

April 8, 2020

Governor Doug Ducey  
1700 W. Washington St.  
Phoenix, AZ 85007

Dear Governor Ducey:

As the COVID-19 pandemic spreads, we are writing to ask you to support the targeted, careful release of certain vulnerable people from Arizona's state prisons. As you know, more than 42,000 people are housed in the Arizona Department of Corrections, Rehabilitation, and Reentry (ADCRR), and thousands more ADCRR employees enter and leave facilities daily. All could be directly affected by COVID-19 inside Arizona's prisons, and spread the disease in communities surrounding the prisons. Social distancing is impossible in prisons; 11 percent of the prison population is over the age of 55; thousands have serious medical conditions that put them at higher risk of complications or death if they contract COVID-19.<sup>1</sup> Releasing those most vulnerable to COVID-19 would help protect staff and prisoners, slow the spread of the disease, and help preserve both prison and community medical resources.

We understand concerns about recidivism and maintaining public safety. However, under any set of circumstances, around 3,000 people will be released from ADCRR custody over the next two months. Releasing them now, before the virus has spread inside prisons, would better protect public health than would releasing about 50 of them per day, every day, all over the state, after untold numbers have been infected.

Additionally, at least some people not scheduled for release are not only particularly vulnerable to COVID-19, but they have been punished sufficiently, and they pose no further threat to public safety. Releasing them would reduce the likelihood that they will get sick or die. Their release will also improve the efficiency and effectiveness of ADCRR's response to the ongoing crisis. These benefits far outweigh any foreseeable risk to public safety, or to the State's general pandemic response.

We understand that identifying individuals suitable for release could prove time-consuming, given Arizona's large prison population. Therefore, we recommend developing objective criteria to define a category of people you believe are safe to release. The CDC's evidence about who is most vulnerable to complications or death from COVID-19 (e.g., those who are pregnant, over age 65, or who have serious heart, lung, and immune system disorders) could help inform these criteria. Along with anyone scheduled to be released within, e.g., three months, ADCRR can identify anyone who fits the criteria you develop. Those people can then be forwarded to the Board of Executive Clemency for emergency evaluation, granted reprieves or commutations, and ordered to remain confined in their homes for the duration of the COVID-19 threat.

Other governors and executives are recognizing the urgent need to remove those most at risk from COVID-19 and most likely to overburden the health care system. U.S. Attorney General William Barr has directed the federal Bureau of Prisons to immediately release people convicted of

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<sup>1</sup> [https://corrections.az.gov/sites/default/files/REPORTS/Inmate\\_Population/inmate\\_popfacts\\_sheet\\_2019.pdf](https://corrections.az.gov/sites/default/files/REPORTS/Inmate_Population/inmate_popfacts_sheet_2019.pdf)

nonviolent offenses to home confinement if they have a low risk of recidivism and a release plan that includes housing.<sup>2</sup> Ohio Governor Mike DeWine is using his powers to expedite release of more than 140 people from his state's prisons, including those within 90 days of release, dozens who are very ill and elderly, and dozens of pregnant women in prison.<sup>3</sup>

Arizona has now confirmed that two prisoners have tested positive<sup>4</sup> for COVID-19 – but testing remains limited, and no data has been made public yet regarding illness and testing of staff.<sup>5</sup> However, it is unreasonable to assume that good luck will continue indefinitely, as the numbers of cases continue to increase in Arizona.<sup>6</sup> There is still time to mitigate the reasonably foreseeable consequences of a widespread outbreak inside Arizona's prisons. Deliberate indifference to those consequences – and to the lives and health of those who could be released safely, along with the lives and health of tens of thousands of corrections professionals charged with their care, as well as their families – is not an option. We urge you to begin the process of targeted release of vulnerable prisoners at the earliest possible time.

Sincerely,

ACLU of Arizona  
American Friends Service Committee-Arizona (AFSC-AZ)  
Arizona Attorneys for Criminal Justice (AACJ)  
Ashley Adams, Adams & Associates, PLC  
FAMM  
Prison Law Office  
The S.T.A.R.T. Project



<sup>2</sup> <https://famm.org/wp-content/uploads/new-barr-statement.pdf>

<sup>3</sup> <https://abc6onyourside.com/news/local/141-inmates-to-be-released-under-ohios-overcrowding-emergency-statute>

<sup>4</sup> [https://www.azfamily.com/news/continuing\\_coverage/coronavirus\\_coverage/two-arizona-inmates-test-positive-for-covid-19-officials-say/article\\_5bd9d16c-7945-11ea-b1ca-431a5afe29fa.html](https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/two-arizona-inmates-test-positive-for-covid-19-officials-say/article_5bd9d16c-7945-11ea-b1ca-431a5afe29fa.html)

<sup>5</sup> <https://corrections.az.gov/sites/default/files/notifications/employee-advisory-coivid-19-update-face-coverings-4-7-20.pdf>

<sup>6</sup> <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-home>