April 7, 2020

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Re: ABA Support for H.R. 6414, the COVID–19 Correctional Facility Emergency Response Act of 2020

Dear Chairman Nadler:

On behalf of the American Bar Association (ABA), which is the largest voluntary association of attorneys and legal professionals in the world, I would like to express our appreciation for your leadership in seeking to reduce the spread of COVID-19 in jails and prisons throughout the country while protecting the most vulnerable by introducing H.R. 6414, the COVID–19 Correctional Facility Emergency Response Act of 2020. By promoting the use of risk-based citation and release for those accused of crimes and urging the early release of prisoners at significant risk of experiencing severe cases of COVID-19 who do not present a public safety risk, your bill would assist states and localities to safely reduce correctional facility overcrowding to minimize the spread of COVID-19 while protecting the public.

The ABA has long supported a presumption of releasing arrested persons before trial unless it is shown by clear and convincing evidence that an individual presents a danger to the public or is unlikely to appear for a court date. In 2017, the ABA House of Delegates adopted a formal resolution urging federal, state, local and tribal governments to adopt policies that “favor release of defendants upon their own recognizance or unsecured bond” unless one of these two exceptional risk factors are present.1 Your bill would help to advance this policy by encouraging the use of pretrial citation and release for those whose charges remain pending unless the individual poses a serious threat to public safety or is unlikely to appear in court.

The ABA has also consistently supported the early release of at-risk prisoners in appropriate circumstances. Specifically, the ABA Standards for Criminal Justice on the Treatment of Prisoners provides that “[w]hen public safety and the interests of justice would not be compromised, governmental authorities should provide judicial and administrative mechanisms to accomplish the early release of prisoners in exceptional circumstances[.]” (Standard 23-8.9(g), p. 276).2 The Standards define such exceptional circumstances to include serious illness, disability and a diminished ability to provide care for the individual, and exigent family circumstances. By creating grant programs to encourage states and localities to release vulnerable prisoners including those 50 years of age or older and those with serious chronic medical conditions, your bill takes critical steps to promote the release of those most at
risk as the COVID-19 pandemic spreads. In addition to protecting vulnerable prisoners and arrested persons who have not yet been convicted of any crime, the bill will also help government authorities to prevent, detect, and stop the presence and spread of COVID-19 among correctional facility staff and their families, visitors to the facilities, and the general public.

On behalf of the American Bar Association, I applaud your leadership on these important issues, and we look forward to working with you in an effort to pass the legislation this Congress. If you have any questions you may contact Ken Goldsmith in the ABA Governmental Affairs Office at kenneth.goldsmith@americanbar.org or (202) 662-1789.

Sincerely,

Judy Perry Martinez

cc: Members of the House Judiciary Committee