



**NEIGHBORHOOD DEFENDER
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**New York State Senate
New York State Assembly**

**Joint Hearing: Exploring Solutions to the Disproportionate Impact of COVID-19 on
Minority Communities**
Hearing Date: May 18, 2020
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Neighborhood Defender Service of Harlem (NDS) is a community-based public defender office that provides high-quality legal services in Northern Manhattan. Since 1990, NDS has been working to improve the quality and depth of criminal and civil defense representation for those unable to afford an attorney through holistic, cross-practice representation. As a true community defender, serving only residents of Northern Manhattan -- a diverse area made up of Harlem, East Harlem, Washington Heights, and Inwood -- we see the disparate impact of economic and racial inequities on our clients on a daily basis. The current public health crisis has heightened those realities and unless the City and State dedicate resources to our community the negative toll will be devastating and long-lasting.

As the number of those infected and killed by the coronavirus continues to disproportionately impact communities of color in New York City, we are also seeing the devastating and disparate impact of the legal system on our communities. People are dying while incarcerated, parents who were diligently working to reunify with their children now are no longer able to see their children in person, there has been an increase in immigration enforcement, and illegal evictions. The issues now facing our clients in the legal system cause us deep concern about how the coronavirus will impact Northern Manhattan and other communities of color in the long term.

There is no doubt that the public health measures implemented by the Governor and Mayor are essential to the health and safety of our entire city. But the most vulnerable of our communities are experiencing a kind of double impact; isolation and anxiety, loss of jobs, illness and death of loved ones, in addition to the existing challenges of poverty and the systemic injustices of the criminal legal, foster, and immigration systems. These issues will be amplified when the court system begins operating at full capacity again.

Even worse, we are now seeing the legal system being weaponized against communities of color, in the name of health and safety. Over the first weekend in May, the New York Police Department added one thousand officers to street duty for the purpose of enforcing social distancing rules. Immediately, images and videos of NYPD officers physically assaulting, pepper spraying, and intimidating people of color emerged. In one instance an officer shouted



racial profanities and physically assaulted a young man, simply because he purported to be within six feet of other people. These images stood in sharp contrast to those of park workers and police officers in wealthy white communities, walking through parks politely distributing personal protective equipment to people gathered together enjoying the warm weather. Over the course of the weekend, the NYPD arrested forty people for violating social distancing rules -- all but one were people of color. The enforcement of social distancing rules is not the only example of the racially biased impact of the legal response to COVID-19, it is only the most visible.

Separation of families, beginning from as early as birth, is an on-going crisis facing communities of color in this city. The Administration for Children's Services (ACS) has long operated from the presumption that people of color are inherently less capable parents in need of greater surveillance and control by the government. We know this based both on our experience in court and by looking at ACS's own numbers demonstrating their disproportionate intervention in NYC's communities of color.

During this pandemic, we are all facing increased anxiety and forced social isolation. In this time, family is even more important. Despite this, ACS and the Family Court continue to separate families. We have seen hospitals separate newborns from their mothers, sometimes without a court order, and despite the fact that some of these mothers are successfully living in state-funded mother-child programs. We have heard from ACS staff that our clients are "non-compliant with supervision" when our clients have attempted to enforce social distancing in their own homes by asking workers to stay at the door, including in cases where there are immune compromised or elderly family members in the home.

Yet many of our clients who have children in foster care have not seen their children in person for many weeks, because ironically, foster agencies are closing their doors and summarily cancelling all in-person visitation claiming to enforce social distancing, despite clear guidelines from ACS to assess each individual case for COVID-19 risk and to maintain in-person visitation as much as possible. Those parents end up seeing their children on video chat, including many whose children are under 2 years old. Some haven't seen their children at all because the adult caring for the children is simply refusing to comply with visitation orders of any kind.

And there is no remedy for our clients in court, where judges have refused to hear even the constitutionally-mandated hearings to determine whether a child should remain in the foster system, let alone hearings to enforce visitation. As a result, our staff has spent countless hours negotiating with ACS staff to safely return children home, to safely continue in-person visitation, to establish video visitation where in-person visitation is not safe, to modify visitation frequency and length to respond to young children's ability to engage in video visitation, and to assist our



clients with technology to enable any visitation at all. In many cases, we have been able to preserve contact between separated parents and children where otherwise ACS and foster agencies' inaction would have resulted in indefinite, total separation.

Less severe, but perhaps more insulting and illustrative of the failures of the system as a whole, schools have been calling in, and ACS has been investigating, cases of educational neglect where our clients, despite their herculean efforts, have not received required technology or materials from the DOE to educate their children at home during the pandemic. This goes on while some white parents (both of whom have PhDs and are university professors) gleefully proclaim in the Op-Ed pages of the New York Times that they “Refuse to Operate A Coronavirus Homeschool” or announce on Twitter that they “will not be participating in [their son’s] ‘virtual classroom’” because it was just too difficult. We, as a city, as a society, must clearly and affirmatively acknowledge the double standard that exists for white parents and parents of color, no matter how painful it is to do so.

We worry that neither ACS nor the federal government will have the grace, the compassion, or the foresight to anticipate what kind of long-term impact this interruption will have in the relationships between parents and children separated by the foster system. In the years and months after we return to normalcy, how will this interruption in visitation be accounted for as the clock ticks closer to termination of parental rights in some cases? Will the irreversible damage done to bonds of families that ACS continues to keep apart during this pandemic be held against them if they are not able to reunite during the arbitrary time period set by the Adoption and Safe Families Act? Will ACS use their great power to continue to separate families or will they harness their strength to give voice to the most vulnerable in our community and ask them what they need instead of continuing the pre-coronavirus culture of reflexively judging and punishing low-income parents of color who simply need more support?

On top of this the well-established challenge of obtaining and maintaining housing in our gentrifying city, the current economic crisis, and the looming housing crisis all pose threats to the safety and well-being of the residents of Northern Manhattan. Despite an eviction moratorium across New York State, New Yorkers like NDS's clients are still not guaranteed the safety and stability of their homes. We have seen landlords attempt to circumvent the law and illegally evict tenants, rendering them homeless in the midst of a pandemic until an emergency application could be heard in Housing Court to restore them to possession. Even for those who remain housed, NDS has seen landlords refuse to provide basic services like bathrooms, heat, and mold abatement -- essentials under any circumstances, but even more vital when New Yorkers have no choice but to shelter in an unsafe home. It is clear that even during a pandemic, New York landlords still value profit over people like NDS's clients. Our clients, primarily



people of color, were living on the edge of extreme poverty prior to the current crisis. The vast majority do not have savings, and survive paycheck to paycheck. The economic toll on our community has yet to be fully realized, but almost certainly when the eviction ban is lifted, there will be a substantial housing crisis needing immediate protective action in the legislature and the courts.

Similarly, Immigration and Customs Enforcement (ICE) continues its crusade of punitive enforcement by arresting, detaining and even deporting non-citizens during the coronavirus crisis. Moreover, non-citizen NDS clients who are sheltering in place have become a sitting target. Since March, NDS has seen an *increase* in clients arrested by ICE in their homes, which has led to their detention and heightened their risk of contracting coronavirus in facilities where the virus is spreading rapidly. Because of this, on top of the everyday injustices surrounding deportation and separation from their families and homes, NDS's non-citizen clients could also face death simply due to their immigration status.

Finally, although we have seen the overall number of arrests decline, and the population of Rikers Island reduced, the impact on people facing criminal allegations can not be overlooked. There are still nearly four thousand people in city jails. In April, the infection rate (that we are aware of) was ten times higher at Rikers Island than in the general population. As of May 11, 2020, the Board of Corrections reported that out of 3914 incarcerated people, 371 were confirmed to have COVID-19, another 71 were symptomatic but had not been tested, and an additional 1529 people were reported to have “likely been exposed” to the virus. In other words, roughly half of the population of incarcerated people at Rikers Island either has coronavirus, is sick, or has been exposed to the disease. In an attempt to keep people safe, by releasing them from Rikers Island, we have conducted bail reviews, filed writs, joined mass writs filed with other defenders, and worked with emergency bail funds. As a result the NYC jail population has been reduced by over 1800 people since the crisis began. This is not nearly enough, but it has made a difference in the infection rate.

Despite these efforts, every person still remaining on Rikers Island is at heightened risk of contracting the coronavirus. The courts and District Attorneys have not adequately recognized this danger. The Governor in his most recent Executive Order created the ability to have preliminary hearings by video. This effort to restore some semblance of due process to incarcerated people has been thwarted by the Courts. The Courts are summarily denying Motions for Release, and allowing District Attorneys to choose which cases they would like to proceed on. The effect on people cannot be overstated. At the start of this crisis, we sought the release of one of our clients, who had underlying health concerns, but his release was opposed by



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the District Attorney and a bail modification was denied by the Court. While in custody he contracted COVID-19, and has since passed away. No New Yorker deserves a death sentence.

Despite the importance of keeping people out of dangerous city jails at this time, we are still seeing people arrested for misdemeanors, and judges setting bail on relatively low-level felonies. Once bail is set on these clients, the suspension of normal time limits for the prosecution by Governor Cuomo's Executive Order means that we have no way to challenge the charges against them or test the prosecution's evidence. Due process has been wholly suspended for our clients who cannot afford bail--there are no grand juries, there are no speedy trials, and preliminary hearings are not being granted in a timely or sufficient manner. Instead our clients sit on Rikers Island, daily facing the imminent risk of contracting Covid-19, unable to pay the often only hundreds of dollars in bail that could ensure their safety.

This virus has not been color-blind as some have said, instead it has laid bare how existing systems, at best, are gleefully neglectful and, at worst, are intentionally brutal in their disproportionate impact on communities of color.

What will the City and State look like for low-income people of color once we are finally released from the clutches of this pandemic? How will government leadership acknowledge and make whole those communities who have been disproportionately impacted? What work will the legislature, the Mayor and the Governor do to anticipate the impacts that will surely continue to resonate in low-income communities of color for decades? The lives of communities of color depend on how we answer these questions.