

March 30, 2020

Governor Kay Ivey
State Capitol of Alabama
600 Dexter Avenue
Montgomery, AL 36130

Dear Governor Ivey:

We are legal academics and former law-enforcement officials from the State of Alabama. We write to urge you in the strongest possible terms to reduce the number of prisoners in Alabama prisons before the current coronavirus outbreak creates a public-health catastrophe. While others have provided input for reducing intake into Alabama's jails and prisons and for reducing the prison population without increasing risk to the community, we write to address a specific, limited issue: the state's backlog of potential parolees.

The Board of Pardons and Parole already faces a crushing backlog of cases¹ and has recently canceled hearings scheduled through April 30.² Given existing overcrowding in Alabama prisons,³ a failure to start releasing prisoners eligible for parole could lead to countless unnecessary illnesses and deaths. We urge you to order the Board to resume parole hearings on an expedited basis, using appropriate social distancing measures such as video and telephonic participation in the hearings. The Board should prioritize the release, if necessary into 14-day quarantine, of prisoners age 50 and over and those with compromised immune systems.

The nation faces an unprecedented public health crisis due to the coronavirus outbreak. Inmates in Alabama prisons are at particular risk for the spread of the disease. First, prison life makes it impossible to practice the social distancing that all experts agree is essential to stopping the spread of the virus.⁴ To make matters worse, Alabama prisons are the most overcrowded in the nation, with most prisoners packed together in

¹ Mike Cason, "Paroles Bureau Director Graddick has contentious exchange with lawmakers," al.com (Jan. 23, 2020) (noting dramatic decrease in number of paroles granted since November 2019).

² Alabama Board of Pardons and Paroles, COVID-19 Headquarters Office and Hearing Information ("Please be advised that all parole and pardon hearings through April 30 have been cancelled due to COVID-19 precautions."), <https://paroles.alabama.gov/covid-19-headquarters-office-and-hearing-room-information/>.

³ U.S. Dept. of Justice Civil Rights Division, Investigation of Alabama's State Prisons for Men at 8 (Apr. 2, 2019) ("Alabama has one of the most overcrowded prison systems in the nation.").

⁴ Kimberly Kindy, "An explosion of coronavirus cases cripples a federal prison in Louisiana," Wash. Post (Mar. 30, 2020) ("A federal prison in Louisiana has, within days, exploded with coronavirus cases, leading to the death of one inmate on Saturday, the admission of a guard into a hospital intensive care unit, and positive test results for another 30 inmates and staff."); Jimmy Jenkins, "Prisons And Jails Change Policies To Address Coronavirus Threat Behind Bars," NPR (Mar. 23, 2020) ("With so many people bunched together in the small spaces, jails and prisons are considered perfect incubators for the coronavirus to potentially take hold.").

dormitories, with only inches of space between them.⁵ Isolating prisoners who show signs of coronavirus infection may overwhelm prison infirmaries.⁶ Prisoners lack access to hand-washing and -sanitizing facilities adequate to address the needs of this outbreak.⁷

Second, inmates age faster than the general population, making them more vulnerable to the effects of the coronavirus. Their physiological age is seven to ten years older than their chronological age. That means that if an inmate is 55 years old, he may have the medical needs of a 65-year-old person who is not incarcerated.⁸ There is overwhelming consensus among correctional experts, criminologists, and the National Institute of Corrections that 50 years of age is the appropriate point marking when a prisoner becomes “aging” or “elderly,” because people age physiologically faster in prison.⁹ Thus, Alabama prisoners age 50 and over fall within the group of people especially at risk from the coronavirus. At the same time, such prisoners are the least likely to recidivate.¹⁰ Evidence overwhelmingly shows that keeping the elderly in prison does not make sense from a public safety standpoint; older people who are released from prison pose little risk to public safety.¹¹

Third, people with pre-existing medical conditions are more at risk for dying from the novel coronavirus.¹² An estimated 40 percent of incarcerated persons have some kind of chronic health condition.¹³ Thus, in addition to elderly prisoners, many prisoners with chronic health conditions are at greater risk of dying from the virus. Yet, at the same time, the risk of recidivism is lower in those who are released from prison because they are sick.¹⁴

All of this confirms that Alabama’s prisons are poised to exacerbate the already-disastrous coronavirus outbreak. Prisons are not islands; if an outbreak starts among

⁵ U.S. Dept. of Justice, *supra* note 3, at 8.

⁶ Danielle Ivory, “‘We Are Not a Hospital’: A Prison Braces for the Coronavirus,” N.Y. Times (Mar. 17, 2020).

⁷ Keri Blakinger & Beth Schwartzapfel, The Marshall Project, When Purell is Contraband, How Do You Contain Coronavirus? (Mar. 6, 2020), <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus>.

⁸ Human Rights Watch, Old Behind Bars: The Aging Prison Population in the United States (2012), https://hrw.org/sites/default/files/reports/usprisons0112webwcover_0_0.pdf.

⁹ ACLU, At America’s Expense: The Mass Incarcerations of the Elderly (June 2012) https://aclu.org/sites/default/files/field_document/elderlyprisonreport_20120613_1.pdf. People who are incarcerated typically experience the effects of age sooner than people outside prison because they are more likely than the general public to experience stresses including long histories of alcohol and drug misuse, insufficient diet, lack of medical care, financial struggles, and stress of maintaining safety while behind bars. Vera Institute of Justice, It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release, (March 2010) <https://vera.org/publications/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release>.

¹⁰ Studies in Colorado and Florida show that an older age at release -- 50 years and older -- is the most important predictor of lower recidivism rates. Human Rights Watch, *supra* note 8.

¹¹ Jamie Fellner, Frail and Elderly Prisoners: Do They Still Belong Behind Bars? (May 29, 2012), <https://thecrimereport.org/2012/05/29/2012-05-frail-and-elderly-prisoners-do-they-still-belong-beh/>.

¹² A Message from the State Health Officer Regarding COVID-19 (Mar. 3, 2020).

¹³ Glenn Ellis, Examining health care in U.S. prisons, Phil. Trib. (Mar. 25, 2017).

¹⁴ Fellner, *supra* note 11.

prisoners, it will spread to correctional officers and other staff, who will take the virus home to their families and communities. Alabama should recognize the parole system as one avenue through which to ameliorate the public-health threat posed by our overcrowded prisons.

Yet, even before the coronavirus outbreak, the Board of Pardons and Parole was experiencing a period of remarkable paralysis. From November 2018 to January 2019, 430 prisoners were granted parole;¹⁵ from November 2019 to January 2020, only 37 were,¹⁶ a decrease of over 90%. Part of this was due to dramatic reductions in the number of hearings held, with the Board reviewing only 200 parole applications in November and December 2019.¹⁷ But even as the number of hearings has increased in 2020,¹⁸ the rate of parole approvals has remained minuscule: so far in 2020, the Board has held 666 hearings and paroled only 116 prisoners; were that rate to continue, the Board would parole far fewer than 1,000 prisoners this year. The prison population rose dramatically in 2019,¹⁹ due in part to the dramatic reduction in parole releases.²⁰ The State of Alabama cannot tolerate continued inaction from the Board as the coronavirus outbreak continues to expand, given the epidemiological risks that overcrowded prisons pose to the people of Alabama.²¹

We urge you to take the following steps. If necessary, you may invoke your authority under Alabama Code 31-9-8, “Emergency Powers of Governor”: because you have declared a state of emergency,²² you are empowered to “utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof,” who “shall cooperate with and extend their services and facilities to the Governor as he or she may request.” Please, for the health of the people of Alabama,

- order the Board of Pardons and Parole to proceed to resume hearings on an expedited basis, using appropriate social distancing such as video and telephonic participation in the hearings;
- order the Board and the Department of Corrections to use its authority under its regulations (see Article 1(13), regarding parole of geriatric, permanently incapacitated, and terminally ill prisoners, and Article 16, “Flexibility in Responding to Crises,” Alabama Board of Pardons and Paroles Rules &

¹⁵ Alabama Dept. of Corrections Monthly Statistical Report, January 2019.

¹⁶ Alabama Dept. of Corrections Monthly Statistical Report, January 2020. No hearings were heard in October 2019 as the Board came into compliance with new requirements regarding notice to victims. Ivana Hrynkiw, “Board says parole hearings will resume Nov. 5, more than 100 scheduled,” AL.com (Sept. 26, 2019).

¹⁷ Mike Cason, “Alabama paroles bureau sharply increases number of hearings,” AL.com (Feb. 2, 2020).

¹⁸ *Id.*

¹⁹ Brian Lyman, “Alabama prison crisis: Governor's group recommends anti-recidivism effort,” Montgomery Advertiser (Jan. 30, 2020).

²⁰ Brian Lyman, “Alabama prison crisis hovers over Corrections, Pardons and Paroles budget requests,” Montgomery Advertiser (Jan. 23, 2020).

²¹ Cf. Reuters, “Releasing Inmates, Screening Staff: U.S. Jails and Prisons Rush to Limit Virus Risks,” N.Y. Times (Mar. 22, 2020).

²² Proclamation of the Governor, Mar. 13, 2020.

Regulations) to prioritize the release (if necessary, into 14-day quarantine) of prisoners age 50 and over and those with compromised immune systems; and

- address the needs of those released for identification cards, Medicaid registration, and housing upon parole.

Thank you for any efforts, including these, to reduce the risk that the coronavirus poses to the people of Alabama.

Yours sincerely,

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Leigh Gwathney, Chair, Alabama Board of Pardons and Paroles
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