No. 20-1792

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ANTHONY MAYS, Individually and on behalf of a class of similarly situated persons, et al.,

Plaintiffs-Appellees,

v.

THOMAS DART, Sheriff of Cook County,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois
No. 20-cv-2134—Matthew F. Kennelly, *Judge*.

PLAINTIFFS-APPELLEES' RESPONSE TO
DEFENDANT-APPELLANT'S MOTION FOR STAY

Attorneys for Plaintiffs-Appellees

Jon Loevy
Sarah Grady*
LOEVY & LOEVY
311 N. Aberdeen St., 3rd Fl.
Chicago, IL 60607
(312) 243-5900
sarah@loevy.com
* *Counsel of Record*

INTRODUCTION

This case concerns the danger COVID-19 poses to the health and safety of individuals at the Cook County Jail. There is no dispute about the deadly impact of COVID-19, which has killed more than 413,000 people. And there can be no dispute about the public health disaster that began to unfold at the Jail in early April, when it became the largest single-known source of infections in the nation. A recent peer-reviewed study has found that more than 15% (1 in 6) of *all* COVID-19 cases in Illinois can be traced to the Jail. Ex. 1.[1]

After filing suit, Plaintiffs sought emergency injunctive relief to protect them from the Sheriff's objectively unreasonable conduct that was putting them in jeopardy. Plaintiffs submitted voluminous evidence about what measures public health and medical experts had determined were necessary to protect against uncontrolled spread of COVID-19. The Sheriff did not dispute that these measures were necessary, but contended he had the situation "under control." R.62 at 2. On April 9, the district court entered a TRO, granting some, but not all, of the measures Plaintiffs had requested. At that time, more than 400 detainees and staff had tested positive for COVID-19. On April 27, the district court entered a preliminary injunction, continuing the TRO relief and ordering the Sheriff to implement certain social distancing measures. At that time, 788 detainees and staff had tested positive for COVID-19, and six people had died. Apr. 23, 2020 Hr'g (Hr'g) at 142:16-143:3.

[1] Plaintiffs submit this report pursuant to Rule 8(a)(2), which permits this Court to consider affidavits or other sworn statements regarding facts that may be in dispute.

On June 5, nearly six weeks after the preliminary injunction and more than two months after the TRO, the Sheriff asked this Court for a stay of the preliminary injunction.[2] The Sheriff raises no legitimate issue on which he is likely to prevail on appeal, and his assertion of irreparable harm is internally inconsistent and lacks evidentiary support. The district court's denial of a stay was accordingly no abuse of discretion, but instead supported by uncontroverted evidence in the record, including the Sheriff's own admissions and evidence. The motion for a stay should be denied.

FACTUAL BACKGROUND

COVID-19 has no cure and no vaccine. The Centers for Disease Control (CDC) advises that the best way to prevent COVID-19 is to avoid exposure, by: (1) frequent handwashing, (2) social distancing, (3) wearing a mask, and (4) disinfecting surfaces. See R.1 ¶ 18 n.17 (citing "How to Protect Yourself," CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html).

On March 23, the Sheriff reported its first COVID-19 case at the Jail. R.31-2 at 3. By April 3, the day Plaintiffs filed suit, more than 200 staff and detainees had tested positive, and 14 detainees had been hospitalized. R.2 at 6. In their lawsuit, Plaintiffs Mays and Jackson asserted 42 U.S.C. § 1983 claims on behalf of a class of detainees at the Jail, as well as claims under 28 U.S.C. § 2241.

[2] The Sheriff also seeks to stay all discovery in the case. But he offers no explanation as to why such a stay is appropriate, why he did not first seek this relief in the district court, or whether this Court even has jurisdiction to issue such a stay. Fed. R. App. P. 8(a); see also *Abelesz v. OTP Bank*, 692 F.3d 638, 647 (7th Cir. 2012) (discussing pendent appellate jurisdiction).

Plaintiffs immediately sought a TRO requiring the Sheriff to implement well-known public health measures necessary to protect detainees from rampant spread of COVID-19. *Id.* at 15-16. In support of their request, Plaintiffs cited CDC guidance and testimony from five medical experts with substantial correctional experience, including three doctors who previously served as medical directors at the Jail. R.1-2 ¶¶ 1-5. These experts opined that the Sheriff needed to take action to protect detainees, whose health and safety were imminently threatened by the COVID-19 outbreak. *Id.* ¶¶ 28-37. They opined that the Sheriff must expand detainee testing, provide detainees masks, provide full, free access to hygiene and sanitation supplies, and implement social distancing throughout the Jail. *Id.* ¶¶ 29-35.

Plaintiffs also submitted declarations from recently released detainees (and individuals who had spoken with detainees), who reported that detainees were not provided adequate hygiene, cleaning supplies, or masks, they remained in close quarters where they could not socially distance, commonly-used surfaces were not regularly disinfected, and they were not being tested for COVID-19, even if they were suffering classic COVID-19 symptoms. R.1-4 through 1-21.

The Sheriff responded to Plaintiffs' motion on April 6, raising no dispute about the measures necessary to protect detainees' health and safety. R.29-1. The Sheriff simply argued that he was already taking those actions. *Id.* at 4.

On April 9, the district court entered a TRO "considerably narrower than the order the plaintiffs have requested." R.48 at 3. The court weighed the parties' evidence and determined Plaintiffs' evidence established that "certain of the

conditions created by the intentional actions of the Sheriff enable the spread of [COVID-19] and significantly heighten detainees' risk of contracting the virus." *Id.* at 18. The court specifically found that the Sheriff was not providing facemasks for detainees, was not providing detainees with adequate access to soap, and was not providing for sanitation of commonly-used spaces. *Id.* at 18-20. The court also found that the Sheriff had no COVID-19 testing policy for detainees and was not implementing social distancing during intake, where individuals are housed in crowded cells called "bullpens." *Id.* at 24, 30-31. The court found these failures objectively unreasonable, given Plaintiffs' evidence about COVID-19's dangers and the steps necessary to protect against its uncontrolled spread, as well as the high number of infected individuals at the Jail. *Id*. at 18-20. At the time of the TRO, more than 400 detainees and staff had tested positive, one detainee had died, and the Jail was the largest known source of infections in the nation. *Id*. at 4.

In its TRO, the district court ordered the Sheriff to: (1) establish a policy requiring prompt COVID-19 testing for symptomatic detainees and (as practicable) detainees who had been exposed; (2) enforce social distancing during intake and suspend the use of bullpens; (3) establish a policy to ensure detainees could access hygiene and sanitation supplies sufficient for regular hand-washing and surface sanitization, and to require sanitization of frequently touched objects between uses; and (4) provide facemasks to detainees exposed to COVID-19. *Id.* at 34-36. The court denied all of Plaintiffs' other requests for injunctive relief, determining that they had not met their evidentiary burden. *Id.* at 14, 23-25, 36.

On April 13, the Sheriff told the district court he had begun enforcing social distancing during intake on April 10; created a policy governing COVID-19 testing on April 11; created the court-ordered hygiene and sanitation policies on April 11; and provided surgical masks to all detainees exposed to COVID-19 on April 13. R.51 at 3-4, 8, 17-18.

On April 14, Plaintiffs moved for a preliminary injunction, seeking to continue the relief ordered in the TRO, and asking the district court to order the Sheriff to enforce social distancing throughout the Jail, release medically-vulnerable detainees, and convene a three-judge panel to consider a prisoner release order. R.55 at 3-19. When Plaintiffs filed their motion, 541 detainees and staff had tested positive. R.55 at 1.

In support, Plaintiffs submitted evidence from Dr. Homer Venters, an epidemiologist and correctional medical expert, R.64-2; Dr. Amir Mohareb, an infectious disease specialist at Harvard, R.64-3; Dr. Gregg Gonsalves, an epidemiologist at Yale, R.55-7; and Dr. Laura Rasmussen-Torvik, the Chief of Epidemiology at Northwestern, R.64-4. All four experts (and the five experts whose declaration was filed with Plaintiffs' Complaint) opined that complete social distancing was the only way to meaningfully reduce COVID-19's rampant spread at the Jail. R.64-2 at 9; R.64-3 at 6-7; R.55-7 at 7; R.64-4 at 3; R.1-2 at 9. Plaintiffs also submitted declarations from investigators who spoke with detainees, all of whom reported they were not able to socially distance. R.55-5 at 2-11.

The Sheriff did not dispute Plaintiffs' overwhelming evidence about continued COVID-19 risks at the Jail, the imminent threat of harm posed to detainees, or the public health measures—including social distancing—that Plaintiffs' evidence established were necessary to control the spread. The Sheriff instead told the district court that an injunction was unnecessary because COVID-19 was "under control" at the Jail. R.62 at 3. And although he argued he was taking steps to implement social distancing at the Jail, *id.* at 19, his evidence demonstrated that many detainees remained housed in tiers well over 50% capacity. R.62-5 at 9-12.

The district court held an evidentiary hearing on Plaintiffs' motion on April 23. R.71. At that time, at least 788 detainees and staff had contracted COVID-19, and the positive testing rate for detainees was nearly 70%, suggesting that the actual number of COVID-19-positive individuals at the Jail was far higher. Hr'g at 142:14-143:14.

Plaintiffs presented Dr. Venters, who testified about the importance of social distancing in controlling COVID-19's spread. Hr'g at 65:9-120:12; see also R.73 at 24-26. The Sheriff presented Michael Miller, the Jail's Executive Director, who did not dispute any of Plaintiffs' evidence regarding the need for social distancing. Hr'g at 8:1-64:3, 123:22-141:19; see also R.73 at 19-23.

On April 27, the district court granted Plaintiffs' motion for a preliminary injunction in part. R.73. The court weighed both sides' evidence and found that Plaintiffs were likely to prevail on their claim that the Sheriff was objectively

unreasonable in his efforts to effect social distancing. *Id.* at 63-64. The court repeatedly recognized its obligation to accord deference to the Sheriff's security interests, and accordingly permitted him flexibility regarding social distancing in many respects. But the court determined greater social distancing was necessary and the Sheriff had provided no adequate explanation as to why he could not or should not do more. *Id.* at 63.

The district court converted the TRO to a preliminary injunction, and additionally ordered the Sheriff to establish a "policy precluding group housing or double celling of detained persons" with exceptions for detainees who: (1) were in quarantined units; (2) had tested positive; (3) needed double-celling because of a risk of self-harm; (4) were housed in a "group housing unit that is equipped for medical or mental health treatment" if there is no available space in a medical unit that permits social distancing; or (5) were housed in dorms at less than 50% capacity. R.74 at 2-3. The court denied all Plaintiffs' other requests for relief.

More than three weeks after it was entered, the Sheriff moved to stay the injunction in the district court. R.98-1. The district court denied the motion on May 29, finding that the Sheriff had not established his likelihood of success on appeal or any irreparable harm. R.109. One week later, the Sheriff sought a stay in this Court.

LEGAL STANDARD

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009). It is a request that this Court

exercise its equitable powers, and the movant bears the burden of showing that such an exercise is warranted by the circumstances. *Id.*

This Court reviews the district court's denial of a stay pending appeal for an abuse of discretion, reviewing findings of fact for clear error. *Venckiene v. United States*, 929 F.3d 843, 853 (7th Cir. 2019). Motions to stay require consideration of four factors: (1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm without a stay; (3) whether a stay would substantially harm the non-movants; and (4) whether the public interest favors a stay. *Nken*, 556 U.S. at 434; *In re A&F Enters., Inc.*, 742 F.3d 763, 766 (7th Cir. 2014).

The Sheriff contends this Court should conduct a "plenary review" of his motion because the district court failed to "meaningful[ly] analy[ze]" the relevant factors. Mot. at 4-5. But this assertion is plainly rebutted by the district court's opinion, which thoroughly discusses the stay factors and their application to this case. R.109 at 3-10. The district court addressed each of the Sheriff's arguments on his likelihood of success, the probability of irreparable harm, and the public interest. *Id*. Abuse of discretion accordingly governs this Court's review. Cf. *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544, 547 (7th Cir. 2007) (conducting plenary review only because the district court failed to balance any of the relevant factors, instead denying a stay based solely on likelihood of success).

ARGUMENT

The district court correctly determined a stay was inappropriate. After waiting several weeks to seek a stay in either court, the Sheriff has articulated *no* harm that he has or will suffer without a stay, much less provided the evidence described in Rule 8. His motion instead contends that he would prefer not to be subject to judicial scrutiny for the actions he is (and is not) taking regarding the pandemic. The Sheriff also fails to acknowledge that the decreased infection rate at the Jail occurred *after* the district court's preliminary injunction, showing that the injunction is critical to protect Plaintiffs' safety. Especially given the lack of any credible arguments on the merits of the appeal, each of the factors counsels against a stay. This Court should deny the motion.

I. The Sheriff Has Not Shown a Strong Likelihood of Success on the Merits.

This Court's review of the district court's decision to enter a preliminary injunction is for abuse of discretion. *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir. 2015). The Sheriff contends he is likely to win on the merits of his appeal because the district court misapplied the standard governing Plaintiffs' claims. But the Sheriff does not dispute that Plaintiffs' Fourteenth Amendment claims properly required an inquiry into the objective reasonableness of his actions to protect Plaintiffs from the threat of COVID-19. Mot. at 5; R.73 at 54, 57-58. The Sheriff instead argues the court erred because it ordered him to do what he was already doing, and failed to give dispositive effect to the CDC Guidance for Detention Facilities. Neither contention has merit.

The district court recognized that the Sheriff's objective reasonableness must be assessed "based on what the [Sheriff] knew at the time[,]" and "must account for his legitimate interest in managing the Jail facilities" and "defer to policies and practices that are needed to preserve the internal order and discipline and to maintain institutional security." R.73 at 58 (citing *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015); *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)) (internal quotation marks omitted). But the district court recognized that deference to the Sheriff was not limitless, and did not excuse the court's "obligation to enforce the constitutional rights of all persons, including prisoners." R.109 at 8 (citing *Brown v. Plata*, 563 U.S. 492, 511 (2011)); see also *Brown*, 563 U.S. at 511 ("Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.").

Applying those precedents to the facts at hand, the district court discussed the wealth of unrebutted medical evidence from Plaintiffs, including expert testimony from medical and public health experts, who unanimously opined that social distancing (in addition to adequate hygiene, sanitation, masks, and testing) was necessary to meaningfully control COVID-19's spread. R.73 at 23-28. The court acknowledged the evidence that these measures were particularly critical in settings like the Jail, which "densely packs large groups of people together." *Id.* at 27. The court addressed the Sheriff's evidence about his efforts to implement social distancing and his decision not to socially distance certain detainees, noting that the Sheriff had offered no explanation for some of these decisions. *Id.* at 19-23 (e.g.,

the Sheriff's executive director testified that some detainees were placed in double-occupancy cells "due to disorderly conduct" but "did not explain how double-celling serves a security purpose in such situations").[3]

The district court accordingly determined, after weighing the evidence and giving due consideration to the Sheriff's security interests, that a preliminary injunction mandating some social distancing (with exceptions) was appropriate. *Id.* at 63-64. The court specifically found that group housing and double-celling "is objectively unreasonable given the immediate and significant risk to [Plaintiff's] life and health" but that certain exceptions were necessary to "account for and give deference to the Sheriff's interest in managing the Jail facilities and to practices that are needed to preserve order and discipline and maintain security." *Id.* According that deference, the court exempted detainees from its social distancing order who: (1) were housed in a quarantined tier; (2) had tested positive for COVID-19; (3) were at risk of self-harm; (4) were housed in a group housing unit equipped for medical treatment, where full social distancing was infeasible; and (5) were housed in dorms at less than 50% capacity. *Id.* at 64.

The Sheriff does not dispute the district court's findings about Plaintiffs' risk of harm or need for social distancing, but argues he was already taking the actions ordered. Mot. at 8. The record belies this contention. In denying the Sheriff's motion

[3] The Sheriff still has not provided any explanation why so-called "disorderly" detainees must be double-celled, or why detainees identified as potential sexual assault victims must sacrifice their health to be protected from assault, despite the district court's express indication that it would consider a request to modify the injunction if some explanation could be provided. R.109 at 9.

to stay, the district court expressly found that "the TRO and preliminary injunction directed the Sheriff to take steps he was not already taking or was not taking in an effective way." R.109 at 5. The record unequivocally supports this finding.

After the TRO, the Sheriff stated that to comply with the court's order, he had: "been implementing the[] new" intake distancing policy "since April 10" (the day after the TRO was entered); amended an outbreak prevention policy on April 11 "to create a plan for administering the [COVID-19] tests" as ordered by the court; created and distributed a sanitation policy on April 11; and "provid[ed] all quarantined detainees one surgical mask per day" beginning on April 13. R.51 at 6, 8, 17-18.

After the April 27 preliminary injunction, the Sheriff reported that he had amended his testing policy to comply with the court's order. R.84 at 2. He also reported changing his social distancing practices in response to the Court's order by significantly limiting the number of detainees in housing units. *Id.* at 12 ("184 of 206 housing units are at 50% capacity or less" and all other units "fall within one or more of the [court's] exceptions"). The record demonstrates the district court did *not* order the Sheriff simply to do what he had already been doing. It compelled the Sheriff to take steps the uncontroverted evidence established were necessary to protect detainees' lives.

The Sheriff next contends that, because the CDC's Correctional Guidance includes certain "feasibility exceptions," his actions were objectively reasonable. This argument fails.

This Court has repeatedly held that administrative guidance, although potentially relevant to the reasonableness of conduct, is not dispositive. *United States v. Proano*, 912 F.3d 431, 439 (7th Cir. 2019); *United States v. Brown*, 871 F.3d 532, 537 (7th Cir. 2017); *Thompson v. City of Chicago*, 472 F.3d 444, 454 (7th Cir. 2006). In *Brown*, this Court held that determining the objective reasonableness of a state actor's conduct is "governed by constitutional principles" and "turns on the facts and circumstances of each particular case[,]" and not administrative regulations. 871 F.3d at 536-37. This Court reasoned that although agency regulations may be relevant to the constitutional analysis, affording them dispositive effect would empower the agency to become the arbiter on the Constitution—"a prospect that would have horrified those responsible for the [Bill of Rights]'s ratification." *Id.* at 537; see also *Proano*, 912 F.3d at 439 (The Constitution, not policies or regulations, "sets the constitutional floor" for what is objectively reasonable.).

The district court determined that, given these precedents, the CDC's Correctional Guidance was "an important piece of evidence to consider in assessing the Sheriff's conduct," but was not "dispositive standing alone." R.73 at 61. That determination was correct.

The Sheriff's citation to two cases involving the deliberate indifference standard is unavailing. See Mot. at 8-9. In both, the plaintiff had provided no evidence to support injunctive measures beyond what the regulations required. See *Caroll v. DeTella*, 255 F.3d 470, 472-73 (7th Cir. 2001); *Forbes v. Edgar*, 112 F.3d

262, 267 (7th Cir. 1997). Here, Plaintiffs showed by substantial evidence that objective reasonableness required the measures ordered by the district court.

The Sheriff's argument also fails to acknowledge that the district court's preliminary injunction decision found the Sheriff's decision not to socially distance certain detainees was *not* based solely on feasibility. R.73 at 63 ("[I]t does not appear, based on the evidence, that the Sheriff has yet hit the feasibility limit on getting detainees out of group housing, even if one considers only the Jail complex itself."). This has been borne out by the Sheriff's own subsequent submissions, where he claimed compliance with the court's injunction by implementing the required social distancing. R.84 at 12. Notably, the Sheriff reported a marked decrease in the Jail's infection rate after he reported compliance with the preliminary injunction. Mot. at 2.

Simply put, the district court's finding that the Sheriff's inaction regarding social distancing was objectively unreasonable is not clearly erroneous, and the Sheriff's contention to the contrary is meritless. The Sheriff has therefore not shown that he is likely to succeed on the merits of his appeal.

II. The Sheriff's Motion Demonstrates He Will Suffer No Irreparable Harm If the Injunction Is Not Stayed.

The Sheriff's motion for a stay was filed nearly six weeks after the preliminary injunction, and more than two months after the TRO. R.48; R.73. That delay falls squarely on the Sheriff's shoulders, who waited more than three weeks after the preliminary injunction to file a motion for a stay in the district court, R. 98-1, and a full week after its denial to seek relief on appeal, R.109. Appellate

courts have found such unexplained delay substantially undercuts an assertion of irreparable harm. *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1993); see also *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015).

Moreover, given the weeks that have now elapsed, an assertion of irreparable harm should be accompanied by evidence of *actual* harm suffered as a result of the injunction. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (no irreparable harm because injunction had been in place for three weeks before government sought a stay, but instead of "evidence of harms that *did* occur because of the injunction[,]" it offered only "estimates, assumptions, and projections"); see also Fed. R. App. P. 8(a)(2)(B) (directing the movant to attach "affidavits or other sworn statements supporting facts subject to dispute"). But the Sheriff provides no such evidence. Mot. at 11.

The Sheriff's assertion of irreparable harm is further undercut by his own promises that "there is no likelihood that [the Sheriff] will discontinue" the actions the preliminary injunction mandates. Mot. at 18; see also *id.* at 12 ("There is no reason to believe that [the Sheriff] would discontinue these efforts absent the injunction order."). As the district court recognized, the Sheriff's argument is "internally inconsistent." R.109 at 8. The Sheriff cannot credibly argue that declining to stay the injunction inflicts irreparable harm while simultaneously promising to abide by its terms even if a stay is issued.[4]

[4] Further evidencing the lack of irreparable harm is the Sheriff's decision not to seek expedited consideration of the merits of his appeal.

In essence, the Sheriff argues irreparable harm is *always* present when a preliminary injunction directs a defendant to take action. As the district court noted, "[t]he upshot of this argument, however, is that any party appealing an injunction would *automatically* meet the irreparable harm requirement for a stay—because an injunction is, after all, an injunction." R.109 at 8. The district court correctly rejected this argument, for which the Sheriff cites no authority.

The Sheriff relies on stays issued in *Valentine v. Collier*, 956 F.3d 797 (5th Cir. 2020), and *Swain v. Junior*, 958 F.3d 1081 (11th Cir. 2020), to bolster his deference arguments. But *Swain* and *Valentine* are not instructive here for multiple reasons, including because they rest on different legal standards. The Eleventh Circuit issued a stay in *Swain* after finding the district court did not properly address, nor did plaintiffs provide, evidence sufficient to establish the defendants' subjective intent so as to show deliberate indifference. 958 F.3d at 1089 (noting lack of evidence "to establish that the defendants subjectively believed the measures they were taking were inadequate"). The stay order in *Valentine*[5] similarly relied on finding the district court improperly "treat[ed] inadequate measures as dispositive of the [d]efendants' mental state." 956 F.3d at 802.

[5] The Fifth Circuit recently vacated the *Valentine* preliminary injunction, finding that the prison had substantially complied with its terms. *Valentine v. Collier*, No. 20-20207 (June 5, 2020). Two of the three judges on the panel wrote separately, however, to express support for the merits of plaintiffs' claims and concern for the prison's conditions. *Id.* at 2 (Davis, J., concurring) (holding prisoners under circumstances where they are unable to socially distance is "nothing short of a human tragedy"); *id.* at 4 (Graves, Jr., J., concurring) ("[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution").

Here, the district court did apply the correct legal standard, and accorded the Sheriff substantial deference in adjudicating Plaintiffs' preliminary injunction motion. R.73 at 58, 63, 84. But deference does not mean blindness, and the court was simultaneously obligated to evaluate whether the Sheriff ran afoul of the Fourteenth Amendment. *Brown*, 563 U.S. at 511; see also *King v. McCarty*, 781 F.3d 889, 897-98 (7th Cir. 2015) (deference does not prohibit the court from intervening in jail management to prohibit constitutional violations). The Sheriff would claim irreparable harm any time a federal court ordered him to take action to uphold his constitutional responsibilities. This is not the law. Given the Sheriff's failure to produce any evidence about the harm inflicted by this injunction—despite having months to do so—this Court should reject his assertion of irreparable harm. See *Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to demonstrate irreparable harm.).

III. Plaintiffs Will Be Substantially Injured If This Court Stays the Injunction.

In contrast to the lack of harm suffered by the Sheriff, Plaintiffs will suffer real harm if the stay is granted. The district court noted that the Sheriff did not undertake the actions at issue in the preliminary injunction voluntarily, so "[s]taying the injunction would permit the Sheriff to lift [those] measures and thereby again place the health of detained persons at serious risk." R.109 at 10. The district court is correct.

The Sheriff contends Plaintiffs will suffer no irreparable harm if a stay is entered because the infection rate has decreased since the preliminary injunction. Mot. at 15. This assertion supports the necessity of leaving the injunction in place, lest the Sheriff abandon the court-ordered measures that the record established are critical to minimizing the spread of the virus.[6] R.73 at 23-28; R.48 at 18-20; R.55-7 at 6-7; R.64-2 at 6-13; R.64-3 at 5-6; R.64-4 at 2-3; R.1-2 at 3-9; see also *United States v. Oregon State Med. Soc.*, 343 U.S. 326, 333 (1952) ("[t]he sole function of an action for injunction is to forestall future violations").

The timeline of the infection rate is strong evidence that the district court's preliminary injunction played a pivotal role in protecting detainees' lives. The day of the preliminary injunction hearing, the infection rate was nearly 70%. Hr'g at 143:1-3. The Sheriff contends the infection rate is now 3%. Mot. at 2. The timing of this claimed decrease perfectly aligns with the entry of the preliminary injunction. See R.109 at 6 ("The Sheriff's argument about positive results does not account for the very real possibility that the measures ordered by the Court at the TRO and preliminary injunction stage contributed to those results.").

The Jail is simply not a place where ingress and egress can be limited. People live in tightly confined congregate spaces. If the stay is granted and the Sheriff is allowed to revert the Jail to its pre-order conditions, when spread of the virus was

[6] The Sheriff repeats his assurance that he will abide by the terms of the injunction even if this Court enters a stay. As discussed above, that defeats any assertion by the Sheriff that he will suffer irreparable harm absent a stay. It further suggests that denial of a stay would "minimize the costs of error[,]" *In re A&F Enters.*, 742 F.3d at 766, since the injunction is not imposing any additional costs on the Sheriff's conduct.

rampant, there is every reason to believe that transmission rates will again increase. There is no doubt that Plaintiffs will accordingly suffer measurable harm.

IV. Consideration of the Public Interest Counsels Against a Stay.

The Sheriff contends that, as a state actor, his interests and the public interest "merge[.]" Mot. at 18. The Sheriff cites *Nken* in support, but misrepresents the holding. To the contrary, *Nken* recognized that there is a public interest in preventing wrongful government action. 556 U.S. at 436. And this Court has similarly held that "[e]nforcing a constitutional right is in the public interest." *Whole Woman's Health Alliance v. Hill*, 937 F.3d 864, 875 (7th Cir. 2019). The district court determined the Sheriff's conduct had run afoul of Plaintiffs' Fourteenth Amendment rights, and there is substantial public interest in ensuring that the Court does not give leave to the Sheriff to continue that conduct during the pendency of this appeal.

Moreover, just as allowing the Sheriff to abandon the measures ordered by the district court will severely harm Plaintiffs, so too will it injure the public. The Jail is part of the Cook County community. The *Health Issues* study shows that an uncontrolled rate of infection inside the Jail directly results in dire health outcomes outside the Jail as well. Ex. 1. As such, if this Court issues a stay, permitting the Sheriff to abandon the measures the district court correctly found were necessary to protect against uncontrolled spread of COVID-19, the entire community will be put at risk.

The public has a strong interest in combatting the spread of COVID-19 (both at the Jail and in the community), and in vindicating Plaintiffs' Fourteenth Amendment rights. The Sheriff's motion for a stay is unfounded.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court deny the Sheriff's motion.

Respectfully submitted,

/s/ Sarah Grady
Counsel for Plaintiffs-Appellees

Jon Loevy
Sarah Grady*
LOEVY & LOEVY
311 N. Aberdeen Street, Third Floor
Chicago, Illinois 60607
(312) 243-5900
sarah@loevy.com

Locke Bowman
Alexa Van Brunt
MACARTHUR JUSTICE CENTER
Northwestern Pritzker School of Law
375 E. Chicago Ave.
Chicago, IL 60611
(312) 503-0884

Alec Karakatsanis
Charles Gerstein
CIVIL RIGHTS CORP
1601 Connecticut Ave., N.W., Ste. 800
Washington, DC 20009
(202) 894-6128

**Counsel of Record*

CERTIFICATE OF COMPLIANCE

I, Sarah Grady, hereby certify that the Plaintiffs-Appellees' Response to Defendant-Appellant's Motion for Stay complies with the length requirements of Federal Rule of Appellate Procedure 27(d) because it contains 5,155 words, excluding the portions of the response exempted by Federal Rule of Appellate Procedure 32(f). In preparing this certificate, I relied on the word count tool of the word-processing system used to prepare the brief, Microsoft Word 365.

I further certify that the response complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(c), as modified by Circuit Rule 32(b), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Century Schoolbook 12-point font, with Century Schoolbook 11-point font used for footnotes.

Respectfully submitted,

/s/ Sarah Grady
Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE WITH THIS COURT'S ELECTRONIC CASE FILING PROCEDURE (C)(3)

I, Sarah Grady, hereby certify that I have filed the Plaintiffs-Appellees' Response to Defendant-Appellant's Motion for Stay electronically in searchable PDF format, as required by this Court's electronic case-filling procedure (c)(3).

Respectfully submitted,

/s/ Sarah Grady
Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I, Sarah Grady, hereby certify that I served the Plaintiffs-Appellees' Response to Defendant-Appellant's Motion for Stay on June 12, 2020, using the CM/ECF system, which effected service on all counsel of record for the Defendant-Appellant.

Respectfully submitted,

/s/ Sarah Grady
Counsel for Plaintiffs-Appellees

No. 20-1792

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ANTHONY MAYS, Individually and on behalf of a class of similarly situated persons, et al.,

Plaintiffs-Appellees,

v.

THOMAS DART, Sheriff of Cook County,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois
No. 20-cv-2134—Matthew F. Kennelly, *Judge*.

DECLARATION OF SARAH GRADY

I, Sarah Grady, under penalty of perjury as provided by 28 U.S.C. § 1746, state as follows:

1. I represent Plaintiffs-Appellees in this appeal.

2. I obtained the attached study by Eric Reinhart and Daniel Chen by visiting the following website on June 11, 2020: https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00652. The article was published online by Health Affairs Journal, a peer-reviewed journal on health policy issues. An explanation by Health Affairs about their journal can be found at this website, which I accessed on June 12, 2020: https://www.healthaffairs.org/about.

3. An editor's note in the abstract on page 1 of the attached study notes that the study is "the accepted version of the peer-reviewed manuscript" and a "final edited version will appear in an upcoming issue of *Health Affairs*."

/s/ Sarah Grady
Counsel for Plaintiffs-Appellees

DATED: June 12, 2020

By Eric Reinhart and Daniel Chen

Incarceration And Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook County Jail

DOI: 10.1377/hlthaff.2020.00652
HEALTH AFFAIRS 39, NO. 8 (2020): –
©2020 Project HOPE—The People-to-People Health Foundation, Inc.

ABSTRACT Jails and prisons are major sites of novel coronavirus (SARS-CoV-2) infection. Many jurisdictions in the United States have therefore accelerated release of low-risk offenders. Early release, however, does not address how arrest and pre-trial detention practices may be contributing to disease spread. Using data from Cook County Jail, in Chicago, Illinois, one of the largest known nodes of SARS-CoV-2 spread, we analyze the relationship between jailing practices and community infections at the zip-code level. We find that jail cycling is a significant predictor of SARS-CoV-2 infection, accounting for 55 percent of the variance in case rates across zip codes in Chicago and 37 percent in Illinois. By comparison, jail cycling far exceeds race, poverty, public transit utilization, and population density as a predictor of variance. The data suggest that cycling through Cook County Jail alone is associated with 15.7 percent of all documented novel coronavirus disease (COVID-19) cases in Illinois and 15.9 percent in Chicago as of April 19, 2020. Our findings support arguments for reduced reliance on incarceration and for related justice reforms both as emergency measures during the present pandemic and as sustained structural changes vital for future pandemic preparedness and public health. [*Editor's Note: This Fast Track Ahead Of Print article is the accepted version of the peer-reviewed manuscript. The final edited version will appear in an upcoming issue of* Health Affairs.]

Eric Reinhart (reinhar@fas.harvard.edu) is a PhD candidate in the Department of Anthropology, Harvard University, in Cambridge, Massachusetts, and an MD candidate at the University of Chicago Pritzker School of Medicine, in Chicago, Illinois. He is also a candidate in adult psychoanalysis at the Chicago Center for Psychoanalysis.

Daniel Chen is Directeur de Recherche at the Centre National de la Recherche Scientifique (CNRS), in Paris, France; a professor at the Toulouse School of Economics and Université de Toulouse Faculty of Law, in Toulouse, France; and lead principal investigator of the DE JURE (Data and Evidence for Judicial Reform) Program at the World Bank in Washington, D.C.

Relative to peer nations, the United States relies disproportionately on arrest and incarceration in its criminal justice administration. In 2018, there were more than 10 million arrests, five million arrests cycled through jails, and two million incarcerated persons in the United States, accounting for nearly a quarter of the total incarcerated population worldwide.[1–3] As a result, many of the country's jails and penitentiaries are severely overcrowded.[4] The current novel coronavirus disease (COVID-19) pandemic presents an urgent public health incentive for reconsidering the logic of punishment and reducing reliance on arrest and incarceration.[5–9] Such a shift would coincide with important political and ethical arguments for reforming policing and carceral policy.[10–12]

Existing conditions in jails and penitentiaries make infection control particularly difficult, putting inmates at unconscionable and perhaps unconstitutional risk.[13] The outbreak at Cook County Jail in Chicago, which was the largest known node of SARS-CoV-2 spread in the country until surpassed by a state prison in Ohio, makes this reality plain.[14–16] In light of the risk of epidemics in densely populated carceral facilities, many jurisdictions have begun releasing certain low-risk offenders in jails and prisons in order to mitigate the risks posed to inmates with condi-

Downloaded from HealthAffairs.org on June 11, 2020.
Copyright Project HOPE—The People-to-People Health Foundation, Inc.
For personal use only. All rights reserved. Reuse permissions at HealthAffairs.org.

tions that render them more vulnerable to severe COVID-19.[17] It is estimated that for approximately 40 percent of incarcerated persons there is no public safety justification for their confinement.[18,19]

Early policy discussions around the infection risk posed by incarceration during the pandemic focused on prison epidemics and the need for associated changes in release policy, such as commutations and compassionate release.[20] These release-oriented approaches, which are necessary for ethical treatment of incarcerated persons, are not adequate to address the way in which ongoing arrest and pre-trial detention practices in jails may be contributing to disease spread in community contexts. This broader discussion goes beyond prison epidemics to consider the consequences of policing practices and jail cycling for SARS-CoV-2 spread. It has more recently begun to attract appropriate attention, including in a non-peer-reviewed modeling study produced by the American Civil Liberties Union in collaboration with several universities, which is based on extensive simulations but little evidence.[21]

Our research evaluates how, following arrest and subsequent cycling in and out of jails as individuals await hearings and trials, the infection risk to those processed through the jail system may multiply into a generalized risk to the public. The data analysis of empirical evidence in our study offers a supplement to modeling studies, which, in the absence of strong available evidence, necessarily rely on various assumptions about SARS-CoV-2 infectivity in jails and prisons, spread in community contexts following inmate release, rates of symptomatic expression and detection among infected persons, mortality rates, and other estimated variables in order to simulate various scenarios.[22] Our analysis of jail cycling and community spread of SARS-CoV-2 presents preliminary evidence concerning Cook County Jail and the State of Illinois that should be followed by larger studies that can further strengthen the evidentiary basis for modeling and managing an ongoing public health crisis.

Study Data And Methods

The scale of jail-community cycling and its potential for infection seeding is significant: for example, in the month of March 2020, 1,855 individuals were booked into Cook County Jail in Chicago while 2,129 were released, 92 percent of whom had been booked into the jail after February 1, 2020. We examine this epidemiological connection between jail and community at the zip-code level, using booking, release, and COVID-19 data obtained from Cook County Jail, demographic data from the 2010 US Census and 2011 American Community Survey (the most recent years for which zip-code level data are available), and COVID-19 data reported by the Illinois Department of Public Health. To evaluate the relative strength of the correlation between Cook County Jail cycling and COVID-19 spread in the city of Chicago and the state of Illinois, we ran bivariate and multivariate regressions between the COVID-19 case rate and five variables by zip code: jail inmates released in March, proportion of black residents, poverty rate, public transit utilization rate, and population density.

Our analysis necessarily relies on the assumption that arrests and releases are unrelated to omitted factors that may be associated with COVID-19 across zip codes. We therefore cannot rule out reverse causality. However, other likely causal factors of COVID-19 case rates are plausibly associated with the other demographic controls we have used, which we found did not account for the correlation we observe between jail cycling and COVID-19.

In terms of generalizability, we have used data only from Illinois and a single county jail—Cook County Jail, the nation's largest single-site jail and third largest jail system. Cook County is the second most populous county in the US, which makes its activities relevant even if they are not representative of smaller counties. The association we document in Chicago and statewide in Illinois does not appear driven by outliers, which alleviates possible concerns that sampling factors are driving the correlations we report. As we have noted, these correlations persist in analysis of the raw data and in multiple regressions that include controls.

Minimal data concerning jail staff is another limitation. According to data we obtained from Cook County Sheriff's Office, there were more than 600 infections within the jail as of April 19; more than 100 of these were among jail staff. These infections among staff are accounted for within institutional reporting but not included in our community-level SARS-CoV-2 data. However, one might expect that jail staff who go in and out of the jail on a daily basis would have unusually high potential for seeding SARS-CoV-2 in their communities. Unfortunately, we do not have zip-code level data on the place of residence of jail staff that would enable us to account for their potential role in community spread. If we had been able to account for staff-associated community spread of SARS-CoV-2 in our analysis, we expect that the association between Cook County Jail and community infection rates would be even greater than we have been able to demonstrate with available data.

Downloaded from HealthAffairs.org on June 11, 2020.
Copyright Project HOPE—The People-to-People Health Foundation, Inc.
For personal use only. All rights reserved. Reuse permissions at HealthAffairs.org.

Study Results

Online supplemental exhibit 1[23] provides details on the above variables for zip codes in both Chicago and statewide in Illinois (limiting to zip codes with at least 5 cases of COVID-19 as of April 19), along with summary statistics. It shows that, in comparison with the rest of Illinois, Chicago zip codes are poorer, use public transit more, and have a higher proportion of black residents and higher population density.

Bivariate correlations between COVID-19 case rates and five variables are given in supplemental exhibit 2.[23] This shows that, restricting to the city of Chicago, released jail inmates, poverty, and black residents were significantly positively correlated with COVID-19 case rate, with R-sq values of 0.55, 0.26, and 0.41, respectively. Statewide in Illinois, all variables were significantly positively correlated with COVID-19, with R-sq values of 0.37 (released jail inmates), 0.09 (poverty), 0.26 (public transit utilization), 0.30 (black residents), and 0.21 (population density).

In multivariate linear regression restricted to Chicago, the significant positive associations with race and poverty disappear while released inmates remains significant at the 1 percent level (supplemental exhibit 3).[23] See supplemental exhibit 4 for a scatter plot of this relationship and appendix exhibit 1 for scatter plots of all the other relationships.[23] In multivariate regression for Illinois, positive associations with released inmates, race, and population density remain significant at the 1 percent level. Supplemental exhibit 3 provides the regression coefficients.[23] Rendered in absolute population terms (as in the lower half of supplemental exhibit 3), multivariate regressions suggest that the cycling of 2,129 individuals through Cook County Jail in March was associated with 4,575 additional known community infections in Illinois as of April 19. We have arrived at this number by multiplying the number of released inmates by the regression coefficient (2.149). In Chicago zip codes, the number of released inmates (1,252) multiplied by the regression coefficient (1.548) suggests 1,938 additional Chicago cases were associated with the jail.

These numbers would represent 15.7 percent of all documented cases in Illinois and 15.9 percent in Chicago as of April 19, suggesting that a much higher number of cases is linked to the jail than limited contact tracing has established.[7] Our results are robust to the inclusion of all Illinois zip codes with fewer than 5 reported COVID-19 community infections (the limited number required by Illinois Department of Public Health in order for them to report cases by zip code) by assigning them a value of zero infections. See appendix exhibit 2 for this analysis and appendix exhibits 3 and 4 for additional models and specifications.[23]

Discussion

This analysis shows that, as of April 19, COVID-19 case rates were significantly higher in zip codes with higher rates of arrest and released jail inmates. We find that jail cycling is a significant predictor of SARS-CoV-2 infection, accounting for 55 percent of the variance in case rates across zip codes in Chicago and 37 percent in Illinois. By comparison, jail cycling far exceeds race, poverty, public transit utilization, and population density as predictor of variance.

Although currently available data are inadequate to establish a clear causal relation, these provisional findings are consistent with the hypothesis that arrest and jailing practices are augmenting infection rates in highly policed neighborhoods. Although we cannot infer causality, it is possible that, as arrested individuals are exposed to high-risk spaces for infection in jails and then later released to their communities, the criminal justice system is turning them into potential disease vectors for their families, neighbors, and, ultimately, the general public. In light of the well-documented, disproportionate intensity of policing and incarceration in black neighborhoods in the United States, the carceral-community spread of disease may bear partial responsibility for the striking racial disparities noted in COVID-19 cases.[12] In Chicago, although black residents comprise only 30 percent of the population, they represent 75 percent of the Cook County Jail population and 72 percent of the city's COVID-19-related deaths.[24]

Our findings reinforce arguments that efforts to shift criminal justice administration away from arrest and incarceration may be vital for protecting the public health during this pandemic and reducing vulnerability to future epidemics.[5–9,19] Waiting until epidemic outbreaks become apparent to implement changes in the criminal justice system, as in the present case, is not sufficient and will not protect against a reprise of the current situation. The COVID-19 pandemic is making clear that alternative mechanisms of criminal deterrence such as citations, public service requirements, and supervised release are not simply ethical demands but also sound public health policy in a globalized era of vulnerability to rapid spread of infectious diseases.[25]

Conclusion

The criminal justice system in the United States is just one among many existing social structures

Downloaded from HealthAffairs.org on June 11, 2020.
Copyright Project HOPE—The People-to-People Health Foundation, Inc.
For personal use only. All rights reserved. Reuse permissions at HealthAffairs.org.

that are being subjected to renewed scrutiny during the COVID-19 pandemic because of the public health hazards they pose. Pandemic reality has brought us to an unprecedented collective realization of national and global interconnectedness in which the risks of vulnerability to disease for America's incarcerated and the world's poor, for example, threaten all of us, although clearly not equally.[26–29] ■

Daniel Chen acknowledges support from the Centre National de la Recherche Scientifique (CNRS), in France, for his position as CNRS Directeur de Recherche, and a research grant from the Knowledge for Change Trust Fund. [*Published online June 4, 2020.*]

NOTES

1 Wagner P, Sawyer W. States of Incarceration: The Global Context 2018 [Internet]. Northampton (MA): Prison Policy Initiative; 2018 Jun [cited 2020 Apr 19]. Available from: https://www.prisonpolicy.org/global/2018.html

2 Heard C. Towards A Health-Informed Approach to Penal Reform: Evidence from Ten Countries [Internet]. London (UK): Institute for Criminal Policy Research; 2018 Jun [cited 2020 Apr 19]. Available from: https://www.prisonstudies.org/sites/default/files/resources/downloads/icpr_prison_health_report.pdf

3 Federal Bureau of Investigation. Crime in the United States, 2018 [Internet]. Washington (DC): FBI; [cited 2020 Apr 19]. Available from: https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018

4 American Civil Liberties Union. Overcrowding and Overuse of Imprisonment in the United States. American Civil Liberties Union Submission to the Office of the High Commissioner for Human Rights [Internet]. New York (NY): ACLU; 2015 May [cited 2020 Apr 19]. Available from: https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf

5 Wurcel AG, Dauria D, Zaller N, Nijhawan A, Beckwith C, Nowotny K, et al. Spotlight on Jails: COVID-19 Mitigation Policies Needed Now. Clinical Infectious Diseases [serial on the Internet]. 2020 Mar 28 [cited 2020 May 8]. Available from: https://doi.org/10.1093/cid/ciaa346

6 Hawks L, Woolhandler S, McCormick D. COVID-19 in Prisons and Jails in the United States JAMA Intern Med. 2020 Apr 28. [Epub ahead of print].

7 Akiyama MJ, Spaulding AC, Rich JD. Flattening the Curve for Incarcerated Populations—Covid-19 in Jails and Prisons. New Engl J Med. 2020 Apr 2. [Epub ahead of print].

8 Nowotny K, Zinzi B, Omori M, Brinkley-Rubinstein L. COVID-19 Exposes Need for Progressive Criminal Justice Reform. American Journal of Public Health [serial on the Internet]. 2020 Apr 30 [cited 2020 May 8]. Available from: https://doi.org/10.2105/AJPH.2020.305707

9 Barnert E, Ahalt C, Williams B. Prisons: Amplifiers of the COVID-19 Pandemic Hiding in Plain Sight. American Journal of Public Health [serial on the Internet]. 2020 May 14 [cited 2020 May 21]. Available from: https://doi.org/10.2105/AJPH.2020.305713

10 Roberts DE. Foreword: Abolition Constitutionalism. Harvard Law Review [serial on the Internet]. 2019;133(1):3–122 [cited 2020 Apr 19]. Available from: https://harvardlawreview.org/wp-content/uploads/2019/11/1-122_Online.pdf

11 Gilmore RW. Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California. Berkeley (CA): University of California Press, 2007.

12 Western B, Pettit B. Incarceration and social inequality. Daedalus [serial on the Internet]. Summer 2010 [cited 2020 May 29]. Available from: https://www.amacad.org/sites/default/files/daedalus/downloads/10_summer_western.pdf

13 Wallace M, Hagan L, Curran KG, Williams SP, Handanagic S, Bjork A, et al. COVID-19 in Correctional and Detention Facilities—United States, February–April 2020. Morbidity and Mortality Weekly Report [serial on the Internet]. 2020 May 6 [cited 2020 May 29]. Available from: https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm?s_cid=mm6919e1_w

14 Cook County Sheriff. COVID-19 Cases at CCDOC [Internet]. Chicago (IL): Cook County Sheriff; [cited 2020 Apr 19]. Available from: https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/

15 Ohio Department of Rehabilitation & Correction. COVID-19 Inmate Testing [Internet]. Columbus (OH): DRC; [updated 2020 Apr 20; cited 2020 Apr 21]. Available from: https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-20-2020%20%201304_1.pdf

16 Rojas R, Cooper M. Georgia, Tennessee and South Carolina Say Businesses Can Reopen Soon. The New York Times [serial on the Internet]. 2020 Apr 20 [updated 2020 Apr 21; cited 2020 Apr 21]. Available from: https://www.nytimes.com/2020/04/20/us/coronavirus-us-hot-spots-reopening.html

17 Williams T, Weisel B, Rashbaum WK. 'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars. The New York Times [serial on the Internet]. 2020 Mar 30 [updated 2020 Mar 31; cited 2020 Apr 21]. Available from: https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html

18 Austin J, Eisen L-B. How Many Americans Are Unnecessarily Incarcerated? [Internet]. New York (NY): NYU School of Law, Brennan Center for Justice; 2016 [cited 2020 Apr 20]. Available from: https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_0.pdf

19 Margulies J. Let the People Go. Boston Review [serial on the Internet]. 2020 Apr 20 [cited 2020 Apr 24]. Available from: http://bostonreview.net/law-justice/joseph-margulies-prisons-and-pandemics

20 Editorial Board. No One Deserves to Die of Covid-19 in Jail. The New York Times [serial on the Internet]. 2020 Apr 23 [cited 2020 Apr 23]. Available from: https://www.nytimes.com/2020/04/23/opinion/coronavirus-prisons.html

21 ACLU. COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures to Reduce Jails [Internet]. New York (NY): ACLU; 2020 Apr 22 [cited 2020 May 29]. Available from: https://www.aclu.org/sites/default/files/field_document/aclu_covid19-jail-report_2020-8_1.pdf

22 Fuller J. Models v. Evidence. Boston Review [serial on the Internet]. 2020

Downloaded from HealthAffairs.org on June 11, 2020.
Copyright Project HOPE—The People-to-People Health Foundation, Inc.
For personal use only. All rights reserved. Reuse permissions at HealthAffairs.org.

May 5 [cited 2020 May 6]. Available from: http://bostonreview.net/science-nature/jonathan-fuller-models-v-evidence

23 To access the appendix, click on the Details tab of the article online.

24 Foody K. Rate of Deaths, Illness Among Black Residents Alarms Cities. Associated Press [serial on the Internet]. 2020 Apr 6 [cited 2020 Apr 19]. Available from: https://apnews.com/1862bf401d6aad1d182e0bd967488c90

25 Kahan DM. What Do Alternative Sanctions Mean? Univ of Chicago Law Rev 1996;63:591–653.

26 Stafford K, Hoyer M, Morrison A. Outcry Over Racial Data Grows as Virus Slams Black Americans. Associated Press [serial on the Internet]. 2020 Apr 8 [cited 2020 Apr 19]. Available from: https://apnews.com/71d952faad4a2a5d14441534f7230c7c

27 Yancy CW. COVID-19 and African Americans. JAMA. 2020;232(19):1891–1892.

28 Gordon C, Johnson W, Purnell JQ, Rogers J. COVID-19 and the Color Line. Boston Review [serial on the Internet]. 2020 May 1 [cited 2020 May 2]. Available from: http://bostonreview.net/race/colin-gordon-walter-johnson-jason-q-purnell-jamala-rogers-covid-19-and-color-line

29 Gross CP, Essien UR, Pasha S, Gross JR, Wang S, Nunez-Smith M. Racial and Ethnic Disparities in Population Level Covid-19 Mortality. MedRxiv [serial on the Internet]. 2020 May 7 [cited 2020 May 29]. Available from: https://www.medrxiv.org/content/10.1101/2020.05.07.20094250v1

Downloaded from HealthAffairs.org on June 11, 2020.
Copyright Project HOPE—The People-to-People Health Foundation, Inc.
For personal use only. All rights reserved. Reuse permissions at HealthAffairs.org.