



**Testimony before New York State Senate Hearing on COVID-19 in prisons and jails
VOCAL-NY
September 22, 2020
Nick Encalada-Malinowski, Civil Rights Campaign Director**

Thank you to Senators Gustavo Rivera and Luis Sepulveda for holding this hearing on COVID-19 in prisons and jails across New York State and to those Senators that are in attendance today. We - along with our colleagues - have been calling for this hearing since March. The legislature, in general, and the Governor, have largely ignored their incarcerated constituents during this pandemic to terrible results, including unnecessary deaths. We welcome this opportunity to share our experiences with the legislature, but are also pained that this hearing did not occur soon enough to save the lives of Leonard Carter, Juan Mosquero, Lulu Benson-Carter, Michael Tyson, Kevin del Rosario and so many others.

When the pandemic began this winter, we, correctly as it turned out, predicted that prisons and jails would become hot spots, because of the congregate settings, substandard medical practices and the political marginalization of incarcerated people. If the past several years have taught us anything, it is that incarcerated people are held mostly in contempt by the government of our state. Even as a growing consensus across the country is realizing the horrors and racism of mass incarceration, the New York State legislature has done next to nothing to address these issues.

This was made painfully clear last year, when the legislature, apparently at the Governor's request, spiked the HALT Solitary bill (**S.1623/A.2500**) in exchange for a weak set of principles, which the Governor acknowledged recently have not even been implemented. Now people are being held in solitary confinement after testing positive for COVID-19. It's barbaric.

The one legislative action taken during the pandemic on these issues, was the rollback of bail reform which triggered an increase to jail populations around the state.

From the early days of the pandemic, VOCAL-NY and many others have been fighting to ensure that incarcerated people survive. That this hearing is coming 7 months after COVID first started ripping through jails and prisons is a good indication that our efforts must continue and, in fact, escalate.

This hearing must result in legislative commitments to protect incarcerated people from this and future pandemics. What we have learned, across the country, and here in New York State, is that the clearest way to keep incarcerated people and their families safe from COVID-19 is to send them home. All future criminal justice policy discussions in Albany must focus on this single goal.

With this in mind we support legislation such as: **Fair and Timely Parole (S.497/A.4346A) and Elder Parole (S.2144/A.4319A) as well as the immediate release of all medically vulnerable people, now and forever.**

We must also end the Jim Crow-era voting ban for people incarcerated in New York State prisons and pass (**S.6905/A.8909**). Providing people in prison with the right to vote will strike at the marginalization that has provided elected officials with a reason to ignore their incarcerated constituents.

For the remainder of my testimony, I will be sharing stories from people currently incarcerated who we have corresponded with throughout the pandemic. I hope that the committee will consider playing the entirety of this hearing on public radio, so that people incarcerated who have access to the radio will be able to tune in, or otherwise make a recording available.

As an initial note about this correspondence I will share that many incarcerated people shared their interest and activities to support those of us on the outside to survive the pandemic. Many were proud to be making hand sanitizer and masks, for 36 cents an hour, because it was a way to give back and save lives. I wish more of us on the outside were able to extend similar grace to those inside.

March 18, from Sing Sing: It's hard to know what's going on because no one is around. The COs don't know anything. We can't get any information.

March 21, Sing Sing: I am experiencing a lot of anxiety about what is going to happen with my parole date. There is no communication about anything.

March 27, Auburn: As soon as I heard about COVID I requested a test and was rejected. No one is getting tested. When people have symptoms they self-quarantine in their cells and self-medicate with teas, ginger root, garlic cloves, and cinnamon.

March 26, Greene: They aren't doing much at all here for COVID. Someone just got it here. A lot of the COs be coming in coughing. It's bad. I wish someone would look into it.

March 29, Otisville: They are doing their best, but there is no way to pull off the suggested procedure. There is no way to do distancing. Once one person gets sick, the entire house gets quarantine. They are not conducting any testing. I've heard of only one test being done. We have no hand sanitizer, but we did get new soap bars and bleach.

March 31st, Midstate: We read in the news that two people at Marcy and 4 people in Mohawk tested positive for COVID-19 but the guards are telling us that it is fake news and the news is lying to us. We saw two people here in hazmat suits in medical. We are living in a dorm of 35 people, but are forced to sit with one space between us when we eat. I sleep in a 6-man room, none of us have been tested. I am 64 years old, with breathing problems so I am very concerned. Any movement to commissary, med runs, to eat, we go in large groups. No visits. I have been seriously mistreated and other people here have been beaten.

March 31, Sing Sing: They shut down all the programs, which will cost me my master's degree, and suspended visits. We started to get bleach for cleaning. Supposedly phones are supposed to be wiped down after every use, but that's not happening. CO's don't care. The yards are actually more populated now because there is nothing else to do. The COs are being asked whether they have been to China or Italy recently and if they have any symptoms.

The most troubling aspect is the fatalistic attitudes inside. Nothing has been done to instill confidence in our safety and because there's an overall lack of control, many of us are just resigned to eventually catching it. Sometimes I go to bed hungry rather than going to the mess hall. There is a hell of a lot more that the prison could be doing to keep us safe. The culture around prison healthcare has conditioned us to accept the fact that catching each other's virus is just part of the program.

April 2nd, Fishkill: Funny now, given all the givens that one must add, should he say he is well, the caveat, for the time being. You and I are both concerned about the rapid spread of COVID. The situation here is "fluid" and "evolving." What was inconceivable last week, is now the new normal. We have started social distancing, guards are starting to wear masks, we got hand sanitizer today, porters now have bleach to clean. Several housing units are under quarantine with food and medical delivered after guards tested positive. We don't know about any confirmed cases though.

April 6, Shawangunk: About 3 weeks ago a dozen people were sick, but we did not know about COVID-19 yet. There was a 14-day lock-down. Non-essential hospital visits have been postponed. We have not had access to hand sanitizer until very recently. Mental health workers are no longer on site, having been deemed non-essential personnel.

April 9, Collins: I have been following the outbreak on TVs and newspapers. We recently received instructions on handwashing and visits have been terminated. We were told we'd get more JPay stamps and phone calls to keep family connections. All medical personnel, who all come from outside the building, have never since the epidemic began, worn any PPEs. However we do now have mounted hand sanitizer in the mess halls. We also get a daily allotment of bleach which I clean with. We have no testing.

May 5, Mid-State: I was just released from Quarantine having tested positive for COVID-19. I am wearing gloves as I write this. The facility placed 6 people who tested positive in the infirmary for 15 days, and gave us ice water and checked our vitals twice a day. Then we were sent back to our original dorm. So now you have 30 men sharing air and space with people known to be infected. The only way I could have caught it was from staff coming into the facility. Social distancing is a joke.

May 10, Otisville: I filed a habeas petition to get out of here. I'm 70 years old and have several comorbidities that make me vulnerable to COVID-19.

May 14, Shawangunk: It's so sad how terrible this pandemic has been for everyone. Being incarcerated, I'm terrified and I'm sure I speak for most when I say I'm hopeless. I'm sure there are hundreds who have been infected, but so far only 19 people have been tested, all positive and they were all critically ill or had a temperature over 100. I have not been tested, but am sure I contracted the virus. I had a headache for 8 days, a terrible ache in my back and legs and lost my sense of taste and smell for 10 days. We recently just got out of 14-day quarantine after someone in my unit tested positive. 4 days after we were released from quarantine, 5 men recorded high temperatures and were rushed out. They tested positive. Just today 2 more men were taken to the infirmary. There are no measures in place to stop the spread. It seems like they are intent on developing a herd immunity.

May 13, Woodbourne: We were issued new face masks today, these are cloth, with elastic loops that go behind the ears. No metal band to form over the nose, so there is a gap. They're

also small, or maybe I have a big head. The new masks barely cover mid-nose to mid-chin. If I open my mouth too much, it slips off my nose or chin and folds into my mouth, and the ear loops tend to pop off. The cops are telling us the new, cloth masks were donated by NuHorizons, which I think I've heard of, an advocacy group. If this is correct, I hope they're being thanked. Paul Manafort got COVID-19 compassionate release, no one here did though.

July 11, Fishkill: One mask every 6 weeks or so isn't sufficient if we're now required to wear it any time we're off our housing units, but the officers/ civilians who are the only people who can bring it into the facility are given the option to wear one. Sure I want to wear a mask, but I feel administration having the option is directly putting my and the rest of the population's lives in danger. It almost feels deliberate at this point.

July 11, Mid-state: Finally getting more regular tests, but when you test positive you go to the box! There are no visits, but lots of K2 getting in. How I wonder?

July 13, Shawangunk: Recently staff began testing everyone 55 and older. I believe that 11 tested positive for COVID. There was some contact tracing implemented and other quarantined as a result. Most of the people who tested positive were asymptomatic, which was a surprise. No one was severely ill, which to my mind is a good thing. I am heartened to read about people protesting for reforms, but the irony is that this is something that has been happening for a long time. Excessive force both inside prisons and out and brutality and violence, this is nothing new. But now it's on social media and the news, it's difficult to turn a blind eye to it.

August 17, Shawangunk: I have chronic asthma and have to use two different inhalers, one for emergency's and one I have to use everyday. I very much fear contracting this covid-19 virus because I know what it can do to me with my medical condition. As it is almost impossible to social distance while in prison I fear that it's just a matter of time before I contract this virus which could put me in a world of trouble, or worse. It is very hard in here to stay out of the way of this virus, as I said before, social distance is almost impossible to do, everyone is using the same phones all day everyday, the same with the kiosk, as well as the workout equipment. I have four years left to come home, my wife and I have been writing everyone we could to get me covid release because of my medical condition, I just put some packets together asking for clemency or commutation, or release with electronic monitoring device in light of covid-19. If I contract this virus I'd rather be home because, (1) I can get the proper medical care to keep me alive and (2) if this virus is going to kill me at least I'll be home with my family, I don't want to die in prison. However me being home will lessen my chances because I can actually social distance. I pray this testimony reach the ears and heart of someone that can help me in this situation.

August 19, Woodbourne: I write today wearing a surgical mask. Every breath fogs my glasses, but I'm glad I have it. The only reason we have masks is that good people in the free world donated masks for us and shamed DOCCS into providing them. Replacement masks are hard to come by, despite repeated inquiries that yielded different results every day. At first I wore the same mask for weeks, every day. We finally have soap and hand sanitizer. Paper towels would be nice too. I was given a nasal swab recently and tested negative for COVID-19. Earlier this year I had a moderate flu. I had some unusual symptoms including a localized headache, extreme exhaustion, trouble staying oxygenated. No one knew about COVID then, but I'm sure I had it. No testing, no confirmation, no reporting.

Lastly I would like to share the following testimony from Veronica del Rosario & Annaliza del Rosario

When Covid-19 Turns a Two-Year Sentence into a Death Sentence

My phone buzzes and it's a photo message from my mom; presumably an update on her latest crochet project. I open it and my breath is gone. It's my brother's urn. I stare at it for some long minutes, and I can't understand. I can't understand how we got here. How he got here. I can't comprehend how his entire person is in this glorified box. I can't understand how he's only ash, how all of his human complexity comes down to this.

These are things, I imagine, most people are faced with when dealing with death. But this is death in COVID times, which is a whole different thing in itself—not getting to visit, not having a chance to say goodbye, not even being able to gather with family for a wake, funeral, burial, or even just for emotional support. And my brother wasn't reckless. He wasn't stubborn about isolating. In fact, he almost never left the house, and had he been at home, he would most certainly have stayed there, safe and sound from all this.

But he wasn't at home. He was at Rikers Island. My brother, Kevin del Rosario, was incarcerated on February 7th, just weeks before Corona hit the jail. On April 23rd his minimum sentence became a death sentence, after New York officials refused to release him and others even in the wake of a pandemic outbreak.

While only 30 years-old, he was definitively at high-risk of contracting the virus. Kevin was asthmatic, overweight, had sleep apnea, and while not a physical risk-factor, still of note, was autistic. His circumstances were unique, his experience, inhumane, and his story, especially tragic. He died a mere six and a half hours before his two-year sentence was to be vacated completely.

In the month following Kevin's death, as my mother only just began to mourn and grieve the loss of her only son, it occurred to her that put simply, this is all wrong. We are stunned at how unconscionable it is that the Department of Corrections keep people on top of each other by the dozen during an outbreak where everyone is being instructed to stay six-feet apart at all times. She has said to me repeatedly, "High-risk is high-risk." The DOC has all the technology necessary available to them to track inmates through a quarantine period; Kevin was on house arrest for a year prior to his sentencing—he could have easily been released and on an ankle bracelet (which, by the way, the wearers pay for), as he had been for twelve months.

My mother's priority, she says, is to advocate for the incarcerated by sharing Kevin's story—something not at all easy for her to do, as she has kept Kevin's incarceration largely a secret (until he was brought to Bellevue, even I was unaware that he was at Rikers), carrying too much on her shoulders alone. Caring for Kevin was central to her life, of course. It is a loss that will impact her in ways deeper than most can comprehend, and so, our family is supporting her in bringing the DOC's negligence to light. In doing so, we have found that the statute of limitations to file suit against the city for wrongful death is a mere 90 days. And so, even in this time of a wildly lonely and profoundly strange manner of grieving, she is putting her gloves on and preparing to enter the ring.

Kevin's story is one of many, but in the hopes of igniting change—in advocating for better inmate treatment and better prison facilities, in helping incarcerated people who still have a

chance amidst all this, in even potentially changing law for the better—my mother shares her account of the last few weeks of his life:

February 7, 2020

Kevin is sentenced; he is supposed to just pass through Rikers before being sent to a facility upstate after February 24th. I begin visiting him twice weekly.

Shortly after this, his transfer is cancelled due to COVID-19. He is assigned to the infirmary due to his autism and various medical conditions (specifically, because he needs a CPAP machine). There are thirty men in his dormitory. He will remain at Rikers for seven weeks.

March 14, 2020

I visit Kevin for the last time. Visitation is canceled due to the outbreak. Kevin is fearful. Soon after this, we learn that high-risk inmates are being released. I contact our lawyer and am told that Kevin does not qualify for release due to the nature of his crime. I reiterate that he is high-risk. He is not released.

March 26, 2020

Kevin calls, explaining that though he has tested negative for COVID-19, he has a fever. The next day, he has a cough, and is being moved to another sick dorm—this time, with ten others. His CPAP machine is taken away, as it has risk of spreading the virus. He is tested again, but doesn't ever receive the result of this particular test. The next day, he is having asthma attacks. He asks a "nurse" (later revealed to be a medical technician) for nebulizer treatments—he can no longer speak without coughing, and his asthma does not improve, even with the nebulizer. He tells a CO that he is having difficulty breathing, and demands to see a doctor.

March 30, 2020

Kevin is finally seen by a doctor. Despite being in an "infirmary," it takes four days following his fever to be examined. One look, and the doctor sends him to the Prison Ward at Bellevue. The next day, he is told that he has tested positive for COVID-19.

April 3, 2020

Kevin is transferred to the ICU, where he will be sedated, intubated, and put on a ventilator. I have my last conversation with him on this day. He says, "Mom, they will make me go to sleep." I reassured him that it will help him get better, and he says "Okay." That is the last thing he will say to me, believing and trusting that he will, indeed, get better. In the weeks that follow, social workers at Bellevue allow me to FaceTime in to the ICU every day; they stand at the window looking into his room and encourage me to talk to him even though he can't hear me. I do.

I take the time to advocate for Kevin; I believe he will pull through, and I begin making plans for his recovery. I write his lawyer and ask that Kevin be released to me when he is discharged from the hospital. I expect his recovery to be tough, and I anticipate that he will need dialysis, physical therapy, and more, so I argue that he should convalesce at home under my care. A virtual court date is set for April 9th, but the DA and the judge ultimately postpone for another 2 weeks, to April 23rd, since "Kevin was not going anywhere" in the meantime.

April 10, 2020

Kevin's kidney is malfunctioning; he needs dialysis. A couple of days later, the ICU is running out of supplies.

April 13, 2020

In my daily update from the palliative care team, I'm told that Kevin is needing less oxygen from the ventilator. I am hopeful; this is the first sign of improvement. In the coming days, they will reduce his sedation to see if he can breathe at all on his own. As they do so, he reacts very poorly and is agitated, emotional, and confused upon waking. I am asked to come help them calm him down. I do so, twice.

April 17, 2020

During my two visits, I soothe and comfort him as best I can. He looks at me blankly, most of the time, but during my second visit, there is a moment when he focuses on me, his eyes pleading, as he points to the intubation. I can see how scared he is, but again, am still hopeful. After all, he is awake. He is breathing, some—he breathes on his own for two whole hours, and he is only 40% dependent on the ventilator.

April 22, 2020

The doctors call. Kevin has taken a turn for the worse. He is once again 100% dependent on the ventilator, he has sepsis. I am devastated.

Our lawyer calls to inform me that tomorrow's hearing will be at 10am, and that the judge will vacate Kevin's sentence.

April 23, 2020

The DOC chaplain calls at 3:30am. Kevin has passed.

For more information please contact Nick Encalada-Malinowski at nick@vocal-ny.org