

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



July 6, 2020

Governor Gavin Newsom
Governor of California
1303 10th Street, Suite 1173
Sacramento, CA 95814
gavin.newsom@gov.ca.gov, governor@governor.ca.gov

RE: Recommendations for Reducing the Prison Population and Protecting People in California Prisons

Dear Governor Newsom,

This is an immeasurably difficult time. With 2,419 incarcerated persons with active cases of COVID-19 in California prisons statewide and over 1,500 people who are incarcerated or work in San Quentin testing positive, I am strongly urging you to exercise your authority to release people from California's overcrowded prisons and to take additional steps to improve the health and wellbeing of incarcerated people, prison staff, and the broader community as outlined below.

At this point, the only way we can protect the lives, dignity, and wellbeing of people in San Quentin and other prisons across the state is to dramatically reduce the prison population as quickly as possible. I stand with incarcerated people¹ and their family members² across the state. Recently, the ACLU and the Prison Policy Initiative gave California an F+³ in the state's responses to COVID-19 in jails and prisons. We must do better. While we have missed the opportunity to prevent the most harm, we can still change course and strive to reduce further harm going forward.

On March 27, District Attorney Chesa Boudin and I first wrote to you regarding our concerns and recommendations for decarceration. Our recommendations included encouraging local jurisdictions across the state to expedite 1170(d) cases that have been referred for resentencing, as we have done here in San Francisco. We also recommended that the Governor, CDCR, and wardens use their authority under Government Code section 8658 to effectuate releases. I am heartened to learn that the CDCR Secretary has exercised his authority under this code section, but I remain concerned that more has not been done to dramatically reduce the prison population. I again urge you to include individual wardens at institutions in making determinations regarding releases and to encourage them to use their powers under GC 8658.

The widespread support for releases is unprecedented: public health experts, judges, and elected officials across the state have joined the repeated calls of incarcerated people, their families, and advocates. Below, I offer my office's insight, expertise, and resources regarding how you can make this happen quickly and responsibly.

¹ <http://bit.ly/StopSQOutbreakDemands>

² <http://bit.ly/sqifcc19>

³ https://www.prisonpolicy.org/reports/failing_grades.html

1. Release without categorical exceptions.

We are aware that CDCR expedited releases for those nearing the end of their sentences in April, as well as the new Supervised Release Program, and we encourage the creation of cohorts to facilitate mass release, but we do not believe that release decisions should stop there. This is because cohorts are generally created in ways that exclude people with violent and serious convictions. We are concerned that continuing to support these exclusions actually works against your commitment to close three prisons in the next two years. This goal will not be possible without releasing more than just the “non-non-non’s,” and we must take steps to change both our rhetoric and our actions in this moment.

We strongly believe that release decisions should also be made on an individual basis, based on who the incarcerated person is today and their readiness to return home. Many people who are serving life sentences have robust reentry plans and can be safely and easily released. This is in line with comments made by Judge Tigar during the recent Case Management Conferences in the *Plata v. Newsom* case. We understand and are sensitive to concerns that those released will have inadequate support and nowhere to go, but we know this is not true across the board, and we would be happy to share information and strategize about how to ensure that people are properly supported upon release.

2. Grant immediate release to those found suitable for parole.

California is one of only a small handful of states that allows for the Governor to review and reverse parole board grants. As you know, being granted parole in the first place is incredibly difficult, with the California Board of Parole Hearings granting parole to only about 20% of people who are eligible for parole each year. We urge you to refrain from using your authority to review parole grants, both during this crisis and beyond. This will help to speed up the process of release for those who have earned a parole grant as well as free up resources within your office to review and expedite additional commutation and pardon applications. As you have done with the moratorium on the death penalty, we believe this is the right, bold, and just decision with the benefit of also being based in sound public policy.

3. Order CDCR to immediately stop cooperating with ICE.

Senator Weiner raised this issue during the Senate Public Safety Hearing, during which Secretary Diaz stated that they would continue to provide information to ICE regarding releases from CDCR custody. We urge you to issue an Executive Order halting this practice immediately and permanently. We echo the demands of the large coalition of advocates who have been fighting vigorously on this issue.

4. Proper care and protections for those who remain inside.

We would like to echo the following demands made by those currently incarcerated:

- COVID-19 has forced CDCR to shut down all in-prison programming, halting credit-earning opportunities for incarcerated people that would allow them to accelerate their release dates. CDCR should expand credit-earning opportunities during the pandemic to allow incarcerated people to participate in programming and work toward accelerating their release date.

- CDCR must provide adequate personal protective equipment (PPE), sanitizer, hygiene products, and other essential goods (stamps, envelopes, food) for free, now through the end of the pandemic. *Note from incarcerated people on Death Row: Sanitizer should be distributed daily, not once every 5 days.*
- All visiting has been suspended since the pandemic began three months ago, cutting off contact between incarcerated people and their families and communities. As we know, ongoing connections with outside community and family members is an essential support system to incarcerated people and their loved ones during these times and always. We urge CDCR to provide free tele-visiting privileges, a timeline for resumption of non-contact visits for the general population in the scaling up to modified contact visiting, the installation of existing JPAY email kiosks in housing units without CDCR facilitating communication between loved ones, and a timeline to reinstate family visiting.
- Phone access should be expanded immediately. CDCR should not attempt to (further) monetize these calls. All phone calls should be free, beginning now and continuing at least through the duration of the pandemic.

Again, I am acutely aware that the work to reduce incarcerated populations does not happen in a vacuum, and that in order to be successful, we must be sensitive to a myriad of overlapping issues -- including housing, healthcare, employment, and the concerns of survivors of all kinds, especially those who have suffered family violence. However, the crisis that is currently unfolding in San Quentin and other prisons across the state requires aggressive, bold, and human-centered measures. I welcome the opportunity to collaborate with you on just and thoughtful plans to address the current crisis and to offer whatever support I, along with my office, can provide.

Sincerely,



Manohar Raju
San Francisco Public Defender
Manoj.Raju@sfgov.org

Cc: Daniel Seeman, Deputy Cabinet Secretary, Office of the Governor
Kelli Evans, Chief Deputy Legal Affairs Secretary, Office of the Governor
Eliza Hersh, Deputy Legal Affairs Secretary, Office of the Governor