID-19 cases and higher rates of COVID-19 than all six of these states that have taken more action.³⁰

According to civil rights attorney and author Michelle Alexander, "Our nation's prison population has quintupled over the last few decades; we lock up and lock out more people than any other country on earth — overwhelmingly poor people and people of color. *Viewed in this light, cutting the prison population by less than half in order to prevent unnecessary suffering and death is hardly an unreasonable demand.* . . . Our governments have been willing to shut down our entire economy, sparing only those sectors deemed "essential." Shouldn't we also consider whether it is truly "essential" for millions of people to be caged?" (emphasis added).³¹

3) Doubling Down on Solitary Confinement is Driving Racially Disproportionate Harm

Rather than releasing vulnerable people, carrying out extensive testing, providing people with masks, sanitizer, other PPEs, quality medical care, and access to outside hospitals, the state's primary response to COVID-19 in New York prisons has been to lock people in solitary confinement. Solitary confinement is not a solution. Solitary causes immense suffering and worsens the spread of the virus. Moreover, solitary is disproportionately inflicted on Black People and other People of Color. According to the most recently available data, while Black

²⁹ Emily Widra and Peter Wagner, *While jails drastically cut populations, state prisons have released almost no one*, Prison Policy Initiative, May 1, 2020, available at: <https://www.prisonpolicy.org/blog/2020/05/01/jails-vs-prisons/>.

³⁰ A State-by-State Look at Coronavirus in Prisons, The Marshall Project, May 15, 2020, available at: <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

³¹ Michelle Alexander, "Let Our People Go," *The New York Times*, May 13, 2020, available at: <https://www.nytimes.com/2020/05/13/opinion/coronavirus-prison-outbreak.html>.

People represent only 18% of the entire population of New York State, Black People make up 48% of people in New York prisons and 57% of people in solitary confinement.³²

a) Unlike True Quarantine and Medical Isolation, Solitary Makes More People More At Risk of COVID-19

True quarantine and medical isolation are designed to help protect people and help people get well.³³ Solitary is just torture. In fact, health experts warn that solitary worsens the spread and impacts of COVID-19 by weakening people's overall condition and immunity.

Specifically, solitary makes more people more at risk of COVID-19. During this pandemic, the physical and mental health harms of solitary confinement weaken people's immune systems, making them especially vulnerable to COVID-19. Also, access to meaningful medical and mental health care is restricted because often communications with providers are limited to talking through small slots in the door to the health staff standing outside the solitary cell. In addition, solitary confinement involves close physical contact between people in solitary and correction officers. In many solitary units, going to a shower, recreation, medical appointment, or other movement involves being shackled and escorted by an officer.

As Dr. Homer Venters, former chief medical officer for New York City Jails, reports: "Outbreaks often stir a desire to lock people away in cells, with the notion that germs won't spread if people are sealed in individual cells. Nothing could be farther from the truth. Lockdown units often require more staff than regular units, because of the need to handcuff and physically escort people to and from the shower, in and out of the cell for health care, and numerous other basic operations. All of this means more staff and more physical contact. Also, being placed in solitary confinement causes extreme distress, and inside the brutal and filthy solitary units I've observed around the nation, this practice drives violence and fractures engagement between health staff and people who are sick just when we need it most."³⁴

³² Trapped Inside: The Past, Present, and Future of Solitary Confinement in New York, New York Civil Liberties Union, p. 20, Oct. 2019, available at:

https://www.nyclu.org/sites/default/files/field_documents/201910_nyclu_solitary_web.pdf.

³³ See, e.g., David Cloud, Dallas Augustine, Cyrus Ahalt, & Brie Williams, *The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings*, AMEND: Changing Correctional Culture, April 9, 2020, available at:

https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

³⁴ Dr. Homer Venters, *Coronavirus behind bars: 4 priorities to save the lives of prisoners*, The Hill, March 23, 2020, available at:

<https://thehill.com/opinion/criminal-justice/488802-coronavirus-behind-bars-4-priorities-to-save-the-lives-of-prisoners>.

Also, the use of solitary confinement as a response to COVID-19 discourages people from reporting symptoms, at a time when such reporting is essential to stop the spread.³⁵ A number of people currently incarcerated in New York prisons have reported to advocates that many people inside choose not to report their symptoms because they do not want to be sent to solitary. According to Correctional Health Experts at *AMEND*, “Fear of being placed in solitary will deter people from reporting symptoms to correctional staff. This avoidance of reporting symptoms or illness will not only accelerate the spread of infection within facilities but also increase the likelihood of [incarcerated person] deaths due to lack of treatment. [Also] preemptive lockdowns may result in failure to detect symptomatic people and cause undue stress to residents.”³⁶

An individual in an Ohio prison, whose letter Michelle Alexander reproduced in the New York Times, powerfully gave an example of this decision to not report symptoms, describing how his friend: “is confined to his bed by COVID-19. Weakness, fatigue, intense vertigo and difficulty breathing allow him to leave his bed area only to defecate (he has to urinate in a drinking jug) or an occasional shower. It has been two weeks now. I have somehow become his nurse. I cook and help with laundry, homework and whatever else he needs. . . . Neither he nor I have notified the staff because we know from other friends’ experiences that he will be thrown into a cell and left to his own devices. We believe that we — unqualified [incarcerated people] — can do better.”

b) New York Is Doubling Down on the Use of Solitary

Despite the multiple ways in which solitary not only causes great suffering but also fuels the spread of the virus, New York has doubled down on solitary at this time. New York continues to lock thousands of people each day in solitary, with many in solitary for months, years, and even decades. New York continues to send people to solitary as purported discipline. People in prison and family members of loved ones inside have reported that people have been sent to solitary for absurd reasons like trying to wear a mask, refusing to wear a mask, or telling an officer to wear a mask.

People have been held in solitary beyond their disciplinary sanction because of COVID-19.³⁷ Forcing people who complete their disciplinary sentence to remain in solitary because DOCCS refuses to transfer them out of the units is an unnecessary and punitive policy.

³⁵ Juan Moreno Haines, *In San Quentin Prison, Getting the Flu Can Land You in Solitary Confinement*, The Appeal, Feb. 20, 2020, available at: <https://theappeal.org/san-quentin-prison-flu-solitary-confinement/>.

³⁶ David Cloud, Dallas Augustine, Cyrus Ahalt, & Brie Williams, *The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings*, *AMEND: Changing Correctional Culture*, April 9, 2020, available at: https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

³⁷ Wesley Williams, *The Cruel Irony of Social Distancing When You’re Stuck in Solitary*, The Marshall Project, May 7, 2020, available at: <https://www.themarshallproject.org/2020/05/07/the-cruel-irony-of-social-distancing-when-you-re-stuck-in-solitary>.

New York also places people in solitary if they report symptoms - sending people to keeplock or Special Housing Units (SHU). As an egregious, but not uncommon, example, a person at Sing Sing reportedly was placed in solitary rather than given proper medical care or properly medically isolated after reporting symptoms of diarrhea, headache, loss of senses, excessive coughing, and fever.

In addition, New York has repeatedly placed entire units on lockdown, and people who are not symptomatic and have not been tested, but may have been exposed to someone who was ill, are being placed in solitary confinement. Also for both people who are placed in solitary because they are ill and people who are being placed in solitary as quarantine because they may have been exposed to the virus, it is not clear that they are being released when there is no medical reason to hold them. Moreover, because all programs and visits have been completely stopped, without alternatives that could be provided remotely or safely in a socially distant way, and because people do not have a safe and healthy way to participate in recreation or other out-of-cell congregate activities, many people across the state are essentially in solitary.

c) Solitary Itself is a Public Health Crisis and Must End, While True Quarantine and Medical Isolation Must Be Done In A Health-Driven Manner

In ordinary times, solitary itself is a public health crisis, inflicts grave suffering, and far too often leads to heart disease, psychosis, self-mutilation, and death. The anxiety and ill health caused by COVID-19 exacerbate the harms of solitary and increase the risks of deterioration and self-harm. A study by correctional health experts found people in solitary were nearly seven times more likely to harm themselves and more than six times more likely to commit potentially fatal self-harm, after controlling for length of jail stay, serious mental illness, age, and race/ethnicity.³⁸ New Cornell research found even a few days in solitary had significantly heightened risks of death by accident, suicide, and violence.³⁹ A 2019 study also found solitary led to increased rates of death after release, including by suicide and overdose.⁴⁰ A 2019 study in the Journal of General Internal Medicine found that solitary is associated with a 31% increase in hypertension and heightened risk of heart attacks, strokes, and higher degrees of loneliness, which also contributes to heart disease.⁴¹

³⁸ Fatos Kaba, et. al., Solitary Confinement and Risk of Self-Harm Among Jail Inmates, Am J Public Health. 2014 March; 104(3): 442–447, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>.

³⁹ James Dean, *Solitary confinement heightens post-incarceration death risk*, Cornell Chronicle, Feb. 5, 2020, available at: <https://news.cornell.edu/stories/2020/02/solitary-confinement-heightens-post-incarceration-death-risk>; Christopher Wildeman and Lars H Andersen, *Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study*, The Lancet Public Health, Vol. 5, Issue 2, Feb. 2020, pp. e107-e113, available at: <https://www.sciencedirect.com/science/article/pii/S2468266719302713>.

⁴⁰ Lauren Brinkley-Rubinstein, Josie Sivaraman, and David L. Rosen, *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Netw Open. 2019;2(10):e1912516, Oct. 4, 2019, available at: <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350>.

⁴¹ Tasfia Jahangir, *Solitary confinement is bad for the heart too*, Massive Science, Jan. 20, 2020, available at: <https://massivesci.com/notes/cardiovascular-health-comparison-solitary-confinement-prison-health/>; Brie A.

New York prisons and jails must release people from solitary confinement, stop placing people in solitary confinement for any reason, and stop using solitary as a response to the virus. Anyone quarantined or medically isolated must be separated for as limited a time as medically necessary in units overseen by medical staff⁴² with all amenities, free phone calls and emails, programming done remotely or safely in a socially distant way, and meaningful human engagement⁴³. According to The Vera Institute of Justice and Community Oriented Correctional Health Services, prisons and jails should “Designate housing areas to separate people with symptoms, as well as those with ... a test-based diagnosis. Using cells designated for solitary confinement is not acceptable. Rather, separate spaces for people with coronavirus should be prepared with access to comfortable furnishings and personal belongings, a telephone, and programming, even if that programming is done via videoconference or another technology.”⁴⁴

4) The Legislature Must Immediately Reconvene Remotely and Pass the HALT Solitary Confinement Act, Elder Parole, Fair and Timely Parole, and more

To save lives and stem the spread of COVID-19 in the New York State prison system, New York must follow the recommendations of health experts and release thousands of people from prisons and jails, end the use of solitary confinement, and provide access to testing, quality medical care, soap, sanitizer, hot water, protective equipment, free phone calls and emails, and outside hospitals.

Governor Cuomo must release thousands of people from prison in order to save lives, and protect people behind prison walls and in the community from the spread of COVID-19. The Governor must grant mass clemencies, the Parole Board must release people, and the legislature must demand that the Executive take those actions. The prison department must also publicly release much more data, and the legislature must demand that they do so. As two examples, DOCCS should provide public data on all tests for COVID-19, infections, and deaths of any cause of staff and incarcerated people in 2020 to date and moving forward broken down by race, age, prison,

Williams, et. al., *The Cardiovascular Health Burdens of Solitary Confinement*, Journal of General Internal Medicine., Vol. 34, pp. 1977–1980, June 21, 2019, available at: <https://link.springer.com/article/10.1007/s11606-019-05103-6>.

⁴² David Cloud, Dallas Augustine, Cyrus Ahalt, & Brie Williams, *The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings*, AMEND: Changing Correctional Culture, April 9, 2020, available at: https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

⁴³ Vera Institute for Justice and Community Oriented Correctional Health Services (COCHS), *Guidance for preventive and responsive measures to coronavirus for jails, prisons, immigration detention and youth facilities*, March 18, 2020, available at: <https://www.vera.org/downloads/publications/coronavirus-guidance-jails-prisons-immigration-youth.pdf>.

⁴⁴ *Id.*

cause of death; and the department should regularly publicly provide the number of people currently in each of the following categories, broken down separately, by race, age, facility, location in the facility, and reason for placement: keeplock in one's own cell, long-term keeplock unit, Special Housing Unit, Residential Mental Health Treatment Units, any other forms of confinement where people are locked in a cell for more than 17 hours per day, other locations for quarantine, other locations for medical isolation, infirmaries, Regional Medical Units, and transfers to outside hospitals.

At the same time, most importantly for the legislature itself: the Senate and Assembly must carry out their core function by immediately reconvening session remotely and passing legislation to address the current crisis and the longstanding racist abuse and neglect that has led to this crisis. Specifically, the Senate and Assembly must at the very least immediately enact the HALT Solitary Confinement Act, Elder Parole, and Fair and Timely Parole.

The HALT Solitary Confinement Act, S.1623/A.2500 has majority support in both houses of the legislature, with 34 Senate cosponsors and 79 Assembly cosponsors. Among other provisions, HALT would end solitary beyond 15 days for all people and create more humane and effective alternatives, while still permitting true medical isolation. HALT should have already been enacted and there is no excuse for the legislature not to bring this bill to a vote immediately. As Wesley Williams wrote from his solitary confinement cell in Upstate Correctional Facility, "If you're quarantined for a few weeks, take note of how you feel when you go out into the world again. Perhaps, you'll think of me. For now I look out my door's window and think to myself that no human being is made for these cages. No human being deserves to rot away in an 8-by-12 box, in solitary deprivation. Long after COVID-19, there will still be a population here, alone and deprived of human touch."⁴⁵

For Elder Parole and Fair and Timely Parole, the legislature's mandate is clear. Despite the repeated calls from health professionals, the widespread public support for releases, and the growing crisis inside, the Governor and the Parole Board have failed to act to release substantial numbers of people. The Elder Parole bill, S.2144/A.9040, allows parole consideration for people aged 55 or older who have served at least 15 years in prison - it does not mandate release and instead simply offers people who meet those criteria a chance to appear before the Parole Board to demonstrate their readiness for release. The Fair and Timely Parole bill, S.497A/A.4346A simply ensures the parole release process in New York State is based on who people are today and their current readiness for release and not centered around their crime of conviction.

⁴⁵ Wesley Williams, *The Cruel Irony of Social Distancing When You're Stuck in Solitary*, The Marshall Project, May 7, 2020, available at: <https://www.themarshallproject.org/2020/05/07/the-cruel-irony-of-social-distancing-when-you-re-stuck-in-solitary>.

These bills are long overdue and they are urgently needed as both a direct response to COVID-19 and its racially disparate impact, and to address the longstanding structural issues exacerbated and made plain by the virus. Had these bills been previously passed, the current crisis and the racially disproportionate harm and death inflicted by COVID-19 could have been significantly reduced. The legislature still has the power to mitigate future harm of the virus by passing these bills that will reduce the number of people in prison who are vulnerable to COVID-19, protect people from the torture of prolonged solitary confinement, and reduce the spread of the virus.

New York's legislators and legislative leadership should take seriously what Michelle Alexander wrote about the person in prison reference above whose letter she reproduced in the New York Times: "What you need to know is that he, like many other people imprisoned today, is demonstrating a higher level of moral clarity and compassion in this crisis than many of us, especially elected officials who would rather let people die in cages than let them go months or years ahead of schedule. . . . If we, as communities and as a nation, fail to free people in this pandemic because we'd rather risk their lives than allow them to come home earlier than our criminal injustice system originally planned, we should consider ourselves guilty of utter disregard for human life."⁴⁶

⁴⁶ Michelle Alexander, "Let Our People Go," *The New York Times*, May 13, 2020, available at: <https://www.nytimes.com/2020/05/13/opinion/coronavirus-prison-outbreak.html>.