

April 8, 2020

New York State Department of Corrections and Community Supervision
Executive Clemency Bureau
The Harriman State Campus Building 2
120 Washington Avenue
Albany, N.Y. 12226-2050

VIA E-MAIL: [REDACTED]

Re: Executive Clemency Application

Dear Clemency Review Team:

Attached to this letter are 11 applications seeking executive clemency from Governor Cuomo. In light of the quickly escalating public health crisis that the COVID-19 pandemic has triggered within New York State prisons, we ask for expedited review of these applications, and we ask that the Governor effectuate the immediate release of these clients. As a group, these clients are particularly vulnerable to the devastating effects of COVID-19 or are close to the point at which they would otherwise be entitled to release. Most of these clients have specific housing plans so that their release from prison will drastically diminish the risk that they will be exposed to the coronavirus. Additionally, independent of the current pandemic, these applicants all have strong equities and are deserving of executive clemency.

As we noted in our April 3rd submission, we are sending expedited clemency applications to your office in groups so that they may be administered more efficiently; this is the second group. Some of these applications are supplemental to applications filed in the past; on the following list of the attached applications, we have indicated when that is the case. This group of applications are on behalf of the following individuals:

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]
- (4) [REDACTED]
- (5) [REDACTED]
- (6) [REDACTED]
- (7) [REDACTED]
- (8) [REDACTED]
- (9) [REDACTED]
- (10) [REDACTED]
- (11) [REDACTED]

If you have questions or need further information, please do not hesitate to reach out to myself or the individual attorneys who prepared the clemency applications.

Very truly yours,

David Loftis

David Loftis
Attorney-in-Charge
Post-Conviction and Forensic Litigation
646-455-7267

Criminal Appeals Bureau
199 Water Street
New York, NY 10038
(212) 577-3564
www.legal-aid.org

Jose David Rodriguez Gonzalez, Staff Attorney
Tel (212) 577-3516
Mobile (646) 483-1110
Jrodriguez-gonzalez@legal-aid.org

John K. Carroll
President

Janet E. Sabel
Attorney-in-Chief
Chief Executive Officer

Justine M. Luongo
Attorney-in-Charge
Criminal Practice

David Loftis
Attorney-in-Charge
of Post-Conviction and Forensic Litigation

April 7, 2020

Executive Clemency Bureau
Department of Corrections and Community Supervision
Harriman State Campus
1220 Washington Avenue
Albany, NY 12226

BY E-MAIL [REDACTED]

Re: Executive Clemency Application:
[REDACTED]

Dear Executive Clemency Bureau:

I write this letter on behalf of [REDACTED] [REDACTED] [REDACTED].¹ Mr. [REDACTED] respectfully asks that his emergency clemency petition be granted in light of his debilitated health condition, which makes it more difficult to face the Covid-19 pandemic in prison, a setting especially conducive to the rapid spread of the virus.² Mr. [REDACTED] suffers from high blood pressure and, in addition, is currently still recovering from an invasive medical proceeding that he underwent last month in connection with a malformation in his brain. These underlying conditions put Mr. [REDACTED] at a high risk of suffering serious health consequences, including death, if he contracts the novel coronavirus. Upon release, Mr. [REDACTED] will live in Queens, New York, with his wife and with his daughter, who dearly love him and eagerly await his return.

Mr. [REDACTED] who has no prior criminal record, is serving a prison sentence of thirteen years and six months (plus five years of post-release supervision) in connection with his Queens County conviction for kidnapping in the second degree, P.L. § 135.20. He has been continuously incarcerated since his arrest in May of 2013. Mr. [REDACTED] whose conditional release date so far is 12/04/2024, was not the driving force behind the 2013 kidnapping of [REDACTED] [REDACTED] an adult, Ecuadorian male who allegedly owed money to the mastermind behind the crime. Mr. [REDACTED] was

¹ DOCCS' inmate lookup incorrectly shows Mr. [REDACTED]

² See Daniel A. Gross, "It Spreads Like Wildfire": The Coronavirus Comes To New York's Prisons, The New Yorker (Mar. 24, 2020), <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>; see also Press Release, N.Y.C. Bd. Of Corr., New York City Board of Corrections Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19 (Mar. 17, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf>

one of the persons hired to watch over Mr. [REDACTED] after the kidnapping. Mr. [REDACTED] – wrongly – agreed to it in order to earn money to provide for his family, including his autistic son in Ecuador which he dutifully supported month-by-month until his incarceration. Mr. [REDACTED] has accepted responsibility for his participation in the crime and is deeply remorseful. Mr. [REDACTED] suffered minor physical wounds as a result of the kidnapping and has long recovered. It was not established who caused the wounds since there were other people watching over him at different times.

Mr. [REDACTED] health has deteriorated significantly during his time behind bars. He suffers from a malformation in the brain—a serious medical condition called brain arteriovenous malformation (AVM) that restricts the normal blood flow in his body and make him prone to seizures and strokes.³ Last fall he was hospitalized for several days after suffering a seizure related to this condition.

Last month Mr. [REDACTED] underwent an invasive medical procedure to treat his AVM condition, which involved the use of a catheter to reach the tangle of blood vessels in his brain. Although he has since been returned to Cossackie Correctional Facility, Mr. [REDACTED] is still recovering and his weakened immune system makes him especially vulnerable to contagion with Covid-19 and to serious life-or-death consequences if he contracts the virus. This vulnerability is exacerbated by Mr. [REDACTED] high-blood-pressure diagnosis, a chronic underlying health condition that, in unison with Covid-19, can be particularly lethal.⁴

Mr. [REDACTED] migrated from Ecuador in 2004 and became a naturalized U.S. citizen. He is married to [REDACTED] and they have a daughter, [REDACTED]. As indicated, Mr. [REDACTED] also has a son in Ecuador, the fruit of his first marriage, whom he supported financially until his incarceration. Before his arrest, Mr. [REDACTED] was gainfully employed as a security guard. He is a hard worker and in prison he has tried to learn new trades to increase his employability upon release, an example of which is his engaged participation in the masonry and agriculture vocational programs. Mr. [REDACTED] has also worked in maintenance during his time as a DOCCS' inmate.

Mr. [REDACTED] wife, [REDACTED] is currently working for a maintenance company. Before the onset of Covid-19, she was working as a waitress at hotel events but she has been temporarily laid-off due to restrictions on public gatherings. Ms. [REDACTED] is committed to support her husband financially and emotionally upon his release. I have confirmed with Ms. [REDACTED] that, after he is released, Mr. [REDACTED] will come to reside with her and their daughter in the apartment where they live. The apartment's address is: [REDACTED]

³ See Mayo Clinic, Brain AVM (arteriovenous malformation), <https://www.mayoclinic.org/diseases-conditions/brain-avm/symptoms-causes/syc-20350260>

⁴ See *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”).

Mr. [REDACTED] has already paid a heavy price for his involvement in this, his only conviction. He has been incarcerated for almost seven years, two years in excess of the minimum for someone in his position convicted of the same offense.⁵ He has missed the possibility of seeing his daughter grow and be next to his family, which he considers his most sacred treasure.

Mr. [REDACTED] is medically vulnerable to the ongoing public health emergency. In prison, due to crowded conditions and the difficulty of maintaining social distancing, he is at an increased risk of contracting the virus. Given the public health emergency and the need to decrease crowding in prison settings so as to curb the spread of the novel coronavirus, it would be in the interest of not only Mr. [REDACTED] but also the other inmates and the staff of Cossackie Correctional Facility if Mr. [REDACTED] were released now and allowed to live with his family in the community.

In view of the foregoing, Mr. [REDACTED] respectfully asks the Governor of the State of New York, Hon. Andrew M. Cuomo, to commute the rest of his prison sentence so that he can be released immediately. If released now, Mr. [REDACTED] would still be subject to five years of post-release supervision by a parole officer.

If the Executive Clemency Bureau wishes to receive additional information for purposes of evaluating this clemency petition, I will be happy to provide it. I can be reached at 646-483-1110 or at the email address jrodriguez-gonzalez@legal-aid.org.

Respectfully submitted,

JOSE DAVID RODRIGUEZ GONZALEZ
Staff Attorney
The Legal Aid Society
Criminal Appeals Bureau
199 Water Street – 5th Floor
New York, NY 10038
(cell) 646-483-1110
jrodriguez-gonzalez@legal-aid.org

⁵ See P.L. §70.02(3)(a).



Criminal Appeals Bureau
199 Water Street
New York, NY 10038

Tel: 212-577-3300
www.legal-aid.org

April 6, 2020

Janet E. Sabel
Attorney-in-Chief

Justine M. Luongo
Attorney-in-Charge
Criminal Practice

David E. Loftis
Attorney-in-Charge
Post Conviction and
Forensic Litigation

New York State Department of Corrections
and Community Supervision
Executive Clemency Bureau
Harriman State Campus
1220 Washington Avenue
Albany, New York 12226

VIA E-MAIL: [REDACTED]

Re: Executive Clemency Application

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Queens County Indictment # [REDACTED]

To the Executive Clemency Bureau:

I am writing this emergency clemency application on behalf of [REDACTED] [REDACTED] who is currently incarcerated at Mid-State Correctional Facility. This application is predicated on the fact that Mr. [REDACTED] suffers from Asthma, for which he uses an albuterol pump PRN. According to the Centers for Disease Control and Prevention, Mr. [REDACTED] Asthma places him at a higher risk of getting very sick if he contracts COVID-19.

Mr. [REDACTED] was convicted in Queens County in 2007 of Manslaughter in the First Degree for a crime that took place when he was sixteen years old. He was sentenced to a prison term of 19 years, and 5 years of post-release supervision. His earliest release date is May 5, 2021.

Discharge Plans

I have spoken with [REDACTED] [REDACTED] Mr. [REDACTED] mother. She has said that her son can live with her if he is released, at [REDACTED]
[REDACTED]. With respect to being able to report remotely to parole, [REDACTED] [REDACTED] the president of the [REDACTED] [REDACTED], has given assurances that the [REDACTED] [REDACTED] will provide remote case management for Mr. [REDACTED] Specifically, [REDACTED] will provide him

with a cell phone so that he can report remotely to parole. I further confirmed that Mr. [REDACTED] suffers from Asthma with his mother, [REDACTED] [REDACTED]

Crime, Prosecution and Post-conviction Investigation

The incident that resulted in Mr. [REDACTED] conviction took place when he was 16 years old. On the day after Christmas 2003, [REDACTED] [REDACTED] age 46, was found dead in the 10th floor stairwell of a public housing building at [REDACTED] [REDACTED]. The People's evidence showed [REDACTED] had attended a Christmas party in apartment 10D. Around 1:30 a.m. to 2:00 a.m., on December 26th, [REDACTED] was intoxicated and high from crack cocaine. She started fighting at the party. A prosecution witness, [REDACTED] testified she told Mr. [REDACTED] and two other men ([REDACTED] and [REDACTED] to remove [REDACTED] from apartment 10D. They dragged [REDACTED] out of the apartment to the 10th floor common hallway and placed her by the elevator bank. [REDACTED] then returned to the apartment, retrieved a wooden two-by-four piece of wood, and went back out to the hallway.

[REDACTED] [REDACTED] testified she heard the three men arguing in the hallway about where to put [REDACTED]. She overheard Mr. [REDACTED] saying he wanted to put [REDACTED] [REDACTED] in the elevator. She overheard [REDACTED] arguing they should put her in the stairwell. Sometime between 2:00 a.m. and 3:00 a.m., 30 to 45 minutes after [REDACTED] was ejected, Mr. [REDACTED] and [REDACTED] returned to the party. [REDACTED] [REDACTED] and [REDACTED] did not. [REDACTED] body was discovered several hours later by a building maintenance worker, in the 10th floor stairwell, on December 26, 2003, at 9:30 a.m..

At trial, a prostitute and crack addict named [REDACTED] testified that, around 11:00 a.m. on December 26th, two hours after [REDACTED] body was found, Mr. [REDACTED] came to the hotel room [REDACTED] was sharing with a crack dealer. Mr. [REDACTED] told them he had to remove [REDACTED] from the party after she became intoxicated and knocked someone down. Reportedly, [REDACTED] [REDACTED] also heard Mr. [REDACTED] say he had to beat [REDACTED] [REDACTED] who fought like a man, to get her out of the apartment and he thought he might have killed her.

According to the medical examiner's report, the cause of [REDACTED] death was severe blunt force trauma to the torso. [REDACTED] had 15 rib fractures, a lacerated liver, and tears to the major blood vessels leading into and out of her heart; these injuries resulted in immediate death from massive internal bleeding. As the prosecutor noted, [REDACTED] "internal injuries were consistent with falling five to ten stories or being hit by a bus," which was what the medical examiner initially told police. At trial, the medical examiner testified that these [REDACTED] injuries could have resulted from being stomped to death. The medical examiner also testified that the injuries to her heart could not have resulted from being struck by a wooden two-by-four or a collapsible metal stick, because those objects could not generate sufficient force to cause injuries that severe.

Between December 26, 2003, and February 2005, Mr. [REDACTED] was interviewed several times by the police. He provided four statements in which he admitted that he helped

to eject [REDACTED] from the party, but denied playing a role in her death. Ultimately, Mr. [REDACTED] was indicted on charges that he acted in concert with others to cause [REDACTED] death. No one else was ever charged with this crime.

The Key Evidence Defense Counsel Failed to Present at Trial

According to Police Officer [REDACTED] [REDACTED] who responded to the crime scene on December 26, 2003, after [REDACTED] body was found in the 10th floor stairwell by a maintenance worker, [REDACTED] was lying face up on the platform in front of the flight of the stairs. Her shirt and upper body were burned, and there was a pair of earrings on the second and third steps, a few feet from the body.

The police spoke to a number of witnesses at the scene. One of these witnesses, [REDACTED] [REDACTED] told Detective [REDACTED] from the 109th Precinct, she had seen [REDACTED] [REDACTED] slumped in one of the building's elevators, alive and intoxicated, at about 5:30 a.m., that morning. [REDACTED] prepared the following report about [REDACTED] [REDACTED] sighting of [REDACTED]

1. On 12-26-03 I was present at 34-41 Linden Place where I did interview what possibly was the last person to see the aided [REDACTED] [REDACTED] alive. The person identified herself as [REDACTED] [redacted text]. [REDACTED] is an [sic] self admitted Prostitute and a drug user who states she gets high in Apartment [REDACTED], an apartment [sic] leased by a [sic] elderly Male Black she knows as [REDACTED]. She states after turning her last trick on [REDACTED] she went to the building to get high. She was buzzed in the building at about 0530 hours on 12-26-03 and observed the aided [REDACTED] [REDACTED] in one of the elevators. The aided was slumped on the floor of the elevator semi conscious. [REDACTED] asked her if she was all right and she said something like uh huh and bobbed her head. She states she got in the other elevator and went up to the [REDACTED] to get high. That was the last she saw of the aided [REDACTED] [REDACTED] and didn't haer [sic] or see anything unusual afterward. [REDACTED] states that she has seen the aided at the apartment in the past and she is from the neighborhood. She states that the aided free bases. She does not know her name but states that other vistors [sic] in the apartmebnt [sic] at this time know it. (A subsequent check with that person led to the aided's true identity.)

2. Case active.

Detective [REDACTED] also provided [REDACTED] [REDACTED] information to [REDACTED] at the Office of the Chief Medical Examiner, in a report stating:

The decedent [REDACTED] [REDACTED] was seen by a women [sic] crouched in the elevator at approximately 5AM today. She appeared to be impaired due to substance use. She had a black coat with her and a pair of yellow metal hoop earrings which were not in her ears. She was headed for the [REDACTED]. The decedent was discovered dead by a building worker who was in the stairwell sweeping after 9AM. 911 was called at that time. As per [REDACTED] detectives,

the [REDACTED] is a known drug location. The decedent is believed to live nearby with a domestic partner.

Ten days later, on January 5, 2004, Detective [REDACTED] interviewed [REDACTED] a/k/a "White Boy [REDACTED]" regarding [REDACTED] death. [REDACTED] said he saw [REDACTED] exit the building at [REDACTED], around 5:30 a.m., as he was coming in. He remembered she said something to him. Then, [REDACTED] saw [REDACTED] on the elevator. She was alive but extremely intoxicated. He told the detective he brought [REDACTED] to the [REDACTED] and left her outside apartment [REDACTED]. Afterwards, [REDACTED] said, he went to [REDACTED] apartment, number [REDACTED] for the rest of the morning. However, later that day, [REDACTED] was very depressed. His grandmother called 911 and he was taken to Queens General Hospital for psychiatric treatment. [REDACTED] told Detective [REDACTED] he knew [REDACTED] and had heard she died from a heart attack or drug overdose.

[REDACTED] January 5th statement to Det. [REDACTED] in which he stated he saw [REDACTED] alive on the elevator at 5:30 a.m., and then he went to [REDACTED] apartment, was corroborated by the statements that the police had previously taken on December 27th and December 30th, 2003, from [REDACTED] grandmother and [REDACTED] respectively, while [REDACTED] was hospitalized.

Four months later, on April 29, 2004, [REDACTED] was re-interviewed by police, and he partially recanted his statement. This time, he said he got back to [REDACTED] around 6:30 a.m., on December 26, 2003, and saw [REDACTED] come running out of the building, screaming. They did not talk. He then went in the lobby, where he saw no one, and got on the elevator. No one was on the elevator, and he went to his grandmother's apartment. Around 1:00 p.m. on December 26, 2003, he learned from his grandmother and girlfriend that the police were asking questions about a body found on the stairs.

Notably, in this retelling of events, [REDACTED] does not say anything about going to [REDACTED] apartment. Thus, his recantation not only contradicts his prior statement, but [REDACTED] statement to police, as well, which [REDACTED] made before the police ever talked to [REDACTED]. It appears, therefore, that [REDACTED] recanted his initial statement to police because he was afraid the police would think that he was the person who killed [REDACTED] and that he left her in the [REDACTED] stairwell.

On April 30, 2004, Detective [REDACTED] conducted his second interview with [REDACTED] the woman who originally told Mr. [REDACTED] and [REDACTED] to eject [REDACTED] from the party. She told Detective [REDACTED] the following:

ON 12-26-03 AT ABOUT 0900 HRS THE POLICE CAME TO THE APARTMENT [REDACTED], ASKING QUESTIONS. [REDACTED] WAS IN THE BACK WITH MR. [REDACTED] AND WAS QUIET AS A MOUSE. [REDACTED] TELLS THE POLICE A STORY ABOUT WHITE BOY [REDACTED] ([REDACTED] ABOUT [REDACTED] IN

THE ELEVATOR, THEN THE LOBBY. THAT'S WHEN EVERYONE THOUGHT
 [REDACTED] KILLED [REDACTED]

Detective [REDACTED] testified at Mr. [REDACTED] trial. He was not questioned about his interviews with [REDACTED] [REDACTED] [REDACTED] was not called as a witness. Neither was Detective [REDACTED] or [REDACTED] [REDACTED]. Given the unrefuted forensic evidence that [REDACTED] died immediately from her internal injuries, [REDACTED] and [REDACTED] statements were of critical importance to Mr. [REDACTED] defense. If [REDACTED] was still alive at 5:30 a.m., then she could not have died as a result of any injuries she sustained when Mr. [REDACTED] [REDACTED] and [REDACTED] ejected her from the party, between 2:30 a.m. to 4:00 a.m. Rather, if believed, [REDACTED] and [REDACTED] statements showed [REDACTED] [REDACTED] did not die until hours later, sometime after 5:30 a.m.

Defense counsel was not provided with these statements until the beginning of trial. Counsel argued they constituted Brady material and requested a continuance so he could locate [REDACTED] and [REDACTED]. The court ruled they were not Brady material and denied the request for a continuance. During the trial, although counsel made a record request for [REDACTED] [REDACTED] address and photograph, he never sought a material witness order to secure her presence at trial. As a result, the jury never learned that [REDACTED] [REDACTED] was seen alive at 5:30 a.m., on December 26, 2003, and Mr. [REDACTED] was convicted of her murder.

On July 30, 2019, I was provided with a compact disc containing the police notes and complaint reports relating to this case by the Office of the Queens County District Attorney. To my surprise, I discovered that this packet of documents contained notes taken by a detective, of an additional interview of [REDACTED] [REDACTED] on June 23, 2004. I have obtained Mr. [REDACTED] trial attorney's file and it does not contain these notes. To my knowledge, this is the first time these notes have been provided to Mr. [REDACTED].

This June 23, 2004 interview contains a considerably more extensive description by [REDACTED] [REDACTED] of the events that culminated in the discovery of [REDACTED] [REDACTED] body. These notes, which I have scanned onto the compact disk accompanying this letter, offer considerably greater details regarding the events that occurred that night. In this interview, Ms. [REDACTED] reports that she saw Mr. [REDACTED] drag [REDACTED] [REDACTED] out of the apartment to the staircase door. [REDACTED] asks him if he threw her down the stairs and Mr. [REDACTED] says no. Later, around 6:00 a.m., [REDACTED] sees [REDACTED] and Mr. [REDACTED] walk out of the apartment and [REDACTED] notes that [REDACTED] is laying in the hallway near the elevator. [REDACTED] sees Mr. [REDACTED] wake [REDACTED] up. [REDACTED] took an elevator downstairs and did not return. [REDACTED] sees Mr. [REDACTED] place [REDACTED] [REDACTED] on the other elevator with her coat and one earring. Then, [REDACTED] and Mr. [REDACTED] return to the apartment where the party is being held.

About ten minutes later, [REDACTED] leaves the apartment and calls for an elevator. When it arrived, the doors opened and [REDACTED] saw [REDACTED] still alive in the elevator. [REDACTED] boards the elevator with [REDACTED] and it proceeds down. It stops at one point, and an unknown man lets it pass and takes the stairs, instead. When the elevator got to the lobby, [REDACTED] saw the man again. As [REDACTED] exited the elevator, she sees [REDACTED] coming in the front door and asks

him to move [REDACTED] out of the elevator and put her on the steps in the lobby. He did not say anything in response, but when [REDACTED] turned back to see what he was doing, she saw [REDACTED] carrying [REDACTED] coat and dropping it on the steps. Then, she left the building to meet a “date” at 6:10 a.m..

When [REDACTED] returned, around 6:50 a.m., she did not see anyone in the lobby and took the other elevator, not the one she had ridden on with [REDACTED] back to the [REDACTED]. She did not see [REDACTED] [REDACTED]. She went into apartment [REDACTED] and saw Mr. [REDACTED] sleeping in a chair. She woke him up to purchase a \$20.00 bag of crack and then [REDACTED] went back to sleep. [REDACTED] smoked and fell asleep. Later, [REDACTED] hears [REDACTED] saying to [REDACTED] “yo, son I’m gonna do that,” and then [REDACTED] leaves. [REDACTED] fell back asleep, until she heard [REDACTED] come back and say to Mr. [REDACTED] “I took care of that.” [REDACTED] said Mr. [REDACTED] gave [REDACTED] drugs, which she assumed [REDACTED] paid for, and [REDACTED] gave [REDACTED] a pipe. Then, [REDACTED] went to lie down in another room and she fell asleep. The next thing [REDACTED] recalls was that the police came to the apartment and Mr. [REDACTED] spoke with Detective [REDACTED]. According to these notes, days later, Mr. [REDACTED] told [REDACTED] that Mr. [REDACTED] was teasing [REDACTED] saying [REDACTED] killed [REDACTED].

The foregoing information clearly demonstrates that [REDACTED] [REDACTED] was not stomped to death in the hallway on the [REDACTED] right after she was ejected from the party by Mr. [REDACTED] [REDACTED] and [REDACTED] as the prosecution argued at Mr. [REDACTED] trial. In actuality, the prosecution has no idea who killed [REDACTED] [REDACTED] or exactly when, where, or how she died. Thus, it cannot be said the Mr. [REDACTED] was proven to have acted in concert to cause her death. Rather, there is clear and convincing that Mr. [REDACTED] is actually innocent of this crime.

Mr. [REDACTED] and The Legal Aid Society have filed a federal habeas corpus petition on Mr. [REDACTED] behalf. The habeas petition has been stayed, however, because the Queens District Attorney’s Conviction Integrity Unit has agreed to reinvestigate Mr. [REDACTED] conviction, and that reinvestigation is ongoing.

About [REDACTED] [REDACTED] Himself

During his incarceration, Mr. [REDACTED] has been working tirelessly to prove his innocence. In addition to researching and filing legal documents toward that end, he has obtained his G.E.D., received 30 college credits, and taken every mandatory and voluntary program that the Department of Corrections had offered. He has completed numerous programs, including A.S.A.T., a substance abuse program, the Alternative to Violence Program, the Inmate Teaching Entrepreneurship Mentoring Program, the Manhood Responsibility Program, the Civic Duty Initiative Program, and the Youth Assistance Program (a/k/a Scared Straight). In sum, he has made extraordinarily good use of the opportunities that he has had been afforded to further his education and to further his character development.

Consequently, in light of the threat to Mr. [REDACTED] health from COVID-19, the fact that he has a high likelihood of demonstrating his actual innocence, and since he is just one year away from his conditional release date, I urge you to grant Mr. [REDACTED] clemency in this case. Please feel free to contact me at 917-922-7075, if you have any questions.

Sincerely,

Susan Epstein
Associate Appellate Counsel

April 7, 2020

VIA EMAIL

New York State Department of Corrections
and Community Supervision
Executive Clemency Bureau
The Harriman State Campus – Building 2
1220 Washington Avenue
Albany, NY 12226-2050
[REDACTED]

Tomoeh Murakami Tse
Staff Attorney
Cell: (646) 584-7046
tmurakamitse@legal-aid.org

Janet E. Sabel
Attorney-in-Chief
Chief Executive Officer

Justine M. Luongo
Attorney-in-Charge
Criminal Practice

David Loftis
Attorney-in-Charge
of Post-Conviction and Forensic Litigation

Re: Emergency Clemency Application
[REDACTED]

To the Executive Clemency Bureau:

I write to request immediate release of [REDACTED] [REDACTED] a medically vulnerable individual who is incarcerated at Otisville Correctional Facility where an inmate last week died from COVID-19. Mr. [REDACTED] suffers from chronic asthma, which requires him to use an inhaler. His condition puts him at a very high risk of experiencing complications, including death, if he contracts the novel coronavirus.

Mr. [REDACTED] has already served nearly six years of his 10-year determinate sentence for his conviction on second-degree conspiracy (his conditional release date is 1/17/23). This was his first felony. He was only 18 years old at the time of his offending conduct in 2010. *See* Pre-Sentence Investigation Report, attached as Exhibit A, at p. 2; *see also id.* at p. 5 (noting regular asthma attacks).

Mr. [REDACTED] is now 28 years old. He has a strong prison record, strong family ties, and access to stable housing upon his release. He does not pose a threat to society. Given current prison conditions under the threat of widespread coronavirus contagion, any further incarceration is unduly harsh and punitive. Mr. [REDACTED] should be released immediately.

Mr. [REDACTED] Medical Condition:

Mr. [REDACTED] suffers from chronic asthma. DOCCS's medical personnel have prescribed an albuterol inhaler to help him breathe. In prison, he has regular asthma attacks, which cause shortness of breath, chest pains, headaches and difficulty breathing. The respiratory condition puts Mr. [REDACTED] at greater risk for serious illness from COVID-19. According to the Centers for Disease Control and Prevention ("CDC"), medically vulnerable people include those "with chronic lung disease or **moderate to severe asthma,**" serious heart conditions, severe obesity, or underlying medical conditions such as diabetes, renal failure and liver disease. CDC, *Coronavirus Disease 2019: People Who Are at Higher Risk for Severe Illness*.¹ (emphasis added). See also *Coronavirus Disease 2019: People with Moderate to Severe Asthma*, CDC ("People with asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.").²

Given Mr. [REDACTED] condition, it is evident that he should be released as soon as possible. See *United States v. Powell*, No. 1:94-cr-316-ESH, Dkt. No 98 (D.D.C. Mar. 28, 2020) (in light of COVID-19, granting release motion filed by inmate with respiratory problems, including sleep apnea and asthma); *Frailhat v. Wolf*, 20-cv-590 (TJH) (C.D. Cal., Mar. 30, 2020) (in immigration habeas proceeding, granting release to detainee with asthma and other ailments, noting that release is in the public interest, and stating, "in the time of a crisis, our response to those at particularly high risk must be with compassion and not apathy. The Government cannot act with a callous disregard for the safety of our fellow human beings").

¹ Available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higherrisk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpeople-at-higher-risk.html (last visited Apr. 7, 2020).

² Available at https://www.cdc.gov/coronavirus/2019-ncov/needextraprecautions/asthma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html (last visited Apr. 7, 2020).

The Coronavirus and Conditions at Otisville Correctional Facility

There is no cure for COVID-19, or any existing medication to prevent or treat infection. The only known methods to reduce the risk to vulnerable people of serious illness or death are to prevent infection in the first place, through social distancing and improved hygiene, including washing hands frequently.

Mr. [REDACTED] tries hard to follow these methods. He showers twice a day, and constantly washes his hands. He limits his time in the yard, and tries to avoid contact with others. However, because of the conditions at Otisville Correctional Facility, it is impossible for him to mitigate his risk. The bathroom where he showers is shared by dozens of other inmates. There is no hand sanitizer, and only bar soap—not the liquid soap recommended by experts. *See CDC, Interim Guidance on Management of Coronavirus Disease 2019 (COVID19) in Correctional and Detention Facilities.*³

Further, Mr. [REDACTED] resides in a “dorm”—a single room with bunk beds, with 40 other men. His dorm, House 118, is just across from House 122, where an inmate last week succumbed to COVID-19, and where its 39 remaining residents are under quarantine. While Mr. [REDACTED] makes an effort to keep to himself, in order to eat, he must go to the one mess hall used by all inmates at the facility. In a phone call earlier this week, Mr. [REDACTED] told me that many people in his dorm are sick, but that unless their fever is 104 or higher, they are not isolated because of the lack of space.

Mr. [REDACTED] is fearful, especially after a captain late last week informed his dorm of the death of the inmate from the adjoining house, that it is only a matter of time before he contracts the virus. Indeed, infectious diseases specialists warn that no conditions of confinement in prison settings can adequately manage the serious risk of COVID-19 infection for medically vulnerable people such as Mr. [REDACTED]. Thus, correctional public health experts have urged the release of older people and those with underlying medical conditions. *See, e.g., NYC Officials Call for Release of ‘Most at Risk’ on Rikers Island as More Test Positive for Virus, NBC New York*

³ Available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (last visited Apr. 7, 2020).

(March 18, 2020).⁴ As these experts have explained, release is the only effective means to protect medically vulnerable inmates because social distancing is virtual impossible inside prisons. By reducing density and freeing up medical resources, the release of Mr. [REDACTED] and other high-risk individuals would also allow for greater risk mitigation for all people who remain in custody or working in New York State prisons. *See Why Jails Are So Important in the Fight Against Coronavirus*, N.Y. Times (March 31, 2020) (featuring interactive map showing flow of people in and out of jails, illustrating risks posed to not only inmates but also workers and surrounding communities).⁵

Time is of the essence. It is clear that the deadly disease has already made its way inside the DOCCS system, and Mr. [REDACTED] facility in particular.⁶ As of 12:32 p.m. on the date of this writing, there were 138,836 confirmed cases in New York State, and 5,489 deaths. *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times.⁷ It is worth noting that just three weeks ago, on March 18, the city jail on Rikers Island had only one confirmed case of a detainee with COVID-19. *See Chelsia Rose Marcus, Rikers Island Inmate Has Contracted Coronavirus:*

⁴ Available at <https://www.nbcnewyork.com/news/local/nyc-officials-call-for-release-of-most-at-risk-on-rikers-prison-as-more-test-positive-for-virus/2333348/> (last visited April 7, 2020).

⁵ Available at <https://www.nytimes.com/2020/03/31/upshot/coronavirus-jails-prisons.html> (last visited April 7, 2020).

⁶ In phone conversations in recent days, several clients of The Legal Aid Society who are incarcerated at Otisville Correctional Facility have informed us that prison officials there late last week announced the death of the inmate at the facility. The death has also been reported by news media. *E.g.*, Sydney Pereira, *Man with Coronavirus Dies While Jailed for Parole Violation on Rikers Island*, The Gothamist (Apr. 6, 2020), available at <https://gothamist.com/news/man-coronavirus-dies-while-jailed-parole-violation-rikers-island> (last visited April 7, 2020). *See also* Andrew Denney, *First New York Prisoner With Coronavirus Dies at Sing Sing*, N.Y. Post (April 2, 2020), available at <https://nypost.com/2020/04/02/first-new-york-prisoner-with-coronavirus-dies-at-sing-sing/> (last visited April 7, 2020).

⁷ Available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Apr. 7, 2020).

Officials, N.Y. Daily News, (Mar. 18, 2020).⁸ As of the day of this writing, there are at least 287 currently incarcerated inmates diagnosed with the virus (and an additional several hundred staff members).⁹

Mr. [REDACTED] Incarceration, Achievements and Release Plans

Mr. [REDACTED] was arrested in June 2014 for his offending conduct, which took place four years earlier, in 2010. He was indicted in 2014 along with dozens of other young men, on allegations that they were part of a conspiracy to kill members of rival gangs and to protect their territory in the [REDACTED] and [REDACTED] Houses in West Harlem. Mr. [REDACTED] was not accused of personally killing anyone. *See* Exhibit A at 1-2.

The 103-person indictment was the culmination of an effort by Manhattan District Attorney Cy Vance Jr. and others to clean up community gang activity; it was preceded by a massive, early-morning raid by the NYPD of the two public housing complexes, which involved 500 police officers and police helicopters. *See* Ben Hattem, *How Massive Gang Sweeps Make Growing Up In The Projects A Crime*, *The Gothamist* (Oct. 24, 2016); *see also* James C. McKinley Jr., *Murder Trial Plumbs Gang Violence, Adding to a Family's Pain*, N.Y. Times (Apr. 10, 2016) (noting raid lead to the “arrest [of] 103 young men on conspiracy charges in one of the largest roundups of people suspected of gang membership in New York City’s history.”)¹⁰

⁸ Available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzmqmrmuevzz3y-story.html> (last visited Apr. 7, 2020).

⁹ The Legal Aid Society is collecting data from the New York City Department of Corrections about the rate of COVID-19 infections and making them publicly available at <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last updated Apr. 7, 2020).

¹⁰ Available respectively at <https://www.nytimes.com/2016/04/11/nyregion/murder-trial-plumbs-gang-violence-adding-to-a-family-s-pain.html> & <https://gothamist.com/news/how-massive-gang-sweeps-make-growing-up-in-the-projects-a-crime> (last visited Apr. 7, 2020).

Some defendants went on to trial, but Mr. [REDACTED] accepted responsibility and pleaded guilty in January 2015 to one count of second-degree conspiracy and one count of attempted second-degree assault. Justice [REDACTED] of the New York County Supreme Court sentenced Mr. [REDACTED] respectively, to a determinate term of 10 years in prison to be followed by five years of post-release supervision, and an indeterminate term of three-and-a-half to 10 years in prison, to be served concurrently. Exhibit A at 1.¹¹

Mr. [REDACTED] is no longer the person he was at the time of his offending conduct in 2010, when he was 18 years old. Indeed, by the time of the mass raid in June 2014, he had already moved back south to Georgia, where he was taking GED classes and living with his mother [REDACTED] [REDACTED] while looking for an apartment with his partner [REDACTED] [REDACTED] and their infant daughter [REDACTED]. Previously, he had moved to New York in October 2009, to live with his father, a dispatcher who resided at the [REDACTED]. See Exhibit A at 3-4.

In his own words, Mr. [REDACTED] described to me how he had moved to New York City to live with his father in Fall 2009 because he was getting in trouble at his high school in Georgia, how he had made friends with the first boy who spoke to him in his new neighborhood ([REDACTED] [REDACTED] a boy two years his senior, who lived three floors above Mr. [REDACTED] father's apartment in the [REDACTED], and who was charged with attempted murder in the same indictment as Mr. [REDACTED] and how he began to understand that he needed to get out of the neighborhood. "As I got older, I started to open up my eyes to what was going on—I saw the negative environment I was in for what it was," he said. "I thought it was normal. But when I had my daughter, I started to see that this was not normal. I saw the danger my girlfriend and my daughter was in. It is not normal to be considered an enemy just because of where you live."

Mr. [REDACTED] has continued to mature since his arrest. He has served nearly six years in prison, more than half of the incarceratory portion of his sentence. In prison,

¹¹ Mr. [REDACTED] was arrested in Georgia on June 30, 2014, several weeks after the NYPD's mass raid of the [REDACTED] and [REDACTED] Houses, and brought back to New York for prosecution. See Exhibit A at 1.

Mr. [REDACTED] has remained focused on getting back to his family and starting his life anew. For the past year, he was enrolled in the GED program at Otisville Correctional Facility, doing very well, and was working hard to prepare for the exam next month; however, classes stopped three weeks ago because of COVID-19, and he is uncertain whether he will be permitted to take the test as planned.

Throughout his custody, Mr. [REDACTED] has maintained close contact with his family. He speaks to Ms. [REDACTED] nearly every day on the phone, and is in regular communication with his parents and siblings as well as Ms. [REDACTED] family. Ms. [REDACTED] 29, who is completing a bachelor's degree in marketing through online courses, and [REDACTED] (who just turned seven), split their time between Georgia (where they stay with Mr. [REDACTED] mother, a nurse at an Atlanta hospital) and New York City, where Ms. [REDACTED] is from (and where they stay with her mother, [REDACTED] a housing specialist for the Department of Housing Services). Until DOCCS suspended family visits on March 14 due to COVID-19, the family regularly visited Mr. [REDACTED] at his facility. I have had multiple conversations with members of Mr. [REDACTED] family over the past several years, and they have told me that they are committed to providing whatever support he needs in reentering society, including emotional guidance and financial assistance.

Immediately upon his release, Mr. [REDACTED] and Ms. [REDACTED] along with [REDACTED] will be able to stay with Ms. [REDACTED] mother, who lives by herself in an apartment in Lower Manhattan. Then, the couple hope to have Mr. [REDACTED] post-release supervision transferred to Georgia, where they plan to pick up the life they had envisioned, and had begun working on, when Mr. [REDACTED] was arrested. In Georgia, first, they plan to move in with Mr. [REDACTED] mother, who lives in a single-family home in the Atlanta suburb of [REDACTED]. She raised Mr. [REDACTED] and his three younger siblings there, but they are grown now. She lives there by herself, and is happy to have Mr. [REDACTED] and his family stay with her until the couple is financially independent.

Finally, Mr. [REDACTED] also has a minimal disciplinary record; he has received approximately six tickets during his six years in prison, and only one of them—incurred shortly after his arrival in the DOCCS system—is a Tier III ticket. He received the ticket because he was in the yard when a riot broke out. Mr. [REDACTED] has also worked throughout his time in custody, and is currently a porter. Mr. [REDACTED]

commitment to rehabilitation, and to his family, demonstrate that he does not pose a risk to society. In light of the risks posed to him by COVID-19, we urge the Executive Clemency Bureau to approve his clemency application and order his immediate release from prison.

We thank the Executive Clemency Bureau for its urgent consideration of Mr. [REDACTED] application. I am available on my cell phone, at (646) 584-7046 to answer any questions.

Sincerely,

Tomoeh Murakami Tse

Tomoeh Murakami Tse

April 6, 2020

New York State Department of Corrections and Community Supervision
Executive Clemency Bureau
The Harriman State Campus Building 2
120 Washington Avenue
Albany, N.Y. 12226-2050

VIA E-MAIL: [REDACTED]

Re: Executive Clemency Application, [REDACTED]
[REDACTED]
N.Y. County Ind. No. [REDACTED]

Dear Executive Clemency Bureau:

I submit this emergency clemency application on behalf of Ms. [REDACTED] [REDACTED] who is currently incarcerated at Taconic Correctional Facility. Ms. [REDACTED] [REDACTED] is 61 years old and has type II diabetes, hypertension, and high blood pressure. Both her age and her medical vulnerabilities place her at high risk of severe illness and death if she contracts the novel coronavirus COVID-19. She is scheduled for release on August 22, 2020, at which point she will have reached the maximum expiration of the incarceratory portion of her sentence.¹ She will remain on post-release supervision for an additional two years upon release. Given the possible death sentence she faces from continued incarceration, and because she has served almost her full sentence and is within four months of release, we respectfully ask for her immediate release.

Ms. [REDACTED] Is in a High-Risk Category Due to Her Age and Health Conditions

According to the CDC, the people at higher risk of getting very sick or dying from COVID-19 include: (1) adults over the age of 60 and (2) people who have serious chronic medical conditions like heart disease, diabetes and lung disease.² At 61 years old and suffering from type II diabetes, hypertension, high blood pressure, Ms. [REDACTED] falls squarely within this high-risk population. For her various conditions, she takes various medications daily, including Metformin for her diabetes, and other medication for cholesterol, high blood pressure and recurring migraines. In addition, she has recently been placed on new heart

¹ See Inmate Information for [REDACTED] [REDACTED] dated Apr. 6, 2020 (attached)

² Centers for Disease Control and Prevention, *If You Are At Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

medication because of an elevated heart rate that was discovered at a routine wellness checkup, after which she was put on a 24-hour heart monitor. This recent development is especially worrying given new information that COVID-19 may target the heart muscle, causing a medical condition known as myocarditis, or inflammation of the heart muscle.³ Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump, and increasing the risk of long-term heart failure.

Ms. [REDACTED] faces great risk of COVID-19 infection by remaining in DOCCS custody and that risk is growing daily as the virus spreads among state facilities. As of Friday, April 3rd, 201 DOCCS staffers and 36 people in custody had tested positive, and two people in custody had died.⁴ At Taconic, Ms. [REDACTED] continues to be in congregate settings with other incarcerated individuals, including at the mess hall where she is required to eat with her entire unit, and at recreation where social distancing is not well enforced. As per DOCCS policy, she will not be provided a mask or other protective equipment and may even face retaliation for making her own mask.⁵ She has seen one civilian wearing a mask inside the facility, but none of the corrections officers wear them, despite the increasing rates of infection among corrections staff.⁶ Additionally, she has requested a medical visit to the hospital for her recurring migraines and blurry vision but has been told that all such visits are on pause for the duration of the pandemic. Clearly, she is already suffering irreparable harm by her continued incarceration during this pandemic.

Ms. [REDACTED] Housing Plan Upon Release

Ms. [REDACTED] has supportive family eagerly awaiting her release, who will ensure that she has a safe and smooth transition process. Upon her release Ms. [REDACTED] plans to live with her father [REDACTED] [REDACTED] in [REDACTED] with whom she has been in regular contact throughout her incarceration. Mr. [REDACTED] lives at [REDACTED] [REDACTED] and I have confirmed this release plan with him. He states that Ms. [REDACTED] will have her own bedroom and her own bathroom so she can quarantine for the recommended 14-day period after her release from prison.

³ Mayo Clinic News Network, *How does COVID-19 affect the heart?* (Apr. 3, 2020) <https://newsnetwork.mayoclinic.org/discussion/how-does-covid-19-affect-the-heart/>

⁴ The City, *State Prisoners Punished For Wearing Masks As City Jails Ok Them* (Apr. 3, 2020) <https://thecity.nyc/2020/04/state-prisoners-punished-for-masks-as-city-jails-oks-them.html>.

⁵ Id.

⁶ Times Herald-Record, *NY correctional officers can wear masks; 120 test positive for COVID-19: union* (Apr. 5, 2020) <https://www.recordonline.com/news/20200405/ny-correctional-officers-can-wear-masks-120-test-positive-for-covid-19-union>.

To facilitate her release directly to [REDACTED], Ms. [REDACTED] has applied for an out-of-state transfer of parole under the Interstate Compact and is awaiting approval. Because she has family living in the receiving state who are willing and able to support her, she will be considered a “mandatory transfer case.”⁷ In the event that her out of state transfer approval is not secured before her release, she can stay temporarily with a friend at [REDACTED] [REDACTED] where she was living [REDACTED].

As Ms. [REDACTED] stated in a letter to the court while her case was pending, “My father is 80 years of age. He’s all I have right now. I just buried my mother 2 years ago. I want all this behind me so I can move home to be with my father.”⁸

Summary of Ms. [REDACTED] Offense and Sentence

Ms. [REDACTED] instant conviction, criminal possession of a controlled substance in the third degree, occurred in the context of her life-long struggle with substance abuse. She is currently serving a two-year prison sentence, to be followed by two years of post-release supervision. Her prior felony convictions for grand larceny, forgery, and drug possession, as well as her misdemeanor convictions, can also be understood in the context of her heroin addiction. She has never been convicted of any crime involving violence.

Ms. [REDACTED] grew up in [REDACTED] where she hopes to return upon her release. Her mother passed away in 2016. Her father, [REDACTED] [REDACTED] whom she has called “the most influential person in my life,” remained in Georgetown her entire life, and is retired from the [REDACTED]

At age 17, Ms. [REDACTED] began using heroin and developed an addiction that would last 43 years. She reports using heroine daily throughout this period. In the instant offense, Ms. [REDACTED] was given an opportunity to complete a drug treatment program for her substance abuse. She successfully completed a rehab program at [REDACTED] Treatment Center and was enrolled in a 12-month residential treatment program at [REDACTED], part of the [REDACTED]. However, due to various factors, including the death of her niece, who she stated was “like a daughter” to her, and reported bullying by another participant in the program, she relapsed and was terminated from the program. She returned to court and was sentenced to two years prison and two years post-release supervision.

⁷ See *DOCCS Directive 9700: Interstate – Compact, Out of State, Cooperative, Dual Supervision Cases*. P. 2, 4.

⁸ Letter from [REDACTED] [REDACTED] Supreme Court File.

Ms. [REDACTED] has tried to take advantage of her time inside and cut off from drugs. Prior to the cessation of programming at Taconic C.F. due to the coronavirus, she was enrolled in ASAT, a program to address her substance abuse. The one year and eight months that she has served, of her two-year sentence, have offered her ample time to take accountability for her actions and lay the groundwork for a better future for herself.

Conclusion

As COVID-19 infections continue to surge and cause thousands of pre-mature deaths in New York State, we respectfully ask that Ms. [REDACTED] be immediately released to protect her from the disproportionate risk of infection within prison walls. Her age and health put her at grave risk of serious illness or death if she contracts the coronavirus. That her scheduled release date is in four short months further supports commuting her sentence and authorizing her immediate release. Lastly, Ms. [REDACTED] requests not a complete termination of her sentence but only that her two-year period of post-release supervision commence a few months early. For these reasons, we urge the Executive Clemency Bureau to approve Ms. [REDACTED] application and order her immediate release from prison.

Thank you for your expeditious consideration of Ms. [REDACTED] application. If there is any other information about this request that I can provide, please feel free to contact me by email at yma@legal-aid.org, or by phone at (646) 592-3633.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Ying-Ying Ma', with a stylized, cursive script.

Ying-Ying Ma
Staff Attorney

April 7, 2020

New York State Department of Corrections and Community Supervision
Executive Clemency Bureau
The Harriman State Campus Building 2
120 Washington Avenue
Albany, N.Y. 12226-2050

John K. Carroll
President

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

Justine M. Luongo
*Attorney-in-Charge
Criminal Practice*

VIA E-MAIL: [REDACTED]
[REDACTED]
[REDACTED]

David Loftis
*Attorney-in-Charge
of Post-Conviction and Forensic Litigation*

Re: Executive Clemency Application, [REDACTED]
[REDACTED]
Bronx County [REDACTED]

Dear Executive Clemency Bureau:

I submit this clemency application on behalf of [REDACTED] who will be parole-eligible on September 26, 2020. His parole hearing, which was originally scheduled for May, has been postponed to an unspecified date in July. In light of the COVID-19 pandemic, we request expedited review of this application. Mr. [REDACTED] is incarcerated for a nonviolent offense, and is not only medically vulnerable to COVID-19, but is being denied necessary non-COVID-related medical care due to the current crisis.

Mr. [REDACTED] Medical and Social History

Mr. [REDACTED] is currently incarcerated at Green Haven Correctional Facility. As of April 5, 18 correction officers at the prison had tested positive for COVID-19, according to reporting by the Poughkeepsie Journal;¹ advocates have received reports that several inmates have contracted the virus as well, but precise numbers are unknown.

This presents a grave risk to Mr. [REDACTED] who is considered at high risk for serious illness if he contracts COVID-19. He has asthma, which he controls with albuterol. He also smokes cigarettes, which places him at high risk not only because COVID-19 attacks the lungs, but also because cigarette smoking may suppress the immune system.²

¹ Katelyn Cordero, "NY correctional officers can wear masks; 120 test positive for COVID-19: union," *Poughkeepsie Journal*, April 5, 2020, available at <https://www.recordonline.com/news/20200405/ny-correctional-officers-can-wear-masks-120-test-positive-for-covid-19-union>.

² Centers for Disease Control and Prevention, "People who are at higher risk for severe illness," at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

In addition to these medical conditions, Mr. [REDACTED] also lives with a painful inguinal hernia, which multiple surgeries while in DOCCS custody have failed to resolve. He first underwent a repair surgery in October, 2017, but had a hematoma at the site and then a recurrence of the hernia, requiring a second repair, with mesh, in August, 2018. Due to ongoing difficulties with the mesh repair he was scheduled to receive a third surgery in early April. However, he has been told that this surgery has been indefinitely postponed due to the current crisis.

Mr. [REDACTED] also carries several mental health diagnoses, and is designated as OMH level 2.³ He received diagnoses of bipolar, depression, and post-traumatic stress disorder while in the community. He also has a history of substance abuse, though he has maintained sobriety for many years. Because of his OMH level, Mr. [REDACTED] is entitled to comprehensive discharge planning prior to his release, including linkages to mental health and case management services in the community as well as assistance with applications to supportive housing.

Mr. [REDACTED] Legal History

Mr. [REDACTED] is serving two concurrent sentences of 3 ½ - 7 years following his pleas of guilty to two counts of robbery in the third degree, a nonviolent felony, in the [REDACTED] Mr. [REDACTED] who was homeless and without a job at the time of his arrest, entered two Chase Banks and passed the tellers notes demanding money and indicating that he was armed. He obtained \$1800 during the first incident and \$1180 during the second. He was arrested within minutes of the second incident, unarmed, and with the \$1180 in his pocket; he readily admitted to the offense.

Not only is Mr. [REDACTED] instant offense nonviolent, but he also has no prior history of violence. His other felony convictions are for auto stripping, attempted forgery in the second degree, and criminal mischief in the third degree. He has a lengthy, but nonviolent, misdemeanor record for property and controlled substance offenses, consonant with his history of poverty, mental illness, and substance use. Mr. [REDACTED] also has prior convictions in [REDACTED] for similar types of offenses.

Conclusion

COVID-19 has already taken hold at Mr. [REDACTED] prison, and he is at high risk if exposed. On the other hand, he poses a low risk of harm to the community. Mr. [REDACTED] is parole eligible in less than six months, and has no history of violent conduct. We respectfully request that you grant his application for clemency so that he may return to the community where he may take all appropriate protective measures.

³ The New York State Office of Mental Health designates incarcerated people as requiring services at levels 1 through 6, depending on the severity of their diagnosis, their acuity, and the types of resources they require.

Very truly yours,

/s/

Hannah Gladstein
Staff Attorney

Encl: Medical Records

April 5, 2020

New York State Department of Corrections and Community Supervision
Executive Clemency Bureau
The Harriman State Campus Building 2
120 Washington Avenue
Albany, N.Y. 12226-2050

VIA E-MAIL: [REDACTED]

Re: [REDACTED]

[REDACTED]
[REDACTED]

Kings Co. Ind. No. [REDACTED]

Conviction: First-Degree Criminal Sale of Firearms

Sentence: 13 years plus 5 years post-release supervision

Conditional release date: May 21, 2021

Facility: Franklin Correctional

Dear Clemency Review Team:

[REDACTED] [REDACTED] has served approximately 10 years of his 13 year sentence, and **he is just over a year away from his May 21, 2021, conditional release date.** Given that he is a strong candidate for clemency, that **he is vulnerable to the devastating effects of the COVID-19 virus,** and **that he has concrete housing plans**—his uncle, [REDACTED] [REDACTED] has offered to help support him and house him in his Brooklyn apartment, we ask the Governor to grant Mr. [REDACTED] executive clemency on an expedited basis.

When Mr. [REDACTED] filed his original executive clemency application in September, 2017¹, he was a very strong candidate for clemency: (1) his time in prison was well spent—he overcame a long term drug and alcohol addiction; he acquired important job skills in the electrical construction trade; he reconnected with his religious roots, he strengthened and rebuilt his family relationships, and he received training to aid the blind; (2) he maintained a positive disciplinary history with only sporadic, technical disciplinary violations; (3) he made solid re-entry plans—arranging to live in his uncle’s apartment in [REDACTED] and planning to enter the IBEW apprenticeship program; and (4) there were strong mitigating circumstances relating to the commission of his underlying offense: indeed Justice [REDACTED], who sentenced Mr. [REDACTED] in 2011, wrote to his prison in 2013, explaining that Mr. [REDACTED] had accepted responsibility, that he never used or threatened to use the weapons involved in

¹ A copy of Mr. [REDACTED] original clemency application can be provided upon request.

his offense, and that his conduct was motivated by his need to support his long-term substance addiction.²

Update and Re-Entry Plans

Since the filing of his clemency application in 2017, Mr. [REDACTED] has remained committed to taking advantage of his time in prison. He continues to successfully address his long-term addictions, and he has maintained a positive disciplinary history—his three rule violations since the time of his last application involved twice being late for a class and once having too many cigarettes. Mr. [REDACTED] also remains in close communication with family members, including his daughter.

An expedited grant of clemency is of great importance to Mr. [REDACTED] because his circumstances put him at heightened risk of harm if infected by COVID-19. Specifically, Mr. [REDACTED] began smoking at 12-years-old and he has a type of herpes that weakens his immune system. There are already reported cases of COVID-19 at Franklin Correctional Facility, and it is only a matter of time before the coronavirus spreads throughout the facility. Mr. [REDACTED] is due to be released in just over a year and hastening his release will substantially increase the odds that he can avoid exposure and will help alleviate the population density at Franklin. Importantly, Mr. [REDACTED] uncle, [REDACTED] who has a history of stable employment, continues to offer Mr. [REDACTED] a place to live in his spacious [REDACTED] apartment on [REDACTED]. With the support of his uncle, his past addictions under control, and a concrete career plan, Mr. [REDACTED] is well position to make a positive return to the community.

If you have questions or need further information, please do not hesitate to reach out to me.

Take care,

Lawrence T. Hausman
Supervising Attorney
646-584-5885

² Justice Gary's letter was an exhibit to Mr. [REDACTED] 2017 clemency application and can be provided upon request.

April 7, 2020

DOCCS Executive Clemency Bureau
Harriman State Campus
1220 Washington Avenue
Albany NY 12226

Via email:

Re: Executive Clemency Application,

New York Indictment

Dear Executive Clemency Bureau:

I submit this clemency application on behalf of [REDACTED] [REDACTED] who was eligible for parole consideration on August 20, 2019, and, after appearing before the parole board on March 31, 2020, has been given a conditional release date of May 11, 2020. In light of the COVID-19 pandemic we are seeking expedited review of this application and Mr. [REDACTED] immediate release.

Mr. [REDACTED] is nearly 64 years old (DOB 5/10/1956), and suffers from Chronic Obstructive Pulmonary Disease ("COPD," a chronic inflammatory lung disease), asthma, anemia, high blood pressure, and loss of vision. His asthma and COPD, the most troubling of his physical conditions, cause shortness of breath. Additionally, as a result of a fall that occurred since his confinement on this case, he requires the use of a cane for walking.

He requires the use of Prednisone, a steroid, to effectively treat his breathing disorders, but this steroid treatment is also known to suppress the

immune system, making Mr. [REDACTED] particularly susceptible to COVID-19. Those individuals, of an elevated age with underlying respiratory conditions, like Mr. [REDACTED] are particularly vulnerable, and for them, contracting the virus is a life-threatening event.

Mr. [REDACTED] incarceration results from a 2018 conviction of grand larceny in the fourth degree, a Class E non-violent felony, for which he was sentenced to 1 ½ to 3 years in prison, the minimum permissible sentence for a second felony offender. At the time of his sentencing, he admitted to the Department of Probation at his interview for the pre-sentence report that he needed drug treatment and that he had been motivated to commit this crime because he needed money to support his drug habit. While incarcerated for this offense, he successfully completed the Alcohol and Substance Abuse Treatment (ASAT) drug treatment program. Indeed, his initial release date was postponed for him to complete the program.

Mr. [REDACTED] also already possesses a letter, dated January 17, 2020, indicating that he has been approved for release to the New York City shelter system. This letter was obtained in anticipation of his release at his first parole hearing in February, where the board decided to postpone his release until after his completion of the ASAT drug treatment program. Now that the program is completed, and he has complied with all pre-conditions of release, he should be granted immediate release under these circumstances. Mr. [REDACTED] parents are deceased; he has no siblings or other family to lean upon at this dire time. To deny him clemency relief due to his lack of family ties under these circumstances – especially in light of the guaranteed right to shelter in New York City – would be a terrible injustice. Additionally, [REDACTED], [REDACTED] of the [REDACTED], has assured The Legal Aid Society that [REDACTED] is willing and able to provide remote case management for all inmates released to New York City during this period of social distancing.

Now that COVID-19 has entered the prison system, continuing to be detained in such close quarters poses a grave danger to Mr. [REDACTED] who suffers from underlying respiratory conditions and is of an advanced age. Since he has served well more than the minimum term for his offense and since the Parole Board has already found him worthy of release and has indicated that he should

be paroled by May 11, 2020, or earlier upon receipt of a satisfactory field investigation letter, there is no compelling reason to hold Mr. [REDACTED] at great risk to his health, until May, rather than releasing him at the earliest possible date. Wherefore, we respectfully request that this body grant his application for clemency.

Respectfully submitted,

Kristina Schwarz
Staff Attorney

Tomoeh Murakami Tse
Staff Attorney
Cell: (646) 584-7046
tmurakamitse@legal-aid.org

Janet E. Sabel
Attorney-in-Chief
Chief Executive Officer

Justine M. Luongo
Attorney-in-Charge
Criminal Practice

David Loftis
Attorney-in-Charge
of Post-Conviction and Forensic Litigation

April 7, 2020

VIA EMAIL

New York State Department of Corrections
and Community Supervision
Executive Clemency Bureau
The Harriman State Campus – Building 2
1220 Washington Avenue
Albany, NY 12226-2050
Email: [REDACTED]

Re: Emergency Clemency Application
[REDACTED]

To the Executive Clemency Bureau:

I write to request immediate release of [REDACTED] [REDACTED] who is incarcerated at Woodbourne Correctional Facility in Sullivan County. Mr. [REDACTED] is 53 years old and suffers from a host of chronic medical conditions, including type-II diabetes, asthma, heart disease, morbid obesity, hypercholesterolemia, severe osteoarthritis in his right shoulder and right knee, and degenerative joint disease in both knees. *See* Medical Records, Exhibit A.

For the past 10 years, Mr. [REDACTED] has been a model inmate, successfully completing various programs while incurring only one disciplinary ticket (Tier II). *See* DOCCS Inmate Records, Exhibit B. Mr. [REDACTED] reached his conditional release date in February 2020 after serving more than a decade in prison, but remains in DOCCS custody solely because of a lack of housing compliant with N.Y. Executive Law § 259-c(14). Given (1) his advanced age and serious respiratory and heart disease conditions, which show he is at great risk for COVID-19 transmission (2) his disciplinary and programmatic record, which demonstrate that he poses little risk to society, and (3) the fact that he has already reached his release date, Mr. [REDACTED] should be released immediately.

Mr. [REDACTED] Medical Conditions

Mr. [REDACTED] is 53 years old. He suffers from asthma, heart disease, type-II diabetes, morbid obesity, chronic methicillin-resistant staphylococcus aureus (or MRSA, a hard-to-treat bacterial infection that attacks different parts of the body), hepatitis C, hypercholesterolemia, osteoarthritis in his right shoulder and right knee, and degenerative joint disease in both knees. He also has a chronic shoulder dislocation problem.

Mr. [REDACTED] has required extensive and ongoing medical treatment while in prison. For example, he had surgery on his right knee in 2017, but his problems with this knee persist. He receives regular cortisone shots for pain and swelling in that knee. Further, Mr. [REDACTED] physical limitations have worsened, with peripheral neuropathy from diabetes affecting his extremities and his weight increasing by 50 percent during his period of incarceration (he now weights approximately 300 pounds). Specifically, for much of 2019, he was deemed unable to participate in programming, unable to work, and unable to even go to the yard due to his medical issues. He now wears a knee brace and has prescription boots (medical footwear) for severe foot pain and podiatric deformity caused by diabetes.

Mr. [REDACTED] multiple conditions put him at high risk of experiencing complications, including death, as a result of COVID-19. According to the Centers for Disease Control, people who are a higher risk for severe illness include those “with chronic lung disease or moderate to severe **asthma**, People who have serious **heart conditions**, People who are immunocompromised including cancer treatment, People of any age with severe **obesity** (body mass index [BMI] >40) or certain underlying medical conditions, particularly if not well controlled, such as those with **diabetes**, renal failure, or liver disease might also be at risk.”¹ Indeed,

¹ *Coronavirus Disease 2019: People Who Are at Higher Risk for Severe Illness*, Centers for Disease Control (emphasis added), available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpeople-at-higher-risk.html (last visited April 7, 2020). See also *Coronavirus Disease 2019: People with Moderate to Severe Asthma*, Centers for Disease Control (“People with asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute

one study published in the medical and science journal *The Lancet* found that, among hospital patients who had COVID-19 and died, 48 percent had hypertension, 31 percent had diabetes, and 24 percent had coronary heart disease.²

Given Mr. [REDACTED] conditions, it is evident that he should be released as soon as possible. *See United States v. Powell*, No. 1:94-cr-316-ESH, Dkt. No 98 (D.D.C. Mar. 28, 2020) (in light of COVID-19, granting release motion filed by 55-year-old inmate with respiratory problems, including sleep apnea and asthma, who had three months remaining on his 262-month sentence); *Frailhat v. Wolf*, 20-cv-590 (TJH) (C.D. Cal., Mar. 30, 2020) (in immigration habeas proceeding, granting release to 58-year-old detainee with asthma and other ailments, noting that release is in the public interest, and stating, “in the time of a crisis, our response to those at particularly high risk must be with compassion and not apathy. The Government cannot act with a callous disregard for the safety of our fellow human beings”).

The Coronavirus and Prison Conditions

Infectious diseases specialists warn that no conditions of confinement in prison settings can adequately manage the serious risk of COVID-19 infection for medically vulnerable people such as Mr. [REDACTED]. Correctional public health experts—including doctors charged with the care of inmates in New York City jails—have urged the release of people over age 50, or with medical conditions known as “comorbidities” for the virus.³ Mr. [REDACTED] falls into both of these categories. As these experts have explained, release is the only effective means to

respiratory disease.”), available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html (last visited April 7, 2020).

² Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, *Lancet* (March 11, 2020), tb. 1, available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext) (last visited April 7, 2020).

³ *E.g., NYC Officials Call for Release of ‘Most at Risk’ on Rikers Island as More Test Positive for Virus*, NBC New York (March 18, 2020), available at <https://www.nbcnewyork.com/news/local/nyc-officials-call-for-release-of-most-at-risk-on-rikers-prison-as-more-test-positive-for-virus/2333348/> (last visited April 7, 2020).

protect such people from transmission of the virus because social distancing is a virtual impossibility inside prisons. Of course, the release of medically vulnerable inmates such as Mr. [REDACTED] would also allow for greater risk mitigation for all people who remain held or working in New York State prisons by reducing density and by freeing up much-needed medical resources and staff.

At Woodbourne Correctional Facility, where Mr. [REDACTED] is being held, he shares a bunk with another inmate and uses the same toilets and showers with dozens of others; there is one mess hall and one yard for the entire population at the facility. Mr. [REDACTED] also works as a porter, and spends a portion of each day maintaining the facility's common areas.

The matter is urgent. The fast-spreading disease has already made its way well into the DOCCS system, killing inmates at Sing Sing and Woodbourne correctional facilities.⁴ In Sullivan County, where Woodbourne Correctional Facility is located, and where many of the facility's staff reside, there are already 259 confirmed cases of COVID-19 despite its relatively sparse population, and 9 deaths.⁵ Mr. [REDACTED] does not know if there are confirmed cases of COVID-19 at his

⁴ Sydney Pereira, *Man with Coronavirus Dies While Jailed for Parole Violation on Rikers Island*, The Gothamist (Apr. 6, 2020), available at <https://gothamist.com/news/man-coronavirus-dies-while-jailed-parole-violation-rikers-island> (last visited April 7, 2020); Andrew Denney, *First New York Prisoner With Coronavirus Dies at Sing Sing*, N.Y. Post (April 2, 2020), available at <https://nypost.com/2020/04/02/first-new-york-prisoner-with-coronavirus-dies-at-sing-sing/> (last visited April 2, 2020).

Aside from its fast-spreading nature, COVID-19 is marked by a high fatality rate—15-20 percent in the highest risk populations; this means that at least one in seven infected individuals in this high-risk group will die from COVID-19. Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, The Washington Post (Mar. 13, 16 2020), <https://www.washingtonpost.com/world/2020/03/13/coronavirus-latest-news/> (last visited April 7, 2020). Even if the COVID-19 infection is not fatal, it will often require highly specialized care for people over the age of 50 and will result in longstanding medical complications, including permanent loss of respiratory capacity, damage other vital organs including the heart, kidneys and liver. *Id.*

⁵ *Coronavirus in New York: Map and Case Count*, The New York Times, available at <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html#county> (last visited April 7, 2020). See also *Why Jails Are So Important in the Fight Against Coronavirus*,

facility, but the vulnerability of the prison population to the fast-spreading and deadly virus make his release imperative.⁶

Mr. [REDACTED] Incarceration, Achievements and Release Plans

Mr. [REDACTED] is serving a sentence of 12 years in prison followed by five years of post-release supervision on his conviction for attempted criminal sexual act in the first degree. On February 21, 2020, he reached his conditional release date after serving more than 10 years in DOCCS custody. His disciplinary and programmatic record over the course of his confinement demonstrate that he poses no threat to society. He incurred only one infraction, a tier II ticket. Despite his medical impediments, he has been regularly employed throughout his incarceration. Currently, he works as a porter, and, while fearful of contracting the virus, takes pride in completing his daily task: wiping down surfaces in common areas with diluted bleach. Mr. [REDACTED] has also successfully completed Alcohol and Substance Abuse Treatment, or ASAT, as well as the Sex Offender Counseling and Treatment Program, or SOCTP.

In addition to programming, Mr. [REDACTED] has learned new trades during his incarceration, including mechanics and masonry. Upon release, he plans to take care of his health, first and foremost, and seek jobs that will make use of the skills he acquired during his rehabilitation. However, despite being past his release date, Mr. [REDACTED] remains held at Woodbourne. The only reason he has not been released is that the prison has not found him housing compliant with Exec. L. § 259-c(14), or SARA. However, because children and adults are on lockdown throughout the state, and all schools are closed, the reasons for prohibiting his release are currently

The New York Times (March 30, 2020) (featuring interactive map showing flow of people in and out of jails, illustrating risks posed to not only inmates but workers and surrounding communities), available at <https://www.nytimes.com/2020/03/31/upshot/coronavirus-jails-prisons.html> (last visited April 7, 2020).

⁶ As of 12:32 p.m. on the day of this writing, there were 138,836 confirmed cases in New York State, and 5,489 deaths; about half of the cases and deaths were from outside of New York City. *Coronavirus in the U.S.: Latest Map and Case Count*, The New York Times, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited April 7, 2020).

inapplicable. They also pale in comparison to the great risk he faces from COVID-19 if he remains incarcerated. Given his age and serious medical conditions, as well as his consistent record of rehabilitation in prison, it is extremely unlikely that Mr. [REDACTED] would commit another crime, let alone a sex offense upon his release.

That Mr. [REDACTED] has managed to complete multiple programs despite his medical issues, and has a near-spotless disciplinary history speaks volumes about his ability to follow rules and his commitment to rehabilitation—which bode well for his release into supervision and beyond. In light of the risks posed by COVID-19 and Mr. [REDACTED] age and serious health conditions, we urge the Executive Clemency Bureau to approve his clemency application and order his immediate release from prison.

We thank the Executive Clemency Bureau for its urgent consideration of Mr. [REDACTED] application. I am available on my cell phone, at (646) 584-7046 to answer any questions.

Sincerely,

Tomoeh Murakami Tse

Tomoeh Murakami Tse
Staff Attorney

April 3, 2020

SENT BY EMAIL: [REDACTED]
[REDACTED]

DOCCS Executive Clemency Bureau
Harriman State Campus
1220 Washington Avenue
Albany NY 12226

**Re: Emergency Clemency Petition on Behalf of [REDACTED]
[REDACTED]
[REDACTED]
Bronx Ind. Nos. [REDACTED]**

To Whom It May Concern:

The Legal Aid Society represents [REDACTED] [REDACTED] in connection with his application for a sentence commutation. We request this relief in light of the COVID-19 pandemic, and the risk that Mr. [REDACTED] could contract COVID-19 and then experience serious COVID-19-related complications given his lifelong struggle with severe asthma.

Mr. [REDACTED] is a 22-year-old man, currently serving a six and one-half year prison sentence on a conviction for assault in the first degree. The court imposed that sentence after promising to sentence Mr. [REDACTED] to between five and seven and one-half years in prison. Mr. [REDACTED] will reach his conditional release date on August 27, 2020. Given the court's sentencing promise, commuting Mr. [REDACTED] sentence by just over four months would keep his ultimate sentence well within the court's sentencing promise, and thus, from a purely criminal justice perspective, provide him with modest relief. Given the potentially lethal consequences of keeping Mr. [REDACTED] in prison during the COVID-19 pandemic, granting him that relief now is fully justified.

Summary of Mr. [REDACTED] History of Severe Asthma

Mr. [REDACTED] struggle with severe asthma has lasted since his birth. His primary care physician, Dr. [REDACTED] of the [REDACTED], treated Mr. [REDACTED] for most of his life. The care Mr. [REDACTED] has received for his severe asthma has involved many treatments and medications. He used a nebulizer one to three times a days. He also took several medications. For example, his prescription list from [REDACTED] (Mr. [REDACTED] local pharmacy in the Bronx) shows that between October 2016 and January 2017, Mr. [REDACTED] picked up prescriptions for Albuterol Solution, Symbicort (inhaler), Singulair, Ventolin, Aerochamber (no mask), and Proair HFA—all asthma medications.¹ See Exh.

¹ An appendix describing each of these medications is attached as Exhibit B to this application.

A (), at 9. He had to pick up some of these medications multiple times during that brief period. His mother, reports that, since her son has been serving his prison sentence, whenever she has gone to visit him he has had an inhaler with him.

Mr. lifelong history of severe asthma puts him at high risk of severe medical complications should he contract COVID-19. The Center for Disease Control (CDC) has noted that “[p]eople with moderate to severe asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.”² In addition, authorities have recognized that the primary method for reducing the risk of contracting COVID-19 is “social distancing”³—a practice that Mr. cannot implement while incarcerated.

Mr. Housing Plan Upon Release

Mr. has a concrete housing plan if released. In particular, he would return to live with his devoted mother, at Mr. was raised by his mother, and, apart from his incarceration, has lived with her for his entire life. Ms. has visited and spoken with Mr. (the youngest of her two children) regularly over the course of his prison sentence. A former social worker of Mr. notes that “[i]t is rare that someone has such a proactive mother to support him.” Exh. C (Letter of LCSW,). In addition, Ms. currently works as an aftercare coordinator at in the , providing social work services for veterans and young adults who are formerly homeless or at risk of homelessness. Apart from his mother, Mr. has a two-year-old daughter living in the whose life Mr. is anxious to become involved in. Mr. would also continue to have access to group and individual psychotherapy at —a reentry organization where Mr. previously received services. *Id.* Thus, once released, Mr. will have a stable living situation with his devoted mother, as well as other supports to help ensure he lives a law-abiding life.

Summary of Mr. Offenses and Sentencing

While the incidents resulting in charges against Mr. were serious, they do not justify subjecting him to the risks of COVID-19. For the first incident, when Mr. was 16 years old, he fired a gun at a group of young men who had recently threatened him, and who indeed had been terrorizing him for years before. The bullet ended up hitting a bystander in the buttock and injuring

² See Center for Disease Control and Prevention, Coronavirus Disease 2019, People With Moderate to Severe Asthma https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html.

³ <https://coronavirus.health.ny.gov/new-york-state-pause>

that bystander. Mr. [REDACTED] pleaded guilty to attempted murder, but because of the context in which the incident occurred, [REDACTED] found “mitigating circumstances that bear directly upon the manner in which the crime was committed” (CPL § 720.10[3]), and adjudicated Mr. [REDACTED] a youthful offender. Exh. D. (Commitment Sheet for Bronx Ind. No. [REDACTED]).

The second incident occurred in March 2017, when Mr. [REDACTED] was 19 years old. For that offense, a large group fight had broken out at the corner of [REDACTED]. During the fight, one [REDACTED] suffered a stab wound. Early on in the proceeding, Mr. [REDACTED] told a Legal Aid Society investigator that only girls were fighting, and that he believed a girl had stabbed him. Exh. E (Letter from [REDACTED] to Grand Jury Foreperson). Still, Mr. [REDACTED] decided to accept the court’s offer that he plead guilty to assault in the first degree, with a promised sentence of between five and seven and one half years. The court ultimately sentenced him to six and one half years in prison, run concurrently with a one year sentence on Mr. [REDACTED] youthful offender adjudication. Exh. F (Commitment Sheet for Bronx Ind. No. [REDACTED]).

Even in imposing that sentence, the court addressed Mr. [REDACTED] and told him that it believed that Mr. [REDACTED] had potential, and was somebody “capable of going on in your life and being a productive parent, a productive member of society, doing all of those things.”⁴ Although the court declined to impose the statutory minimum of five years on the ground that Mr. [REDACTED] committed the offense while on release for a previous offense, the court came down from seven and one half years because Mr. [REDACTED] was “still a young man” who the court believed understood the consequences of his actions.

In these circumstances, even if released immediately, Mr. [REDACTED] would still have served a sentence that was above the statutory minimum for his assault conviction, and would fall well within the range that the sentencing court considered appropriate back in May 2018. Given the severity of the current COVID-19 pandemic, and the medical risk that Mr. [REDACTED] lifelong, severe asthma puts him in, commuting his sentence and authorizing his immediate release is fully justified. We respectfully request that Governor Cuomo do exactly that.

If there is any other information about this request that I can provide, please feel free to contact me at welliott@legal-aid.org, or (917) 922-7601. Thank you for your consideration.

Respectfully submitted,

THE LEGAL AID SOCIETY
/s/ Whitney Elliott, Staff Attorney

⁴ Undersigned counsel can provide Mr. [REDACTED] sentencing minutes upon request.

April 6, 2020

VIA EMAIL ([REDACTED])

Request for Emergency Executive Clemency for [REDACTED]

Dear Executive Clemency Bureau:

On behalf of 26-year old Mr. [REDACTED] and with the support of defense attorneys who have come to know him over the years, along with his closest family, friends, and former teachers, we respectfully urge you to grant emergency clemency for [REDACTED]. He has served more than half of his minimum sentence, has concrete housing plans, and is medically vulnerable. As such, he meets the criteria for consideration of emergency clemency.

[REDACTED] has been incarcerated for 8 years and has been welding for the past six years. He has been exposed to harmful chemical fumes during welding. Improper inhalation of toxic chemicals during welding can cause lung damage and occupational asthma. In 2018, [REDACTED] suffered a two-week period of coughing blood following exposure to a toxic welding material. Since then, he has continued to see spots of blood in his phlegm when he is improperly exposed to welding fumes. Given this medical history, [REDACTED] is medically vulnerable and could suffer the worst consequences should he contract COVID-19. We are deeply concerned for his safety and well-being and despite his youth, we fear he is at a grave risk of death once the virus spreads through the prison.

In the past 8 years, [REDACTED] has transformed himself into a mature, drug-free, deeply thoughtful human being. He has an exemplary resume of program completion, job training, jobs held, and community service while in prison. Additionally, he is a welding apprentice and upon completion of the requisite course work, and building upon his training in welding, he will receive a certification from the Department of Labor as a master welder. As such, [REDACTED] can find work upon release. [REDACTED] has never been involved in any violent incident in prison. He is not a threat to public safety. [REDACTED] has more than ten letters of support from those who hold him dear and with whom he has maintained close contact. They all acknowledge his metamorphosis to adulthood. Whenever he is released, [REDACTED] has three confirmed options for residency, including living with his father and step-mother in [REDACTED], his best friend (a registered nurse) in [REDACTED], or another friend, a mental health and substance abuse counselor, in [REDACTED].

[REDACTED] pled guilty to 2 counts of Arson (3rd Degree, C felony) and 2 counts of Burglary (2nd degree, C felony). This plea covered several burglaries and setting fire to a car and house. Although these crimes caused devastating loss to personal property, nobody was physically injured and nobody was present inside these locations during the fires. [REDACTED]'s actions were not the result of an inherently dangerous disposition. He is not an arsonist and, as confirmed by a clinical social worker we consulted with, there is no real risk of this adolescent behavior repeating in adulthood. These acts were committed in May 2011 and December 2011 when [REDACTED] was 17 and 18 years old. The specific circumstances are described in the accompanying summary. [REDACTED] has come a long way from the troubled kid who once made very poor choices. Those choices were the result of drug use, family instability, youth, and negative peer influence. [REDACTED] immediately accepted responsibility for what he did and expressed genuine remorse.

It is important to note that one of [REDACTED] co-defendants was initially sentenced to 5 ½ years, but on appeal was given youthful offender treatment and has since been released. At the time of [REDACTED] arrest, he had no criminal record and had never served time in prison. Nonetheless, [REDACTED] was not given youthful offender adjudication or diversion court despite being a good candidate for such treatment. As a teenager, [REDACTED] was sentenced to a determinate term of 14 years followed by five years of post-release supervision. His current earliest possible release date is February 19, 2024 via conditional release. Upon release, he will be subject to five years of post-release supervision. Please see a more detailed petition attached hereto.

We beg you to grant emergency clemency to [REDACTED]. During the time we have spent with him, we have witnessed his humanity and know he will make positive contributions to society if commutation is granted. He is ready for release now. Thank you very much for your time and consideration of this urgent request.

Respectfully submitted,
Gaynor Cunningham, Esq. & L. Antonia Codling, Esq.
The Legal Aid Society
260 East 161st Street
Bronx, N.Y. 10451
(718.579.3140/718.579.3124)

April 6, 2020

The Honorable Andrew M. Cuomo
Governor of the State of New York
Executive Chamber
Capitol
Albany, NY 12207

BY E-MAIL

Re: Emergency Clemency Petition (Covid-19)

Dear Governor Cuomo:

I represent [REDACTED] [REDACTED] DIN 02-A-6223, DOB 2/24/60. In light of the dangers if one is infected by the novel coronavirus for someone of Mr. [REDACTED] age, and the increased risk of transmission in a crowded prison environment, I am writing to request a commutation of Mr. [REDACTED] sentence so that he can be conditionally released in advance of his current conditional release date in June 2020.

Mr. [REDACTED] was convicted of manslaughter in the first degree in Supreme Court, Kings County, under Kings County Indictment [REDACTED]. He is serving a determinate sentence of 22 years at Green Haven Correctional Facility. Mr. [REDACTED] is 60 years old and is scheduled to be conditionally released on June 28, 2020, less than 3 months from now. (The maximum expiration date for Mr. [REDACTED] sentence is August 20, 2023.) Upon his conditional release, he will begin a period of five years of post-release supervision. Mr. [REDACTED] has been continuously incarcerated since his arrest in this case in August 2001.

Upon his release, Mr. [REDACTED] plans to live with his wife, [REDACTED] [REDACTED] ([REDACTED] I have confirmed that plan with Mr. [REDACTED] wife. Ms. [REDACTED] ([REDACTED] lives at [REDACTED] [REDACTED]

Mr. [REDACTED] wife has a history of gainful employment and will provide a steady influence on Mr. [REDACTED] while he is on post-release supervision. Until recently, Ms. [REDACTED] ([REDACTED] worked sorting and delivering mail for the United States Postal Service. She decided to leave that position out of concern that her work could expose her to the novel coronavirus. She previously worked as a providers services representative for a health insurance company, [REDACTED]

Justice in Every Borough.

Mr. [REDACTED] has had a good disciplinary record while in prison. According to prison records from December 2018,¹ the last disciplinary violation to go on his permanent record was adjudicated as a Tier 2 infraction for violating a direct order and committing a movement violation in July 2014, more than 5 ½ years ago. During his time in the state prison system for this case, Mr. [REDACTED] only Tier 3 violation (the most serious of three levels) occurred in April 2003, only a few months after he arrived in DOCCS in December 2002. The underlying paperwork shows that the incident involved words spoken by Mr. [REDACTED] that the incident was not regarded as a particularly serious Tier 3 infraction is that the penalty for the violation included only 15 days in keeplock along with temporary revocation of certain other privileges. (A computer printout summarizing Mr. [REDACTED] disciplinary history from December 2018 is attached.)

While incarcerated, Mr. [REDACTED] earned a high school equivalency diploma (GED) in April 2007. (See attached copy). He spent over four years in a metal assembly shop or program. In a document summarizing Mr. [REDACTED] Case Plan Goals, Tasks and Activities, Mr. [REDACTED] expressed an interest in opening his own business² and attending [REDACTED] College.

Mr. [REDACTED] is at increased risk of serious illness or death if he contracts Covid-19 because he is 60 years old. The chances of contracting the disease are increased due to the crowded conditions in prisons and the difficulties of maintaining social distancing in a prison environment. According to an official of the New York State Correctional Officers and Police Benevolent Association, at least 18 staff members at Green Haven Correctional Facility have tested positive for the novel coronavirus. [REDACTED] “NY correctional officers can wear masks; 120 test positive for COVID-19: union” (posted at recordonline.com on 4/5/2020; last visited 4/6/2020).³ Mr. [REDACTED] is

¹ Due to the Appellate Division’s reversal of Mr. [REDACTED] previous conviction under this indictment (7003/2001) in September 2018, Mr. [REDACTED] was moved from Green Haven Correctional Facility to Rikers Island in October 2018. He remained there until late 2020 when, following his guilty plea in December 2019, he was returned to the New York State Department of Corrections and Community Supervision (DOCCS). Thus, the records that The Legal Aid Society received from DOCCS in 2018 reflect Mr. [REDACTED] entire disciplinary other than the period from January 29, 2020 until the present. Mr. [REDACTED] wife has informed me that he is now housed in an “honor block” at Green Haven Correctional Facility. That would indicate that the prison system continues to regard his disciplinary record as good.

² According to statements by Mr. [REDACTED] mother, [REDACTED] in July 2019, Mr. [REDACTED] had opened a business during some period before he went to prison. Therefore, he would have relevant experience if he tried to open a business after his release.

³ The article refers to the persons who had tested positive for the virus at Green Haven Correctional Facility as “faculty members.” From the context, the description of the position of the persons who

currently scheduled to be conditionally released on June 28th, less than three months from now. Given the public health emergency and the need to decrease crowding in prison settings so as to curb the spread of the novel coronavirus, it would be in the interest of not only Mr. [REDACTED] but also the other inmates and the staff of Green Haven Correctional Facility if Mr. [REDACTED] were released now and allowed to live with his wife in the community.

To allow for his immediate release, Mr. [REDACTED] is respectfully asking the Governor to exercise his clemency powers by commuting his sentence to the extent of reducing the determinate prison term of 22 years that he is currently serving to a determinate term of 21 ½ years. Such a reduction would result in a recalculation of his conditional release date to one that would fall in late January 2020. Since that date has already passed, Mr. [REDACTED] would be entitled to immediate release. If conditionally released now, Mr. [REDACTED] would still be subject to five years of post-release supervision by a parole officer.⁴

If the Governor wishes to receive additional information for purposes of evaluating this clemency petition, I will be happy to provide it. I can be reached at 718-683-7871, or ahopkirk@legal-aid.org.

Respectfully submitted,

/s/ Arthur H. Hopkirk

ARTHUR H. HOPKIRK
Associate Appellate Counsel
The Legal Aid Society
Criminal Appeals Bureau
199 Water Street – 5th Floor
New York, NY 10038
(cell) 718-683-7871
ahopkirk@legal-aid.org

tested positive at the prison may be inaccurate. The critical fact is that it appears, as of a few days ago, that 18 people employed at the prison had tested positive.

⁴ In the unlikely event that Mr. [REDACTED] were to violate the terms of his post-release supervision in a significant way, he would be subject to serving some or all of the almost three years of his determinate sentence that will be held in abeyance upon his conditional release as well as any time remaining on his period of post-release supervision at the time he were to be declared delinquent. Penal Law §70.45(5).