



POST OFFICE BOX 110034 BROOKLYN, NEW YORK 11211

Updates for January 12<sup>th</sup>

## 25 Dec - Mumia Gets a New Chance to Challenge His Murder Conviction

*State Supreme Court rejects Faulkner Widow's 'Evidence-Free' Effort to Block Mumia Appeal*

### **MORE:**

by Dave Lindorff

Mumia Abu-Jamal, the prison journalist long known as the “voice of the voiceless” for his compelling writings and short audio tapes about life behind bars, moved a step closer to getting a chance for a reconsideration of his earliest appeal of his conviction — an allegedly flawed Post-Conviction Relief Act hearing in 1995, as well as three other later PCRA appeals of aspects his case, all ignored and their findings rejected by Pennsylvania’s appellate courts under spurious conditions.

The opening comes in the form of dismissal by the state’s Supreme Court of an attempt by Maureen Faulkner, widow of slain Philadelphia Police Officer Daniel Faulkner, to use an obscure legal gambit called a King’s Bench petition, to have DA Larry Krasner’s office removed as the legal entity defending against Abu-Jamal’s appeals. That effort, filed last February had blocked any forward action on those appeals.

Abu-Jamal’s attorneys had filed an appeal several years ago in Philadelphia’s Court of Common Pleas, claiming that the handling of those four PCRA hearings, all of which were rejected by the State Supreme Court, were all constitutionally flawed because one of the judges reviewing them, Justice and eventually Chief Justice Ronald D. Castille (now retired), had refused Abu-Jamal’s requests that he recuse himself, despite his having been Philadelphia’s district attorney and the man overseeing the DA Office’s legal effort to oppose Abu-Jamal’s appeals of his sentence and conviction. (That appeal was filed following the discovery of two notes — a draft letter and a final letter by then DA Castille to then Gov. Tom Ridge in 1990 calling on Ridge to speed up the signing of execution warrants for convicted “police killers” in which Castille said such a measure would “send a message” to would be police killers.

The appeal also came following a 2016 US Supreme Court ruling in a case called *Williams v. Pennsylvania*, in which another Philadelphia defendant convicted of murder sentenced to death was granted a new penalty phase trial because the same Justice Castile had as DA approved his prosecutor seeking the death penalty, and then did not agree to recuse himself in considering an appeal of that sentence.

Abu-Jamal’s new legal effort gained urgency when in late December 2018, newly elected progressive DA Krasner (elected in Nov. 2017), reported discovering, in an unused storeroom of the DA’s office, six file boxes containing a vast number of documents relating to Abu-Jamal’s case. Many of these documents were found to be dated from around the time of his 1982 trial, and including material that should, under the US Supreme Court’s 1963 Brady decision, have been disclosed by to Abu-Jamal and his defense team at the time of the trial or, depending on the date of their production, before his 1995 PCRA hearing.

Among these documents was, for example, a shocking letter from a key prosecution witness, a young white taxi driver Robert Chobert, asking prosecuting attorney Joseph McGill, “Where is my money?” As journalist Linn Washington has noted, Chobert, as a prosecution witness, was unlikely to have been asking for reimbursement for travel to court, or for meals as a witness, “Because typically as a key prosecution witness he would have been brought to and from court by police officers, would have been provided w/his meals & hotel room by the DA’s office, not expected to front his expenses himself, then get reimbursed.”

Chobert was indeed a critical prosecution witness, as he claimed at the trial to have parked his taxi directly behind Faulkner’s patrol car, and that from that position to have witnessed Abu-Jamal allegedly firing

multiple times down at the prone Faulkner on the sidewalk with his licensed snub-nosed pistol. That testimony has been challenged by many because photos of the crime scene taken almost immediately after the shooting do not show a taxi cab behind Faulkner's squad car. Also many people familiar with this case, this journalist included, find it hard to believe that Chobert, who at the time was driving his taxi cab illegally because his license had been revoked following a DWI conviction, and who moreover, was also at the time on probation on a five-year sentence for felony arson of an elementary school, would have pulled up and parked directly behind a cop car.

(In fact, it is likely that Chobert was actually parked a block away on 13<sup>th</sup> street north of Locust where the shooting incident occurred, his vehicle pointing away from the scene. This would explain why no other witness, for either prosecution or defense, ever mentioned either in court testimony or in statements to police investigators seeing a taxi cab near Faulkner's car or the shooting, and why the other main eye witness, the prostitute Cynthia White, in a drawing she made of the scene for police detectives, drew Faulkner's car, Abu-Jamal's brother's VW in front of it, and even an uninvolved Ford sedan in front of that, but no taxi.)

The idea that there was a letter from Chobert asking the DA for "my money" that was not provided to the defense between his 1982 trial and the time when Chobert was recalled to testify at the 1995 PCRA, is certainly appalling. It appears on its face to be a serious case of probable prosecutorial misconduct, or the type of evidence that, if known of to a jury considering a murder conviction, could have led to a different outcome. (Jury decisions in felony cases have to be unanimous for conviction, so even one juror voting no to conviction makes it a hung trial.)

Also important in those discovered boxes were other documents suggesting that Judge Castille, while DA, contrary to his own assertion, was indeed directly monitoring not only the disposition of his office's death penalty cases, but how his office's felony appeals unit was handling the legal effort to oppose Abu-Jamal's appeals as they moved up through the state's court system.

Common Pleas Judge Leon Tucker disagreed with Castille's decision on recusal in the Supreme Court's consideration of Abu-Jamal's various PCRA hearings. In supporting Abu-Jamal's motion to have four of his rejected PCRA hearings re-considered, or reopened, because of Justice Castille's failure to recuse, he cited the US Supreme Court's Williams precedent. In that 2016 precedent-setting decision, the US Supreme Court ordered a new sentencing jury trial for the convicted and condemned Terrance Williams, finding that the same Justice Castille's refusal to recuse himself after having as DA approved a subordinate prosecutor's request to seek the death penalty, had "violated the Due Process Clause of the 14<sup>th</sup> Amendment."

Using forceful language, the Judge Tucker wrote, regarding Abu-Jamal's petition:

*"The claim of bias, prejudice and refusal of former Justice Castille to recuse himself is worthy of consideration as true justice must be completely just without even a hint of partiality, lack of integrity or impropriety."*

Tucker added, citing the US High Court's Williams ruling:

*"If a judge served as prosecutor and then the judge, there is a finding of automatic bias and a due process violation...The court finds that recusal by Justice Castille would have been appropriate to ensure the neutrality of the judicial process in [Abu-Jamal's appeals] before the Pennsylvania Supreme Court."*

The ruling by Tucker (the first African American jurist to have heard any aspect of the Abu-Jamal case or any of his appeals over four decades), was properly viewed (including by the widow Faulkner and the Philadelphia Fraternal Order of Police (FOP) as a stunning breakthrough, offering Abu-Jamal, for the first time in more than two decades, an opportunity to have his conviction, not just his now-vacated death sentence, reconsidered.

But that appeal was halted in its tracks earlier this year when Maureen Faulkner, the widow of the slain Officer Daniel Faulkner, backed by the FOP, filed in Supreme Court a rarely used King's Bench petition — a hoary legal maneuver dating to pre-Revolutionary British Common Law — arguing that DA Krasner, a progressive former defense attorney who won election as DA in November 2017, was prejudiced in favor of Abu-Jamal and should be barred from defending against his appeal petition. Faulkner's King's Bench petition made a number of factually erroneous or baseless claims that Krasner had a pro-Abu-Jamal bias. Her attorney, George Bochetto, made nine claims to support his client's contention about Krasner.

Among these were the assertion that the new progressive DA had been a member of the leftist National Lawyer's Guild, a civil rights organization of mostly leftist activist lawyers some of whose Philadelphia chapter members in 2000 had defended protesters at the 2000 Republican National Convention in Philadelphia, calling for Abu-Jamal's freedom; that Krasner had publicly referred to "some prosecutors" in the DA's office as being "war criminals;" and that he had not tried to challenge or delay Judge Tucker's order authorizing a new PCRA to consider the cartons of hidden and unreported documents relating to Abu-Jamal's case.

The Pennsylvania Supreme Court on Dec. 16, in a 3-1 ruling (signed by Justices Christine Donohue, David Wecht and Kevin Dougherty, with Justice Sallie Updike Mundy dissenting and three justices who had sat on the Supreme Court with Justice Castile recusing themselves because of a real or perceived conflict of interest), supported the conclusion of that court's appointed "master," McKean County Judge John M. Cleland. Judge Cleland, after a lengthy and detailed investigation at the request of the court that included interviews with Krasner and other witnesses, had recommended rejection of the King's Bench petition. He reported that he'd found no "direct evidence of a conflict of interest" or even "an appearance of impropriety" that would "compromise" DA Krasner's ability to "carry out his responsibilities," in defending against Abu-Jamal's appeal of his PCRA rejections. The court master learned for example that Krasner had never paid dues to be a member of the NLG and in any event was not personally involved in defending any pro-Mumia protesters arrested at the convention. He said he found other Faulkner claims regarding Krasner bias to be similarly without any factual basis.

As Judge Cleland concluded in his report to the court:

*"A perception based on the arguments of detractors cannot overcome the actual and undisputed fact that Ms. Faulkner has presented no evidence that Krasner or his assistants have not defended the conviction of Mumia Abu-Jamal or do not intend to do so in the future."*

He added:

*"No credible argument has been made that Krasner and his assistants have adopted legal positions or legal strategies that do not have arguable merit or are not supported in law based on the facts."*

Abu-Jamal Attorney Judy Ritter said, "The King's Bench petition has been dismissed, and that decision cannot be appealed. Now our case involving the four rejected PCRA hearings can go forward."

So too will the long-delayed evidentiary hearing into the contents of those six boxes of prosecutorial documents relating to the case — documents that prior DAs from Ed Rendell through Ron Castille, Lynn Abraham, Seth Williams to Kelly Hodge had illegally kept undeclared and hidden away from Abu-Jamal and his lawyers for four decades.

What happens next will be a hearing before a superior court panel on Abu-Jamal's petition for reconsideration of his PCRA's into whether the newly discovered documents pose a Brady violation in his initial trial or later during his PCEA hearings. That panel can make a determination, refer the case to a

Superior Court judge, or decide to move everything directly to the Pennsylvania Supreme Court — a court that will no longer have the controversial Justice Castille, now retired, sitting on it.

Abu-Jamal's appeal prospects in that court could be iffy, given the recusal already in the current case by three of the court's seven judges, and by negative comments about the applicability of the Supreme Court's Williams precedent to Abu-Jamal's case filed by one of the three judges who concurred in the 3-1 decision, not to mention the dissent by one judge. (Pennsylvania's higher courts have been notorious for showing a proclivity for denying this particular prisoner, Abu-Jamal, the benefits of precedents routinely made available to less notorious appellants — a point specifically noted by Judge Thomas Ambro, one of the three federal Circuit Court judges who heard his last appeal of his conviction, and who dissented when that panel voted 2-1 to uphold his murder conviction, saying "I don't see why this appellant isn't afforded the benefit of the same precedents as other appellants.")

With only four current justices able to consider Abu-Jamal's case at present, two of whom have expressed their opposition to the appeal already (Dougherty in a critical concurrent opinion and Mundy by her dissent in the King's Bench petition), there would be a potential for a tie vote, which would leave any superior court order standing, though given the time the appeals process takes, it is also likely that Chief Justice Saylor, a Castille court era holdover, whose will be leaving the court at the end of his term next year, will have been replaced by a fifth Justice who could participate in any ruling.

That said, one of the justices who voted with the majority of the state Supreme Court to reject Faulkner's petition, David Wecht, wrote a powerful 20-page concurring opinion supporting the court's King's Bench petition rejection. In that concurrence, he included a blistering dismissal of the negative comments about DA Krasner and Abu-Jamal's case made by his court colleague Justice Kevin Dougherty, writing:

*The dearth of evidence in the record to support Ms. Faulkner's allegations does not deter my learned colleague, Justice Dougherty, with whose perspective I respectfully disagree. Justice Dougherty elects to forego the requirement that we afford supported factual findings due consideration and chooses instead to ignore those findings and reach his own conclusions. Notwithstanding the broad prerogatives attendant to our review at King's Bench, this approach strikes me here as unwise and in any event unavailing. It is axiomatic that we afford due consideration to fact-finders, because 'the jurist who presided over the hearings was in the best position to determine the facts.' I see no reason not to give Judge Cleland's findings their due "consideration."*

After several pages devoted to a thorough debunking of Dougherty's evidence-free claims of purporting to demonstrate Krasner's pro-Mumia bias, Wecht writes:

*"From that empty bucket, Justice Dougherty somehow nonetheless finds paint to compose a 'disturbing picture.' However vast our authority in cases such as this one is, our standard of review still does not permit such creations."*

Justice Wecht also debunks, in his concurring opinion, the arguments of Justice Mundy, the lone dissenter to the decision rejecting Faulkner's King's Bench petition, writing:

*"Justice Mundy's dissent fares no better. Like Justice Dougherty, Justice Mundy elects to premise her analysis upon Ms. Faulkner's allegations, ignoring the fact record as it now stands and the decisions that Judge Cleland made based upon that record. As opposed to Justice Dougherty, Justice Mundy would resolve the matter [regarding Abu-Jamal's right to appeal for a reconsideration of four PCRA's where Judge Tucker found Justice Castille should have recused himself] instead of awaiting a future ruling based upon Reid. However, like Justice Dougherty, Justice Mundy makes no serious attempt to explain if, or how, Judge Cleland's fact-finding was undeserving of our due consideration. Consequently, Justice Mundy's position fails for the same reasons that undercut the position advanced by Justice Dougherty."*

Since 2001 when his death sentence was finally ruled unconstitutional and converted to a sentence of life without chance of parole, Abu-Jamal has spent nearly 20 additional years in prison, some of that time still held in solitary confinement on the state's death row while the DA battled all the way to the US Supreme

Court trying unsuccessfully to have his death sentence reinstated. Now 66, he is suffering from cirrhosis of the liver from a Hepatitis C infection contracted while in prison and left untreated for some time until he won a federal lawsuit mandating that effective treatment be belatedly made available to him. Over the years, Abu-Jamal, referred to by supporters and opponents alike by his first name Mumia, has been the focus of intense efforts by the Philadelphia FOP, which, along with Faulkner's widow, has campaigned doggedly since his murder conviction to have him executed, and, since his death sentence was overturned on Constitutional grounds, to keep him locked up and denied avenues of appeal.

Meanwhile, a global campaign seeking his freedom continues to demand his release from prison, arguing that he never received a fair trial and that, as he has always maintained, he did not murder Officer Faulkner.

That Abu-Jamal did not receive a fair trial is clear given how the trial judge, the late Albert Sabo, a jurist notorious for having both the greatest number of death penalty notches on his belt of any jurist in the US, and the most convictions and death sentences overturned on appeal, repeatedly denied defense requests for subpoenas and witnesses, and allowed the prosecutor, in his summation to the jury, to make spurious references to Abu-Jamal's having been a member of the Black Panther Party as a 15-year-old kid.

That Abu-Jamal didn't receive a fair appeal process is even clearer. First there's the fact that Judge Sabo was controversially recalled from retirement to preside over Abu-Jamal's initial PCRA, where he was so biased in his rulings on things like permissible testimony and requests for subpoenas of witnesses that even the *Philadelphia Inquirer*, no backer of Abu-Jamal, called the judge's behavior "embarrassing."

And the corruption of that case has been made even more abundantly clear by Judge Tucker's comments on Castille's failure to recuse himself in the Supreme Court's ruling on Abu-Jamal's PCRA's, and by the recent discovery of the hidden crates of prosecution documents in the DA's office that were never revealed to the defense in the case.

The existence of those documents in themselves is a clear violation of the US Supreme Court's 1963 Brady policy, which requires that prosecutors provide defendants in criminal cases with all evidence in their possession that might conceivably help exonerate a defendant.

Whatever the future holds, this case is not going away, and Abu-Jamal and his defense team are headed, finally, to a Pennsylvania superior court hearing on Judge Tucker's ruling granting Abu-Jamal the right to challenge the earlier rejection of his PCRA hearing findings by Pennsylvania's higher appellate courts. Beyond that, should the appeal for reconsideration of his four rejected PCRA's and for the chance to have a further PCRA hearing on the new evidence that could challenge his conviction be rejected, he could — though over the years the Congress and the US Supreme Court have made it increasingly difficult — have an opportunity to bring his case back into federal court with a second habeas petition.

### **28 Dec - "I don't know what to write Eric about"**

*Eric King is still able to receive mail (for now). Please take advantage and send him something. His supporters came up with some things Eric likes to get you started.*

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Ridiculous list of things Eric is into:

Soccer/Football – Thumbs up: Manchester United, Celtics, Sporting KC. Thumbs down: Leeds, Chelsea, Arsenal or Manchester City; Dad Jokes; Crawly things; Puns; Alliterations; IRA; New science stuff you have read about; Comedians, Comedies, Anything funny; Boxing news; The moon; memes; "non-bro" country music; Folk punk; So much music; yes even Taylor Swift; Witchcraft; Making lists; Bad Cartoons;

Scrabble; Hearing about the misfortunes of officers/nazis; saying “I head this story on NPR the other day;” Stories of animals punking humans; The American football team who shall not be named from Kansas City; and Poetry. Also, feel free to talk to Eric about things he is reading...

## **29 Dec - What it's like to get COVID-19 from a federal prison**

*Lore Elisabeth is among the hundreds of people who have contracted COVID-19 from the U.S. Bureau of Prisons' federal detention center in downtown Philadelphia (FDC Philadelphia).*

### **MORE:**

She is recovering well and helping others to weather this storm wrought by the cruelty of a few and the incompetence of a great many more. The facility continues to obstruct information and preventative care to those who need it, but you know that's when people like Lore can help the most.

Lore contracted COVID-19 some time between October 26 and November 6. She was especially ill with flu symptoms for about 10 days but maintained steady breathing throughout. During this time she received no medical attention save for a nasal swab test and tylenol. She was not informed of her positive test result.

FDC Philadelphia imposed a strict lockdown on November 1 due to the rampant spread of COVID-19 throughout their building. Lore and others in the women's unit were let out of their cells weeks later, by which time more than half of them had contracted the virus. Another detainee then informed Lore that a warning sign was hung on her cell door during the lockdown. A staff nurse eventually confirmed to Lore this meant that she'd indeed had the virus. As they continue to get sick, women are now moved into the special housing unit (SHU)—solitary confinement—for weeks at a time, a regular violation of the United Nations Convention Against Torture committed by US federal prisons.

This is infuriating, but it is not surprising. FDC Philadelphia's inability to prevent the spread of COVID-19 and keep its detainees healthy has been known since the onset of the global pandemic. FDC Philadelphia's own staff joined an OSHA complaint against the Bureau of Prisons in March, arguing that their facility constituted an imminent danger to all. A lawsuit filed in April finally succeeded by October to force the facility into at least performing regular COVID-19 tests. The case reports, the complete lockdown, and a communications blackout followed.

Hundreds of people at FDC Philadelphia have been infected since October, including dozens of staffers and correctional officers. Still, we cannot expect conditions to improve meaningfully in the near term because FDC Philadelphia's correctional officers continue to flaunt even the most basic COVID-19 protocols, like wearing masks and social distancing. I observed this during the very brief time in October when outside visitations were allowed. COs demanded that I remove my latex gloves before entering, claiming that they attract the virus. They refused repeatedly to maintain even a reasonable distance from our mom, a senior with elevated risks of COVID-19 complications. Even with us in the meeting room, groups of 5-6 gathered closely and maskless to socialize. It is no wonder that they continue to infect people, the majority of whom are simply waiting for their day in court.

This didn't have to happen. Since the virus took hold in the United States, public health experts have clamored for home confinement of pre-trial detainees, compassionate release of medically vulnerable and/or suffering seniors, and other provisions available to prison wardens around the country. Their pleas fall on deaf ears. Wardens have approved fewer than 2% of the compassionate release requests they've received. FDC Philadelphia has even less reason to worsen this crisis. The facility is primarily a pre-trial detention facility, wherein people like Lore are confined before they even get to mount a defense. This may

be because they cannot buy their freedom through the abominable cash bail system or, like Lore, they are just too useful as political effigies.

We are lucky to still have Lore. We warned the US Attorney's office that they weren't equipped or motivated to protect Lore's health. They countered first by blocking Lore from signing the HIPAA releases that were necessary to share her heart condition, which the Centers for Disease Control and Prevention (CDC) affirms puts her at elevated risk for COVID-19 complications. When that failed, they falsely claimed that FDC Philadelphia could take proper care of her. Lore has been denied her prescription medications for Supraventricular Tachycardia (SVT) and other conditions since she was taken into custody. I'm relieved that we don't currently need to call the facility every day, only to be denied any kind of proof-of-life, but we must now focus on the myriad potential near- and long-term effects of COVID-19 that FDC Philadelphia will not treat.

All of this could have been avoided. We begged for the opportunity to care for Lore safely at home until her trial, which still has no foreseeable start date. Sadly, the judge decided that Lore's charges and treatment in confinement were too obviously political in nature and extent to grant her this safety, lest others take sympathy with her and join the movements for racial justice and against police brutality.

We need to step in for a broken criminal justice system. Lore is just one of the more than 275,000 people who were forced to contract COVID-19 in a prison cell —1 out of every 5 incarcerated people in the United States. I'm very grateful to the Marshall Project for collecting these statistics assiduously throughout the year, providing us some useful perspective on the scale of the crisis, and I encourage you to donate to their efforts. Likewise, the Amistad Law Project, who organize so well on the behalf of people incarcerated by the City of Philadelphia and the Commonwealth of Pennsylvania. The people incarcerated at FDC Philadelphia and other federal prisons nationwide deserve the same kind of support.

At the moment, the women's unit at FDC Philadelphia has Lore to help them. Since recovering from Covid, she has been absolutely tireless in collecting public health and legal information for them, quickly becoming a kind of unofficial librarian for the group in addition to its de facto therapist. I'm so proud of her! I know you are, too. If you haven't had a chance recently, please send her your love and let her know that she isn't forgotten. (We're using the free Ameelio app to send pics too, and it's good!). Lore's wishlist is also up-to-date with reading material to share with the whole unit. And if you're feeling especially generous, donate to her fund via PayPal or Venmo. With a major fundraising goal met, this money can go to her commissary fund—mostly packaged food to augment the typical meal of an apple and PB sandwich.

Please hold Lore and FDC Philadelphia's detainees in the light with us.

### **30 Dec - COVID, Prison, and Another Pandemic Clare Grady Made Me Remember**

*Clare Grady is going to prison. On February 10, this nice Irish Catholic lady of 62, who lives with her family in upstate Ithaca, will enter Alderson Prison in W. Virginia, to begin a one-year, one-day sentence.*

#### **MORE:**

by Susie Day (*Gay City News*)

That's because on April 4, 2018, Clare and six cohorts, also white and Catholic, broke into the world's largest nuclear submarine base at Kings Bay, Georgia, and defaced government property to call attention to the increasing danger of nuclear war.

Because the group — Plowshares 7 — believes that nuclear weapons aren't created in isolation from a system that also creates climate change, murders people like George Floyd, and brutally detains immigrants, the group read out a statement, repenting of the sin of white supremacy. They condemned

“racism, militarism, and extreme materialism,” the triple evils of the US profit imperative once called out by Martin Luther King, Jr.

Unsurprisingly, Clare and her comrades were arrested, charged with federal crimes, and convicted on all counts. By now, all but one have been sentenced to terms similar in length to Clare’s, which, compared to those served by most people convicted of felonies, seem almost tiny.

As a journalist, I recently interviewed Clare about her case. Since then, Clare and I have been emailing, Zooming, talking about people we know in common, her kids, the puppets she’s making for some peace project. She is becoming my friend. So what you’re reading isn’t anything like a balanced, unbiased hunk of journalism. I am an unprofessional.

See, over the past decades, I’ve come to know many people imprisoned for unlawful acts, protesting some or all of Dr. King’s “evil triplets.” I know that people in prison suffer physically, psychologically. Sometimes they die.

And now, the COVID-19 pandemic has invaded the crowded, unsanitary cages where people — “political” or not — are afforded little or no protection. Reportedly, COVID-19 infections are 5.5 times — and counting — higher in US prisons than out. Seeing Clare Grady and her friends incarcerated would’ve been hard without COVID. It’s harder now. They’re in their 60s, 70s; many battling underlying health concerns.

To try and help them, I’ve thought about reporting on the scourge of COVID-19 behind bars: the high infection rates inside; the vulnerability of elders; how hardly anyone gets out. But knowing Clare has helped me remember, from deep in the 20<sup>th</sup> century folds of my brain, something even worse than this pandemic. I remember what nuclear weapons can do.

In 1945, as everybody knows, the US dropped atom bombs on two Japanese cities, killing hundreds of thousands of people, poisoning the ecosystem, and beginning a global arms race that brought us weapons of increasing devastation, capable of obliterating planetary life many times over. Like billions, I grew up in a world where “mutually assured destruction” was the only way to “peace.”

Fortunately, there was pushback. Some people wrote books like E.P. Thompson and Dan Smith’s “Protest and Survive.” Others actually protested. People around the world decried not just nuclear war but also nuclear power, after accidents like Three Mile Island and Chernobyl. Plowshares, begun in 1980, was only one group among hundreds working to abolish nuclear power and weapons. People like Clare and her gang were there on June 12, 1982, when around a million antinuke protestors took over Midtown and Central Park in New York.

For a minute, back in the last century, protesting nuclear war was cool. Women in particular played a huge part; in the 1980s, women’s peace camps sprang up in places like Greenham Common in the UK and Seneca Falls here in New York State. I was part of a Midwestern lesbian community where, along with supporting battered women’s shelters and marching against police brutality, just about everybody worked somehow against nuclear weapons and power. We got pretty good at describing what a nuclear winter would be for those unlucky enough to survive an initial blast: blackened sky for years, burning asphalt, deaths from radiation... We ingested that nightmare.

But it turns out you can’t live more than a few years contemplating nuclear apocalypse and ragging on the military industrial complex if you want a “normal” life. In Nicaragua, the Sandinistas needed help; then the HIV/AIDS crisis hit. So, forgetting that the arms industry never sleeps, most of us migrated to other causes.



Like America, we made peace with our end-of-the-world nightmare through fun, post-apocalyptic and dystopian scenarios, from “Godzilla” to “The Hunger Games.”

Years ago, it was relatively simple to identify governments as the source of nuclear buildup. Then corporations began devouring every facet of production, handling, storage. As the nuclear industry threaded its way through the products and services of our lives, it became harder to see, dismantle, and to protest. Gradually, much of the antinuke movement shuttered.

Plowshares didn't. Clare's April 2018 protest was maybe the 80<sup>th</sup> Plowshares action. Yet, how could it possibly change today's world, which holds around 14,000 nuclear bombs, most of which are vastly more destructive than those that hit Japan, and can be launched (by design or accident) instantly?

There's also the fact that Trump has pissed on nuclear pacts like the Open Skies Treaty, the Intermediate-Range Nuclear Forces Treaty, and the Iran Nuclear Deal. A few days after Joe Biden takes office, the Strategic Arms Reduction Treaty with Russia will expire. Will Biden move to extend it? Maybe. But let's remember that he voted for the 2003 Iraq invasion, and seems, according to *In These Times*, to be stocking his administration with a “host of pro-war individuals.”

What Joe Biden will never admit is that the world doesn't have to work this way. In fact, it was Clare, not Joe, who told me that there's a new Treaty on the Prohibition of Nuclear Weapons [TPNW] going into effect January 22. International law will soon make nuclear weapons illegal.

Of course, Joe doesn't care; NATO and the US oppose the treaty. Clare will go to prison and the mainstream press won't peep. All TPNW offers is small hope for a big miracle. But still, it's hope.

So COVID. It would be wonderful if Clare and her comrades never had to go to prison and possibly contract the virus. It would be wonderful if none of the 2.3 million, mostly Black or Brown, people in US prisons didn't have to be there in the first place and live with the constant fear of dying inside.

Basically: if you've been fighting those bad triplets, please don't stop. But the whole point of that seemingly pointless Plowshares action is to wake us up to the fact that all life forms — regardless of politics — are desperately, deeply, drastically interdependent. “Intersectional,” in movement terms. And if some “right-wingers” deny COVID, most of us — left, right, center — perpetually deny the likelihood of nuclear disaster.

So let Clare Grady do her work. And if my friend goes to prison, if she gets sick there, then sicker... my heart will break. It may not recover.

But here's the thing: It won't break for nothing.

### **31 Dec - Happy New Year!**

*The latest from recently released political prisoner David Campbell is just below.*

#### **MORE:**

Hey everyone, Happy New Year!

I've been out for about two and a half months now, and while the world is definitely a bit more fucked up out here than when I left, it is an absolute joy to be on this side of the wall. THANK YOU SO MUCH to

everyone who helped me make it through the year! I'm not usually an all-caps kinda guy, but words truly cannot express my gratitude. Hitting Caps Lock is as close as I can get.

Wishing everyone a safe and rewarding 2021, even in the face of all the depressing threats we face. Don't hesitate to reach out to me at any time. This website will be up until at least October 2021.

Again, THANK YOU!

## **1 Jan - Prison Break: New Year, Same Struggle for Abolition**

*Below is our condensed version of the monthly column by the Certain Days collective.*

### **MORE:**

With *The Marshall Project* reporting that 1 in 5 prisoners in the U.S. have had COVID-19, we are beginning the new year with an intense struggle ahead. In the last few weeks it was announced that political prisoners Russell Maroon Shoatz, Mutulu Shakur, Eric King, Rattler, Jaan Laaman, and Joe Dibee have tested positive for COVID-19. Since April, other political prisoners including Marius Mason, Sundiata Acoli, Reality Winner, Jeremy Hammond, and Jalil Muntaqim have also contracted the virus. Elder political prisoners Imam Jamil Al-Amin, Ed Poindexter, David Gilbert, Chip Fitzgerald, Leonard Peltier and numerous others face acute risks due to their continued confinement.

Looking back at 2020, we welcomed home several political prisoners, including Chuck and Delbert Africa (the last of the MOVE 9 still imprisoned), Ramsey Orta, Chelsea Manning, Red Fawn Fallis, David Campbell, Jay Chase, Jeremy Hammond, and Jalil Muntaqim. We mourn the passing of Delbert Africa in June, though we are glad he was able to do so from outside the prison walls. Since the police killing of George Floyd in May, we have witnessed a rise in people willing to directly confront the system, many of whom are currently facing lengthy prison sentences if convicted. Providing support and solidarity to these groups and individuals will be paramount in the year ahead.

The new 2021 *Certain Days: Freedom for Political Prisoners* calendar is selling out quickly. Both the artwork and the essay for the month are by political prisoner and Certain Days collective member Xinachtli. All funds go to prison abolitionist organizations and political prisoners in need. You can also use the calendar to raise funds for your own organization or group.

### **Political Prisoner Birthdays**

With four political prisoner birthdays in January, the new year is a great time to throw an online prisoner letter-writing party! The personal touch of a birthday card means so much to those inside, so write a letter, have people sign a card, and show your solidarity with those locked behind bars. Remember that prisoners at Federal prisons (USPs and FCIs) cannot receive cards, colored paper, or colored ink. [Check [nycabc.wordpress.com/pppow-birthday-calendar](http://nycabc.wordpress.com/pppow-birthday-calendar) for dates and addresses]

### **Releases**

On December 22, Abdulrahman Odeh was released from prison after 15 years, as one of five Palestinians imprisoned in the U.S. as the Holy Land Foundation 5 (HLF5). Of the HLF5, Odeh received the shortest sentence, with the remaining defendants still fighting for their freedom.

### **Ongoing Cases and Appeals**

The Pennsylvania Supreme Court has dismissed a petition to remove the DA's Office from handling the case of Mumia Abu-Jamal. What this means for Mumia's case is yet unknown.

In early December the 11<sup>th</sup> Circuit Court of Appeals ruled against compassionate release for NSA whistleblower Reality Winner. Winner tested positive for COVID-19 in July and has several health issues that are not being addressed. She is eligible for release in November 2021 and is still fighting for clemency.

In December, Rebekah Jones, a former Department of Health data scientist, had her home raided by police in an ongoing whistleblower investigation of COVID-related data. In late December, 22 people were arrested in Minnesota as they protested the Enbridge Line 3 pipeline in solidarity with Indigenous struggles. In St. Paul, Mike Forcia, charged with destruction of a Christopher Columbus statue in the capitol in June, received no conviction in a unique example of restorative justice.

The Kings Bay Plowshares 7—aging Catholic peace activists who symbolically sabotaged nuclear weapons on the 50<sup>th</sup> anniversary of the assassination of Martin Luther King, Jr.—are reporting to prison as concerns continue to rise about COVID-19 for those incarcerated. Defendants Carmen Trotta, of the St. Joseph House Catholic Worker in NYC, and Martha Hennessy (Dorothy Day’s granddaughter) reported to prison in mid-December. Clare Grady and Patrick O’Neill report to prison in the coming weeks, while Mark Colville’s sentencing has been delayed until February. Fr. Steve Kelly is already in prison and being transferred, while Elizabeth McAlister (widow of Plowshares co-founder Philip Berrigan) was released after time served.

### **In Case You Missed It**

- Members of the Certain Days collective have done several recent interviews/podcasts to promo the new 2021 calendar. Listen now and grab a calendar while they’re still available!
- Starting later this month, former political prisoner and Jericho Movement founder Jalil Muntaqim will be hosting the We Are Our Own Liberators webinar, a six-part series.
- Eddie Benton-Banai, co-founder of the American Indian Movement and former political prisoner, died late last year.
- Karen Smith, abolitionist/longtime organizer, passed away in a car accident at the end of last year.
- Ruchell Cinque Magee, one of America’s longest held political prisoners, recently released a message speaking of his continued confinement.
- The Xinachtli Defense Committee and the Central Texas ABC Collective have produced a Tribute to Ricardo Flores Magon, Mexican revolutionary and former political prisoner.
- “40 Years a Prisoner” is a new documentary exploring the MOVE 9, political prisoners connected to Philadelphia’s back-to-nature organization, which has faced police brutality and state repression since its inception.

### **5 Jan - NSA Whistleblower Reality Winner Alleges Guard Threatened Her Over Sexual Abuse Claim**

*In March 2020, NSA whistleblower Reality Winner filed a report alleging that a guard sexually abused or harassed her. Now, her mother says days ago the guard she reported came to her unit and threatened her with retaliation.*

#### **MORE:**

by Kevin Gosztola (*Shadowproof*)

The report was filed under the Prison Rape Elimination Act (PREA), a law passed in 2003 with the intent of ensuring that prisons do more to document sexual abuse in order to stamp it out of facilities.

Winner has been incarcerated at Federal Medical Center Carswell since October 2018, where she is serving a 63-month sentence after accepting a plea agreement.

According to Billie Winner-Davis, her daughter finally met with an “investigator” on January 4, but “they minimized and blamed Reality Winner for the lack of action and response.”

Winner-Davis received a phone call in the morning on New Year’s Eve. Reality was crying and upset. She was not sleeping and informed her mother for the first time that she submitted a report alleging abuse and harassment. She suggested the grievances she (and others) filed were “blocked.” (It is possible the PREA official claimed the allegations could not be substantiated.)

The night before, a guard and lieutenant reportedly came to Reality’s unit and announced to everyone that they knew Reality complained. “If you lie on me, I go for blood,” the guard allegedly stated.

Reality became afraid the prison might put her in solitary confinement and maintain it was for her safety. She did not want to be removed from her unit, where she believes fellow prisoners would protect her. And she was convinced if she was in isolation the guard would “have access to her.”

Winner-Davis was told by Reality that two or three of the prisoners in the unit also have an active PREA report against the same guard.

A PREA audit conducted in 2019 found Carswell did not always conduct “retaliation monitoring” in a timely manner. Staff were instructed to review the standard and “correct time frame” for such monitoring.

“In November 2017, a former male case manager was sentenced to 12 months incarceration and two years supervised release for sexually abusing a woman incarcerated at FMC Carswell in November 2016,” according to a report from a congressional oversight body.

The *Dallas Morning News* reported that Brady Michael Green was a guard at Carswell and pled guilty in 2014 to “making a false statement to a government agency for lying about having sex with an inmate at least three times.”

As the *Fort Worth Star-Telegram* has noted, Carswell, “which currently houses about 1,300 inmates, has a checkered history of accusations of sexual assault and medical neglect.”

A 2009 Inspector General report found “58 inmates at Carswell had reported incidents of staff sexual abuse” from 2001 to 2008. “That was the fourth-most complaints among institutions managed by the Federal Bureau of Prisons.”

Reality Winner survived a COVID-19 outbreak at Carswell and spent most of 2020 fighting for compassionate release. She has submitted a clemency application to the Justice Department.

“Just when we think it can’t get worse, it does. Just when we think the worst is behind us, a new nightmare emerges,” Winner-Davis declared.

Her mother is deeply concerned about the safety of her daughter. “I can’t stop worrying, not knowing what’s happening to her. Is she okay? I just don’t know where to go for help anymore or how to protect her. I just keep doing whatever I can do.”

Winner-Davis contacted both of her senators in Texas—John Cornyn and Ted Cruz—as well as a congressional representative, Filemon Vela. Only Cornyn responded, and he declined to help her.

Reality Winner is not eligible for release from prison until November 2021.

As she has stated, she's a political prisoner, and the staff hate her because she has a voice. She's a veteran, and they hate her because of her service. She's a human being—they hate her because she knows her worth.

"I am a daughter, sister, auntie, and they hate me because I am loved."

### **5 Jan - Indigenous Activist Faces 10 Years for Facebook Comments: The Case of Loren Reed**

*On the episode of the It's Going Down podcast, they spoke with Klee Benally of Indigenous Action out of Kinlani, or so-called Flagstaff, and Ryan Fatica of Perilous Chronicle and discussed the case of Loren Reed, a 26 year-old indigenous activist who is facing up to 10 years simply for making Facebook comments about damaging property in a private chat.*

#### **MORE:**

listen at [tiny.cc/IGDPod\\_Loren](https://tiny.cc/IGDPod_Loren)

As Fatica wrote:

*Loren is charged with one count of "Threats to Damage and Destroy a Building by Means of Fire," which carries a maximum sentence of 10 years in prison and a fine of up to \$250,000. The charges stem from comments Loren made in a private Facebook chat while planning a protest against police violence in his hometown. Because federal grand juries were suspended in Arizona for six months due to COVID-19, Loren spent the majority of his time in pre-trial detention without an indictment—in legal limbo. After more than four months of detention, he was finally able to enter a plea of "not guilty" to the charge against him.*

*With the Trump administration lobbying attacks at those it deems "anarchists" and political divisions igniting violence in the streets amidst a historically contentious election, a 26-year-old Diné (Navajo) man from the small town of Page, Arizona has found himself in the crossfire of a national political melee.*

### **6 Jan - 145 Organizations Support the Immediate Release of Russell Maroon Shoatz**

*To Governor Tom Wolf, Lieutenant Governor John Fetterman, and Attorney General Josh Shapiro...*

#### **MORE:**

To Governor Tom Wolf, Lieutenant Governor John Fetterman, and Attorney General Josh Shapiro:

Re: Russell Maroon Shoatz, AF3855 SCI Dallas

The undersigned Pennsylvania human rights and criminal justice organizations, demand the immediate unconditional release of Russell Maroon Shoatz and all elderly prisoners who've contracted COVID-19.

Russell Maroon Shoatz is 77 years old. A dedicated community activist, Shoatz has been incarcerated and serving multiple life sentences since 1972, including nearly 30 years in solitary confinement. He has stage 4 colon cancer and on November 11<sup>th</sup>, tested positive for COVID-19. Shoatz and other people in prison who have tested positive are being held in inhumane and unsanitary conditions. Shoatz is also being denied an urgent surgery to aid his colon cancer.

As COVID-19's full-blown resurgence in Pennsylvania prisons ravages the most medically vulnerable, there is no moral justification for keeping elderly and infirm individuals incarcerated. Indeed, as indicated in "Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety"—a recent publication from the National Academies of Sciences, Engineering, and Medicine—"decarceration is

an appropriate and necessary mitigation strategy to include in the COVID-19 response in correctional facilities” and “individuals assessed as medically vulnerable or of low risk to commit serious crime should be suitable candidates for release during a public health crisis.” In addition, the authors’ research found “that people convicted of violent offenses have lower overall recidivism rates for all age groups compared with individuals convicted of nonviolent offenses [and] the recidivism rates are particularly lower for people 55 and over.” At his advanced age and in his medically compromised state, Shoatz poses neither a threat to public safety nor a recidivism risk. The same is true for many elderly incarcerated.

The time is now to do what’s right, and to model for the rest of the country what a rational and ethical response to the impact of COVID-19 on society’s most vulnerable and marginalized populations looks like.

We demand your prompt attention to this urgent matter and await your action securing the release of Russell Maroon Shoatz.

**January 7<sup>th</sup> - Letter from Health Experts Urging Immediate Release of Russell Shoatz**

We are writing to urge you to release Russell Maroon Shoatz, #AF3855, currently incarcerated at SCI Dallas. As medical professionals familiar with the details of Mr. Shoatz’s situation and health, we know that Mr. Shoatz is in imminent danger of death if he remains incarcerated.

After treatment for prostate cancer several years ago, Mr. Shoatz was diagnosed with Stage 4 rectal cancer in the spring of 2019 at age 75. The cancer was discovered when he had emergency surgery for a bowel obstruction. He received initial treatment at a hospital near Dallas SCI, where his family and friends were close enough to visit. Then he was transferred to Fayette in western, PA, where there is an on-site chemotherapy/oncology unit. Far away from family and friends, amid the COVID pandemic, he endured over 12 cycles of chemotherapy that completed in late July 2020. He suffered side effects of painful hand neuropathy, fatigue, low blood counts, and weight loss.

In late October he consulted with a surgeon who said that it was time to remove the rectal primary tumor, since the chemotherapy had successfully eradicated the distant areas of metastases. The surgeon said surgery was planned within two weeks and it was critical it not be delayed. At this time Mr. Shoatz heard that there were 18 cases of COVID at Fayette. On November 13<sup>th</sup>, right before the surgery, after receiving the colon prep, he was tested COVID positive. Since then, suffering severe gastrointestinal distress, he was put into medical isolation—24-hour solitary confinement—in the infirmary.

At age 77, debilitated from cancer and chemotherapy, in grave danger from COVID-19 infection, Mr. Shoatz now faces life-threatening delays for the cancer surgery. We understand that there is currently a significant spike in COVID-19 cases throughout the Pennsylvania system, with resulting pressures on the prison health facilities. Mr. Shoatz must be released immediately.

Sincerely,  
Robert Cohen, MD  
David Hoos, MD  
Robert Fullilove, Professor of Sociomedical Sciences at the Columbia University Medical Center  
Barbara C. Zeller, MD

**January 15<sup>th</sup> - We Maroon(s) an International Day to Free Maroon(s)**

**WHAT:** An International Call to Free Russell Maroon Shoatz.

**WHEN:** 6:00pm, Friday, January 15<sup>th</sup>

**WHERE:** Online <Invite at [facebook.com/events/2747400555509121](https://www.facebook.com/events/2747400555509121)>

**COST:** FREE

The Maroon Party For Liberation & The Cultural Committee of the Free Maroon Coalition will host a virtual album release of We Maroon Liberation Suite #1 : The Mosaic of Sound. An album dedicated to Russell "Maroon" Shoatz, marronage and maroons.

Join us for performances, updates, Q&A, strategy session on next steps, political education and report backs along with fresh new music and art to liberate Maroon(s).

An International Call to Free Russell Maroon Shoatz. He was just recently diagnosed with Covid 19 as well as having Stage 4 Cancer. He is an elder, grandfather, father, loving spirit of 77 years old.

We are requesting that people throughout this planet earth consider doing an event in their locale every month until he is released and home with his family.

Russell Maroon Shoatz is a political prisoner who has been held unjustly for over thirty years, including two decades in solitary confinement. He was active as a leader in the Black Liberation Movement in Philadelphia, both above and underground. His successful escapes from maximum-security prisons earned him the title "Maroon." This is the first published collection of his accumulated written works, and also includes new essays written expressly for this volume.

Despite the torture and deprivation that has been everyday life for Maroon over the last several decades, he has remained at the cutting edge of history through his writings.

### **7 Jan - Water Protector political prisoner Rattler released from prison**

*Despite Rattler's compassionate release being denied by the federal courts, and the prison as well as federal probation offices refusing to look into Rattler's legal change of address to be housed with family during the pandemic, Rattler was made to get on a public plane (regular commercial airlift, not Bureau of Prisons personal airlines) despite his attorney being physically present to pick him up to have safe travel and limiting exposure during the pandemic.*

#### **MORE:**

We are unsure if he was tested again for COVID before being put on the plane, but he has reported having no more symptoms since his contraction of COVID at Sandstone federal prison last month. He is now in ND heading for the halfway house for the next 6 months.

We will update his mailing address for support mail. Any donations can be added to his Support Committee: [paypal.me/siouxic](https://www.paypal.com/merchot?cmd=_donations&business=siouxic@comcast.net); messages for him can be sent to this Facebook page. Pray for those stuck in federal halfway houses, local jails, and state/federal prisons because they are ALL affected by COVID.

### **7 Jan - Urgent medical alert for Kamau Sadiki**

*Help save the life of former Black Panther & political prisoner Kamau Sadiki/Freddie Hilton.*

#### **MORE:**

Tweet @GovKemp & call the Augusta State Medical Prison at (706) 855-4700 to demand he be taken to the wound care clinic ASAP.

Sadiki has spent more than four decades fighting for Black people. At seventeen, he joined the NYC Black Panther Party. He been imprisoned since 2002 for refusing to aid in the capture of Assata Shakur. Learn more about his story [freakamau.com](http://freakamau.com)

## 8 Jan - New York's Prison Transfers Increased Covid-19 Risk for Sick, Elderly Men

*A new lawsuit accuses state officials of “deliberate indifference” for prison transfers that defy public health recommendations.*

### **MORE:**

by Alice Speri (*The Intercept*)

Months after New York had become a global epicenter of the Covid-19 pandemic, state officials began quietly moving dozens of elderly men with underlying health conditions from prisons across the state to a facility close to the Canadian border.

The transfers, which began in June 2020, after the virus had spread widely and caused several deaths among the state's incarcerated population and prison staff, were ostensibly intended to protect the most vulnerable from Covid-19. But defying both public health recommendations and common sense, prison officials moved the men from different facilities, including some with large outbreaks, without first testing them, transporting them on crowded and poorly ventilated buses. They then mixed them at the Adirondack Correctional Facility in Ray Brook, New York, without quarantining them. Since then, officials have tested the men only sporadically, even after some were exposed to the virus inside the prison, and have taken minimal steps to promote hygiene and social distancing. When a man incarcerated at the facility was discovered to have contracted the virus, prison officials ordered the guards who had come in contact with him to quarantine at home for two weeks. But they took no measures to test and isolate the incarcerated people with whom he had also been in close proximity.

The moves to Adirondack — which state officials did not announce publicly beyond a brief mention on the website of the Department of Corrections and Community Supervision, or DOCCS — were detailed in a class action lawsuit filed on Friday on behalf of the nearly 100 men who were transferred to the prison, all of whom are over the age of 60 and have underlying health conditions. The lawsuit further includes claims on behalf of a subset of Adirondack's population who also have a disability recognized under the Americans with Disabilities Act.

In the complaint, attorneys with the Legal Aid Society and the civil rights firm Relman Colfax accuse state officials of effectively creating “a prison nursing home” without adopting the precautions this approach would require, and of “creating a heightened risk of spreading infection and undermining the ability to treat this particularly vulnerable group.” In doing so, they claimed, the state violated constitutional protections against cruel and unusual punishment and discrimination as well as disability laws. The lawsuit calls for the state to cease all future transfers to Adirondack until officials have addressed conditions there and brought the prison and transfer protocols in compliance. But attorneys for the men incarcerated at Adirondack also argue that releasing them is the single safest solution.

“By design, incarcerated people transferred to Adirondack are old, infirm, and unthreatening,” the complaint reads. “These are precisely the people that DOCCS should prioritize releasing in light of the COVID-19 crisis.”

The lawsuit, which accuses the state of “deliberate indifference” to the safety of the men incarcerated at Adirondack, comes as New York is in the grips of a second wave of the pandemic, which has once again spread widely through the state's prisons, with three new deaths reported just on Wednesday. At least 27 incarcerated people have died so far in the state after contracting the virus in prison, according to official figures compiled by Legal Aid. Four parolees and six prison staff members have also died of the virus. Some 3,459 people incarcerated in the state have tested positive so far, though New York maintains a lower infection rate per capita than many other states.



The lawsuit also comes as advocates are lobbying legislators to reform the state’s parole system and as pressure mounts on Gov. Andrew Cuomo to release vulnerable people through clemency or other means. Dozens of court claims have been brought on behalf of individuals and groups of people incarcerated in the state seeking their release — with mixed success. Ten people were released on medical parole since March, and Cuomo has recently granted clemency to 21 more. As of Thursday, 3,552 people were released early from New York prisons because of the pandemic, though advocates say that is far too little.

“Essentially, the state started transferring people halfway through the ongoing pandemic rather than releasing them,” Stefen Short, a supervising attorney at Legal Aid’s Prisoners’ Rights Project who is representing the men incarcerated at Adirondack, told *The Intercept*. “The department is engaging in very unsafe practices in transferring people to Adirondack, including not quarantining people upon arrival, not testing people before they’re transferred, shunting people directly into general population without any type of measures to ensure they don’t have Covid or have not been in contact with anyone who has Covid. And the conditions at Adirondack are totally inadequate to protect people.”

Thomas Mailey, a spokesperson for DOCCS, wrote in an email to *The Intercept* that there are currently 93 men incarcerated at Adirondack, none of whom have recently tested positive for Covid-19. He added that the transfers were intended to reduce density in other facilities with a high number of positive cases. Buses moving incarcerated people between facilities travel at half capacity, he said, and individuals traveling are screened and receive temperature checks.

“Throughout the COVID-19 public health emergency, the Department of Corrections and Community Supervision has worked in consultation with the NYS Department of Health (DOH) and followed facts and science to protect staff and the incarcerated population,” he wrote. “The entire incarcerated population has been tested for COVID-19 and an asymptomatic testing program is currently underway.”

Mailey did not specify when the prison’s population was tested or whether it was tested more than once. Cuomo’s office declined to comment on the record.

## **A Death Sentence**

In court filings, the men transferred to Adirondack described communal spaces such as dorms, mess halls, and bathrooms where social distancing was impossible. They denounced a dearth of hand sanitizer and masks months into the pandemic. And they reported weekslong wait times to see a doctor and guards not wearing masks or wearing them around their chins.

Jose Leon, a 62-year-old with a long list of medical conditions, including hypertension, colitis, and a history of heart attacks, has become so scared of contracting the virus at the prison that he has stopped going to the mess hall for meals, his sister, Jeanette Velazquez, told *The Intercept*. Because of a policy at Adirondack that prohibits residents from eating food from the mess hall in their dorms, that means that Leon is only able to eat food he has purchased from the commissary. (At other prisons in the state, eating in cells is allowed so that people are not forced to choose between buying food and risking exposure.) Velazquez also said that Leon, who used to call her a couple times a day, is calling her far less because he is trying to avoid the prison’s communal areas. Mailey told *The Intercept* that staff are required to wear masks and that the DOCCS Office of Special Investigations has been performing compliance checks. He added that individuals eating in the prison’s mess hall are seated three seats apart.

“He’s very nervous, and he’s trying to stay away from people, places, and things,” said Velazquez. “He doesn’t go to the infirmary. He’s afraid to go anywhere. He’s just been isolated from everything. He’s

skipping meals, he's staying away, he doesn't really call me as much as he would want to, to stay away from the phone."

Leon, who has spent the last 16 years in prison, was denied parole in 2019. Earlier in the pandemic, Velazquez had hoped he would be among the elderly people with health conditions who officials said they would consider for early release. Instead, he was moved to Adirondack, where prison staff handed him two paper masks that he has been rewashing for months. According to court filings, he was recently denied a colonoscopy necessary to monitor his colitis because the prison had not conducted sufficiently recent Covid-19 testing for the hospital to admit him for the procedure.

"It's unnecessary, what's the purpose of that?" Velazquez said, referring to the continued incarceration of her brother and other elderly, sick people who pose no threat to public safety. "Why are they doing it? It's like giving them a death sentence right now, with what's going on."

Jose Hamza Saldaña, director of the Release Aging People in Prison Campaign, or RAPP, a group of formerly incarcerated advocates and their families that is also a party to the lawsuit, echoed that sentiment.

"Everybody agrees that these men and women are the least likely to ever commit another crime. For the most part, they've been mentors," said Saldaña, who was released in 2018 after serving 38 years in New York prisons. "It's really hard for me to really imagine what could stop this governor from releasing these men and women, who will probably be a benefit to society as they enter their home communities, as opposed to let them die."

### **Deliberate Indifference**

In late spring, DOCCS published a "Covid-19 Reopening Plan" fact sheet on its website. In a bullet point, the department indicated that it planned to move individuals over 60 and with medical conditions to Adirondack, a facility that until that point had housed incarcerated minors. In an updated version of the document, DOCCS explained the move by noting that "the North Country has an extremely low infection rate," a reality that has since changed. "There was one bullet point in this five-page document," said David George, who also works with RAPP and was monitoring the site for any update to share with incarcerated people and their families. "There was no public announcement, there was no press release."

Indeed, the lack of information from prison officials has been a consistent issue throughout the pandemic, attorneys say. "We're begging the department for information about what it's doing and what it intends to do to protect people from Covid," said Short. "And the department won't tell us anything."

The attorneys say that DOCCS declined to answer their questions about the move to Adirondack, including whether the decision had been informed by public health experts. "We specifically asked, 'Have you consulted with experts on this? Who has been informing you throughout the process on whether or not there's a way to do these transfers safely, whether or not there's a way to group vulnerable people together safely?'" said Short. "And they won't answer that either."

The complaint filed on Friday argues that department officials ignored the most basic public health guidelines, even as the high risk of spreading the virus by transferring and mixing people without screening and testing them was well known at the time of the transfer.

As *The Intercept* has reported before, prisons and jails, where social distancing is virtually impossible, quickly became epicenters of the pandemic. According to the complaint, the virus attack rate, or the proportion of those exposed to the virus who ultimately contract it, is as high as 80 percent in prison, as

opposed to 20 to 30 percent in the general population. And the virus is deadlier inside prisons than it is outside, making the death rate for those incarcerated three times higher than for the general population.

Yet the pandemic has only exacerbated what was already a public health crisis in U.S. prisons, where a disproportionate number of people are elderly and suffer from health conditions like hypertension, diabetes, and asthma. According to the complaint, the physiological age of an incarcerated person is estimated to be 10 to 15 years more than their actual age, and chronic failures in prisons' medical care systems have long gone unaddressed. Adirondack is more than two hours away from the closest hospital with the capacity to accept people from prison, the lawsuit claims, and two small local hospitals that don't have the required security features would quickly be overwhelmed in the event of an outbreak at the prison.

Attorneys argued that officials ignored guidelines issued to correctional facilities by the Centers for Disease Control and Prevention and warnings by dozens of experts calling on state officials to release incarcerated people to "save lives." And they said that prison officials moved people to Adirondack who had come from facilities with large outbreaks underway. Leon, for instance, was transferred over the summer from Otisville Correctional Facility, where almost 10 percent of the prison's population had tested positive for the virus by the end of July. He was not tested before transfer. Many others were taken to Adirondack from Fishkill Correctional Facility, where five people had died of the virus by July. The hourslong transfers took place on crowded and poorly ventilated buses. During one such trip from Fishkill, a man started coughing and exhibiting flu-like symptoms, but while he was taken off the bus, none of the people he had been traveling with were tested or quarantined once they reached Adirondack, according to the lawsuit.

The men incarcerated at Adirondack are believed to have last been tested between September 30 and October 1, according to the lawsuit. When a man did test positive on that occasion, he was isolated, but none of the men he had been mingling with in his housing unit were screened or tested after he tested positive. And while three staff members who had been in close proximity with him during an hourlong grievance hearing in a room with no windows were ordered to quarantine at home for two weeks, two other incarcerated men who were also there were neither tested again nor isolated after the exposure.

"There was absolutely no effort to stop the spread within the facility," said Rebecca Livengood, an attorney at Relman Colfax who is representing the men incarcerated at Adirondack. "In the event of an outbreak, they have no processes in place that would contain or mitigate the spread at all."

### **Political Will**

Before the pandemic, Adirondack housed about 13 incarcerated youths, and there were plans to turn the 500-bed prison into a drug treatment facility. As about 17 prisons across the state have closed over the last decade, Cuomo has come under pressure from representatives of parts of the state that rely heavily on prisons for jobs. Advocates are questioning whether the transfer of elderly people to Adirondack was part of an effort to keep the prison filled — even though Cuomo has long maintained that "incarceration is not an employment program."

"These are economic anchor institutions in economically depressed areas of the state," said Short, noting that it's common for the state to repurpose the most remote facilities multiple times in an effort to keep them utilized. "It certainly doesn't surprise us that the department is trying to keep those economic anchor institutions functioning."

It is not clear how long the people who were transferred to Adirondack will remain there, but attorneys argue that the men moved to the prison have lost access to programs and to adequate medical care, and that in many cases they have been moved farther away from their families. They and their loved ones have

received little information throughout the process, a reality that attorneys say is indicative of the state's haphazard approach to the handling of the pandemic in prisons. Even months into the crisis, testing in New York prisons has lagged, as has information about prison outbreaks.

"When you look at how Cuomo has handled Covid statewide, for folks who aren't incarcerated, he has really modeled himself as a leader in taking a testing-based, science-based approach, and being very aggressive," said Livengood. "That response is really lacking in prisons."

In the absence of bolder measures from the governor, advocates are lobbying for a number of prison reform bills currently before state legislators, including the Elder Parole bill and the Fair and Timely Parole Act, which would give elderly incarcerated New Yorkers a chance at release and directly impact many of the men currently at Adirondack.

"This is really a matter of political will," said RAPP's George. "Time and time again, Governor Cuomo and the state prison system have just failed, flat out, incarcerated people, their families, and their communities. And as a result, lawmakers in New York really need to step up."

### **8 Jan - Two Native Americans arrested over Keystone XL protests**

*Though plenty of white Trump supporters who terrorized the Capitol face little consequence, Jasilyn Charger & Oscar High Elk are charged for nonviolently resisting oil pipeline construction in South Dakota*

#### **MORE:**

by Lakota People's Law Project (*Indian Country Today*)

As many Trump supporters who stormed the nation's Capitol appear poised to evade punishment, two young Native Americans from the Cheyenne River Sioux Tribe in South Dakota have been arrested and charged for peacefully protesting construction of the Keystone XL oil pipeline (KXL).

Jasilyn Charger (24) and Oscar High Elk (30) were booked by law enforcement after independent protest actions. The two are among a group of tribal members who have formed a resistance encampment on their reservation, near where the long-disputed pipeline would pass, should it be completed.

"At a time when white rioters are being let off the hook after raiding the nation's Capitol and driving legislators into hiding, Native Americans and other people of color are still being dealt harsh criminal charges for nonviolent acts of civil disobedience," said Chase Iron Eyes, lead counsel for the Lakota People's Law Project, a nonprofit organization helping with the legal defense of one of the activists.

The pipeline has seen its share of political wrangling and legal entanglements, in the Dakotas and at the highest levels of government. Indigenous communities have resisted its construction since 2012, highlighting the threat posed by the tar sands pipeline to the Ogallala Aquifer and the risks that "mancamps" — temporary housing for oil workers — present to Native women and girls. President Barack Obama terminated the project in 2015, citing climate change and the fact that the Canadian pipeline would do little to benefit Americans economically.

But in his first days in office, Trump used an executive order to reverse Obama's decision on KXL and another pipeline project, Dakota Access (DAPL). KXL's intended path would pass through the heart of Lakota treaty lands — just as DAPL does, 100 miles to the north of Cheyenne River, adjacent to the Standing Rock Nation. In 2016 and 2017, DAPL spawned protests ten of thousands strong, capturing worldwide attention.

Representatives for president-elect Joe Biden said during his campaign that he'd rescind KXL's permit, should he be elected. Despite Biden's pledge to halt construction, the pipeline company — TC Energy from Canada — continues to build both mancamps and pump stations at a rapid rate.

In May of 2020, a federal judge in Montana, citing the Endangered Species Act, halted construction of KXL across domestic waterways, and in July the Supreme Court upheld the judge's order with respect to KXL. Furthermore, in December a Nebraska judge halted all additional eminent domain orders within the state in connection to KXL, citing Biden's pledge to cease construction.

Ms. Charger locked herself to a pump station on November 21, and she was arraigned Wednesday for a class 1 misdemeanor of trespassing. Mr. High Elk was arrested Wednesday on 12 counts, including felony aggravated assault and felony aggravated eluding. High Elk, who committed no acts of violence prior to his arrest, could face up to 23 years in prison, if convicted. The state's attorney in his case is Ralph Kennik from Haakon County, South Dakota.

"This is on my people's land, and I have the right to protect it for my future generations," Charger said. "Our people will not be bullied, and we're not criminals for protecting our water. What they forget to realize is that we have been occupying and living on this land for generations. And this just goes to show that we need to keep showing up as a people. We need to keep up the resistance."

The Lakota People's Law Project has helped secure counsel to represent Charger, who is with BSK Youth Camp and 7<sup>th</sup> Defender's Project. Her next court appearance is on March 3 in Phillip, South Dakota. High Elk, with Roots Camp and 2KC Media, is out on \$10,000 bail and awaiting arraignment now in Haakon County. His next court date is February 3.

## **15 Jan - Metropolitan Anarchist Coordinating Council (MACC) General Assembly**

**WHAT:** General Assembly

**WHEN:** 6:30pm, Friday, January 15<sup>th</sup>

**WHERE:** YOUR HOME

**COST:** FREE

### **MORE:**

We will be hosting another "Virtual" General Assembly for July - lookout in your various Working Group platforms, e-mail listservs, Loomio, et cetera for details on how to join the assembly. General Assemblies are the most ideal place for new folks to plug-in to MACC, learn about our projects and ongoing efforts, and connect to organizers. There will be a 6:30-7PM orientation for new folks that would like to get connected and learn more about MACC's structure and history.

Our topic for this month will be gendered violence in movement spaces. Often these type of conversations happen in private, out of the realm of a public political space, so we're giving them a forum. Let's build a culture of care.

Please review these documents before coming:

[macc.nyc/organizing](http://macc.nyc/organizing)

[macc.nyc/safer-spaces](http://macc.nyc/safer-spaces)