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Criminal Defense Clinic Students Push for the Release of Prisoners Vulnerable to COVID-19



Clinical Assistant Professor of Law Kathryn Miller

Students in **Cardozo's Criminal Defense Clinic** partnered with the **Office of the Appellate Defender** to outline legal strategies to advocate for the release of incarcerated people who are vulnerable to harm from COVID-19.

Contrary to New York Governor Andrew Cuomo's statements, the student's research concluded that the Governor has nearly limitless power to release these individuals.

Clinical Assistant Professor of Law Kathryn Miller explained how the project started.

“Shortly after Cardozo transitioned to remote learning, the clinic reached out to defender organizations to see how we could help. Our students’ typical work—representing New Yorkers accused of misdemeanors in Manhattan Criminal Court—had been suspended with the closure of the courts. The students were enthusiastic about joining efforts to argue for the release of people vulnerable to harm from Covid-19. The clinic elected to partner with the Office of the Appellate Defender in researching and evaluating strategies for achieving release of these individuals.”

The 17-page memo, which focused on the powers of government executives to release vulnerable prisoners, was circulated to New York City’s defender organizations. The clinic students who were involved in writing the memo included 3Ls Sara Alvarez, Andrew Kopke, Mari Stein and Meg Tiley, who reflected on her work with the project.

"After we submitted the memo, our work continued as we each helped Legal Aid attorneys write individual writs of habeas corpus for medically vulnerable people being held in the City's jails. Our jails are filled with people who are either too poor to afford their bail or who are being on technical parole violations. Receiving a violation for missing curfew should not subject people to what amounts to a death sentence. It's critical that people be released and so I'm grateful that we've been able to contribute to extraordinary efforts that have been undertaken by advocates and attorneys across the City," Tiley said.

Many clinic students also took part in social media campaigns to persuade Mayor Bill de Blasio and Governor Cuomo to release vulnerable individuals. Professor Miller said that despite the mayor's and governor's claims that they had released vulnerable people from prison, the majority remain incarcerated. The students’ memo demonstrates the power these elected officials have to grant clemency and commute sentences.

"The area of research I focused on was Executive Clemency, and particularly, Governor Cuomo’s power to commute these prisoners’ sentences on a mass scale," Alvarez said. "We learned that Governor Cuomo has practically limitless authority to grant clemency and commute sentences - this is true even in the absence of a declared emergency."

Professor Miller added: “The students worked around the clock to produce this memo, giving up their nights and weekends. Their work was sophisticated, concise and critical during a time when many organizations were scrambling to determine the best path forward for their clients.”

Criminal Defense Clinic Director and Professor Jonathan Oberman also acknowledged the students' work with the Legal Aid Society Criminal Defense

Practice (LAS), with which the Clinic partners. Students worked, and are continuing to work with LAS to file writs of habeas corpus to secure the immediate release of incarcerated clients. They have filed writs on behalf of individual clients as well as contributing to two mass writs filed on behalf of close to 150 people -- most of whom are being held in jail only on the basis of being charged with having violated a technical condition of their parole.

Alvarez described how working in the Criminal Defense Clinic has impacted her legal career.

"My experience as part of the Criminal Defense Clinic at Cardozo has been incredibly valuable and empowering," Alvarez said. "Under the supervision of our amazing professors, Kathryn Miller and Jonathan Oberman, I have had the opportunity to represent clients in their misdemeanor cases from the inception through the cases' final disposition in Manhattan Criminal Court. Through this field work, and with our supervisors' meaningful guidance, I am learning how to be an effective, client-centered advocate - and I am eager to continue doing this work as an Assistant Public Defender at the Miami-Dade Public Defenders' Offices in the Fall."