FOURTEENTH AMENDMENT — DUE PROCESS — ELEVENTH CIRCUIT HOLDS THAT A FLORIDA JAIL WAS NOT DELIBERATELY INDIFFERENT TO THE SPREAD OF COVID-19. — *Swain v. Junior*, 961 F.3d 1276 (11th Cir. 2020).

The COVID-19 pandemic has had a catastrophic impact on incarcerated individuals and their families: nearly 390,000 incarcerated people have contracted the virus, and over 2,400 have died.[1] Overall, the rate of COVID-19 in prisons has been over five times that of the general population.[2] People in prisons and jails looked to the judiciary for enforcement of their constitutional rights, but it soon became clear that the federal courts could not be counted on for broad-based relief.[3] Some scholars have highlighted the Supreme Court's 2015 ruling in *Kingsley v. Hendrickson*,[4] in which the Court employed an objective reasonableness liability standard for the use of excessive force against pretrial detainees,[5] as an opportunity to expand a friendlier liability standard to those who challenge prison and jail conditions in court.[6] But there is reason to think that *Kingsley* isn't enough. Recently, in *Swain v. Junior*,[7] the Eleventh Circuit held that the existent measures taken by a Florida jail to mitigate COVID-19's spread were sufficient under the Fourteenth Amendment. *Swain*'s emphasis on the jail's reasonable response, despite the rising rates of COVID-19 in the jail, shows how even the more plaintiff-friendly objective liability standard imposed in *Kingsley* will fail to protect incarcerated people.

Once the coronavirus pandemic began, prisons and jails became "petri dishes" for the virus.[8] Metro West Detention Center (Metro West) in

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[1] *National COVID-19 Statistics*, COVID PRISON PROJECT, https://covidprisonproject.com/data/national-overview [https://perma.cc/HK2E-9LM8].

[2] Brendan Saloner et al., Research Letter, *COVID-19 Cases and Deaths in Federal and State Prisons*, 324 JAMA 602, 602–03 (2020).

[3] *See* Sharon Dolovich, *Mass Incarceration, Meet COVID-19*, U. CHI. L. REV. ONLINE (Nov. 16, 2020), https://lawreviewblog.uchicago.edu/2020/11/16/covid-dolovich [https://perma.cc/V3MM-QC3M].

[4] 135 S. Ct. 2466 (2015).

[5] *Id.* at 2470.

[6] *See, e.g.*, Rosalie Berger Levinson, Kingsley *Breathes New Life into Substantive Due Process as a Check on Abuse of Government Power*, 93 NOTRE DAME L. REV. 357, 358 (2017); Margo Schlanger, *The Constitutional Law of Incarceration, Reconfigured*, 103 CORNELL L. REV. 357, 360 (2018); Kyla Magun, Note, *A Changing Landscape for Pretrial Detainees? The Potential Impact of* Kingsley v. Hendrickson *on Jail-Suicide Litigation*, 116 COLUM. L. REV. 2059, 2063 (2016).

[7] 961 F.3d 1276 (11th Cir. 2020).

[8] Timothy Williams et al., *"Jails Are Petri Dishes": Inmates Freed as the Virus Spreads Behind Bars*, N.Y. TIMES (Nov. 30, 2020), https://nyti.ms/2Jmnf4z [https://perma.cc/88Q3-8GB8]; *see also* Aleks Kajstura & Jenny Landon, *Since You Asked: Is Social Distancing Possible Behind Bars?*, PRISON POL'Y INITIATIVE (Apr. 3, 2020), https://www.prisonpolicy.org/blog/2020/04/03 [https://perma.cc/TM69-D6EQ] (explaining that jails and prisons are more vulnerable to COVID-19 than cruise ships or nursing homes). State prison systems were unprepared to mitigate

Miami, Florida, was no exception.[9] Those detained at Metro West were not able to socially distance from one another,[10] did not have access to hand sanitizer,[11] and, if exhibiting symptoms of COVID-19, had to "wait three days or more to visit a nurse."[12] Predicting that an outbreak at Metro West was imminent,[13] a class of pretrial detainees, including a subclass of medically vulnerable detainees, filed suit against Daniel Junior, the Director of the Miami-Dade Corrections and Rehabilitation Department, and Miami-Dade County in the U.S. District Court for the Southern District of Florida under 42 U.S.C. § 1983, arguing that the facility's inability to take proper measures to mitigate the spread of COVID-19 amounted to unconstitutional conditions of confinement under the Eighth and Fourteenth Amendments.[14] The plaintiffs then moved for a temporary restraining order (TRO) and an emergency preliminary injunction, and requested that the court order the defendants to release the medically vulnerable plaintiffs from jail and implement protocols to mitigate the spread of coronavirus.[15] In the plaintiffs' words, "[t]hey turn[ed] to [the] Court to save their lives."[16]

The district court granted in part the TRO[17] and, later, the preliminary injunction.[18] First, Judge Williams extensively quoted plaintiffs' declarations that indicated that social distancing was near-impossible at Metro West and that the detainees were not being adequately provided with masks, sanitary materials, or medical care.[19] The court then briefly rejected the defendants' arguments that plaintiffs needed to exhaust ad-

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the virus's spread. Emily Widra & Peter Wagner, *How Prepared Are State Prison Systems for a Viral Pandemic?*, PRISON POL'Y INITIATIVE (Apr. 10, 2020), https://www.prisonpolicy.org/blog/2020/04/10/prepared [https://perma.cc/6FT6-R398].

[9] From April 5 to April 29, 2020, coronavirus infections at Metro West increased by 994%. Swain v. Junior, 457 F. Supp. 3d 1287, 1309 (S.D. Fla. 2020).

[10] *See* Class Action Complaint ¶ 60, *Swain*, 457 F. Supp. 3d 1287 (No. 20-cv-21457).

[11] *Id.* ¶ 64.

[12] *Id.* ¶ 71.

[13] *Id.* ¶ 2.

[14] *Id.* ¶¶ 3, 83, 112–22. The plaintiffs also petitioned for a writ of habeas corpus to seek immediate release from the jail on behalf of the medically vulnerable subclass. *Id.* ¶¶ 123–26.

[15] Emergency Motion and Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction at 2 n.2, 29–30, *Swain*, 457 F. Supp. 3d 1287 (No. 20-cv-21457).

[16] *Id.* at 28. Events following the start of the case proved just how true this statement was. Charles Hobbs, one of the pretrial detainees and putative class members, died of COVID-19 complications while the litigation was ongoing. *Swain*, 961 F.3d at 1280 n.2; *see also* Radley Balko, Opinion, *The Last Days of a Covid-19 Prisoner*, WASH. POST (May 20, 2020), https://www.washingtonpost.com/opinions/2020/05/20/last-days-covid-19-prisoner [https://perma.cc/4J36-8V42].

[17] *See* Swain v. Junior, No. 20-cv-21457, 2020 WL 1692668, at *1 (S.D. Fla. Apr. 7, 2020).

[18] *Swain*, 457 F. Supp. 3d at 1291. The court denied the part of the preliminary injunction that asked for immediate release of the medically vulnerable plaintiffs on habeas grounds. *Id.*

[19] *Id.* at 1297–300. The court also summarized the defendants' evidence of their compliance with the initial TRO. *Id.* at 1301–03.

ministrative remedies,[20] that plaintiffs' claims were mooted due to compliance with the TRO,[21] and that plaintiffs needed to prove all elements of a § 1983 municipal liability claim before a preliminary injunction was warranted.[22] Moving to the elements of the preliminary injunction, the court held that the plaintiffs were likely to succeed on the merits of their Fourteenth Amendment claim.[23] Citing Eleventh Circuit precedent, Judge Williams explained that pretrial detainees challenging conditions of confinement must satisfy the Eighth Amendment deliberate indifference standard on the part of the jail officials.[24] Once a court determines that the conditions gave rise to an objectively substantial risk of harm to the individuals incarcerated, it must next decide if the jail officials knew of and disregarded the risk.[25] Looking to the increasing rates of COVID-19 at Metro West and lack of social distancing,[26] Judge Williams concluded that the evidence demonstrated that the officials were deliberately indifferent.[27] The court ordered the defendants to, among other things, enforce social distancing, provide disinfectant products, and offer COVID-19 testing.[28] The defendants appealed.[29]

The Eleventh Circuit vacated the injunction.[30] Writing for the panel, Judge Newsom[31] zeroed in on the district court's Eighth Amendment analysis.[32] The circuit court emphasized that the deliberate indifference analysis required a showing that the defendants "*recklessly*

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[20] *Id.* at 1305.

[21] *Id.* at 1306–07.

[22] *See id.* at 1307.

[23] *Id.* at 1312. Because they have not been convicted, and therefore have not been punished for any crime, pretrial detainees' claims relating to their detention technically fall under the Fourteenth Amendment's Due Process Clause; convicted prisoners' claims are brought under the Eighth Amendment's prohibition against cruel and unusual punishment. *See* Kingsley v. Hendrickson, 135 S. Ct. 2466, 2475 (2015); Schlanger, *supra* note 6, at 360.

[24] *Swain*, 457 F. Supp. 3d at 1310 & n.20 (citing Mann v. Taser Int'l, Inc., 588 F.3d 1291, 1306 (11th Cir. 2009)).

[25] *See* Farmer v. Brennan, 511 U.S. 825, 837 (1994).

[26] *Swain*, 457 F. Supp. 3d at 1310.

[27] *Id.* at 1311. The court then addressed the remaining factors of a preliminary injunction and found that the plaintiffs would suffer irreparable harm without the injunction, the injunction would not overly burden the defendants, and the injunction was in the public interest. *Id.* at 1312–14.

[28] *Id.* at 1317–18. Judge Williams also discussed the habeas claim and held that because under Eleventh Circuit case law habeas relief could not be obtained based on Eighth Amendment violations, the request for release had to be denied. *Id.* at 1314–15.

[29] *Swain*, 961 F.3d at 1284. The habeas claim was not at issue on appeal. *Id.* at 1295 n.1 (Martin, J., dissenting).

[30] *Id.* at 1280 (majority opinion). Prior to this ruling, the Eleventh Circuit granted the defendants' motion for a stay of the injunction pending appeal. Swain v. Junior, 958 F.3d 1081, 1085 (11th Cir. 2020) (per curiam).

[31] Judge Newsom was joined by Judge Watkins, U.S. District Judge for the Middle District of Alabama, sitting by designation.

[32] *Swain*, 961 F.3d at 1286–87.

disregard[ed] [the] risk" of COVID-19.[33] Accordingly, defendants are not liable, even if harm was not avoided, so long as they acted reasonably.[34] Under this articulation of deliberate indifference, Judge Newsom reviewed the district court's reasoning and found that rising infection rates and the impossibility of social distancing[35] did not prove the requisite level of recklessness or a "sufficiently culpable state of mind."[36] The court then concluded that the defendants acted reasonably because they were "doing their best" to stop the spread, and social distancing in the jail "wasn't possible."[37] Given the jail's response, the court found that the officials did not act with deliberate indifference.[38] Lastly, the court agreed with the defendants that the district court erred in considering neither the municipal liability question under § 1983 nor the administrative exhaustion requirements.[39] Thus, the court ultimately held that the plaintiffs were not likely to succeed on the merits of their claim[40] and vacated the preliminary injunction.[41]

Judge Martin dissented.[42] Reviewing the record, she found no abuse of discretion in the district court's finding that the defendants did not take adequate steps to prevent COVID-19 infections and, accordingly, had acted with deliberate indifference.[43] First, Judge Martin recognized that experts overwhelmingly recommended that a reduction in the jail population was the best way to mitigate the spread of COVID-19;[44] because defendants were aware of this but failed to do so, they demonstrated deliberate indifference.[45] Then, Judge Martin stated that she was not convinced that the defendants did enough to minimize COVID-19 infections aside from reducing the population,[46] noting that the "repeated failures" to enforce social distancing warranted a finding of

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[33] *Id.* at 1285 (quoting Farmer v. Brennan, 511 U.S. 825, 836 (1994) (emphasis added)).

[34] *Id.* at 1286 (citing *Farmer*, 511 U.S. at 844).

[35] *Id.*

[36] *Id.* at 1287 (quoting *Farmer*, 511 U.S. at 834).

[37] *Id.* at 1289. The court also dismissed the plaintiffs' arguments that failing to implement social distancing and continuing the detainees' confinement constituted deliberate indifference largely on the grounds that such issues were not presented in the district court's opinion. *Id.* at 1289–91.

[38] *Id.* at 1289.

[39] *Id.* at 1291.

[40] Judge Newsom analyzed the remaining factors of the preliminary injunction analysis, finding that the district court incorrectly assessed the irreparable harm to the plaintiffs and gave insufficient weight to the potential burdens of forcing the defendants to allocate public health resources in a particular way. *Id.* at 1292–93.

[41] *Id.* at 1294.

[42] *Id.* (Martin, J., dissenting).

[43] *Id.* at 1296.

[44] *Id.*

[45] *Id.* at 1296–97. Judge Martin continued to explain that Director Junior's lack of authority under Florida law to release those in the jail did not preclude a finding of deliberate indifference and injunctive relief. *Id.* at 1297–99.

[46] *Id.* at 1300.

deliberate indifference.[47] Lastly, Judge Martin concluded that neither the issues of municipal liability nor requirements of administrative exhaustion precluded the grant of the preliminary injunction.[48]

Perhaps unlike other prison litigation cases, the parties in *Swain* agreed with each other on multiple prongs of the constitutional analysis: COVID-19 was a risk to incarcerated people, and the jail knew it.[49] Where they diverged, however, and where the substance of the court's decision ultimately lies, is the adequacy of the jail's response.[50] Under *Farmer v. Brennan*,[51] prison officials can avoid liability for substantial risks to incarcerated people's health so long as they "responded reasonably to the risk, even if the harm ultimately was not averted."[52] *Swain* and the circumstances around the pandemic show just how much work this reasonable response defense is doing to insulate prisons and jails from any sort of accountability. Despite hopes that *Kingsley* created an opportunity for a more plaintiff-friendly liability standard in prison and jail litigation, *Swain* proves that even *Kingsley* will not be enough to provide relief for incarcerated people.

The reasonable response defense stretches quite far to protect prison and jail officials from liability. The strength of this defense is due to courts' sweeping deference to administrators' perspectives on how to manage prison and jail facilities.[53] As Professor Sharon Dolovich has noted, this deference is threaded throughout Eighth Amendment prisons jurisprudence and seeps into the courts' factual analyses of the cases before them.[54] Such deference to prison and jail officials is directly in tension with courts holding them accountable to their obligation to care for their incarcerated populations.[55] The *Swain* court puts this inherent conflict in stark relief: Judge Newsom's swift acceptance of Metro West's response to the pandemic and disregard for the detainees' testimony regarding the jail's shortcomings exemplifies how deference is used to the detriment of incarcerated people.

The reasonable response defense in *Swain* presented a major obstacle for incarcerated people and their advocates, and unfortunately, *Swain* demonstrates that *Kingsley*'s more plaintiff-friendly liability

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[47] *Id.* at 1301.

[48] *Id.* at 1302.

[49] *Id.* at 1285 (majority opinion).

[50] *Id.*

[51] 511 U.S. 825 (1994).

[52] *Id.* at 844; *see also Swain*, 961 F.3d at 1286 (citing *Farmer*, 511 U.S. at 844).

[53] *See* Sharon Dolovich, *Forms of Deference in Prison Law*, 24 FED. SENT'G REP. 245, 245 (2012).

[54] *See id.* at 246–49.

[55] This duty has been long established. *See, e.g.*, DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 199–200 (1989); Estelle v. Gamble, 429 U.S. 97, 103 (1976); *see also* Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 921–22 (2009) (describing the "state's carceral burden," *id.* at 922).

standard is insufficient. In an excessive force claim brought by a pretrial detainee, the *Kingsley* Court held that a deliberate indifference claim under the Fourteenth Amendment required only a showing of objective unreasonableness on the part of the jail official, meaning that incarcerated people do not have to prove that the officer *knew* that the use of force was unreasonable.[56] Some circuits have responded to *Kingsley* by extending its holding to include Fourteenth Amendment conditions of confinement cases,[57] and scholars have emphasized *Kingsley* as an opportunity to reform current Eighth and Fourteenth Amendment doctrine.[58] But while *Kingsley*'s approach will help in cases when officials' states of mind are difficult to prove[59] or where officials failed to act, *Swain* shows that *Kingsley* has significant limitations.

To illustrate *Kingsley*'s reach, it is helpful to directly compare *Kingsley*'s excessive force analysis with *Swain*'s conditions of confinement context. Michael Kingsley argued that a jail official used excessive force against him.[60] Employing the mens rea standard articulated in *Kingsley*, so long as the jail official's act in an excessive force case brought by a pretrial detainee is found to have been objectively unreasonable, the official is liable even if he was not subjectively aware that he was using excessive force at the time.[61] Critically, the Court used objective unreasonableness to assess the officer's *actions*, as opposed to the harm inflicted upon the detainee, even though the two were closely related. Notwithstanding the effect of the use of force on the incarcerated individual, other factors that entail deference to the officer — such as the "threat reasonably perceived by the officer"[62] or the "severity of the security problem at issue"[63] — come into play in determining whether such use of force by the jail official was excessive.[64]

The inquiry into the reasonableness of the jail officials' actions persists in *Swain*. The risk to the detainees in *Swain* was the potential

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[56] Kingsley v. Hendrickson, 135 S. Ct. 2466, 2472 (2015).

[57] *See* Darnell v. Pineiro, 849 F.3d 17, 34–35 (2d Cir. 2017); Castro v. County of Los Angeles, 833 F.3d 1060, 1070 (9th Cir. 2016); *see also* Levinson, *supra* note 6, at 374–75; Schlanger, *supra* note 6, at 410. *But see* Strain v. Regalado, 977 F.3d 984, 991 (10th Cir. 2020); Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018); Dang *ex rel.* Dang v. Sheriff, Seminole Cty., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017).

[58] *See* sources cited *supra* note 6.

[59] *See* MARGO SCHLANGER, AM. CONST. SOC'Y, RESTORING OBJECTIVITY TO THE CONSTITUTIONAL LAW OF INCARCERATION 14 (2018).

[60] *Kingsley*, 135 S. Ct. at 2470–71.

[61] *See id.* at 2472.

[62] *Id.* at 2473.

[63] *Id.*

[64] *Id.* Justice Breyer noted that the court "must make this determination from the perspective of a reasonable officer on the scene" and "appropriately defer[]" to prison and jail officials' judgment on how to manage the facility. *Id.*

spread of the coronavirus,[65] and the state-of-mind inquiry at issue in *Kingsley* was easily satisfied, as Metro West's officials conceded knowledge of the risk.[66] Applying *Kingsley* to *Swain*, however, one question still remains: No matter what they knew about the risk, were the Metro West staff's *actions* — that is, their response to the pandemic — objectively unreasonable? A court's determination that the risk to the detainees was substantial does not therefore mean that the jail's actions in light of such risks were unreasonable. *Kingsley*'s explicit preservation of the doctrinal deference to prison and jail administrators supports this distinction.[67] Therefore, in cases such as *Swain*, incarcerated plaintiffs will still have to prove that the jail officials' actions in light of certain conditions were objectively unreasonable.[68]

Looking to *Swain*, this is not easy to do. The Eleventh Circuit noted that COVID-19 rose to a "substantial risk of serious harm."[69] However, in spite of the rising infection rates in Metro West and the special threat that COVID-19 presented to incarcerated populations, the court listed favorably the actions the jail administrators had taken to mitigate the pandemic's spread (many of which were implemented only after the lawsuit was filed[70]), such as staggering bunks, suspending visitation, and requiring masks.[71] Unaddressed was the plaintiffs' testimony that policies were not being enforced adequately.[72] For example, the detainees received masks only every seven days,[73] never received cleaning supplies,[74] and waited up to three days for medical attention.[75] Rather, given the "perfect storm of a contagious virus and the space constraints inherent in a correctional facility,"[76] the *Swain* court decided that jail officials were "doing their best."[77] Under the Constitution, that was sufficient and warranted vacatur of the entire preliminary injunction.[78]

Since *Kingsley*'s objective reasonableness standard cannot do enough to protect incarcerated people, advocates and scholars must con-

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65 *Swain*, 961 F.3d at 1280.

66 *Id.* at 1285.

67 *Kingsley*, 135 S. Ct. at 2473–75.

68 Although few courts have applied the *Kingsley* standard to pandemic conditions, an example from the Seventh Circuit, *Mays v. Dart*, 974 F.3d 810 (7th Cir. 2020), supports the proposition that even under *Kingsley*, courts will still be focused on the jail's reasonable response and encourage deference to jail administrators, *see id.* at 819–21.

69 *Swain*, 961 F.3d at 1285.

70 Swain v. Junior, 457 F. Supp. 3d 1287, 1301 & n.10 (S.D. Fla. 2020).

71 *Swain*, 961 F.3d at 1288–89.

72 *Swain*, 457 F. Supp. 3d at 1299; *see also Swain*, 961 F.3d at 1289 n.5 (noting that the dissent was incorrect to "take[] the plaintiffs' allegations as true").

73 *Swain*, 457 F. Supp. 3d at 1299.

74 *Id.* at 1299–300.

75 *Id.* at 1300.

76 *See Swain*, 961 F.3d at 1289.

77 *Id.*

78 *Id.* at 1294.

tinue pushing for alternative liability schemes. For example, Dolovich has proposed a modified strict liability standard under which prison administrators would be held liable for serious harms suffered by those in their custody without any finding of culpability, even if they exercised due care.[79] Similarly, in her analysis of *Kingsley*'s potential impact on conditions of confinement cases, Professor Margo Schlanger describes a standard akin to products liability, which would consider the unreasonable risk created by prison officials' intentional actions, even if officials had "exercised all possible care."[80] Under this scheme, a prison's "intentional provision of [an] undertrained, overworked, or underresourced" response to a public health crisis that resulted in inadequate healthcare would violate the Eighth Amendment.[81] Courts may not be amenable to these alternatives any time soon,[82] but the stakes of these cases demand that advocates keep pushing for these reforms.[83]

Beyond the doctrinal consequences, *Swain* has alarming implications for the lives of incarcerated individuals. Incarcerated populations have been among those acutely impacted by the pandemic,[84] as their wellbeing is completely in the hands of prison and jail officials.[85] It merits repeating that nearly 390,000 incarcerated people have contracted the coronavirus, and over 2,400 have died.[86] Moreover, given that our criminal legal system disproportionately incarcerates Black and brown people, the prevalence of COVID-19 in prisons and jails exemplifies yet another way in which systemic racism has led to the pandemic's disparate impact on communities of color.[87] Despite these terrifying trends, the constitutional doctrine meant to provide incarcerated people with relief has consistently failed them. *Swain* and the disastrous impact of the pandemic on incarcerated people should signal to courts that prisons and jails doing their "best" has simply not been enough.

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[79] *See* Dolovich, *supra* note 55, at 965. In order to mitigate excessive liability, this proposal includes the defense of contributory negligence and allows prisons to argue that certain harms may be completely independent from an individual's incarceration. *See id.* at 966–67.

[80] *See* Schlanger, *supra* note 6, at 416.

[81] *Id.* at 417.

[82] *See* Dolovich, *supra* note 55, at 971; *see also* Sharon Dolovich, *Evading the Eighth Amendment: Prison Conditions and the Courts*, *in* THE EIGHTH AMENDMENT AND ITS FUTURE IN A NEW AGE OF PUNISHMENT 133, 134 (Megan J. Ryan & William W. Berry III eds., 2020) ("[R]ecent signs from the new Roberts Court suggest that people in prison may soon face an Eighth Amendment regime even less protective than the already diminished standards that currently govern.").

[83] *See* Dolovich, *supra* note 82, at 133–34.

[84] *See* Benjamin A. Barsky et al., Perspective, *Vaccination Plus Decarceration — Stopping Covid-19 in Jails and Prisons*, NEW ENG. J. MED. (Mar. 3, 2021), https://www.nejm.org/doi/full/10.1056/NEJMp2100609 [https://perma.cc/99VM-YNFK].

[85] *See* Dolovich, *supra* note 55, at 913 ("People in prison are both wholly dependent on the state for the means of their survival and deeply vulnerable to harm.").

[86] *National COVID-19 Statistics*, *supra* note 1.

[87] *See* Nikki Zinzuwadia, *Racial Disparities in Jails and Prisons: Covid-19's Impact on the Black Community*, ACLU W. VA. (June 12, 2020, 1:00 PM), https://www.acluwv.org/en/news/racial-disparities-jails-and-prisons-covid-19s-impact-black-community [https://perma.cc/8FKF-AFDH].