



# THE FLORIDA STATE UNIVERSITY

COLLEGE of LAW

Public Interest Law Center

*Children's Advocacy Clinic*

*Gender and Family Justice Clinic*

*Immigration Law Project*

*Veterans Legal Clinic*

June 10, 2020

The Honorable Richard Neal, Chairman  
United States House of Representatives  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

**Comments for the Record of the Hearing on the Disproportionate Impact of COVID-19 on Communities of Color (May 27, 2020), by Law Student Advocate Brenna Fischer and Clinical Professor Carla Laroche**

Families with loved ones who are incarcerated have suffered and continue to suffer a significantly high toll from the Coronavirus Disease 2019 (COVID-19). They have no way to visit, have limited access to regular calls, and receive scarce communication from prison administration. At a time when mass incarceration in the United States is already a pervasive issue, the COVID-19 threat only adds to the significant burden of the families of people who are incarcerated. These families rightfully fear that their loved ones are at increased risk of being exposed to COVID-19. With more than 44,000 people who are incarcerated and correctional staff members having tested positive for COVID-19 in the country, that fear has become a harrowing reality.<sup>1</sup>

The Florida State University College of Law Gender and Family Justice Clinic<sup>2</sup> (the Clinic) addresses the intersection between mass incarceration on families by offering legal knowledge and direct legal representation to people who are incarcerated and those who are returning from incarceration. Brenna Fischer is a rising second-year law student advocate who participates in the Clinic under Clinical Professor Carla Laroche's supervision.

We submit this written statement to outline how COVID-19 has disproportionately affected families of color. The experiences of the families we describe show the extent to which they suffer regularly and highlight how COVID-19 has exacerbated their struggles. Next, we discuss data the cost of communication with people who are incarcerated has created additional obstacles for families of color. Lastly, we recommend issues the Committee should address because of this untenable situation.

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<sup>1</sup> *COVID-19's Impact on People in Prison*, EQUAL JUSTICE INITIATIVE (May 21, 2020), <https://eji.org/news/covid-19s-impact-on-people-in-prison>.

<sup>2</sup> *Gender and Family Justice Clinic*, FLA. ST. U. C. L. (last visited June 9, 2020), <https://law.fsu.edu/academics/clinical-programs/public-interest-law-center/gender-and-family-justice-clinic>.

## **I. Reports of Family Members' Pain Because of Losing Incarcerated Loved Ones to COVID-19**

The Clinic fosters relationships with parents and family members who are and were incarcerated; we seek to elevate these families and their experiences through our work. To further that endeavor, we scoured recent news reports on COVID-19 and feature the stories of two people who ultimately contracted the coronavirus while incarcerated, and we emphasize the pain their families suffered while kept in the dark about their loved ones' health condition.

### *A. Andrea Circle Bear: A Mother and The First Woman to Die of COVID-19 in Prison*

Andrea Circle Bear is the first woman to die in federal prison from catching COVID-19, on April 27, 2020.<sup>3</sup> A member of the Cheyenne River Sioux Tribe, Ms. Circle Bear was a loving mother to five children and was eight months pregnant when she contracted COVID-19 in prison.<sup>4</sup> The thirty-year-old mother had been serving a two-year sentence on drug charges in South Dakota, her home state.<sup>5</sup> Ms. Circle Bear's grandmother, Carla LeBeau, attempted to remain in contact with her granddaughter during the imprisonment.<sup>6</sup>

Days after Ms. Circle Bear began complaining of feeling sick, prison staff took her to a nearby hospital on March 28, 2020; the hospital, however, discharged her that same day.<sup>7</sup> Three days later, Ms. LeBeau received a call from the local hospital, notifying her that Ms. Circle Bear had a fever and a dry cough and had contracted pneumonia.<sup>8</sup> As has been the case for other COVID-19 patients, when Ms. LeBeau spoke to her granddaughter for the last time, on March 31, 2020, Ms. Circle Bear expressed concern for her five children. According to Ms. LeBeau, "She told me that she loved me and told me to tell her kids that she loved them."<sup>9</sup> Although Ms. Circle Bear was incarcerated and removed from her family, she focused on her children.

On April 1, 2020, Ms. Circle Bear had a C-section; she gave birth to a healthy baby girl and was placed on a ventilator.<sup>10</sup> Two days later, the hospital confirmed Ms. Circle Bear had contracted the Coronavirus. Ms. LeBeau was unable to see her granddaughter in the hospital when she drove to Texas to pick up her great-granddaughter. "[The hospital said] she belongs to the prison

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<sup>3</sup> Nicholas Bogel-Burroughs & Vanessa Swales, *Prisoner With Coronavirus Dies After Giving Birth While on Ventilator*, N.Y. TIMES (Apr. 29, 2020), <https://www.nytimes.com/2020/04/29/us/coronavirus-inmate-death-andrea-circle-bear.html>.

<sup>4</sup> Arielle Zions, *Grandmother says Eagle Butte woman should have never been transferred to prison while pregnant*, RAPID CITY J. (Apr. 30, 2020), [https://rapidcityjournal.com/news/local/grandmother-says-eagle-butte-woman-should-have-never-been-transferred-to-prison-while-pregnant/article\\_b696b2e1-b6db-5f0e-b577-672147bfc086.html](https://rapidcityjournal.com/news/local/grandmother-says-eagle-butte-woman-should-have-never-been-transferred-to-prison-while-pregnant/article_b696b2e1-b6db-5f0e-b577-672147bfc086.html).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Bogel-Burroughs & Swales, *supra* note 3.

<sup>8</sup> A whistle-blower complaint alleged that the prison knew of Ms. Circle Bear's COVID-19-related symptoms earlier. *Id.*

<sup>9</sup> Zions, *supra* note 4.

<sup>10</sup> *Id.*

and they have no say,” lamented Ms. LeBeau. It was only after Ms. Circle Bear died in April that her grandmother heard from prison officials; they sent Ms. LeBeau a letter stating that they would send Ms. Circle Bear’s body back to South Dakota.<sup>11</sup>

Ms. Circle Bear died without being able to say goodbye to her grandmother and six children.

*B. Lonnell Chaney: A Family’s Unfulfilled Wish to Say Goodbye*<sup>12</sup>

Lack of communication between people who are incarcerated and their loved ones is frequent. Mr. Lonnell Chaney, a sixty-one-year-old Black man, was convicted in 1999 and had been incarcerated at the Plainfield Correctional Facility in Indiana.<sup>13</sup> Mr. Chaney was scheduled to be released in 2029.<sup>14</sup> His family, including his daughter Crystal Gillispie, had been advocating for his release for 20 years. Ms. Gillispie last spoke with her father on April 13, 2020,<sup>15</sup> during a conversation, that lasted only five minutes.<sup>16</sup> Even though there were reports of COVID-19 cases in the prison Mr. Chaney was housed, he was more concerned for the safety of his family.<sup>17</sup> After days of Mr. Chaney reporting to prison officials of being able to “barely breathe” and requesting medical attention, prison staff finally allowed Mr. Chaney to go to the medical unit.<sup>18</sup> Sadly, Mr. Chaney was quickly sent back to his dorm. Medical staff at the facility reported that they subsequently checked in on him, but other men incarcerated at the facility were the ones who discovered Mr. Chaney unresponsive.<sup>19</sup> He passed away on April 19, 2020.<sup>20</sup> The prison staff did not make Mr. Chaney’s family members aware of his COVID-19 condition until after Mr. Chaney’s death. Mr. Chaney’s sister and Ms. Gillispie “both sa[id] that if possible, they wanted a chance to say goodbye.”<sup>21</sup>

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<sup>11</sup> Interview by Kevin Ring & Rachel Barkow with Clara LeBeau (May 13, 2020), <https://www.facebook.com/FAMMFoundation/videos/925235027917384>.

<sup>12</sup> Jake Harper, *When Inmates Get COVID-19, Families Are Kept in the Dark*, SIDE EFFECTS PUBLIC MEDIA (May 7, 2020), <https://www.sideeffectspublicmedia.org/post/when-inmates-get-covid-19-families-are-kept-dark>.

<sup>13</sup> *Id.*; *Lonnell Chaney Offender Data*, IND. DEPT. CORR. (last visited June 9, 2020), <https://www.in.gov/apps/indcorrection/ofs/ofs?lname=chaney&fname=lonnell&search1.x=0&search1.y=0>.

<sup>14</sup> Harper, *supra* note 12.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> IND. DEPT. CORR., *supra* note 13.

<sup>21</sup> Harper, *supra* note 12.

## II. “Spread Like A Wildfire”: COVID-19 Exacerbates the Health and Safety Risks in Facilities COVID-19<sup>22</sup>

While these families’ experiences are distressing, many other families around the nation are suffering because of how disconnected they have become from their loved ones incarcerated in facilities during this pandemic. With people of color, Black people in particular, comprising a disproportionate number of people who are incarcerated, family members are acutely aware of their loved ones’ high risk of exposure to the coronavirus while incarcerated.<sup>23</sup> Even before the COVID-19 pandemic, jails and prisons in the United States were unclean and had the potential to spread sickness rapidly. “There are lots of people using a small number of bathrooms. Many of the sinks are broken or not in use. You may have access to water, but nothing to wipe your hands off with, or no access to soap,” explains Homer Venters, former chief medical officer at Rikers Island jail complex.<sup>24</sup>

The Centers for Disease Control and Prevention (CDC) recommends frequent disinfection of communal surfaces, frequent hand washing, hand sanitizing with high-alcohol content sanitizer, and covering sneezes and coughs with a tissue.<sup>25</sup> Yet, this is nearly impossible in jails and prisons. There is limited access to toilet paper or tissues and people are often unable to cover their mouths when handcuffed for any number of reasons. Additionally, prison facilities consider hand sanitizer contraband due to its high-alcohol content and because the alcohol can be

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<sup>22</sup> A man incarcerated in Indiana told his sister he feared COVID-19 would “spread like a wildfire” in prison. Harper, *supra* note 12. The man, Sam Edwards, succumbed to COVID-19. *Id.*

<sup>22</sup> Keri Blakinger & Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, The Marshall Project (Mar. 6, 2020), <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus>.

<sup>23</sup> In Florida, for example, correctional officers are reporting that there are not enough masks or gloves, the facilities are desperately understaffed, and officers are worried about bringing the virus home to their family members. Ana Ceballos, *COVID-19 Stalks Vulnerable Florida Prey in Prison Workers*, Tampa Bay Times (May 5, 2020), <https://www.tampabay.com/news/health/2020/05/05/covid-19-stalks-vulnerable-florida-prey-in-prison-workers>. As of June 2, 2020, the Florida Department of Corrections has reported over 1,540 positive cases in state correctional facilities, with 749 pending tests and 4,889 people held in medical quarantine. *COVID-19 Information*, Florida Department of Corrections (last updated June 2, 2020), <http://www.dc.state.fl.us/comm/covid-19.html>. Fifteen people have died from the coronavirus while in custody. *Id.*

<sup>24</sup> Keri Blakinger & Beth Schwartzapfel, *When Purell is Contraband, How Do You Contain Coronavirus?*, THE MARSHALL PROJECT (Mar. 6, 2020), <https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus>.

<sup>25</sup> *Protect Yourself*, CENTER FOR DISEASE CONTROL AND PREVENTION (last updated Apr. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

chemically separated from the gel. While some prisons sell hand sanitizer on commissary, it is a non-alcohol-based alternative that is effectively useless against COVID-19.<sup>26</sup>

Yet, this information is not surprising to the family members of people who are incarcerated. As one family member described the conditions in a local prison, “You know it is substandard on its best day. We know that they’re not going to send ventilators to a prison.”<sup>27</sup> Knowing that their family members are at greater risk of contracting COVID-19, families long to communicate with them during the pandemic, but they have limited options.

### III. COVID-19 Causes an Immense Strain on Families with Incarcerated Loved Ones

At a time when more information about conditions in prisons and jails would relieve stress, administrators have gone silent.<sup>28</sup> The lack of communication negatively affects not only people in jails and prisons, but also their families on the outside. Before COVID-19, families would attempt to maintain connections with their incarcerated loved ones through in-person visits, phone calls, letters, and emails. However, these options are expensive and not all families are able to use them;<sup>29</sup> the COVID-19 pandemic has made direct communication between family members even more difficult.

#### A. Pre-COVID-19, Contact with Family Members Was Difficult and Expensive

Even though researchers have found that family communication helps reduce recidivism, prisons and jails have not made contact easily accessible for families and their loved ones who are incarcerated.<sup>30</sup> Of the nearly three million women jailed every year, 80% are mothers.<sup>31</sup> A

<sup>26</sup> Blakinger & Schwartzapfel, *supra* note 24.

<sup>27</sup> Steven Hale, *Families Fear an Outbreak inside Tennessee’s Prisons*, NASHVILLE SCENE (Mar. 31, 2020), <https://www.nashvillescene.com/news/features/article/21125380/families-fear-an-outbreak-inside-tennessees-prisons>.

<sup>28</sup> See Jeff Weiner, *Fla. Corrections Dept. Faces Public Records Lawsuit Over Prison Coronavirus Plans*, Orlando Sentinel (May 15, 2020), <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-lawsuit-florida-department-of-corrections-20200515-cxknfucjrrarxgd4abq6upcb2y-story.html> (describing a recent lawsuit against the Florida Department of Corrections for not disclosing its procedures addressing the coronavirus in its facilities).

<sup>29</sup> See Saneta deVuomo-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together, Research Action Design, 29-31 (2015), <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

<sup>30</sup> Bernadette Rabuy and Daniel Kopf, *Separation by Bars and Miles: Visitation in State Prisons*, Prison Policy Initiative (Oct. 2015), <https://www.prisonpolicy.org/reports/prisonvisits.html>; Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism*, AM. JAILS (September/October 2012), 17, <https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf>.

<sup>31</sup> Wendy Sawyer & Wanda Bertram, *Jail Will Separate 2.3 Million Mothers from Their Children This Year*, Prison Policy Initiative (May 13, 2018), <https://www.prisonpolicy.org/blog/2018/05/13/mothers-day-2018>.

majority of these mothers is the primary caretakers of their children, and a disproportionate number of them are Black.<sup>32</sup> Approximately a quarter of a million children in the United States have a single mother who is in jail.<sup>33</sup> Additionally, one in four Black children can expect to have their father incarcerated before they turn fourteen.<sup>34</sup> This data confirms that mass incarcerations' impact on families is particularly devastating.

Prisons and jails have contracted with telecom companies that charge almost \$25.00 for a fifteen-minute phone call, and sometimes even more for video conferencing.<sup>35</sup> While jail offers the small solace of a shorter period of confinement, the means of communication in jails are extremely difficult and more expensive. Jail phone calls are three times more expensive than calls from prison, and some jails prohibit letters, only allowing approved postcards or electronic scans of letters.<sup>36</sup> The costs of sending emails, which are free to those on the outside, have become exorbitant for people who are incarcerated, a group with limited family contact already. For example, in New York in 2018,

Sending one email costs \$.35, double that to include a photo, and quadruple to include a video. A song can cost up to \$2.50, and an album can be — somewhat inexplicably — as much as \$46. Chat with a loved one? That'll be \$18 per hour. But even these prices fluctuate during busy seasons. For instance, WIRED reported that the price of an email might increase from \$.35 to \$.47 around Mother's Day, when [people] most want to communicate with loved ones.<sup>37</sup>

Because of these accumulating fees and charges, it is not surprising that one out of every three families goes into debt to attempt to remain in contact with their family members in incarceration facilities.<sup>38</sup> Further, given that women comprise 87% of the family members with loved ones who are incarcerated, these financial constraints impact women of color more heavily.<sup>39</sup>

*B. COVID-19 Has Cut off People's Ability to Connect with Their Children and Families While Incarcerated*

Since the COVID-19 pandemic hit, families' ability to connect with their loved ones who are incarcerated has been reduced to a bare minimum, if existent at all, and communication continues to be expensive. In response to the pandemic, prisons and jails around the country

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Peter Wagner and Alexi Jones, State of Phone Justice: Local Jails, State Prisons and Private Phone Providers (Feb. 2019), [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html); Bianca Tylek, Opinion, *As We Struggle to Stay Connected, Prison Calls Must Be Free*, ESSENCE (May 10, 2020), <https://www.essence.com/op-ed/prison-communications-mothers-day>.

<sup>36</sup> *Id.*

<sup>37</sup> Michael Waters, *The Outrageous Scam of "Free" Tablets for the Incarcerated*, THE OUTLINE (Aug. 10, 2018).

<sup>38</sup> *Id.*

<sup>39</sup> deVuono-powell, *supra* note 29.



suspended visitations.<sup>40</sup> With millions of people around the nation suddenly finding themselves unemployed, it has become more difficult – if not nearly impossible – to expend funds on high-cost prison calls. The existing connection that family members may have had with a loved one who is incarcerated has become unreachable.

To increase access, some state and federal facilities have attempted to waive communication fees or reduce the cost of calls.<sup>41</sup> In April 2020, the Federal Bureau of Prisons implemented a rule providing people free phone calls and video conversations with their families.<sup>42</sup>

Under these circumstances, administrators of correctional facilities and jails should increase people's access to phones and other means of electronic communications, and make calls and emails free. They should allow people who are incarcerated to receive tangible handwritten notes from their loved ones from the outside. They should also relay more information to families about the status of COVID-19 in facilities.

#### **IV. Conclusion**

Thank you for the opportunity to submit these comments on COVID-19 and people of color for the records of the Committee on Ways and Means. As you consider those who have been harmed by this pandemic, we urge you to take into account the immense toll those who are incarcerated and their family members have experienced and continue to endure. The very real fear of a family member contracting COVID-19 while incarcerated puts an extra strain on families, particularly children, whose voices society often ignores and disregards. Their experiences, however, deserve recognition, and prisons and jails require long-overdue reform.

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<sup>40</sup> Sharon Dolovich, *ULCA Law COVID-19 Behind Bars Data Project*, UCLA SCHOOL OF LAW (last visited June 10, 2020), [https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eReOA\\_HkPVTk/edit#gid=1537122272](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eReOA_HkPVTk/edit#gid=1537122272).

<sup>41</sup> See Responses to the COVID-19 Pandemic: Reducing the Cost of Phone and Video Calls, Prison Policy Initiative (last visited June 10, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.

<sup>42</sup> John Hendel, *Fed. Prisons Make Inmate Calling, Video Visits Free During Pandemic*, POLITICO (Apr. 14, 2020), <https://www.politico.com/news/2020/04/14/federal-prisons-make-inmate-calling-free-186383>.