



29 April 2020

To the Honorable Governors of all fifty States:

Amid a global pandemic with the potential to claim hundreds of thousands of lives, I write to you on behalf of Amnesty International USA imploring you to do all in your power to prevent these deaths.¹ The outbreak of COVID-19 is impacting all of us, though some communities are more likely to bear the brunt of an inadequate public health response, including those held in our nation's prisons and jails.² A COVID-19 model from the University of Pennsylvania, University of Tennessee, Washington State University and the American Civil Liberties Union, projects that the COVID-19 death toll could nearly double from US government projections, if significant efforts are not taken to reduce the population of jails and prisons.³ In this letter I want to draw your attention to our concerns on the risks to the health of those incarcerated and encourage you to take urgent and necessary steps to protect them.

There are a total 2.3 million people living behind bars in the United States, about 1.9 million of which are incarcerated in state and local prisons and jails.⁴ The right to health is not negated

¹ Amnesty International is a global movement of more than 8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. We have hundreds of thousands of supporters, members and activists in the U.S. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

² Edwin Rios and Sinduja Rangarajan, *COVID-19 Has Infected and Killed Black People at Alarming Rates. This Data Proves it. It's time for "an ethical reckoning"*, Mother Jones, 17 April 2020, <https://www.motherjones.com/coronavirus-updates/2020/04/covid-19-has-infected-and-killed-black-people-at-alarming-rates-this-data-proves-it/>

³ American Civil Liberties Union, *COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures to Reduce Jails*, A Partnership Between ACLU Analytics and Researchers from Washington State University, University of Pennsylvania, and University of Tennessee, April 2020, <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19?redirect=covidinjails>

⁴ Wendy Sawyer and Peter Wagner, *Mass Incarceration: the Whole Pie 2020*, Prison Policy Initiative, 24 March 2020, <https://www.prisonpolicy.org/reports/pie2020.html>

by a person's incarceration and every state must ensure that incarcerated individuals are included in its response to COVID-19. People held in confined spaces with inadequate access to basic hygienic tools and the inability to effectively distance or quarantine themselves are at greater risk of contracting this potentially fatal disease. While testing for COVID-19 in prisons and jails of both staff and the incarcerated population has been inconsistent across the USA, state and local jails and prisons have already come to see the deleterious effect of COVID-19 on the incarcerated population and corrections staff, with some facilities reporting even larger rates of infection than the public living outside prison walls.⁵ The Ohio Department of Rehabilitation and Correction reported that 3,792 prisoners tested positive for COVID-19 as of 22 April, 8 percent of the total prison population (48,765) and 28 percent of the total number cases recorded in the state (13,609), In Arkansas, the number of people in prisons reported as tested positive under quarantine rose from zero to 751 between 10 - 24 April.⁶ Meanwhile, as of 27 April, 32 of the 47 people in Arizona prisons that tested positive are held at the prison complex in Florence, including four people condemned to death row.⁷ However, only a miniscule fraction (194) of the more than 41,500 daily population in all Arizona

⁵ Cary Aspinwall and Joseph Neff, *These Prisons Are Doing Mass Testing For COVID-19—And Finding Mass Infections*, The Marshall Project, 24 April 2020, <https://www.themarshallproject.org/2020/04/24/these-prisons-are-doing-mass-testing-for-covid-19-and-finding-mass-infections>; Zak Cheney-Rice, *Rikers Reports its First COVID-Related Prisoner Death*, New York Times, Intelligencer, 6 April 2020, <https://nymag.com/intelligencer/2020/04/rikers-island-reports-its-first-covid-related-prisoner-death.html>; Timothy Williams and Danielle Ivory, *Chicago's Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars*, New York Times, 8 April 2020, <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>; Angie Jackson and Kristi Tanner, *Infection Rate at Michigan Prison Exceeds, New York, Chicago Jail Hot Spots*, Detroit Free Press, 16 April 2020, <https://www.freep.com/story/news/local/michigan/2020/04/16/infection-rate-michigan-prison-exceeds-new-york-chicago-jail-hotspots/2987935001/>.

⁶ Ohio Department of Rehabilitation and Correction, COVID-19 Inmate Testing, <https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-22-2020%201314.pdf>; Ohio Department of Health, Coronavirus (COVID-19), last updated 22 April 2020, <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home>; Arkansas Department of Correction, Coronavirus (Covid-19) updates, <https://adc.arkansas.gov/coronavirus-covid-19-updates>

⁷ Arizona Department of Corrections, ADCRR COVID-19 Dashboard, <https://corrections.az.gov/adcr-covid-19-dashboard>; Arizona Republic, *Lawyer: 4 Arizona death row inmates test positive for coronavirus*, 23 April 2020, <https://www.azcentral.com/story/news/local/arizona-breaking/2020/04/23/lawyer-4-arizona-death-row-inmates-test-positive-coronavirus/3017448001/>

facilities were tested as of 27 April. Mass testing of staff and incarcerated individuals can help identify people who are asymptomatic or not showing signs of COVID-19 and allow for better interventions to prevent the spread within facilities.

States must act now to put in place in all jails and prisons a comprehensive and effective plan to prevent and respond to the health crisis, as appropriate to the specific situation and facilities. This should include:

- all appropriate measures to prevent the spread of COVID-19 within detention facilities and the allocation of specific funds and resources exclusively to guarantee the implementation of health and hygiene measures within facilities, such as adequate access to soap, sanitizer and disinfecting materials and mass testing of all staff and incarcerated people;
- in the event of its spread, ensuring that people deprived of their liberty can access specialized medical care, including COVID-19 testing, without complications, and their families and legal representatives have access to regular communications channels with them. Not providing appropriate medical treatment that could reasonably be expected of the state, including to hold prisoners who suffer from serious and highly infectious diseases with many other prisoners in an overcrowded cell, may amount to ill-treatment;
- ease the prison population density, and in so doing ensure that no one is discriminated against. Consider including whether incarcerated people already serving their sentences qualify for parole, early release, or other alternative non-custodial measures; releasing people in pre-trial detention, unless strong factors weigh against it. When doing such assessments, it is important to consider particularly if those in prison are older or at greater health risk due to underlying medical conditions or with weak immune systems. Not providing or carrying out a process in which prisoners can apply for early or conditional release due to medical circumstances may amount to a violation of the right of an effective remedy.
- Data should be collected and made public on the number of people tested, testing positive, recovered and that have died from COVID-19 and those released or transferred to non-custodial confinement. This data should be disaggregated to include

information on age, race, ethnicity, religion, gender, gender identity, sexual orientation, and disability of incarcerated people and corrections staff.

Additionally, to Governors who oversee one of the 28 states that still retain the death penalty, we renew our call to cease all executions and abolish this cruel punishment once and for all.⁸ Amnesty International opposes the death penalty unconditionally and we believe that a person's right to life is not negated by their incarceration, regardless of their conviction. We consider it to be a punishment incompatible with fundamental human rights principles.

The last execution to take place in the United States was Nathaniel Woods, despite a confession of another man claiming to be the lone gunman in the crime, on 5 March, by the state of Alabama, just days before President Trump declared a national emergency concerning the COVID-19 outbreak.⁹ Since then, the Texas Court of Criminal Appeals has either handed down 60-day stays or rescheduled six executions.¹⁰ Carrying out executions especially during this global pandemic over saving lives, would be unconscionable. We urge states to not only halt all executions during this global pandemic but use this time to re-examine their use of the death penalty altogether - its ineffectiveness as a deterrent, its racially discriminatory application, its finality and the human rights violations associated with its use – with a view towards abolition. In March, Colorado became the 22nd state to abolish the death penalty and there are 11 additional states that maintain this punishment in law but have not executed anyone in 10 years. The national picture reflects the global one, as more than half of the countries in the world have abolished the death penalty and 142 in total are now abolitionist

⁸ Official moratoriums on executions have already been established in California, Colorado, Oregon and Pennsylvania.

⁹ Ray Sanchez, Martin Savidge, and Justin Gamble, Man convicted of killing 3 police officers says co-defendant set for execution is '100% innocent', CNN, 4 March 2020, <https://www.cnn.com/2020/03/04/politics/alabama-nathaniel-woods-execution-wednesday/index.html>, Proclamation No. 9994, 85 FR 15337, 13 March 2020, <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>

¹⁰ Death Penalty Information Center, Upcoming Executions, <https://deathpenaltyinfo.org/executions/upcoming-executions>

in law and practice. In the Americas, the USA has been the sole practitioner of executions for the past 11 years.¹¹

While Amnesty International opposes the death penalty in all cases and maintains that no method of execution makes these state-sanctioned killings less of a violation of human rights, it is worth noting that the very same drugs used in states' lethal injection protocols to take life, are more commonly used in hospitals to save them on a daily basis – and even more so during the present crisis. Drugs like midazolam (a sedative), etomidate (a sedative), cisatracurium besylate (muscle relaxer), vecuronium bromide (a paralytic), rocuronium bromide (a paralytic), and fentanyl (an opioid pain reliever) have been used by states to carry out executions but also serve a vital role in hospitals for sedative purposes to decrease the respiratory burden when patients need to be connected to a ventilator and enhance its effectiveness.

In March, it was reported that the need for drugs used to support patients on ventilation grew 73 percent nationwide, outpacing the supply at that time.¹² On 1 April, the American Society of Health-System Pharmacists wrote a letter to Vice President Mike Pence calling for the administration to “address shortages of supportive medications critical to ventilating and treating coronavirus patients.”¹³ The US Food and Drug Administration (FDA) first posted on 2 April that midazolam injections were in shortage. Nearly all pharmaceutical companies listed as producers attributed the shortage to ‘demand increase’.¹⁴ This drug is known to be part of the lethal injection protocol in at least seven states, including Alabama, Ohio, Virginia, among

¹¹ Amnesty International USA, Death Penalty, Amnesty International USA, 14 April 2020,

<https://www.amnestyusa.org/issues/death-penalty/>

¹² Michael Rezendes and Linda A. Johnson, *Next Potential shortage: Drugs needed to run ventilators*, Associated Press, 10

April 2020 <https://apnews.com/644302ec76172aafbedb00a2626358bc>

¹³ American Society of Health-Systems Pharmacists, Letter to Vice President Michael Pence, 1 April 2020,

<https://www.ashp.org/-/media/assets/advocacy-issues/docs/GRD-Letter-Pence-Supportive-Meds-Shortage>

¹⁴ US Food and Drug Administration, Drug

Shortages, https://www.accessdata.fda.gov/scripts/drugshortages/dsp_ActiveIngredientDetails.cfm?AI=Midazolam+Injection,+USP&st=c&tab=tabs-4&panels=0 (last visited Apr 16, 2020).

others.¹⁵ A group of medical experts penned an open letter on 10 April calling for states to surrender drugs states may have for execution by lethal injection, to hospitals to help care for the hundreds of thousands infected with COVID-19.¹⁶ In April 2020, the FDA included four drugs – cisatracurium besylate, etomidate, fentanyl citrate, and midazolam – that are part of the lethal injection protocols of some states in its list of drug shortages linked to increased demand, and also separately cited these drugs and others on a list of “drugs used for hospitalized patients with COVID-19”.¹⁷

Amnesty International echoes the recommendations from medical experts and urge states that have medical drugs to be used for lethal injection procedures, to give their viable supplies of these drugs to hospitals, particularly those in need for treatment of people infected with COVID-19.

For the reasons stated above we urge you to use your executive authority and implement a comprehensive approach to curbing the spread of COVID-19 within the criminal justice system that includes: ensuring that prompt and regular access to medical attention and adequate health care is provided to people who are deprived of their liberty, urgently reducing the overall number of people in detention, ceasing all executions and taking the opportunity to reassess the use of death penalty if your state still maintains it, and relinquishing any viable sedatives, paralytics or pain relievers in possession of your departments of corrections for execution by

¹⁵ State by State Lethal Injection Protocols, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/executions/lethal-injection/state-by-state-lethal-injection-protocols>. The Governor of Ohio Mike DeWine rescheduled executions referring to lethal injection drug shortages, including most recently on 14 April 2020. *Ohio governor delays 3 more executions amid drug shortage*, APNews, 14 April 2020, <https://apnews.com/d17e95e75d3a83e100705d565f1eddb2>

¹⁶ Open Letter From Doctors Pharmacists and Health Experts Lethal Injection and COVID 19, 6 April 2020, <https://www.documentcloud.org/documents/6834631-2020-04-06-PUB-Open-Letter-From-Doctors.html>

¹⁷ U.S. Food & Drug Administration, What's New Related to Drugs, updated on 22 April 2020, <https://www.fda.gov/drugs/news-events-human-drugs/whats-new-related-drugs>; U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Office of Compliance Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Pharmacy Compounders no Registered as Outsourcing Facilities During the COVID-19 Public Health Emergency, Guide for Industry, April 2020, <https://www.fda.gov/media/137125/download>

lethal injection to hospitals to care for COVID-19 patients that desperately need them. There is so much out of our control as this virus takes the lives of our community members and loved ones, however these recommendations are all within your power, so too is the ability to prevent the further loss of the lives of people living behind bars.

Should you have any questions please email Senior Program Officer, Criminal Justice Program, Kristina Roth at kroth@aiusa.org or 202.509.8182

Respectfully,



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