CONSTITUTIONAL LAW — QUALIFIED IMMUNITY — SECOND CIRCUIT DECLINES TO DELINEATE CONSTITUTIONAL BOUNDARIES OF ACCEPTABLE OFFICIAL CONDUCT IN QUARANTINE. — *Liberian Community Ass'n of Connecticut v. Lamont*, 970 F.3d 174 (2d Cir. 2020).

Through the doctrine of qualified immunity, courts delineate the boundaries of acceptable official conduct. By asking whether an official violated a constitutional right and whether that right was clearly established at the time of the violation,[1] courts "balance[] two important interests — the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."[2] Over the past decade, however, the Supreme Court has steadily tipped the balance by permitting avoidance of the first question[3] and raising the bar for the second.[4] The doctrine now offers broad and generous support for law enforcement.[5] Recently, in *Liberian Community Ass'n of Connecticut v. Lamont*,[6] a Second Circuit panel adhered to this trend: it held that due process and Fourth Amendment limits on a state's power to quarantine are not clearly established, but then declined to define what those limits are.[7] Given the current coronavirus pandemic, however, both officials and the public may have benefitted from a ruling on the boundaries of the government's authority to impose quarantine during an emergency. The decision therefore illustrates the limitations of the Supreme Court's current approach to qualified immunity.

From 2014 through 2016, the world's largest outbreak of Ebola[8] devastated West Africa.[9] Responding to the crisis, the Centers for Disease Control and Prevention (CDC) recommended a variety of measures but

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[1] *See* Saucier v. Katz, 533 U.S. 194, 200–01 (2001).

[2] Pearson v. Callahan, 555 U.S. 223, 231 (2009).

[3] *See id.* at 236–42.

[4] *See, e.g.*, Kisela v. Hughes, 138 S. Ct. 1148, 1152–53 (2018) (per curiam); White v. Pauly, 137 S. Ct. 548, 552 (2017) (per curiam); Mullenix v. Luna, 136 S. Ct. 305, 308 (2015) (per curiam).

[5] *See* Susan Bendlin, *Qualified Immunity: Protecting "All but the Plainly Incompetent" (and Maybe Some of Them, Too)*, 45 J. MARSHALL L. REV. 1023, 1023, 1031–40 (2012); Karen M. Blum, *Qualified Immunity: Time to Change the Message*, 93 NOTRE DAME L. REV. 1887, 1887–89 (2018).

[6] 970 F.3d 174 (2d Cir. 2020).

[7] *Id.* at 193.

[8] Ebola is a deadly virus that causes intense, flu-like symptoms following direct bodily contact with the blood or body fluids of a symptomatic individual, a contaminated object, or an infected animal. *See Signs and Symptoms*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 5, 2019), https://www.cdc.gov/vhf/ebola/symptoms/index.html [https://perma.cc/Z5GQ-PLGB]; *Transmission*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 5, 2019), https://www.cdc.gov/vhf/ebola/transmission/index.html [https://perma.cc/S8ES-CH45].

[9] *See Liberian Cmty. Ass'n*, 970 F.3d at 179–80.

at no point required quarantine.[10] Connecticut responded more aggressively.[11] On October 16, 2014, then–Connecticut Governor Dannel Malloy and the state's commissioner of public health, Dr. Jewel Mullen, mandated a twenty-one-day[12] quarantine for all asymptomatic individuals returning from affected West African countries.[13] Less than two weeks later, Mullen revised the policy to require only active monitoring.[14] Under the new rule, quarantine could be imposed solely on the basis of an individualized risk assessment.[15]

In 2016, a group of individuals who either were quarantined pursuant to Connecticut's initial policy or feared quarantine under Connecticut's revised policy[16] sued Malloy, Mullen, and the state's acting Commissioner of Public Health in a proposed class action.[17] All of the plaintiffs sought declaratory and injunctive relief from the revised policy,[18] and some of the plaintiffs who had been quarantined under the initial policy also sought damages from Mullen, who they alleged violated their substantive due process, procedural due process, and Fourth Amendment rights.[19]

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[10] *See id.* By 2014, scientists had spent nearly forty years studying Ebola and had found that asymptomatic individuals cannot transmit the virus. *See* Brief of Amici Curiae in Support of Appellants & Reversal at 7–8, *Liberian Cmty. Ass'n*, 970 F.3d 174 (2d Cir. 2020) (No. 17-1558), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/66_amicus_brief-_ynhhhospitals.pdf [https://perma.cc/96G8-65A5]. Though ostensibly synonymous, "quarantine" and "isolation" refer to different practices: "quarantine" refers to the separation of an asymptomatic individual exposed to a contagious disease, whereas "isolation" refers to the containment of an individual who has a contagious disease. *See Quarantine and Isolation*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 29, 2017), https://www.cdc.gov/quarantine/index.html [https://perma.cc/MP9J-8R7P]; *see also Liberian Cmty. Ass'n*, 970 F.3d at 179 n.8.

[11] *See Liberian Cmty. Ass'n*, 970 F.3d at 180–81.

[12] At a maximum, Ebola incubates over a twenty-one-day period, but on average, symptoms appear between eight to ten days after contact with the virus. *Signs and Symptoms*, *supra* note 8.

[13] *See Liberian Cmty. Ass'n*, 970 F.3d at 180–81.

[14] *See id.*

[15] *See id.* at 181.

[16] *See* Complaint at 4–6, Liberian Cmty. Ass'n of Conn. v. Malloy, No. 16-cv-00201 (D. Conn. Mar. 30, 2017), https://law.yale.edu/sites/default/files/area/clinic/wirac_liberian_comm._assoc.v_malloy_complaint_2-8-2016.pdf [https://perma.cc/9ZUK-BS8K].

[17] *See id.* at 3, 6–7. The plaintiffs asserted claims under the Fourteenth Amendment, the Fourth Amendment, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, provisions of the Connecticut Constitution and state statutes, and various common law torts. *Id.* at 39–47.

[18] *See id.* at 3, 39.

[19] *Id.* at 39–43. The plaintiffs claimed that Mullen violated their substantive due process rights by quarantining them without medical justification and in a manner that exceeded the least restrictive means necessary. *Id.* at 40. The plaintiffs also claimed that Mullen violated their procedural due process rights by failing to assess the risk they posed to the public health on an individualized basis, failing to provide timely notice of their quarantine and their rights to challenge the quarantine, and failing to initiate a hearing within forty-eight hours for judicial review of the quarantine order. *Id.* at 41. Further, the plaintiffs claimed that Mullen confined them without a warrant or probable cause in violation of their right to be free from unreasonable seizure under the Fourth Amendment. *Id.* at 42.

Issuing two rulings, the U.S. District Court for the District of Connecticut declined to certify a class[20] and dismissed the plaintiffs' case.[21] Addressing their claims for injunctive relief, Judge Covello reasoned that the plaintiffs lacked standing because they failed to demonstrate actual or imminent harm.[22] Turning to their damages claims, he concluded that qualified immunity shielded Mullen from liability.[23] In Judge Covello's view, the plaintiffs failed to point to case law that clearly established the constitutional violations they sought to remedy.[24] Though the plaintiffs analogized to civil commitment cases, the court rejected this precedent as "not sufficiently related to the quarantine context."[25] Instead, citing chiefly to *Jacobson v. Massachusetts*,[26] Judge Covello determined that Mullen did not act in "an arbitrary, unreasonable manner."[27] After similarly dismissing the Fourth Amendment claim,[28] the district court declined to exercise supplemental jurisdiction over the remaining state claims.[29]

The Second Circuit affirmed.[30] Writing for the panel, Judge Livingston[31] addressed the appellants' two main arguments: (1) that they had standing to seek injunctive relief and (2) that Mullen was not entitled to qualified immunity on the damages claims.[32] Assessing standing first, the court agreed with the district court that the appellants

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[20] *See* Liberian Cmty. Ass'n of Conn. v. Malloy, No. 16-cv-00201, 2016 WL 10314574, at *8 (D. Conn. Aug. 1, 2016). Judge Covello concluded that the plaintiffs' evidence of numerosity was too speculative to meet Federal Rule of Civil Procedure 23(a)'s numerosity requirement for class actions. *See id.* at *7–8; *see also* FED. R. CIV. P. 23(a)(1).

[21] *See* Liberian Cmty. Ass'n of Conn. v. Malloy, No. 16-cv-00201, 2017 WL 4897048, at *15 (D. Conn. Mar. 30, 2017).

[22] *Id.* at *7–8.

[23] *Id.* at *14.

[24] *See id.* at *11–14.

[25] *Id.* at *13.

[26] 197 U.S. 11 (1905).

[27] *Liberian Cmty. Ass'n*, 2017 WL 4897048, at *11 (quoting *Jacobson*, 197 U.S. at 28). The court concluded that even if Mullen had violated clearly established law, she would have been entitled to qualified immunity because her actions were "objectively reasonable." *Id.* at *9. This finding follows from Second Circuit precedent that grants immunity on that basis. *See* Taravella v. Town of Wolcott, 599 F.3d 129, 134 (2d Cir. 2010). *But see id.* at 136 (Straub, J., dissenting) (arguing that the "three-step process" has "no basis in Supreme Court precedent and has served to confuse the case law in this area").

[28] *Liberian Cmty. Ass'n,* 2017 WL 4897048, at *14. Under the Fourth Amendment, Judge Covello determined, an official must have had reasonable grounds for believing an individual was legally subject to seizure. *Id.* at *13. Judge Covello found that Mullen acted reasonably in quarantining the plaintiffs pursuant to the Governor's emergency declaration. *Id.* at *14.

[29] *Id.* at *15.

[30] *Liberian Cmty. Ass'n*, 970 F.3d at 178.

[31] Judge Livingston was joined in full by Judge Winter and joined in part by Judge Chin. *Id.*

[32] *Id.* at 183.

lacked standing because they did not plausibly demonstrate either a present harm or a substantial risk of future injury.[33] The panel then turned to qualified immunity and found each constitutional claim deficient for essentially the same reason: the appellants failed to demonstrate that clearly established law in the context of quarantine existed at the time of Mullen's actions such that a reasonable official would have considered her conduct unconstitutional.[34]

Addressing substantive due process, the panel determined that the cases on which the appellants relied, such as *Project Release v. Prevost*,[35] referred "*only* to the civil detention of people who are mentally ill,"[36] which "involv[es] different public safety concerns and implicat[es] different liberty interests" than those raised by quarantines against infectious disease.[37] Analogizing to these cases would defy the Supreme Court's ruling that clearly established law should not be defined "at a high level of generality."[38] Further, *Best v. St. Vincents Hospital*,[39] the only decision cited by the appellants in which a court applied the civil commitment cases to the infectious disease context, did not suffice to clearly establish a constitutional rule.[40] Situating *Best* among other cases involving quarantines also did not support the appellants' case in light of the Supreme Court's recognition in *Jacobson* that states possess broad police power to promulgate public health regulations.[41] Since deciding *Jacobson* in 1905, the Court has not addressed due process limits on a state's power to protect the public from infectious disease, and contrary to the appellants' assertion, courts have not clearly adopted a least-restrictive-means test.[42] In fact, the panel found,

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[33] *Id.* at 184–85. Rather, the appellants' injuries were confined to the short period in which Connecticut mandated quarantines, and the appellants failed to substantiate how they would be injured by the modified policy. *Id.* at 185.

[34] *Id.* at 193.

[35] 722 F.2d 960 (2d Cir. 1983).

[36] *Liberian Cmty. Ass'n*, 970 F.3d at 187.

[37] *Id.* at 188.

[38] *Id.* (quoting Mullenix v. Luna, 136 S. Ct. 305, 308 (2015) (per curiam)).

[39] No. 03 CV.0365, 2003 WL 21518829 (S.D.N.Y.), *adopted sub nom.* Best v. Bellevue Hosp., No. 03 CV.0365, 2003 WL 21767656 (S.D.N.Y. July 30, 2003), *aff'd in relevant part* 115 F. App'x 459 (2d Cir. 2004).

[40] *Liberian Cmty. Ass'n*, 970 F.3d at 188–89. *Best*, the panel noted, consisted of a "single magistrate's report and recommendation," which, though adopted by the district court, was insufficient to clearly establish law. *Id.* at 189. State trial court decisions and the Connecticut quarantine statute similarly carried no weight in the determination of the existence of clearly established federal law. *Id.* at 190–91.

[41] *Id.* at 189–90. Notably, *Jacobson* involved the power of a state to mandate vaccines, not the power to impose quarantines. Jacobson v. Massachusetts, 197 U.S. 11, 12–13 (1905). It did however address the state's power to quarantine in dicta. *Id.* at 25, 29.

[42] *Liberian Cmty. Ass'n*, 970 F.3d at 190. In contrast to the "arbitrary, unreasonable manner" test under *Jacobson*, 197 U.S. at 28, the appellants argued for a less deferential least-restrictive-means test that would require officials to impose quarantines "only when necessary to achieve a compelling state interest and in the absence of less restrictive means," Brief of Plaintiffs-Appellants

courts have reached no consensus on what level of deference to afford.[43] In sum, the appellants could point to no clearly established standards of official conduct in the context of quarantine.[44]

The panel dismissed the procedural due process and Fourth Amendment claims on similar grounds. Applying a flexible conception of procedural due process guided by *Mathews v. Eldridge*,[45] the panel noted that procedural due process is "not a technical conception with a fixed content unrelated to time, place and circumstances."[46] As such, procedural due process claims "make[] particularly fertile ground for qualified immunity," and here too the appellants failed to point to sufficient case law establishing federal procedural due process protections in the context of quarantine.[47] Finally, the panel stated that qualified immunity "affords especial protection to state officials in the Fourth Amendment context" and held that the appellants failed to cite a case wherein a court invalidated a quarantine order on such grounds.[48] Therefore, in the panel's view, there was simply "no clearly established law . . . at the time of Dr. Mullen's actions," and thus no need to "reach the merits of Appellants' constitutional claims."[49]

Judge Chin concurred in part and dissented in part.[50] In his view, the majority was correct in holding that the appellants lacked standing for injunctive relief but incorrect in holding that qualified immunity barred their damages claims.[51] Beginning with the Supreme Court's decision in *Jacobson*, Judge Chin took a broader view of the case to argue that a state may not wield its police power in an unreasonable or arbitrary fashion.[52] Though the "current epidemic" illustrates the government's "compelling interest in preventing the spread of disease," *Jacobson* instructs that this compelling interest must be balanced "against the rights of individuals to be free from unreasonable restraint."[53] Citing federal and state cases and the Connecticut quarantine statute, he identified freedom from physical restraint as a "fundamental liberty interest that cannot be infringed upon by the government unless the restriction is narrowly tailored to further a compelling state interest

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at 30, *Liberian Cmty. Ass'n*, 970 F.3d 174 (2d Cir. 2020) (No. 17-1558), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/48_-_appellant_brief.pdf [https://perma.cc/45QU-3W5T].

43 *See Liberian Cmty. Ass'n*, 970 F.3d at 191.

44 *Id.*

45 424 U.S. 319 (1976).

46 *Liberian Cmty. Ass'n*, 970 F.3d at 191 (quoting Gilbert v. Homar, 520 U.S. 924, 930 (1997)).

47 *Id.* at 192 (quoting Francis v. Fiacco, 942 F.3d 126, 149 (2d Cir. 2019)). The court found the appellants' citation of civil commitment cases and state law insufficient here as well. *Id.*

48 *Id.* at 193.

49 *Id.*

50 *Id.* at 194 (Chin, J., concurring in part and dissenting in part).

51 *Id.* Judge Chin addressed only the due process claims. *See id.* at 194–99.

52 *Id.* at 194–95.

53 *Id.* at 194.

and less restrictive alternatives . . . are not available."[54] Through this lens, Judge Chin found that the appellants plausibly alleged violations of their substantive and procedural due process rights.[55]

In *Liberian Community Ass'n*, the Second Circuit adhered to a doctrinal trend away from resolving constitutional questions in qualified immunity cases. But by doing so, the panel illustrated the limitations of that approach. Decided in the midst of an unprecedented pandemic, this case raised urgent questions that merited a constitutional ruling. The Second Circuit therefore missed an opportunity to clarify standards of official conduct at a time when both officials and the public could have benefitted from a ruling on the limits of the government's authority to quarantine.

As the doctrine of qualified immunity has developed, it has become increasingly common for courts to grant immunity without determining whether a constitutional violation occurred.[56] In theory, the contemporary qualified immunity analysis includes two prongs: (1) whether a public official violated a constitutional right and (2) whether the right was clearly established at the time of the alleged violation.[57] But in practice, courts often dismiss claims on the basis of the second prong alone.[58] Though at one point the Court mandated addressing the prongs sequentially,[59] it now permits eschewing the first prong altogether when no clearly established law applies.[60] Thus, courts can dispose of cases before they address the merits of the constitutional question.[61] The Second Circuit's decision fits neatly with this trend.

But as the Supreme Court itself has acknowledged, it is often beneficial to define the scope of a constitutional right.[62] Discussing the underlying right may conserve judicial resources by making it easier to answer the "clearly established" inquiry, and critically, the analysis can

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[54] *Id.* at 199; *see id.* at 194–96.

[55] *Id.* at 196–98.

[56] *See, e.g.*, sources cited *supra* note 5. Over time, the Court has "refashioned" qualified immunity as "an *immunity from suit* rather than a mere defense to liability." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985); *see also* Harlow v. Fitzgerald, 457 U.S. 800, 814–18 (1982). In its early iterations, the inquiry contained both subjective and objective elements, *see, e.g.*, Wood v. Strickland, 420 U.S. 308, 321–22 (1975), but given concerns about the costs of such inquiries, the Court shifted to a solely objective inquiry, *see Harlow,* 457 U.S. at 816–18.

[57] *See, e.g.*, Pearson v. Callahan, 555 U.S. 223, 232 (2009).

[58] *See* Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. CAL. L. REV. 1, 35–38 (2015) (observing that courts find constitutional violations where the law is not clearly established in one in twenty cases in which qualified immunity is granted).

[59] *See* Saucier v. Katz, 533 U.S. 194, 201 (2001).

[60] *See Pearson*, 555 U.S. at 236–42. The Court cited minimizing unnecessary expenditure of public and private resources, reducing the risk of poor decisionmaking, and adhering to constitutional avoidance principles among the reasons for permitting avoidance of the first prong. *Id.*

[61] *See* Nielson & Walker, *supra* note 58, at 4–5.

[62] *See Pearson*, 555 U.S. at 236.

"promote[] the development of constitutional precedent."[63] Such decisions ensure rights have remedies, "have a significant future effect on the conduct of public officials . . . and the policies of the government,"[64] and "promote clarity — and observance — of constitutional rules."[65] In deciding whether to address the constitutional merits, courts have recognized that "the salience of the underlying questions to . . . ongoing societal debate[s]"[66] may weigh in favor of addressing the issue, as does the potential value of a constitutional ruling in future cases.[67] In sum, "there remains a role for courts to rule on constitutional questions even in cases where qualified immunity ultimately determines the result."[68]

The circumstances of *Liberian Community Ass'n* weighed in favor of resolving the constitutional questions presented, even if doing so would not have changed the outcome. As the court was deciding the case, the public was, and continues to be, concerned about the constitutional boundaries of the government's response to an unprecedented global pandemic. Yet, the majority made no mention of coronavirus. Local and federal officials across the country have already taken actions similar to the ones taken in this case.[69] Some of these restrictions may be reasonable, but others are not.[70] Resolving the constitutional questions posed by *Liberian Community Ass'n* could have clarified boundaries of acceptable official conduct and the appropriate standard for assessing government quarantines. While a rejection of the least-restrictive-means test could have allowed officials — knowing that their actions

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[63] *Id.*; *see also* Camreta v. Greene, 563 U.S. 692, 706 (2011) (noting how the Court's "regular policy of avoidance sometimes does not fit the qualified immunity situation because it threatens to leave standards of official conduct permanently in limbo" and leaves plaintiffs without remedies).

[64] *Camreta*, 563 U.S. at 704.

[65] *Id.* at 705.

[66] Williams v. Sec'y Pa. Dep't of Corr., 848 F.3d 549, 558 (3d Cir. 2017).

[67] *See* Doe *ex rel.* Johnson v. S.C. Dep't of Soc. Servs., 597 F.3d 163, 169–70 (4th Cir. 2010).

[68] Francis v. Fiacco, 942 F.3d 126, 140 (2d Cir. 2019); *accord* Bacon v. Phelps, 961 F.3d 533, 542 (2d Cir. 2020).

[69] *See, e.g.*, Karen Schwartz, *I'm a U.S. Citizen. Where in the World Can I Go?*, N.Y. TIMES (Dec. 17, 2020), https://nyti.ms/33ldpJb [https://perma.cc/LWB5-GK7X]; Karen Schwartz, *Thinking of Traveling in the U.S.? Check Which States Have Travel Restrictions*, N.Y. TIMES (Dec. 17, 2020), https://nyti.ms/2W8L3Q5 [https://perma.cc/DYV5-PEDR].

[70] For example, xenophobic slurs and unscientific guidance have marred aspects of the federal government's response to the pandemic. *See, e.g.*, David Nakamura, *With "Kung Flu," Trump Sparks Backlash over Racist Language — And a Rallying Cry for Supporters*, WASH. POST (June 24, 2020, 7:13 PM), https://www.washingtonpost.com/politics/with-kung-flu-trump-sparks-backlash-over-racist-language--and-a-rallying-cry-for-supporters/2020/06/24/485d151e-b620-11ea-aca5-ebb63d27e1ff_story.html [https://perma.cc/8GPC-ZCZQ]; Katie Rogers, Christine Hauser, Alan Yuhas & Maggie Haberman, *Trump's Suggestion that Disinfectants Could Be Used to Treat Coronavirus Prompts Aggressive Pushback*, N.Y. TIMES (Apr. 24, 2020), https://nyti.ms/2S4iqSi [https://perma.cc/8FGL-76FV].

would be lawful as long as they were not done in an "arbitrary, unreasonable manner"[71] — to respond to the virus more aggressively, an acceptance could have encouraged government officials to respond more cautiously. A clear articulation of the law would better enable future plaintiffs to vindicate the liberty interest the least-restrictive-means test is designed to protect and, regardless of the outcome, provide contour to an ambiguous and pressing legal area.[72] Though constitutional avoidance has its benefits in certain contexts,[73] the urgency of this moment warranted a response.

The court's decision not to reach the merits was also unfortunate given the temporary and unpredictable nature of quarantines.[74] Damages suits, in which qualified immunity is usually a defense, may be the only opportunity to establish their legal limits.[75] Though the Supreme Court has suggested that suits for injunctive relief can function as an alternative means of establishing constitutional precedent,[76] requests for such relief may become moot once a plaintiff's quarantine is over, and plaintiffs who sue before quarantine may lack standing because their injury is too speculative.[77] Given the limited guidance on the constitutional limits of quarantine and the difficulty of developing quarantine-related law outside the damages context, the panel should not have avoided the opportunity to clarify.

Therefore, while *Liberian Community Ass'n* was in line with a trend away from deciding constitutional questions in qualified immunity cases, the court should not have declined to consider the constitutional questions here. The doctrine of qualified immunity recognizes that resolving constitutional questions may be beneficial even when immunity decides the case. Both the current pandemic and the difficulty of challenging unlawful quarantines weighed in favor of clarifying the limits on the government's power. As experts warned the Second Circuit in 2017: "That there will be a next epidemic and more quarantines is not a hypothetical scenario."[78] COVID-19 forcefully underscores this reality.

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[71] Jacobson v. Massachusetts, 197 U.S. 11, 28 (1905).

[72] *See* Bendlin, *supra* note 5, at 1047–49; Colin Rolfs, Comment, *Qualified Immunity After* Pearson v. Callahan, 59 UCLA L. REV. 468, 478–80 (2011).

[73] *See* Pearson v. Callahan, 555 U.S. 223, 237–41 (2009).

[74] *Cf. Liberian Cmty. Ass'n*, 970 F.3d at 179–81 (describing the plaintiffs' experiences under the state's initial and revised quarantine policies).

[75] *See Pearson*, 555 U.S. at 236 (describing rulings on constitutional questions as "especially valuable" for issues that typically arise in cases where qualified immunity defenses are available); John C. Williams, Note, *Qualifying Qualified Immunity*, 65 VAND. L. REV. 1295, 1328 (2012).

[76] *See Pearson*, 555 U.S. at 242–43.

[77] *See* Liberian Cmty. Ass'n of Conn. v. Malloy, No. 16-cv-00201, 2017 WL 4897048, at *7–8 (D. Conn. Mar. 30, 2017); *see also* City of Los Angeles v. Lyons, 461 U.S. 95, 105–07 (1983).

[78] Brief for *Amici Curiae* Mark Barnes & Leana Wen in Support of Appellants at 10, *Liberian Cmty. Ass'n*, 970 F.3d 174 (2d Cir. 2020) (No. 17-1558), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/67_-_amicus_of_public_health_officials.pdf [https://perma.cc/49U2-8DWK].