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Joint Statement by New York Advocates and Public Defenders on Trump's False and Inflammatory Dog-Whistle on People in Pre-Trial Detention

(New York, NY) -- Today, Citizen Action of New York, Brooklyn Defender Services, The Bronx Defenders, New York County Defender Services, The Legal Aid Society, and the Brooklyn Community Bail Fund released the following joint statement on [inaccurate and inflammatory comments](#) regarding bail reform in New York made by President Trump on Twitter:

“The comments on New York’s bail reform made by Donald Trump were abhorrent and inaccurate. To start, Trump referred to people in pre-trial detention as ‘criminals.’ Not only is this language dehumanizing and offensive, it also fails to acknowledge the fact that people incarcerated pre-trial are legally innocent and, in the vast majority of cases, only in jail because they cannot afford bail. Trump also stated that he believes New York City is ‘rapidly declining’. On the contrary, our city is safer than ever before, and our jail population is shrinking. In fact, the jail population has already dropped from nearly 22,000 to 7,000 over the past three decades and crime is at record lows. Trump’s comments on the pre-trial liberty of 900 people ignores this reality. These unfounded attacks are coming from the same man who called for the death penalty for the [Exonerated Five](#), using similar false and inflammatory rhetoric.

Earlier this year, New York State took a major step forward for justice, safety, and fiscal responsibility by enacting pretrial justice reforms, including bail reform and bringing discovery laws in line with the rest of the country. The right to liberty and a fair and speedy trial are two key pillars of our democracy. For decades, New York’s unfair bail and discovery laws destroyed lives, ripped families apart, and deprived countless people of these fundamental rights, jailing them for months or even years based on nothing more than an accusation. The mass jailing crisis has disproportionately impacted Black and Latinx families, worsening inequality in our society. It has also cost taxpayers a fortune: Detaining a person on Rikers Island costs \$828 per day. All this without improving public safety.

Sadly, while President Trump tweets malicious lies, the District Attorneys Association of the State of New York is taking a page from his playbook while [actively seeking to undermine our state's progress](#). Its two-pronged attack includes a statewide campaign of fear-mongering and misinformation and trainings on a series of tactics to subvert the new bail and discovery laws. Echoing Trump's cruel separation of families at the border, these prosecutors are working to maintain unchecked power to separate Black, Brown, and low-income families across New York. Now more than ever, New Yorkers must stand together to help ensure that these criminal justice reforms are successfully implemented so that we can continue to make strides toward fairness and real public safety.”

Background:

New Yorkers across the state are regularly jailed pretrial due to poverty. In New York City, 87% of people who have bail set cannot afford to pay it and 59% of the people in local jails outside of NYC are being held pre-trial. A total of approximately 15,000 people across the state are currently jailed pre-trial. Statistics show that pre-trial detention negatively impacts public safety, denies equal justice, and wastes taxpayer funds.

Public Safety: [Studies](#) show that brief periods in pretrial detention can actually increase the likelihood that a person will be rearrested, likely because they worsen the root drivers of harm and crime: poverty, trauma, housing instability, unmet mental health and health needs and untreated substance use disorder. [Decades of data](#) and experience show us that decarceration can come with improved public safety.

Distortion of Justice: Statistics show that pre-trial detention distorts justice and contributes to mass incarceration by empowering the prosecutor's to coerce guilty pleas, regardless of guilt or innocence. A summary of analyses included in a 2015 report by the VERA Institute of Justice found defendants jailed before trial were far more likely to accept harsher plea deals and receive prison or jail sentences. Of all those who receive prison and jail sentences, people who were incarcerated pre-trial received sentences that were, on average, three times longer than those who were released pending trial. The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that “[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped.”

Appearance Rates: Data from charitable bail funds across the state also demonstrates that bail is not necessary to ensure that people released pretrial return to court. Roughly 95% of the people whose bail was paid by a community bail fund — from Kings to Columbia to Suffolk to Tompkins and Onondaga counties — returned for all of their court dates, despite having no financial “skin in the game.” The Brooklyn

Community Bail Fund paid bail for nearly 5,000 people who would otherwise have been jailed for their poverty and, in many cases, coerced to plead guilty, regardless of guilt or innocence, just to get free. Instead, they were free to fight their cases while at liberty. BCBF clients were 3x as likely to have favorable case outcomes. That means fewer lives and families derailed by incarceration and criminal records. That means far greater chances at positive outcomes in education, employment, housing, and health. This is achieved through support, not punitive measures. Bail funds provide court reminders and help connect people to needed social services.

Harm of incarceration: Pretrial jailing imposes a wide range of devastating costs on New York's families and communities. These costs begin with the need to post bail or pay for someone's release from jail after their arrest. When they cannot afford bail, it costs families to stay in contact with their loved ones as they have to pay exorbitant rates for phone calls and transportation to visit. On top of these direct costs, families lose income, child support, and other financial contributions when a wage-earner is incarcerated. Finally, incarceration also takes a toll on family members' physical and mental health, education outcomes, and other measures of well-being. Even one day in jail can totally [derail a person's life](#). They can lose their jobs and housing. The state may take their children away.

Jail conditions pose a serious, and too often deadly, threat to incarcerated people. The New York State Commission of Correction found that in six different deaths across five different New York county jails, there were "egregious lapses in medical care." Perhaps the best known story of the trauma caused by pretrial jailing is that of Kalief Browder, who took his own life after being jailed for three years as an innocent teenager on Rikers Island. There is [an epidemic of jail deaths](#) in Broome County. In addition, at least [26 people have died](#) in Erie County's jail since 2005. At least [372 people have died](#) in New York City jails since 2001. Efforts to protect public safety must also address the acute and grave risk that incarceration poses to the safety and well-being of the tens of thousands of New Yorkers locked inside.

People in pre-trial detention are regularly locked in solitary confinement for months and even years. Ample research and accounts from survivors of solitary affirm that this practice causes serious and lasting psychological and physical harm.

Solution: Thankfully, our legislature and Governor took action to address this injustice. They responded to the call of community and passed the new pretrial laws so that all people – not just relatively wealthy people – accused of misdemeanors and non-violent felonies can fight their cases while at liberty, with their families and communities and support networks, though with some degree of community supervision if needed. The status quo often gets a pass, but it is important to

remember that being legally innocent while suffering in a jail cell is a crisis of injustice and that has to be reckoned with.

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