

Abstract

This report provides a snapshot of the impact of systemic racism on people of color, immigrants, the homeless, and other oppressed and marginalized communities in the wake of COVID-19. Among the report's other contributions, it highlights best practices for addressing the pandemic's debilitating effects on socially and economically distressed communities in the United States.

2020

Snapshots of COVID-19: Structural Inequity and Access to Justice



KEYWORDS

Racial Disparities, Public Health, Education, Voting Rights, Immigrant Rights, Detained Immigrants, Prisoner's Rights, Disproportionality in Law Enforcement (police), Navajo Community, Housing Rights, Homelessness, Structural Inequality, Justice.

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I. Introduction

As we write this, the streets of America are engulfed in protests over police violence, ignited by the horrific killing of George Floyd by white Minneapolis police officers. The deep sorrow, pain, and renewed trauma enveloping Black and Brown people across the country over Floyd's public execution have come during yet another public crisis: the coronavirus pandemic that has ravaged underserved, socially and economically distressed communities, which now face even more urgent and pressing needs. The more recent crisis of Covid-19 and the longstanding crisis in policing bring into sharp relief the systemic inequality and routinized injustice that daily confronts Black and Brown people.

Yet, uprisings across the entire face of the United States indicate that people may be readying themselves for transformative change. At the Newark campus of Rutgers Law School, many are asking what we can do in this moment to fight racial subordination and to realize (finally) the promises of equality, fairness, and justice for all. To do nothing, of course, would abet the forces that continuously seek to oppress Black and Brown people. There really is no choice in the matter.

These considerations drove the effort to produce this snapshot of the racial impact of Covid-19 and to highlight best practices for addressing its debilitating effects on distressed communities. As the enormity of the Covid-19 crisis unfolded and as we were called upon to separate ourselves physically through social distancing, each contributor to this project responded to a call for action. The primary authors and editors are law students enrolled in Professor Elise Boddie's Spring 2020 Civil Rights, Race & Equality class on the Newark campus of Rutgers Law School; Susan Feathers, Assistant Dean for Pro Bono and Public Interest at Rutgers Law School; and Dina Nehme, a PhD student in Global Affairs at Rutgers University-Newark.

The student chapters comprise Section 1 of the report and were edited and updated (as time and circumstances allowed) by Assistant Dean Feathers, Dina Nehme, and Professor Boddie. Some of them, such as the piece on policing, were written before the massive protests against the police unfolded. Because of unanticipated delays in production and the rapidity of Covid-19's spread, some of the information quickly became outdated. Nonetheless, we think it provides a useful retrospective on the challenges of the coronavirus as it unfolded.

Each of the law students volunteered to do this research and helped identify the issues that would comprise this report. They carried out this project within a very short period of time during the last week of classes, while juggling the demands of pending exams and papers, family obligations, and the myriad inconveniences of the quarantine. They neither received course credit for their contributions; nor were they paid for them. These students represent the social justice spirit that pervades Rutgers Law School and the "People's Electric" campus in Newark. They win major kudos for rising to the occasion.

Section 2 offers snapshots into the rapidly evolving needs of the vulnerable homeless, detained immigrants, and the incarcerated. This Section is inspired by the efforts of our pro bono student leaders who work with community partners and faculty in providing legal

assistance to low-income communities. The Pro bono program strives to inculcate an ethic of service in our students, as well as to sensitize them to issues of structural racism that limit access to justice.

For far too long, systemic racism has pervaded every aspect of our society. It has oppressed and marginalized people of color, immigrants, people in prison, the homeless, and other communities. We have born witness to how the "rhetoric" around access to justice is far from a reality for the most vulnerable communities. We hope that these "snapshots" from our student leaders and the pro bono program, will serve to advance the dialogue about how we can address these critical issues, which have been amplified in the wake of COVID-19.

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II. Section 1: Snapshots on Race and Injustice during COVID-19

Eight chapters comprise the following section, each written by a law student or group of students in Professor Boddie's spring 2020 civil rights class. The first chapter discusses the disproportionate impact of COVID-19 on Black and Brown Communities due to underlying social and economic distress factors brought on by systemic racism. The second chapter spotlights the problem of racial profiling of Black people who wear face masks. The third chapter discusses the abject failure of states to mitigate the spread of COVID-19 in prisons. The fourth chapter identifies public health initiatives in Vermont and Louisiana that promote racially equitable responses to COVID-19. The fifth chapter offers a window into COVID-19's devastating impact on the Navajo Nation. The sixth chapter explores the significant educational inequities exposed by COVID-19. The seventh chapter comprehensively discusses voting rights in the context of the pandemic. The eighth and last chapter focuses on some of the challenges that immigrant communities have faced during the pandemic and the critical resources that they have been unfairly denied during this very difficult and turbulent period.

Chapter 1: Racial Disparities in Black and Brown Communities by Gatién Laurol

“When White folks catch a cold, Black folks get pneumonia.” – African-American Proverb

The United States currently holds the most registered cases of COVID-19. With over 1.7 million cases and over 250,000 active cases in New York City alone, the coronavirus pandemic has forced governors to issue state orders requiring nonessential businesses to close-down until further notice, while essential businesses remain open.¹ Public gatherings have been banned which forced educational institutions to implement remote learning. COVID-19 has impacted all Americans at an unprecedented rate with deaths exceeding 60,000 since the start of 2020. As many Americans attempt to adopt the global procedural guidelines to “flatten the curve” of the virus, it is Black and Brown communities that are disproportionately suffering the brunt of the pandemic at alarming rates. This report will briefly explore the relationship between COVID-19 and the impact it has had on Black and Brown communities.

Fatality Rates

Although the Center for Disease Control and Prevention has not published any data on the race and ethnicity of patients who have contracted COVID-19, individual states have generated statistics based on their own database. For example, Black people account for more than 40% of the reported death counts in the state of Michigan, despite making up only 14% of the population.² Wayne County (which includes the city of Detroit) has a black population of over 40% and records the second most registered cases of COVID-19 in the state of Michigan.³ Similarly in Illinois, according to statistics provided by the state’s public health agency, although black people represent only 14.6% of the state’s population, they constitute 40% of its coronavirus-related deaths. Cook County (which includes the city of Chicago) has over 35,000 reported cases of COVID-19, 76.2% of deaths attributed to the Black and Latinx population.⁴ Lastly, in the state of New York, Black and Latinx communities account for 62% of the overall fatalities.⁵ In an early interview in April, Governor Cuomo acknowledged that it was no surprise that Black and Brown communities have suffered the impact of COVID-19 the most. As he discussed in his April interview:

¹ Worldometer, “Covid-19 Data”, as cited from: <https://www.worldometers.info/coronavirus/country/us/>.

² Michigan.gov, “Michigan Data”, (updated daily May 26, 2020) as cited from: See, https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

³ Michigan.gov, “Michigan Data”, (updated daily May 26, 2020) as cited from: https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

⁴ Chicago.gov, “Covid-19 Latest Data”, (May 24, 2020), as cited from: <https://www.chicago.gov/city/en/sites/covid-19/home/latest-data.html>.

⁵ Department of Health, New York State, “Testing Data: Fatalities”, (May 26, 2020), as cited from: https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n&utm_source=knewz.

*"We know that there's inequality in the health care system. We know that the poorer communities often pay the highest price for these types of emergency situations because they're really just bringing to light that systemic racism and discrimination in the system."*⁶

So, the key question becomes: Why are Black and Brown communities more likely to be impacted by COVID-9?

The Statistics:

Individuals living with preexisting health conditions—such as high blood pressure, diabetes, asthma, heart disease, and obesity—are more likely to contract and, in some cases, die from the disease. For example, Black adults are 60% more likely than non-Hispanic white adults to have been diagnosed with diabetes by a physician, 3.5 times more likely to be diagnosed with end stage renal disease as compared to non-Hispanic whites, 2.3 times more likely to be hospitalized for lower limb amputations as compared to non-Hispanic whites and are overall twice as likely than non-Hispanic whites to die from diabetes.⁷ Similarly, Black adults are 40% more likely to have high blood pressure, and are less likely able to regulate their blood pressure. Moreover, Black people are 20% more likely to die from heart disease than non-Hispanic white people. Black women are 60 percent more likely to have high blood pressure, as compared to non-Hispanic white women.⁸

Biological Factors vs. Sociological Variables

It is imperative to note that the statistical disparity found in the above-mentioned data, does not stem from any biological differences found between Blacks and non-Hispanic white people. Evidence reveals that the documented health disparities are influenced by other sociological variables such as mass incarceration and housing discrimination. Black and Brown communities have been the victims of federal incompetence in the healthcare system for generations.

Racial Myths

Current studies in pain assessment suggest that White trainees believe that Black patients have thicker skin. It is through similar racial myths that Black patients receive disproportionate treatment.⁹ For example, Deborah Gatewood, a nurse of 31 years, was working the front lines of Beaumont Hospital in Detroit on March 16th when she fell ill with symptoms of a cough and fever. She visited the ER four times, each time displaying worsening conditions. By the end of March, she had developed bi-lateral pneumonia and died shortly after. She was 63. Gatewood's story is

⁶ G. Smith, Patch, "Cuomo: Systemic Racism Key Factor In Minority Coronavirus Cases", (April 10, 2020), as cited from: <https://patch.com/new-york/new-york-city/cuomo-systemic-racism-key-factor-minority-coronavirus-cases>.

⁷ U.S. Department of Health and Human Services Office of Minority Health, "Diabetes and African Americans", as cited from: <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=18>.

⁸ U.S. Department of Health and Human Services Office of Minority Health, "Diabetes and African Americans", as cited from: <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=18>.

⁹ J. A. Sabin, "How We Fail Black Patients in Pain", (January 6, 2020), as cited from: <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain>.

yet another example of a long and growing line of Black people who have fallen victim to neglect in the healthcare system.

Furthermore, working-class Black neighborhoods have high rates of substandard housing and poor maintenance. Black communities suffer from poor diets and widespread obesity, characteristics that are often conflated with race. For example, CNN commentator Van Jones advised Black people to “drink more water. Move your bodies. Process emotional pain through therapy, rather than comfort-eating or substance-abuse. Commit to a spiritual or religious practice. Meditate. Rest. Get more sleep.”¹⁰

Jones’s comments reflect the rhetoric of antiblack racism that many have used to justify the mistreatment of Black and Brown people in the healthcare system. While Jones’s comments may stem from a place of genuine concern and a desire to help Black people, Jones’s use of Americanism tropes, pins the health problems Black people face, on poor choices and lifestyle rather than attributing these problems to generational systemic racism.

Job Availability, Vulnerability and Exposure

The COVID-19 pandemic has provided an unfiltered look into the pre-existing dynamics of race and class. Black Americans are more likely to work frontline jobs (grocers, fast-food workers, transit and postal workers). Meaning, they are more likely to work jobs where occupational hazards and exposure are tremendously high. For example, Jason Hargrove was a bus driver in Detroit who created a video urging the public to take COVID-19 seriously. The video was uploaded on March 21 in response to a female passenger who did not take the appropriate measures to cover her mouth while she was coughing on his bus. At the age of 50, Hargrove died four days later.

For many Black Americans, the option of “working from home” is not viable. Keeanga-Yamahtta Taylor, a contributor to the *The New Yorker*, notes as follows:

The intersecting threats of hunger, eviction, and unemployment drive poor and working-class African-Americans toward the possibility of infection. Fewer than twenty percent of African-Americans have jobs that allow them to work at home¹¹. Black workers are concentrated in public-facing jobs, working in mass transit, home health care, retail, and service, where social distancing is virtually impossible. And then there is the concentration of African-Americans in institutions where social distancing is impossible, including prisons, jails, and homeless shelters. African-Americans make up the majority of the incarcerated and the homeless. Forty-six per cent of African-Americans perceive covid-19

¹⁰ R. Dunmore, “Van Jones Slammed for Saying Black People Must Change ‘Lifestyle Choices’ Amid Coronavirus Pandemic”, (April 24, 2020) as cited from: <https://newsone.com/playlist/van-jones-slammed-black-people-change-lifestyle-choices-amid-coronavirus/>.

¹¹ U.S. BUREAU OF LABOR STATISTICS, “Economic New Release”, as cited from: <https://www.bls.gov/news.release/flex2.t01.htm>.

as a “major threat” to their health, and yet race and class combine to put black people in danger. These numbers are the crisis wrapped inside of the pandemic.¹²

When these statistics are combined regarding the need for Black labor and the persistence of poverty, it produces a self-replicating cycle of poor health in the black community.

¹² K. Y Taylor, “The Black Plague”, The New Yorker, (April 16, 2020) as cited from: <https://www.newyorker.com/news/our-columnists/the-black-plague>.

Chapter 2: Disproportionality in Law Enforcement by Kendal Longmore

As the COVID-19 pandemic continues to mandate stay at home orders and social distancing practices, law enforcement has been tasked with implementing such orders. Like COVID-19 itself, the regulating practices enforcing these orders are disproportionately affecting Black Americans and other minorities.¹³

Mask Bias in Black Communities

On April 3rd, the Center for Disease Control and Prevention issued guidance recommending the wearing of face masks in public, especially in areas where proper social distancing is not possible. Since then, states such as New York, New Jersey and California have implemented orders requiring masks in public places in order to stop the spread of the virus.¹⁴

This guidance has been complicated by reports of racial profiling of Black men who are wearing masks. For example, in Miami, Florida, a Black male physician who was wearing a mask, was handcuffed by a police officer—apparently on suspicion of theft—as he was loading camping tents into a truck outside his home as part of his volunteer work with the homeless.¹⁵ *Not* wearing a mask also has caused problems. In Philadelphia, a Black man was physically removed from a public bus by law enforcement for failing to wear a mask, just a day after the city had implemented a mandatory mask policy for public transportation.¹⁶ Yet another issue is the low availability of masks, which leads people to make their own.¹⁷ Homemade masks, such as colored bandanas, that may be associated with criminal activity, further increase the chances of being racially profiled.¹⁸ Black people’s anxiety and stress over wearing a mask—and the sense of being “damned if you do, damned if you don’t”—is yet another factor to consider in assessing the virus’s harmful impact.¹⁹ Given widespread fears of racial profiling in relation to wearing—or not wearing masks—U.S. Senator Kamala Harris and other Democratic lawmakers have called upon the U.S.

¹³ Centers for Disease Control and Prevention, “COVID-19 in Racial and Ethnic Minority Groups”, as cited from: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

¹⁴ Centers for Disease Control and Prevention, “Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission”, as cited from: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

¹⁵ C. Silva, “Black Miami Doctor Handcuffed While Helping the Homeless During Pandemic,” (April 17, 2020), as cited from <https://www.nbcnews.com/news/nbcblk/black-miami-doctor-handcuffed-while-helping-homeless-during-pandemic-viral-n1185416.html>.

¹⁶ C. Danner, “Philly Police Drag Man From Bus for Not Wearing a Face Mask”, (April 10, 2020), as cited from: <https://nymag.com/intelligencer/2020/04/philly-police-drag-man-from-bus-for-not-wearing-a-face-mask.html>.

¹⁷ J. Reynolds, “Are Homemade Face Masks Effective in Protecting Against COVID-19”, (April 24, 2020), as cited from: <https://www.post-gazette.com/news/health/2020/04/24/cloth-face-mask-homemade-require-COVID-19-coronavirus-research-infection-masks/stories/202004220138>.

¹⁸ C. Devine, “Professor Explains Impact of Bandana Mask for Black Men During COVID-19 Pandemic”, (April 24, 2020), Fox 11 Los Angeles, as cited from: <https://www.ktvu.com/news/professor-explains-impact-of-bandana-mask-for-black-men-during-covid-19-pandemic>.

¹⁹ I. Natividad, “Among the Reasons COVID-19 is Worse for Black Communities: Police Violence”, Berkley News, (April 23, 2020), as cited from: <https://news.berkeley.edu/2020/04/23/one-reason-covid-19-is-worse-for-black-communities-police-violence/>.

Attorney General William Barr and the Department of Justice to provide federal law enforcement with anti-bias training and guidance.²⁰

²⁰ All Things Considered, “Be Guardians, Not Warriors’: Training A New Generation of Police”, (May 21, 2015), as cited from: <https://www.npr.org/2015/05/21/408549702/be-guardians-not-warriors-training-a-new-generation-of-police>.

Chapter 3: Prisons and Covid-19 by Anastasiya Pokrovskaya²¹

Prisons across the country are failing to protect the persons who have been entrusted to their care. As documented in a report by the American Civil Liberties Union and the Prison Policy Initiative (PPI), “state responses [have] ranged from disorganized or ineffective, at best, to callously nonexistent at worst.”²² As the report makes clear, “no state has done enough” and “all states [have] failed to implement a cohesive, system-wide response.”²³ Indeed, a recent study published in JAMA shows that when adjusted for age and sex the death rate in prisons from Covid-19 is three times higher than the death rate of the general population.²⁴

These systemic failures fall into several categories: the failure to significantly reduce prison populations, despite gubernatorial directives; the lack of universal testing; and the lack of “transparency into how many incarcerated people were being tested and released as part of the overall public health response.”²⁵ As of this writing, over 570 people in prison and more than 50 correctional staff have died.²⁶

The number of people incarcerated in federal prisons now stands at 226,000; 42,000 adults and children are incarcerated in immigration detention centers.²⁷ Nearly 2 million people are being held in state prisons and local jails.²⁸ The conditions within prisons and detention centers run inherently counter to the CDC’s social distancing recommendations. The response has been multifold, but across jurisdictions there are three key components to minimizing the threat to imprisoned populations: increasing electronic monitoring capabilities to allow for home confinement or release; providing appropriate healthcare within the prison structure; and curbing arrests for non-violent, low-level crimes, to both avoid re-populating the prisons and to allow courts to process parole and release proceedings under the current limited circumstances. Many jurisdictions have adjusted their arrest and booking protocols in order to limit the amount of people who cycle through short detention facilities, where they may either become infected or infect others.

²¹ Anastasiya Pokrovskaya contributed the bulk of the information in this chapter. This section was updated by Elise Boddie to reflect newly released information from the Prison Policy Initiative and the American Civil Liberties Union about mitigation efforts in prisons around the country. E. Widra & D. Hayre, Prison Policy Initiative as cited from: “Failing Grades: States’ Responses to Covid-19 in Jails and Prisons” [hereinafter “Failing Grades”], June 25, 2020, https://www.prisonpolicy.org/reports/failing_grades.html.

²² Id.

²³ Id.

²⁴ E. Widra, “New research: Adjusted for age and sex, the COVID-19 death rate in prisons is 3 times higher than in the general population,” July 8, 2020, as cited from: <https://www.prisonpolicy.org/blog/2020/07/08/coviddeaths/>.

²⁵ E. Widra & D. Hayre, Prison Policy Initiative, “Failing Grades,” June 25, 2020, as cited from: https://www.prisonpolicy.org/reports/failing_grades.html.

²⁶ Id.

²⁷ W. Sayer & P. Wagner, “Mass Incarceration: The Whole Pie 2020,” March 24, 2020, as cited from: <https://www.prisonpolicy.org/reports/pie2020.html>.

²⁸ Id.

Highlighting Best Practices

In Milwaukee County, law enforcement agencies have agreed to temporarily halt bookings for non-violent offenses, instead instructing people to report in court weeks later.²⁹ On April 6th King County in Washington reduced its prison population by over 600.³⁰ Subsequently, King County instructed jails to halt misdemeanor bookings, with advocates urging for a halt on bookings of certain felonies as well.³¹ As the coronavirus spread, Cleveland cut its county jail population in half, to about 1,000 people, by March 12.³² Prosecutors in Brooklyn were advised to review their cases and to recommend inmates for release, taking into account age, health condition, the nature of their charges and the risk to the community posed by early release.³³

The Federal Response

On the federal level, Attorney General William Barr has issued guidance to the Bureau of Prisons advising them to transition non-violent, at-risk inmates to home confinement. This guidance urged Prison Directors to weigh whether inmates may be safer in prison, where they may have greater access to medical care than at home.³⁴ The memorandum called for consideration being restricted to inmates with pristine disciplinary records, who can demonstrate and verify that their risk of exposure to Covid-19 would be lesser at home than within the prison. Sexual offenders are not eligible for home confinement under this memorandum.³⁵ Inmates eligible for transfer to home confinement are placed on a 14-day mandatory quarantine prior to transfer.

Conclusion

Aside from the inherent contradiction between social distancing guidelines and dormitory style housing, prisons face unique difficulties in preventing the spread of the virus. Many prisons are unable to provide protective equipment to inmates, including those who are essential workers within the prison itself.³⁶

Attempts to control the virus also raise important questions about the rights of inmates, particularly as the length of the quarantine draw out. In an attempt to curb the spread of the virus,

²⁹ Bruce Vielmetti, “Early releases free up isolation space, improve distancing at jails,” April 6, 2020, as cited from: <https://www.jsonline.com/story/news/crime/2020/04/06/coronavirus-wisconsin-early-jail-releases-free-up-isolation-space/2950986001/>.

³⁰ Steve Hunter, “King County reduces jail population by more than 600,” April 6, 2020, as cited from: <https://www.bellevuejournal.com/northwest/king-county-reduces-jail-population-by-more-than-600/>.

³¹ David Kroman, “Steady arrests risk Covid-19 spread beyond jail walls, advocates say,” April 17, 2020, as cited from: <https://crosscut.com/2020/04/steady-arrests-risk-covid-19-spread-beyond-jail-walls-advocates-say>.

³² Timothy Williams, Benjamin Weiser & William K. Rashabaum, “‘Jails are Petri Dishes,’ Inmates Freed as the Virus Spreads Behind Bars,” March 20, 2020, as cited from: <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>.

³³ Id.

³⁴ Office of the Attorney General, Memorandum for Director of Bureau Prisons, March 26, 2020, as cited from: <https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000>.

³⁵ Id.

³⁶ David Kroman, “Steady arrests risk Covid-19 spread beyond jail walls, advocates say,” April 17, 2020, as cited from: <https://crosscut.com/2020/04/steady-arrests-risk-covid-19-spread-beyond-jail-walls-advocates-say>.

many jurisdictions have halted visits to prisons. Information about the crisis both within the prison and outside of it is often either unavailable or scant.

Chapter 4: Public Health by Carol Huston

Introduction

Health disparities have long existed between white people and people of color in our country.³⁷ During this pandemic, lawmakers are sounding the alarm about how these inequities connect to structural racism³⁸ and are calling for the collection of COVID-19 related racial and ethnic data to make sure that mitigation resources are targeted to communities who are most in need.³⁹ In response, several non-profit, academic and governmental institutions at the federal and state level have begun to form equity task forces and committees and are creating websites with guidelines for how best to collect data and disseminate information, engage community members, and improve access to health services for isolated minorities and indigenous people.⁴⁰

Summary of Task Forces and Other Organizational Activities/Reports

A. Vermont

Montpelier, Vt. – Governor Phil Scott and the Agency of Commerce and Community Development (ACCD) have initiated the State of Vermont Economic Mitigation & Recovery Task Force. The Local Support and Community Action team will identify gaps in recovery efforts to ensure equitable distribution of resources, especially in rural areas and underserved populations.⁴¹

B. Louisiana

On April 10, 2020, Gov. John Bel Edwards announced the Louisiana COVID-19 Health Equity Task Force, which will monitor the impact of health inequities on communities that are most impacted by the coronavirus.⁴² The Task Force includes subcommittees that receive COVID-19 related information from the medical community, provide research and data regarding the disparities associated with COVID-19; analyze data; and provide input on community outreach, especially in lower-income parishes that have a high incidence of the disease.⁴³ Governor Edwards has also made funds available to the Task Force for examining the “the causes and possible

³⁷ C. Hanlon and E. Higgins, “States Use Race and Ethnicity Data to Identify Disparities and Inform their COVID-19 Responses”, (April 13, 2020), as cited from: <https://nashp.org/states-use-race-and-ethnicity-data-to-identify-disparities-and-inform-their-covid-19-responses/>.

³⁸ A. Morrison, “Pressley And Warren Call for Racial Data in Coronavirus Testing”, (March 30, 2020), as cited from: <https://www.wbur.org/commonhealth/2020/03/30/pressley-warren-race-data-coronavirus-testing>.

³⁹ E. Warren, A. Pressley, R. L. Kelly, K. D. Harris, and C. A. Booker, Congress of the United States, “Letter to HHS”, (March 27, 2020), as cited from: <https://pressley.house.gov/sites/pressley.house.gov/files/2020.03.27%20Letter%20to%20HHS%20re%20racial%20disparities%20in%20COVID%20response.pdf>.

⁴⁰ M. Levine, “Communities Mobilize to Reduce Racial Disparities in COVID-19 Cases”, (April 27, 2020), as cited from: <https://nonprofitquarterly.org/communities-mobilize-to-reduce-racial-disparities-in-covid-19-cases/>.

⁴¹ Vermont Official State Website, “Agency of Commerce and Community Development Establishes Economic Mitigation & Recovery Task Force”, (April 14, 2020), as cited from: <https://governor.vermont.gov/press-release/agency-commerce-and-community-development-establishes-economic-mitigation-recovery>.

⁴² Office of Gov. Edwards, “Gov. Edwards Announces Creation of COVID-19 Health Equity Task Force”, (April 10, 2020), as cited from: <https://gov.louisiana.gov/index.cfm/newsroom/detail/2457>.

⁴³ Office of Gov. Edwards, “Gov. Edwards Announces Co-Chairs, Members of COVID-19 Health Equity Task Force and Subcommittees”, (April 12, 2020), as cited from: <https://gov.louisiana.gov/index.cfm/newsroom/detail/2469>.

solutions to the high rate of deaths from the coronavirus within Louisiana’s African-American community and other impacted populations.”⁴⁴

⁴⁴ ⁴⁴ Office of Gov. Edwards, “Gov. Edwards Announces Funding to the Health and Equity Task Force to Examine Causes and Solutions to COVID-19 Racial Disparities”, (April 24, 2020), as cited from: <https://gov.louisiana.gov/index.cfm/newsroom/detail/2473>.

Chapter 5: The Navajo Nation by Brandon Morrissey

The Navajo Nation now has the highest per-capita infection rate in the United States. For its people who have long been excluded from critical resources, such as running water and adequate health care, these numbers are particularly devastating. Indeed, the severity of this crisis led Doctors Without Borders to send teams of doctors to Navajo Nation to help fight the disease.⁴⁵

New Mexico:

As of May 18th, 2020, the Navajo Nation had the highest per capita infection rate in the country, surpassing New York City.⁴⁶ Earlier in the pandemic, New Mexico reported that approximately 37% of their coronavirus cases had come from the state's Native American population.⁴⁷ Governor Michelle Grisham announced that she was working with tribal leadership, as well as leadership of surrounding states, to provide support for the state's Navajo community.⁴⁸

Response

At the time of this writing, the crisis response has consisted of setting up field hospitals in Navajo territory, establishing roadblocks in and out of Navajo land, and delivering food through the National Guard. The New Mexico Department of Indian Affairs has also assisted in setting up funds meant to aid New Mexico's tribal communities.

New Mexico's Department of Health contains a link titled "Information for Tribes," but clicking on it doesn't seem to link to any information that is unique to tribal matters. Additionally, New Mexico has released a "Radio Transcript for Tribal Communities."⁴⁹

Arizona:

At the time of this writing, Arizona is reporting that people in the Navajo Nation are testing positive at a rate that is nine times higher than the rest of the state.⁵⁰

⁴⁵ V. Anguiano, "The Navajo Nation's Dine College Faces the Worst Coronavirus Outbreak in the Country", (May 21, 2020), as cited from: <https://www.americanprogress.org/issues/education-postsecondary/news/2020/05/21/485285/navajo-nations-dine-college-faces-worst-coronavirus-outbreak-country/>

⁴⁶ H. Silverman, K. Toropin, S. Sidner & L. Perrot, "Navajo Nation surpasses New York state for the highest Covid-19 infection rate in the US," (May 18, 2020) as cited from: <https://www.cnn.com/2020/05/18/us/navajo-nation-infection-rate-trnd/index/>. (This statistic was updated by an editor of the report.)

⁴⁷ K. Stafford, M. Hoyer, and A. Morrison; "Racial Toll of Virus Grows Even Starker as More Data Emerges", (April 18, 2020), as cited from: <https://apnews.com/8a3430dd37e7c44290c7621f5af96d6b>

⁴⁸ R. Klar, "New Mexico Governor Says State Faces 'Unique Challenges' Responding to COVID-19 in Native American Communities", (April 12, 2020), as cited from: <https://thehill.com/homenews/state-watch/492408-new-mexico-governor-says-state-faces-unique-challenges-responding-to>.

⁴⁹ New Mexico Department of Health, "Keep Your Community Safe", (May 4, 2020), as cited from: https://cv.nmhealth.org/wp-content/uploads/2020/04/NPT-SCRIPT_Keep-your-community-safe_040620.docx

⁵⁰ C. Sottile and E. Ortiz, "The Coronavirus is Taking its Toll on the Navajo Communities", (April 19, 2020), as cited from: <https://www.nbcnews.com/news/us-news/coronavirus-hits-indian-country-hard-exposing-infrastructure-disparities-n1186976>.

Response

Arizona has deployed their National Guard to airlift PPE to the Navajo town of Kayenta.⁵¹ The National Guard has also converted a community center in the Navajo town of Chinle into a field hospital for quarantining those who test positive.⁵² Additionally, Arizona's Department of Health and Pueblo leadership have announced a partnership with the Hilton hotel in Pojoaque, where the hotel will serve as a quarantine spot for those awaiting test results.⁵³

⁵¹ S. Romero, "Checkpoints, Curfews, Airlifts: Virus Rips Through Navajo Nation", (April 20, 2020), as cited from: <https://www.nytimes.com/2020/04/09/us/coronavirus-navajo-nation.html>

⁵² S. Romero, "Checkpoints, Curfews, Airlifts: Virus Rips Through Navajo Nation", (April 20, 2020), as cited from: <https://www.nytimes.com/2020/04/09/us/coronavirus-navajo-nation.html>.

⁵³ D. J. Chacon, "Buffalo Thunder to Serve as Self-isolation Site for New Mexico Tribal Members", (April 8, 2020), as cited from: https://www.santafenewmexican.com/news/coronavirus/buffalo-thunder-to-serve-as-self-isolation-site-for-new-mexico-tribal-members/article_88bf81d4-79ab-11ea-ab56-0be2eda4dbe3.html.

Chapter 6: Education Midst COVID-19 by Ruby Kish, Brandon Morrissey, and Benjamin Ashmore⁵⁴

A Historic First: Case of Gary B vs. Gretchen Whitmer

U.S. Supreme Court educational jurisprudence has taught that there is “no broad, general right to education.”⁵⁵ However, in a historic first, the Sixth Circuit Court of Appeals, in *Gary B, vs. Gretchen Whitmer*, held that access to literacy, i.e. a basic minimum education, is a constitutional right fundamentally guaranteed under the Due Process clause of the 14th Amendment. This is due to the court’s conclusion that an education is a “prerequisite to the exercise of political power” and “implicit in the concept of ordered liberty.”⁵⁶

Overview

The *Whitmer* decision is even more relevant given the substantial educational challenges arising during—and likely worsened by—the COVID-19 pandemic. This essay proceeds by (1) identifying these challenges, (2) surveying various state and local policies tailored to providing an adequate education to all children (by region), and (3) providing several anecdotal evidence from the lessons learned and best practices being utilized by educators in disadvantaged communities, particularly communities of color, in Polk County, Florida, and the Pikes Peak Region of Colorado.

After the onset of COVID-19, every U.S. state suspended in-class instruction. Forty-seven states extended their statewide closures through the 2019-20 academic year (forty-four by way of mandates; three issued only “recommendations”). As of this writing, only Montana had resumed classes at some schools (on May 7th), with other closures in Wyoming and Nebraska expiring weeks later.⁵⁷ These actions in response to COVID-19 raise significant implications for the quality of education for America’s children and their ability to access it.

Educational Equity in Distance Learning

The COVID-19 pandemic has changed the education system in the United States. It has prompted almost every district to send their students home and to adopt distance learning.⁵⁸ As schools across the country shifted to distance learning, some students have continued to make progress in their education, while others who were already behind are continuing to lose ground.⁵⁹

⁵⁴ This piece has been edited to reflect intervening events since its initial writing.

⁵⁵ *Gary B. et al. v. Whitmer et al.* No. 18-1855, 1801871 2020 U.S. App. LEXIS 13110 * 62-72 (6th Cir. Apr. 23, 2020) (collecting and citing cases) as cited from: https://www.michigan.gov/documents/ag/Gary_B_v_Whitmer_-_6th_Circuit_Decision_688291_7.pdf.

⁵⁶ *Id.* at 5, 72-89.

⁵⁷ Ballotpedia, “State Government Reopenings and Coronavirus (COVID-19) Lockdowns, 2020”, as cited from: [https://ballotpedia.org/State_government_reopenings_after_coronavirus_\(COVID-19\)_lockdowns,_2020](https://ballotpedia.org/State_government_reopenings_after_coronavirus_(COVID-19)_lockdowns,_2020).

⁵⁸ S. Page, “Back to School? 1 in 5 Teachers are Unlikely to Return to Reopened Classrooms this Fall, Poll Says”, (May 26, 2020), as cited from: <https://www.lansingstatejournal.com/story/news/education/2020/05/26/coronavirus-schools-teachers-poll-ipsos-parents-fall-online/5254729002/>.

⁵⁹ D. Goldstein, New York Times, “Coronavirus is Shutting Schools. Is America Ready for Virtual Learning?”, (March 13, 2020), as cited from: <https://www.nytimes.com/2020/03/13/us/virtual-learning-challenges.html>.

Many factors contribute to these inequities, especially the structural inequality that concentrates poverty in communities of color⁶⁰ and is reflected in their schools.⁶¹ As schools move to distance learning, those in wealthier communities are able to provide students with a robust distance learning experience while those in disadvantaged and marginalized communities will struggle to provide any education at all.⁶²

Actions Towards Equity Provision in Distance Learning

There are actions that states and school districts can take to promote equity in the provision of distance learning education, most effectively by bridging the digital divide. Key issues include access to internet-enabled devices, the internet, transportation, and training for digital education. Eighteen percent of students nationwide lack broadband internet access while seventeen percent lack a computer at home.⁶³ School districts in middle class have the resources to bridge the digital divide in their districts by providing students in need with devices and internet access. In these districts, students are learning through online, interactive lessons, with the ability to engage with teachers and submit completed assignments. For students in low income, under resourced school districts, distance learning consists of packets of lessons, without any actual instruction. However, across the country, states and individual school districts have found innovative ways to address this digital divide and provide devices and internet to students from even the most disadvantaged districts.⁶⁴

In situations where there is no means of bridging the digital divide, states must step in to provide meaningful guidance to school districts about how best to implement distance learning programs. The Massachusetts Institute of Technology Teaching Lab Systems released a report regarding best practices for state guidance in distance learning.⁶⁵ Important considerations include placing issues of equity at the center of all remote learning plans as well as providing sample lessons and schedules. States can also provide checklists and templates to help districts establish plans that meet state recommendations. Additionally, states that require districts to submit plans increase the level of accountability, allowing state education leaders to identify districts that require greater support and guidance.

Finally, states should provide specific guidance to school districts on how best to support vulnerable populations including guidance on how best to provide distance learning to English

⁶⁰ L. Darling-Hammond, "Unequal Opportunity: Race and Education", (March 1, 1998), as cited from: <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/>.

⁶¹ E. Garcia and E. Weiss, "Education Inequalities at the School Starting Gate: Gaps, Trends, and Strategies to address them, (September 27, 2017), as cited from: <https://www.epi.org/publication/education-inequalities-at-the-school-starting-gate/>.

⁶² A. North, "The Shift to Online Learning Could Worsen Educational Inequality", (April 9, 2020), as cited from: <https://www.vox.com/2020/4/9/21200159/coronavirus-school-digital-low-income-students-covid-new-york>.

⁶³ N. T. Lee, "Bridging Digital Divides Between Schools and Communities", (March 2, 2020), as cited from: <https://www.brookings.edu/research/bridging-digital-divides-between-schools-and-communities/>.

⁶⁴ M. DuBose and P. Gorski, "Equity Literacy During the COVID-19 Crisis", as cited from: <https://www.equityliteracy.org/equity-covid-19>.

⁶⁵ Reich, J., Buttimer, C. J., Fang, A., Hillaire, G., Hirsch, K., Larke, L. R., ... Slama, R. (2020, April 2). Remote Learning Guidance From State Education Agencies During the COVID-19 Pandemic: A First Look. As cited from: <https://doi.org/10.35542/osf.io/437e2>.

language learners, students with disabilities, students facing housing insecurity and students in incarcerated settings. These vulnerable students are most likely to be negatively impacted by the move to distance learning and effective state guidance may help provide more equitable outcomes across districts.

Bridging the Digital Divide

Some states have taken direct action to address the digital divide by allocating funds to allow districts to purchase devices and internet access. California has allocated 100 million dollars to “implement a distance learning infrastructure that is equitable and accessible to all students.”⁶⁶ Similarly, the Maine legislature approved a bond package to allow \$50 million to expand broadband services across the state.⁶⁷ Wisconsin’s Board of Commissioners of Public Lands’ Common School Fund allocated a grant of \$5.25 million to help cover the costs of “technology needed for remote learning during the COVID-19 pandemic.”⁶⁸

With state budgets strapped, states and individual school districts have increasingly turned to public-private partnerships to increase access to devices and the internet. At the state level, California again has led the way. On April 20th, Governor Newsom announced cross-sector partnerships “to support the state’s distance learning efforts and help bridge the digital divide.”⁶⁹ The partnership includes dozens of private partners including Amazon, Google and Apple.⁷⁰ At the local level, the Los Angeles Unified School District has made available summer school enrollment to any student wishing to participate, in order to help children overcome challenges associated with distance learning during the latter part of the current school year.⁷¹

A public-private partnership in Connecticut is contributing \$40 million to fund the purchase and distribution of laptops where the cost is to be split between the state and the Greenwich-based Dalio Philanthropies. The partnership is allowing the state to address the digital divide much faster than if it had to work alone.⁷² Similarly, North Carolina announced a partnership with AT&T, Google and Duke Energy to provide school buses as sources for Wi-Fi hotspots to the state’s unserved and underserved communities.⁷³

⁶⁶ C. Guerrero, “\$100M in Coronavirus Funding Available to California School Districts”, (April 4, 2020), as cited from: <https://www.dailydemocrat.com/2020/04/04/100m-in-coronavirus-funding-available-to-california-school-districts/>.

⁶⁷ S. Thistle, Portland Press Herald, “Broadband Access Tops Priorities for Maine Legislature”, (January 6, 2020), as cited from: <https://www.govtech.com/network/Broadband-Access-Tops-Priorities-for-Maine-Legislature.html>.

⁶⁸ Wisconsin Department of Public Instruction, “Special Fund Allocation to Help Improve Wisconsin Student Access to Digital Tools, Resources”, (April 15, 2020), as cited from: <https://dpi.wi.gov/news/releases/2020/special-fund-allocation-help-improve-wisconsin-student-access>.

⁶⁹ Office of Governor Gavin Newsom, “Governor Newsom Announces Cross-Sector Partnerships to Support Distance Learning and Bridge the Digital Divide”, (April 20, 2020), as cited from: <https://www.gov.ca.gov/2020/04/20/governor-newsom-announces-cross-sector-partnerships-to-support-distance-learning-and-bridge-the-digital-divide/>.

⁷⁰ Id.

⁷¹ Id.

⁷² L. C. Lambeck, “Schools Struggle to Get Laptops to Students During Pandemic”, (April 2, 2020), as cited from: <https://www.govtech.com/network/Schools-Struggle-to-Get-Laptops-to-Students-During-Pandemic.html>.

⁷³ G. Childress, “School Buses to Carry Wi-Fi Hotspots to Rural, Underserved Students”, (May 6, 2020), as cited from: <https://pulse.ncpolicywatch.org/2020/05/06/school-buses-to-carry-wi-fi-hotspots-to-rural-underserved-students/>.

In Washington D.C., Mayor Muriel Bowser worked with local philanthropic organizations to establish the DC Education Equity Fund which raised \$1.1 million to “increase access to internet access and purchase digital devices.”⁷⁴ Prince George’s County Public Schools has similarly turned to philanthropic donations to bridge the divide. Sam Brin, a former PGCPs student and brother of Google co-founder Sergey Brin, donated \$100,000 to provide internet access to students in the district.⁷⁵ The school district has also reached out to local businesses, churches and nonprofits to help and has planned to spend \$2 million to ensure students have access to digital classes.⁷⁶

The Detroit Public Schools provides a great example of the power of community partnerships in addressing the digital divide. Detroit is one of the poorest school districts in the country, with an estimated 90% of students lacking internet and appropriate devices. Through the Connected Futures initiative, a coalition of multiple businesses and organizations—including the Kellogg Foundation, Quicken Loans, General Motors and the Skillman Foundation—worked with the district to raise an estimated \$23 million to connect students to virtual classrooms.⁷⁷ The partnership is working to ensure that every student in the Detroit Public Schools Community District will receive a computer table with high-speed internet connectivity.⁷⁸ The group says they hope that the partnership will serve as a model for other school districts in Michigan and across the country.

States have also established innovative means for ensuring that students can access the internet by increasing the availability of Wi-Fi hotspots. Illinois created an interactive map that can be searched by zip code to indicate where internet hotspots are located and how to access them.⁷⁹ The Illinois Board of Higher Education spearheaded the map’s creation in collaboration with several other state agencies. South Carolina and Georgia also offer interactive maps that provide information on nearby internet hotspots. In Missouri, all local library branches have taken off the password required to access Wi-Fi, allowing families to access Wi-Fi from the parking lot. Unfortunately, plans which rely on users traveling to parking lots or public libraries do not address the needs of student who have limited transportation. Several states, including Alabama, have started using school buses to bring Wi-Fi hotspots directly into underserved communities. Other

⁷⁴ Executive Office of the Mayor, “Press Release: Mayor Browser, DC Education Leaders Highlight the Start of Distance Learning and Launch Digital Equity Fund”, (March 24, 2020), as cited from: <https://thedcline.org/2020/03/24/press-release-mayor-browser-dc-education-leaders-highlight-the-start-of-distance-learning-and-launch-digital-equity-fund/>.

⁷⁵ W. West, “Prince George’s Schools Hand Out Laptops, Offer Internet to Bridge Digital Divide”, (April 1, 2020), as cited from: <https://www.nbcwashington.com/news/coronavirus/coronavirus-in-maryland/prince-georges-schools-hand-out-laptops-offer-internet-to-bridge-digital-divide/2260526/>.

⁷⁶ *Id.*

⁷⁷ C. Ferretti and S. Rahal, “\$23M Initiative to Give Tablets, Internet to Detroit Students Learning Remotely”, (April 23, 2020), as cited from: <https://www.detroitnews.com/story/news/local/detroit-city/2020/04/23/dte-detroit-schools-announce-plan-bridge-digital-divide-students/3010642001/>.

⁷⁸ *Id.*

⁷⁹ J. Nowicki, “Where to Find a Wi-Fi Hotspot in Illinois”, (April 21, 2020), as cited from: https://www.daily-journal.com/news/illinois/where-to-find-a-wi-fi-hotspot-in-illinois/article_6bf0e324-83d1-11ea-9bb3-1f1326feacb6.html.

states, like Florida, maintain lists of internet providers who are providing free or extremely discounted internet service.

Equity in Distance Learning Guidelines

Through guidance provided by state departments of education, states can ensure that local school districts address the gap in learning opportunities among students.⁸⁰ To ensure equity, states must set clear expectations regarding distance learning plans and monitor districts' progress in implementing plans.⁸¹ While all fifty states have a COVID-19 guidance page for local school districts, they differ significantly in the amount of guidance provided. States that are likely to produce the most equitable outcomes in student learning emphasize equity, provide detailed guidance and monitor local plans.

By the end of March, the majority of states included recommendations for school districts to consider equity in developing distance learning plans but varied in their recommendations for accomplishing this goal.⁸² Some states simply offered a single statement on the importance of equity while others provided useful tools and guidance on how to accomplish distance learning with a focus on equity. For example, Vermont offered an Equity Lens Tool to help guide decision making regarding policies, programs and practices. Minnesota also has significant guidance focused on equity with an Equity Lens Reflection and Exploration Tool, as well as specific guidance on equity best practices.⁸³ Oregon similarly offers concrete recommendations on providing equity in distance learning such as ensuring that every student has access to a teacher on a regular basis, even if they are not able to connect to an online learning system. Delaware and Massachusetts have also centered their distance learning guidance around equity principles.

States can promote equity by providing concrete guidance on how best to implement distance learning plans for students who cannot access online instruction. Most states have acknowledged the need for districts to establish alternatives to digital instruction for students unable to access online classes. For example, Ohio recommends that districts distribute “thoughtful instructional packets (virtual or paper-based) and appropriate interdisciplinary, exploratory, hands-on activities”; that schools “exercise creativity” when distributing instructional packets, such as through “meal drop off and pickup at grab-and-go sites or through safe meeting sites.”⁸⁴ Arkansas and other states have partnered with local public broadcasting stations to provide educational instruction via television for those that lack internet.⁸⁵ Michigan provides guidance in distribution of instructional packets as well as recommendations for distributing age-appropriate reading

⁸⁰ U.S. Department of Education, “Equity of Opportunity”, as cited from: <https://www.ed.gov/equity>.

⁸¹ Id.

⁸² Education Week Staff, “Coronavirus and Learning: What’s Happening in Each State”, (April 3, 2020), as cited from: http://blogs.edweek.org/edweek/campaign-k-12/2020/04/coronavirus_and_schools_state_guide.html.

⁸³ Department of Education, “Student Instruction COVID-19 Resources: Equity Lens Reflection and Exploration Tool for Learning”, as cited from: <https://education.mn.gov/MDE/dse/health/covid19/AcademicStandardsCOVID-19Resources/MDE032230>.

⁸⁴ Ohio Department of Education, “Ohio’s Remote Learning Resources”, as cited from: <http://education.ohio.gov/Topics/Student-Supports/Coronavirus/Ohio%E2%80%99s-Remote-Learning-Resources>.

⁸⁵ America’s Public Television Stations, “Public Media Education Partnerships with School Districts, Governments and Education Agencies”, as cited from: <https://apts.org/news/station-stories/public-media-education-partnerships-school-districts-governments-and-education-agencies>.

material to all students via Michigan’s E-library and the use of community drop boxes.⁸⁶ Mississippi’s ”Digital Access Continuum” provided a general overview of what school districts should implement to address inequity in education access.⁸⁷

States can also promote equity by clearly defining distance learning and providing clear examples, such as sample schedules and curriculum for schools and guidelines regarding instructional time and teacher communication. For example, Massachusetts, Illinois and Delaware provide specific guidance on the minimum and maximum amount of time for remote instruction per grade. Massachusetts and Minnesota also provide sample lesson plans. Michigan’s “Learning at a Distance” manual includes suggestions for structuring the day and week as well as communication between students and teachers.⁸⁸ Oregon published their guidance in a 74-page manual that includes a distance learning planning tool, a timeline for implementation, lists of educational resources and a sample of an instructional day per grade level.⁸⁹

Detailed guidance and recommendations can be most effective when coupled with state monitoring to ensure that school districts are pursuing effective approaches. Many states have ceded distance learning planning to local control, even when specific guidance is offered. Other states, like Wyoming, have required states to submit their distance learning plans, providing only those districts that meet the state requirements with a waiver for missed instructional time. An alternative approach is taken by states such as New York, which requires schools to submit their continuity of learning plans and—as the school closures were extended—mandated that school districts complete additional surveys regarding their plans.⁹⁰ New York’s rules do not appear to be tied to school funding but rather are intended to encourage schools to “consider the needs of all students and strive to ensure that any plans for continuity of learning are equitable and available to all students.”⁹¹

Some states more rigorously monitor their school districts’ distance learning plans. For example, the Maryland State Department of Education requires districts to present a sample student schedule, a plan to monitor student performance, and a description of the roles of teachers, administrators, parents and students.⁹² Similarly, New Mexico requires LEAs to provide assurance that they “will follow the requirements for a Continuous Learning Plan for the remainder

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Michigan Department of Education, “Learning at a Distance: Guidance”, (April 2020), as cited from: https://www.michigan.gov/documents/mde/LearningDistanceGuidance_686455_7.pdf.

⁸⁹ Oregon Department of Education, “School Closure Guidance: Distance Learning for All: Ensuring Care, Connection and Continuity of Learning”, (Spring 2020), as cited from: https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/Distance%20Learning%20for%20All%20Guidance%20March%202020.pdf?utm_medium=email&utm_source=govdelivery.

⁹⁰ New York City Department of Education, “Remote Learning Survey FAQs”, as cited from: <https://www.schools.nyc.gov/learn-at-home/remote-learning-survey/remote-learning-survey-faqs>.

⁹¹ New York State Education Department, “Guidance on Continuing of Learning”, as cited from: <http://www.nysed.gov/edtech/guidance-continuity-learning>.

⁹² Maryland Together, “Maryland’s Recovery Plan for Education”, (May 2020), as cited from: <http://marylandpublicschools.org/newsroom/Documents/MSDERecoveryPlan.pdf>.

of the 2019-20 school year.”⁹³ To demonstrate compliance, districts must complete the form, answering detailed questions about their plans, including teacher communication with students, addressing social-emotional needs, supports for families and caregivers, as well as mechanisms for evaluating the effectiveness of the distance learning plan. Michigan similarly regulates school districts by demanding documents that specify plans for providing remote instruction.⁹⁴ An executive order in Minnesota mandates school districts to post their distance learning plans, including plans to address “communication pathways with student families, community input on student and family needs, and other outreach opportunities....in addition to core instruction, supports for all student groups, nutrition, school-age care, technology needs, and effectively delivering educational models to students in a distance setting.”⁹⁵

Additional Guidance for Vulnerable Populations

School closures will undoubtedly have a disproportionate effect on vulnerable populations of students and states that provide specific guidance for addressing the needs of this population can help blunt the academic disparities that will result. The most common guidance provided regarding vulnerable students is directed at the education of students with disabilities. While nearly every state provides some guidance for school districts regarding the requirement to continue to provide free and appropriate education to students with disabilities, very few explain what a FAPE looks like in this new environment.⁹⁶ Illinois is an example of a state inching closer to providing meaningful guidance regarding the education of students with disabilities with over 50 FAQs regarding the provision of special education services. Michigan has gone a step further by suggesting that districts create contingency learning plans for every child with an IEP.⁹⁷ These plans requires schools to address important issues regarding the education of students with disabilities, including how the student will continue to make progress towards their IEP goals under the continuity learning plan implemented by the district. Recognizing the challenges that distance education creates for teachers addressing students with disabilities, the Georgia Department of Education provided a digital class to teachers on how to best support students with disabilities.⁹⁸

⁹³ New Mexico Public Education Department, “Continuous Learning Assurances Document & Local Plan”, (April 8, 2020), as cited from: https://www.ratonschools.com/uploads/1/3/0/3/130384604/nmped_clp_fillable_assurances_and_plan_3.26.20_final.pdf.

⁹⁴ Michigan Council of Charter School Administration, Michigan Department of Education, and Michigan Association of Intermediate School Administrators, “Continuity of Learning and COVID-19 Response Plan (‘Plan’) Application Template”, as cited from: https://www.michigan.gov/documents/mde/MICLPlan.FINAL_685762_7.pdf.

⁹⁵ Minnesota Department of Education, “COVID-19 Updates”, (March 2020), as cited from: <https://education.mn.gov/MDE/dse/health/covid19/>.

⁹⁶ A. M.I. Lee, “What is and isn’t Covered Under FAPE”, as cited from: <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/what-is-and-isnt-covered-under-fape>.

⁹⁷ Michigan Department of Education, “Guidance for Compliance with the Individuals with Disabilities Education Act and the Michigan Administrative Rules for Special Education During the COVID-19 Pandemic”, (April 10, 2020), pp.3, as cited from: https://www.michigan.gov/documents/mde/MDE-OSE_GuidanceIDEA-MARSE_Covid-19_685879_7.pdf.

⁹⁸ Georgia Department of Education, “COVID-19 and Schools: Distance Learning”, as cited from: <https://www.georgiainsights.com/digital-learning.html>.

In addition to students with disabilities, some states have offered guidance for English Language Learners, students in foster care, students facing housing insecurity and incarcerated students. Maryland requires all school districts to account for “how the school system plans to address equity for special education students, English learners, students with academic needs, and homeless students.” Minnesota governor released Executive Order 20-41 specifically directing school districts to “support communities disproportionately impacted by distance learning. This includes, but is not limited to, historically marginalized families and families experiencing homelessness. During distance learning, schools are expected to provide students with instructional resources needed for distance learning and access to meals.” Minnesota has also posted guidance specifically to address the needs of young, multilingual learners, migratory children and English Learners. The Minnesota guidance for English Learners provides samples of appropriate language instruction educational programs and requires districts to “provide in writing how English language development services will be provided to English learners.”⁹⁹ Regarding students in the foster care system, Pennsylvania posted extensive guidance to assist local education agencies in “ensuring educational stability for youth in foster care” including how to promote “equitable access to instruction and educational supports.”¹⁰⁰

Equalizing distance learning will not equalize educational outcomes or reduce the inevitable widening of the achievement gap. Our segregated and unequal society will continue to deeply impact home and neighborhood environments that, in turn, impact the ability of youth to engage with distance learning.¹⁰¹ Correcting these larger systemic inequalities should be a long-term goal that we work continuously to address. Adjusting distance learning programs to provide equitable education is just one small step in this direction.

Anecdotal Prescriptions from the Front Lines

We interviewed an elementary teacher, and the principal of a K-12 school in Polk County, Florida, teaching in schools with majority low-income students of color to obtain better insights into what is working, and what is needed, especially if distance learning extends into the next academic year as many experts predict may be necessary.

At first, at the county level, Polk County created printed “learning packets” in two-week intervals to physically distribute to students’ homes, until funding for this was exhausted, leaving to schools the work to continue printing packets. While the infrastructure to give digital access to all students exists – including companies willing to provide free access – in practice technology to enable digital learning remains a mirage for many students. For example, while internet providers are willing to provide free temporary access, to obtain this, account setting requirements necessitate the entry of a credit-card, which for many families who do not participate in the traditional banking market, creates an insurmountable barrier. Another challenge is that where

⁹⁹ Minnesota Department of Education, “English Learner Language Instruction Educational Program Plan Desk-Review Procedures”, (August 30, 2018), as cited from: <https://education.mn.gov/MDE/dse/el/>.

¹⁰⁰ Pennsylvania State Resource Family Association Hearts & Homes, “The Facts about Foster Care”, as cited from: <https://www.psrfa.org/being-a-foster-parent/the-facts/>.

¹⁰¹ N. T. Lee, “Bridging Digital Divides Between Schools and Communities”, (March 2, 2020), as cited from: <https://www.brookings.edu/research/bridging-digital-divides-between-schools-and-communities/>.

technology platforms are obtained (e.g. donations of new tablet devices), (1) districts have been reticent to distribute these for fear that families, faced with severe economic and food insecurities, will pawn the devices and (2) students lack of familiarity with newer technologies compared to what students were utilizing in the classroom effectively creates a too-steep learning curve.

We also interviewed a high school teacher and administrator of two departments in a charter school system serving the Pikes Peak Region of Colorado, and students that chiefly are either immigrants themselves or the children of non-citizen parents.

One of the greatest barriers the digital divide has exposed in Florida, Colorado, and elsewhere, are the difficulty in teaching ESL (“English as a Second Language”) and ESE (commonly known as special education) students. Because educators are relying more on parents to drive and supervise the educational instruction at home, when parents are non-English speakers, many teachers cannot communicate with parents. Thus, where text messages are an effective tool to help teachers work with parents to ensure students are on track, this often is unworkable where parents and teachers do not share a common language.

Even more difficult, is the instruction for students who have IEPs or with disabilities, who would receive more robust services with in-class instruction. While an educator can work with several students in a class, that is not possible over telephone or videoconference, assuming even that a student has access to these regular resources. While administrators could, hypothetically, realign resources to increase classroom sizes for traditional students to free up more educators to work with ELS and ESE populations, in many cases this is not presently an option because state classroom size restrictions require amendment.

One innovative approach to bridging the digital divide arises in the provision of nutritional services to students for whom, before COVID-19-related school closures, breakfast and lunch services were a necessity. In Polk County, administrators first provided on Mondays, Wednesdays and Fridays, two-day meal boxes for students at schools where the pick-up of this food for families provided an opportunity for teachers to exchange paper packets of work. Given the success of this to students living in close proximity of schools, but not those who utilized busing, school administrators have reactivated limited busing to students to accommodate both nutrition services and to support distance learning, including tutorials for families on how to utilize Facebook so that teachers may upload multilingual instructional videos to better reach students and parents.

Chapter 7: Voting Rights and COVID-19 by Julia Burzynski

As of May 21, 2020, eighteen states had postponed their elections due to the Coronavirus.¹⁰² To ensure that all voters can cast their ballot during Covid-19, voting rights organizations are calling for all states to adopt no-excuse absentee voting, allow voters to request an absentee ballot online and register to vote online, implement early-in person voting and same-day registration, and provide pre-paid postage for vote-by-mail ballots.

The following essay extracts most information surrounding Voting Rights from a memorandum written about “How to Protect the 2020 Vote from the Coronavirus,” conducted by the [Brennan Center for Justice](#). The memorandum reflects the input of multiple election officials and voting rights experts and is a good source of information on voting rights during this pandemic and in the wake of the upcoming 2020 election.

The memorandum identifies five categories for how to protect access to the ballot during the Coronavirus: “(1) polling place modification and preparation; (2) expanded early voting; (3) a universal vote-by-mail option; (4) voter registration modification and preparation, including expanded online registration; and (5) voter education and manipulation prevention.” The following recommendations rely primarily upon and are structured based on the [Brennan Center](#)’s Covid-19 and elections report while also utilizing recommendations from other voting rights organizations.¹⁰³

Polling Place Modification & Preparation

Keep physical polling places clean and open: Since many people do not have internet access or a way to receive mail, the Brennan Center and Dēmos stress the need for states to maintain physical polling places. Dēmos notes that removing in-person polling places altogether would negatively impact Black and Brown voters. Polling sites and voting machines, however, should be cleaned regularly to prevent the spread of the virus. The [Center for Disease Control](#) issued guidelines for how to clean polling sites properly.¹⁰⁴ Additionally, the [National Task Force on Elections](#) recommends that polling sites remain open longer than usual and recruit less-at-risk groups as additional poll workers.¹⁰⁵

Ensure all voters regardless of disability, age, or language assistance can vote: States should identify and then modify polling sites that serve those who are at a high risk of contracting

¹⁰² K. Sullivan, and A. Levy and L. Stark, “Here are the States that Postponed their Primaries Due to Coronavirus”, (May 21, 2020), as cited from: <https://www.cnn.com/2020/03/16/politics/state-primaries-postponed-coronavirus/index.html>.

¹⁰³ W. R. Weiser and M. Feldman, Brennan Center, “How to Protect 2020 Vote from the Coronavirus”, (March 16, 2020), as cited from: <https://www.brennancenter.org/our-work/policy-solutions/how-protect-2020-vote-coronavirus>.

¹⁰⁴ Center for Disease Control and Prevention, “Recommendations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019”, (March 27, 2020), as cited from: <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹⁰⁵ Election Task Force, “COVID-19 Election Guide – Executive Summary”, as cited from: <https://static1.squarespace.com/static/5e70e52c7c72720ed714313f/t/5ea9a053796c432c2e7ab080/1588174932676/COVIDguideSummary.pdf>.

Covid-19. For example, senior care facilities. Individual voters should receive notice of all polling site changes.¹⁰⁶

For voters with disabilities and illness, states should adopt a “uniform process for signature matching” that allows voters to “cure or prove that they personally cast the ballot.” States should also allocate funding for necessary equipment to accommodate voters with disabilities and provide access to curbside voting. Also, all voter website portals should be “screen-reader compatible” to accommodate voters with visual impairments.¹⁰⁷

Additionally, to ensure that voters in need of language assistance can vote and that states comply with Section 203 of the Voting Rights Act, the Brennan Center recommends that interpreters are available by phone to translate the voting process as well as any “changes to election procedures.” For example, [California](#)’s permanent Vote-By-Mail ballot applications are available in [English](#), [Spanish](#), [Chinese](#), [Hindi](#), [Japanese](#), [Khmer](#), [Korean](#), [Tagalog](#), [Thai](#), and [Vietnamese](#).¹⁰⁸

Expand Early Voting

To limit crowding at polling places on Election Day, the Brennan Center recommends that all states adopt early in-person voting. States should also expand the early voting period. Dēmos notes that expanding early voting is “especially critical for Black and [B]rown voters, who are more likely to be working in jobs without flexibility or paid sick leave, and who may have an even harder time voting on Election Day.”¹⁰⁹

Vote-by-Mail

Adopt No-Excuse Absentee Voting: The Brennan Center recommends that states allow all voters to vote-by-mail. Sixteen states currently require voters to provide an excuse to vote absentee. No-excuse absentee voting allows voters to request and obtain an absentee ballot without providing a reason why they cannot vote on Election Day. Also, states that have the “infrastructure” should ensure that election officials mail a vote-by-mail ballot to all voters.¹¹⁰

Provide All Election Materials to Voters at No Cost: Additionally, states should provide pre-paid postage and other election materials at no cost to voters. Fourteen states already provide pre-paid postage to voters. These states include Arizona, California, Delaware, Hawaii, Indiana, Iowa, Minnesota, Missouri, Nevada, New Mexico, Oregon, Washington, West Virginia, and Wyoming. To ensure that every registered voter has the opportunity to vote by mail, states should also print “enough paper ballots and absentee envelopes...to cover 120 percent of the number of

¹⁰⁶ J. C. Smyth, “States Shuffle Poll Locations to Protect Seniors from Virus”, (March 11, 2020), as cited from: <https://abcnews.go.com/Health/wireStory/states-shuffle-poll-locations-protect-seniors-virus-69539275>.

¹⁰⁷ J. C. Smyth, “States Shuffle Poll Locations to Protect Seniors from Virus”, (March 11, 2020), as cited from: <https://abcnews.go.com/Health/wireStory/states-shuffle-poll-locations-protect-seniors-virus-69539275>.

¹⁰⁸ W. R. Weiser and M. Feldman, Brennan Center, “How to Protect 2020 Vote from the Coronavirus”, (March 16, 2020), as cited from: <https://www.brennancenter.org/our-work/policy-solutions/how-protect-2020-vote-coronavirus>.

¹⁰⁹ Id.

¹¹⁰ Id.

registered voters.” States should provide “self-sealing” postage” to prevent voters from licking the postage.¹¹¹

Offer Voters Multiple Methods for Requesting, Returning, and Receiving Mail Ballots: The Brennan Center recommends that states provide several ways for voters to request a vote-by-mail ballot. For example, states should allow voters to request an absentee ballot via phone, mail, and online. States should ensure that voters can return ballots in a secure manner by having security cameras outside ballot drop box locations. Voters who are unable to return their ballots should be able to easily assign a designee to return their ballot. Dēmos recommends that states “[a]llow Native voters to use tribally-designated buildings as their address for receiving and returning Vote-By-Mail ballots.”¹¹²

Ease Deadlines for Requesting, Receiving, and Returning Vote-by-Mail Ballots: Voters should be able to request an absentee ballot “as close as possible to Election Day.” States should be lenient to voters who experience administrative issues due to Covid-19, such as U.S. Postal delays or “ballot drop box retrieval.” All extensions, however, should comply with “federal Electoral College deadlines.”¹¹³

Extend Deadlines for Processing and Counting Vote-by-Mail Ballots: The Brennan Center recommends that states extend deadlines for processing and counting absentee ballots. Before Election Day, states should allow election officials to process vote-by-mail ballots. To ensure a “fair and accurate count,” states should extend deadlines for resolving “election disputes.” States should also allocate funds needed to address an increase in the volume of vote-by-mail ballots. This process may include “purchasing high-speed ballot scanners,” “automated mail sorting machines,” and “additional warehouse space.”

Opportunity to Cure: States should give people who vote by mail the opportunity to cure their ballots if they are rejected, which often happens because a signature does not match or is missing. A study by the Florida ACLU found that Black and Brown voters were more likely to have their ballots rejected. See <https://www.aclufi.org/en/publications/vote-mail-ballots-cast-florida> (in 2016: 1.9% of Black voter ballots, 1.8% of Hispanic voter ballots, 0.7% of white voter ballots). This is a particularly important issue during the COVID crisis when voting-by-mail will be more prevalent.

¹¹¹ Id.

¹¹² L. Williamson, “How to Build a Racially Inclusive Democracy During COVID-19 and Beyond”, pp. 7, (April 28, 2020), as cited from: https://www.demos.org/sites/default/files/2020-04/How%20to%20Build%20a%20Racially%20Inclusive%20Democracy%20During%20COVID-19%20and%20Beyond_0.pdf.

¹¹³ W. R. Weiser and M. Feldman, Brennan Center, “How to Protect 2020 Vote from the Coronavirus”, (March 16, 2020), as cited from: <https://www.brennancenter.org/our-work/policy-solutions/how-protect-2020-vote-coronavirus>.

Voter Registration

Provide Same-Day Voter Registration: Potential voters should be allowed to register to vote with same day registration. Same-day registration is when individuals can register to vote and cast a ballot on the same day. [Demos](#) recommends that states provide same-day registration for the duration of the early voting period.

Implement Online Voter Registration: Potential voters must be able to register to vote through online voter registration. Almost every state has implemented online voter registration. Arkansas, Maine, Mississippi, Montana, New Hampshire, South Dakota, Texas, and Wyoming still have yet to implement online voter registration. However, states should ensure that their online voter registration systems can deal with the capacity of having more people than usual accessing the voter registration website.

Offer Flexible Voter Registration Deadlines: During Covid-19, states should maintain flexible voter registration deadlines. If a state notices a high rate of voters being unable to register, it should extend the voter registration deadline. For example, on March 19, 2020, voting rights groups in Ohio called for an extension of the voter registration deadline.

Voter Education and Manipulation Prevention

Notify Voters of All Changes to Election Dates or Voting Procedure: States should seek to educate the public on any changes to voting procedure or election dates. This voter education should include ensuring that states are taking necessary measures to “combat disinformation.”

Recommendations For New Jersey

In light of the COVID-19 pandemic, the [New Jersey Institute for Social Justice](#), along with other organizations, wrote a letter to New Jersey’s Governor Murphy calling for New Jersey to mail all registered voters mail-in ballots along with pre-paid postage. New Jersey should provide pre-paid postage for all its election materials, such as stamps and sealable envelopes.¹¹⁴

Additionally, the New Jersey State Legislature enacted online voter registration, but New Jersey as yet to implement online voter registration. In light of the COVID-19 pandemic, New Jersey should work to expedite its implementation of online voter registration. New Jersey should also allow voters to request an absentee ballot online.

¹¹⁴ J. Girard, “Voting Rights Advocates Urge Gov. Murphy and Sec. of State Way to Ensure Robust Elections During Public Health Crisis, (March 27, 2020), as cited from: https://www.njisj.org/voting_rights_advocates_urge_gov_murphy_and_sec_of_state_way_to_ensure_robust_elections_during_public_health_crisis.

Table 1: Postponed and or Modified Voting for 2020 Elections – Last Updated April 23, 2020

State	Absentee Voting Procedure in Light of COVID-19
AK	<p>Alaska extended the Alaska Democratic Presidential Primary vote-by-mail deadline from March 24, 2020 to April 10, 2020.</p> <p><u>Who can vote absentee:</u> Alaska voters must provide an excuse to vote absentee.</p> <p><u>How to apply:</u> Apply by mail.</p> <ul style="list-style-type: none"> The Alaska Democratic Presidential Primary will only be vote-by-mail. Ballots must be returned by April 10, 2020. In-person voting for the Alaska Democratic Presidential Primary was set for April 04, 2020. <p><u>Voted Ballot Return Deadline:</u> 10 days before election (12 PM).</p>
CT	<p>Connecticut postponed 2020 Presidential Primary to August 08, 2020.</p> <p><u>Who can vote absentee:</u> Connecticut voters must provide an excuse to vote absentee.</p> <p><u>How to apply:</u> Apply by mail. If applying within 6 days of the primary due to unforeseen illness, use the emergency application form.</p> <p><u>Absentee Application Request Deadline:</u> 1 day before the election.</p> <p><u>Voted Ballot Return Deadline:</u> Mailed ballot must be received by the municipal clerk by close of polls on August 08, 2020.</p> <p>Note: “Connecticut requires individuals who distribute more than four absentee ballot applications to people outside of their immediate family to register with and obtain those forms from a local town clerk.”</p>
DE	<p>Delaware Presidential Primary rescheduled to June 2, 2020.</p> <p><u>Who can vote absentee:</u> Anyone may vote by mail, in light of the pandemic. Delaware does not have no-excuse absentee voting. Due to Covid-19, however, Delaware is allowing all voters to use the “sick” or “temporarily or permanently physically disabled” reason when requesting an absentee ballot. Voters are also able to request an absentee ballot online.</p> <p><u>How to vote absentee:</u> Apply by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by May 29.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Ballot must be received by the county Department of Elections by close of polls (typically 8pm) on June 2.</p>
GA	<p>Georgia State Primary and Presidential Primary Elections are rescheduled to June 09, 2020.</p> <p><u>Who can vote absentee:</u> Everyone.</p> <p><u>How to vote absentee:</u> Apply by mail, fax, or email (if sent as an attachment). Georgia voters should automatically receive an application in their mailbox.</p> <p><u>Absentee Application Request Deadline:</u> Active voters should automatically receive an application in their mailbox by April 10.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballots must be received by county election officials by June 9.</p>

HI	<p>Democratic Presidential Primary is rescheduled to May 22, 2020.</p> <p><u>Who can vote absentee:</u> Any registered voter enrolled in the Hawai'i Democratic Party may vote by mail.</p> <p><u>How to vote absentee:</u> All registered voters in Hawaii automatically receive a vote-by-mail ballot.</p> <p><u>Absentee Application Request Deadline:</u> All registered voters who are also enrolled in the Hawai'i Democratic Party by April 4 will automatically be mailed a vote-by-mail ballot.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by the Hawaii Democratic Party by May 22, 2020.</p>
IN	<p>State Party and Presidential Primaries are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Voters in Indiana must provide an excuse to vote absentee and cannot request an absentee ballot online. However, anyone may vote by mail in light of the pandemic.</p> <p><u>How to vote absentee:</u> Apply by mail, fax, or email.</p> <p><u>Absentee Application Request Deadline:</u> 12 days before the election (12 PM).</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by the county election board by 12PM on June 2.</p> <p><u>Absentee Applications Available in Language(s):</u> English and Spanish.</p>
KS	<p>Democratic Party Presidential Primary is rescheduled to May 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Kansas has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> The May 02, 2020, Democratic Presidential Primary will only be vote-by-mail. Kansas canceled all in-person voting for the May 02, 2020 Presidential Primary.</p> <ul style="list-style-type: none"> • On March 30, 2020, all registered Democrats in Kansas were automatically mailed an absentee ballot, along with necessary pre-paid postage. • On April 7, 2020, the Kansas Democratic Party sent a supplemental ballot mailing to recently-registered Democrats who were not included in the March 30th mailing. The ballots are sent with pre-paid postage. • Those eligible who did not receive a ballot by April 10, 2020 can request another mail-in ballot until April 24, 2020. <p><u>Absentee Application Request Deadline:</u> 7 days before the election (12PM).</p> <p><u>Ballot Return Deadline:</u> Mailed absentee ballots must be received by the Kansas Democratic headquarters by May 02, 2020.</p>
KY	<p>Party Election and Presidential Primary Election is rescheduled to May 02, 2020.</p> <p><u>Who can vote absentee:</u> Voters in Kentucky must provide an excuse to vote absentee.</p> <p><u>How to vote absentee:</u> Request application by contacting the county clerk.</p> <p><u>Absentee Application Request Deadline:</u> 7 days before the election (12PM).</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by the County Clerk's Office by close of polls (typically 6pm) on Election Day.</p>

LA	<p>Presidential Primary Election is rescheduled to July 11, 2020.</p> <p><u>Who can vote absentee:</u> Voters in Louisiana must provide an excuse to vote absentee.</p> <ul style="list-style-type: none"> • Louisiana has implemented additional emergency procedures for hospitalized voters, who may request to vote-by-mail through July 10, 2020 and may return their vote-by-mail ballots by 8PM on July 11, 2020. <p><u>How to vote absentee:</u> Apply online or by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by July 7.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by the parish registrar by 4:30pm on July 10, 2020.</p>
MD	<p>Maryland State Primary and Presidential Primary Elections are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Maryland has no-excuse absentee.</p> <p><u>How to vote absentee:</u> Apply online or by mail, fax, or email.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by May 26, 2020 for a voter to be mailed or faxed their ballot or by May 29, 2020 for a voter to receive their ballot electronically.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by June 2, 2020 and received by the local election board by 10AM on June 12, 2020.</p>
MT	<p>Montana State Primary and Presidential Primary Elections are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Montana has no-excuse absentee.</p> <p><u>How to vote absentee:</u> Apply by mail or drop-off in person at the county election office.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 12PM on June 1.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> For the June 02, 2020 elections, mailed ballot must be received by the election office or polling place by 8PM on June 2, 2020.</p>
NE	<p>Nebraska State Primary and Presidential Primary Elections are rescheduled to May 12, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Nebraska has no-excuse absentee.</p> <p><u>How to vote absentee:</u> All registered voters will be mailed an application for a vote-by-mail ballot in early April (or apply by mail, email, or fax to your county election official).</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 6PM on May 1.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> For the May 12, 2020 elections, mailed ballot must be received by the county election office by 8PM CT / 7PM MT on May 12, 2020.</p>
NJ	<p>New Jersey State Primary and Presidential Primary Elections are rescheduled to July 07, 2020.</p>

	<p><u>Who can vote absentee:</u> Everyone can vote absentee because New Jersey has no-excuse absentee.</p> <p><u>How to vote absentee:</u> Apply by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by June 30, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by July 7, 2020 and received by the county board of elections within 48 hours of polls closing.</p>
NM	<p>New Mexico State Primary Election and Presidential Primary Election are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because New Mexico has no-excuse absentee.</p> <p><u>How to vote absentee:</u> Apply online or by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 5PM on May 28.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by the county clerk's office by 7PM on election day.</p>
NY	<p>New York State Primary and Presidential Primary Elections are rescheduled to June 23, 2020.</p> <p><u>Who can vote absentee:</u> New York requires voter to provide an excuse to vote absentee. As a result of Covid-19, however, New York is providing no-excuse absentee voting for all elections on or before June 23, 2020.</p> <p><u>How to vote absentee:</u> Apply by mail or online, starting May 24, 2020.</p> <p><u>Absentee Application Request Deadline:</u> Application must be postmarked by June 16, 2020.</p> <ul style="list-style-type: none"> • Voters who are self-quarantining can contact their county board of elections to check if they can apply for a vote-by-mail ballot. <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by June 22, 2020 and received by the local board of elections by June 30, 2020.</p>
OH	<p>Ohio State Primary and Presidential Primary Elections are rescheduled to April 28, 2020. Ohio has no-excuse absentee voting.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Ohio has no-excuse absentee.</p> <p><u>How to vote absentee:</u> Apply by mail (you can put in a request online for an application to be mailed to you, or call your county clerk).</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 12PM on April 25, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by April 27, 2020 and received by May 8, 2020.</p>
OR	<p>Oregon State Primary and Presidential Primary Elections are rescheduled to May 19, 2020. All eligible voters in Oregon automatically receive their ballots.</p>

	<p><u>Who can vote absentee:</u> Everyone can vote absentee because Oregon has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> Register to vote online or by mail.</p> <p><u>Absentee Application Request Deadline:</u> All voters registered to vote by April 28, 2020 will receive a vote-by-mail ballot.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by 8PM on May 19, 2020.</p>
PA	<p>Pennsylvania State Primary and Presidential Primary Elections are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Pennsylvania has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> Apply online or by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 5PM on May 26, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by 8PM on June 2, 2020.</p>
RI	<p>Rhode Island Presidential Primary Election is rescheduled to June 02, 2020. Rhode Island has no-excuse absentee voting.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Rhode Island has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> All voters registered by May 3, 2020 will automatically receive a vote-by-mail ballot. Voters can also apply by mail.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by local board of canvassers by 4PM on May 12, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by 8PM on June 2, 2020.</p>
SD	<p>South Dakota State Primary and Presidential Primary Elections are rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because South Dakota has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> Apply by mail to the county auditor.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by 5PM on June 1, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by county auditors by close of polls (typically 7PM) on June 2, 2020.</p>
D.C.	<p>Presidential Primary Election is rescheduled to June 02, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Washington, D.C. has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> Apply online or by mail, fax, or email.</p> <p><u>Absentee Application Request Deadline:</u> Application must be received by May 26, 2020.</p>

	<p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by June 2, 2020 and received by June 9, 2020.</p>
VA	<p>Virginia Primary Elections is rescheduled to June 23, 2020.</p> <p><u>Who can vote absentee:</u> Everyone can vote absentee because Virginia has no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> Apply online or by mail, fax, or email.</p>
W-VA	<p>West Virginia State Primary and Presidential Primary Elections are rescheduled to June 09, 2020.</p> <p><u>Who can vote absentee:</u> West Virginia requires voter to provide an excuse to vote absentee. As a result of Covid-19, however, West Virginia is providing no-excuse absentee voting.</p> <p><u>How to vote absentee:</u> All voters who have not already requested a vote-by-mail ballot will be mailed an application to vote by mail by April 17, 2020.</p> <p><u>Absentee Application Request Deadline:</u> Voters can also apply by mail by June 3, 2020.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be postmarked by June 9, 2020 and received by start of canvass (June 16, 2020).</p>
WY	<p>Wyoming Democratic Presidential Caucus is rescheduled to April 17, 2020.</p> <p><u>Who can vote absentee:</u> All registered Democrats in Wyoming.</p> <p><u>How to vote absentee:</u> All voters registered as Democrats by March 20, 2020 will automatically receive a vote-by-mail ballot.</p> <ul style="list-style-type: none"> • The April 17, 2020, Democratic Presidential Caucus will only be vote-by-mail. Wyoming canceled all in-person voting for the April 17, 2020 Democratic Presidential Caucus. <p><u>Absentee Application Request Deadline:</u> Voters may request a <i>replacement</i> ballot by March 31, 2020 if original was lost.</p> <p><u>Voted Absentee Ballot Return Deadline:</u> Mailed ballot must be received by Wyoming Democratic Party by April 17, 2020.</p>

Table 1., has a collection of information extracted from several related sources including the National Conference of State Legislatures¹¹⁵ and Vote.org.¹¹⁶

VOTER PHOTO IDENTIFICATION LAWS

Voter photo identification laws (“photo ID”) work to suppress the vote. Many people are barred from voting when states enact voter photo ID laws. The [ACLU](#) reports that voter photo ID laws “disproportionately” affect “low-income, racial and ethnic minorities, the elderly, and people with disabilities.” Photo ID laws also negatively impact voter turnout. As a result of the DMV closures caused by Covid-19, [Dēmos](#) recommends that states remove all photo ID requirements.

¹¹⁵ National Conference of State Legislatures, “COVID-19 and Elections”, (May 21, 2020), as cited from: <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx>.

¹¹⁶ Vote.org, “Voting & COVID-19”, as cited from: <https://www.vote.org/covid-19/>.

Table 3: Categories and Description of the Types of Photo ID in Table 2

Category	Description
<i>Strict</i>	“Voters without acceptable identification must vote on a provisional ballot and also take additional steps after Election Day for it to be counted.”
<i>Non-strict</i>	“at least some voters without acceptable identification have an option to cast a ballot that will be counted without further action on the part of the voter.”
<i>Photo ID Requested/Photo ID Required</i>	“Some states request or require voters to show an identification document that has a photo on it, such as a driver’s license, state-issued identification card, military ID, tribal ID, and many other forms of ID.”
<i>Photo ID Not Required</i>	“States accept non-photo identification such as a bank statement with name and address or other document that does not necessarily have a photo.”
<i>No Documentation Required</i>	These states do not require any photo ID or documentation to vote.

Chapter 8: Concerns for Immigrant Populations by Priscila Abraham

Undocumented Immigrants and Mix-Status Families

“Immigrant health workers have played a critical role in the response to the COVID-19 pandemic.”¹¹⁸ However, taxpaying undocumented immigrants, including undocumented healthcare workers, will not receive a stimulus check.¹¹⁹ “[R]oughly 4.3 million mostly unauthorized immigrants who do not have a Social Security number file taxes using what’s known as a taxpayer identification number,” and only those who file with a Social Security Number will be provided the stimulus benefit.¹²⁰ This policy impacts mix-status families.¹²¹ Even U.S. Citizens who file jointly with undocumented immigrants will not receive a stimulus check.¹²²

Unauthorized workers are also restricted from accessing unemployment benefits.¹²³ While this effects undocumented immigrants, it also effects “visa holders who have been laid off during the crisis[.]”¹²⁴

DACA Recipients

About 29,000 front-line healthcare workers are Deferred Action for Childhood Arrivals (DACA) recipients.¹²⁵ Additionally, “[m]ore than 150,000 other DACA recipients work in other industries. . . including grocery stores, drugstores, transportation and warehousing, manufacturing, and custodial and food service.”¹²⁶ This workforce has been crucial during COVID-19, as so many residents across the country have depended on their services.

Undocumented Students

As part of a stimulus package, Congress provided universities funding to help struggling students cover their expenses.¹²⁷ The Department of Education provided guidelines that only students who qualify for federal financial aid are to be assisted by congressional funding, thereby

¹¹⁸ Infographic: Corona Coronavirus and Immigrant Health Workers, NATIONAL IMMIGRATION FORUM, Apr. 8, 2020, as cited from: <https://immigrationforum.org/article/infographic-coronavirus-and-immigrant-health-workers/>.

¹¹⁹ Astrid Galvan, et al., Millions of Taxpaying Immigrants Won’t Get Stimulus Checks, AP News, Apr. 12, 2020, as cited from: <https://apnews.com/ca1f72133e8d4eec906f93b724ec24b3>.

¹²⁰ Id.

¹²¹ Shannon Dooling, They Followed Tax Rules and Filed On Time. But Some U.S. Citizens Aren't Getting A Stimulus Check, WBUR Apr. 22, 2020, as cited from: <https://www.wbur.org/news/2020/04/22/stimulus-checks-mixed-immigration-status-households>.

¹²² Id.

¹²³ Nicole Narea, The Missing Piece In The Coronavirus Stimulus Bill: Relief for Immigrants, VOX Apr. 1, 2020, as cited from: <https://www.vox.com/2020/4/1/21197017/immigrants-coronavirus-stimulus-relief-bill>.

¹²⁴ Id.

¹²⁵ Bill Aseltyne, et al., There’s Only One Thing Stopping Trump From Deporting Health Care Workers, NEW YORK TIMES Apr. 2, 2020, as cited from: <https://www.nytimes.com/2020/04/02/opinion/trump-coronavirus-daca.html>.

¹²⁶ Id.

¹²⁷ Tal Axelrod, DeVos Blocks Undocumented College Students From Receiving Emergency Aid Amid Pandemic, THE HILL Apr. 21, 2020, as cited from: <https://thehill.com/homenews/administration/494023-devos-rule-blocks-undocumented-college-students-from-receiving>.

excluding undocumented immigrants, including DACA recipients, from receiving much-needed federal assistance.¹²⁸

Safety Concerns

Federal policy does not address whether U.S. Immigration and Customs Enforcement (ICE) can conduct immigration enforcement in health care centers.¹²⁹ While an internal ICE memo prohibits enforcement in “sensitive locations,” including medical treatment and health care facilities, that policy is at the agency’s discretion and can be revoked at any time.¹³⁰ Additionally, “ICE has continued to engage in immigration and enforcement actions, ignoring state and local stay-at-home orders and strict social-distancing guidelines.”¹³¹ Not only do these enforcement exercises add another layer of fear for immigrant communities, but it also makes all communities less safe.¹³²

- In partnership with Open Society Foundation, New York City will disseminate \$20 million in emergency economic relief through the New York City COVID-19 Immigrant Emergency Relief program to assist immigrant workers and their families who have been left out of federal programs.¹³³
- California announced a \$125 million aid package for undocumented workers who were ineligible for federal relief.¹³⁴ The program has been challenged in state court.¹³⁵
- California and Texas are allowing DACA recipients to file for unemployment.¹³⁶
- New York State Medicaid coverage provides emergency services only to undocumented immigrants.¹³⁷

¹²⁸ Id.

¹²⁹ Id. at 4.

¹³⁰ Id.

¹³¹ Id.

¹³² Id.

¹³³ Mayor de Blasio Announces New York City COVID-19 Immigrant Emergency Relief Program with Open Society Foundations, THE OFFICIAL WEBSITE OF THE CITY OF NEW YORK Apr. 16, 2020, as cited from: <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.

¹³⁴ Coronavirus in California: Lawsuit Filed to Stop \$75M in Economic Relief for Undocumented Workers, ABC7 NEWS Apr. 23, 2020, as cited from: <https://abc7news.com/california-coronavirus-undocumented-immigrants-ca-covid-19-workers/6124778/>.

¹³⁵ Id.

¹³⁶ Nicole Narea, The Missing Piece In The Coronavirus Stimulus Bill: Relief for Immigrants, VOX Apr. 1, 2020, as cited from: <https://www.vox.com/2020/4/1/21197017/immigrants-coronavirus-stimulus-relief-bill>.

¹³⁷ New York State Medicaid Coverage and Reimbursement Policy for Services Related to Coronavirus Disease 2019, NEW YORK STATE MEDICAID UPDATE – MARCH 2020 SPECIAL EDITION, NEW YORK STATE DEPARTMENT OF HEALTH March 27, 2020, health.ny.gov/health_care/medicaid/program/update/2020/no07_2020-03_covid-19_reimbursement.htm. For information about the impact of Covid-19 relief packages on immigrant communities and “urgently needed improvements in future relief legislation, see Understanding the Impact of Key Provisions of COVID-19 Relief Bills on Immigrant Communities, 15 NATIONAL IMMIGRATION LAW CENTER, Apr. 1 2020, as cited from: <https://www.nilc.org/wp-content/uploads/2020/04/COVID19-relief-bills-understanding-key-provisions.pdf>.

III. Section 2: Snapshots on Immigrant Rights, Prisoners' Rights, and Housing Rights

This section offers additional insights into Immigrant Rights, Prisoners' Rights, as well as Housing Rights. Each title holds a collection of information and resources expanding on the “responses” and “best practices” which emerged due to COVID-19.

Housing Rights/Homelessness

A. Introduction

For those who live without a home, without shelter, and without security, COVID-19 is a nightmare manifesting as reality. Living on the streets has its very own set of terrifying occurrences and encounters without the added concern of a rapidly spreading virus roaming your space so freely. The risk of transmission of COVID-19 increases when one is faced with housing insecurity and homelessness. This, in turn, complicates treatment upon diagnosis.¹³⁸ Social distancing and self-quarantining are essential preventive measures against the virus and are almost impossible to implement in crowded shelters with communal sleeping areas. For the approximately [550,000 homeless persons](#) in the United States (U.S.), the spread of COVID-19 presents a uniquely grave threat. Those who have homes are struggling to keep them, but for those Americans who don't, calls to remain home are impossible to heed.¹³⁹

With higher rates of comorbidities, the homeless are particularly vulnerable to COVID-19. It is important to keep in mind that a lack of access to primary care, mobility, and poor health status from extended episodes of homelessness place families and individuals experiencing homelessness in a more vulnerable position in terms of infectious diseases.¹⁴⁰ As soup kitchens and food pantries around the city have temporarily suspended operations in response to the outbreak, the situation for those in need of food and shelter is becoming worse. This is alarming, especially since it dramatically increases the number of people in need on the streets.¹⁴¹

B. Responses

[Cities Push for Moratoria](#)

In the short term, some cities and states are addressing some of these issues by providing a temporary stay on evictions, stopping the “sweeping” of encampments, and in some cases,

¹³⁸ Center for Disease and Control and Prevention, “Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials”, (Last revised May 10, 2020), as cited from: <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html>.

¹³⁹ T. Fuller, “Coronavirus Outbreak Has America’s Homeless at Risk of ‘Disaster’”, (March 12, 2020), as cited from: <https://www.nytimes.com/2020/03/10/us/coronavirus-homeless.html>.

¹⁴⁰ N. Lima, R. de Souza, P. Feitosa, J. Moreira, C. Silva, and M. Neto, “People Experiencing Homelessness: Their Potential Exposure to COVID-19”, (April 11, 2020), as cited from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7151321/>.

¹⁴¹ Coalition for the Homeless, “COVID-19 Update”, (May 27, 2020), as cited from: <https://www.coalitionforthehomeless.org/covid-19/>.

providing housing to people who are living in encampments or, at least, providing sanitation for encampments. These are all-important short-term measures. However, many questions remain about how legal advocacy can adequately address needs during a time when health dangers for the homeless are so high. To protect low-wage workers from these ripple effects, two California cities, San Francisco and San Jose, are advancing legislation that would place a moratorium on evictions for people whose wages have been affected by coronavirus-related closures and work stoppages. Washington, D.C. has begun to provide shelter in hotels for its [homeless population](#) after [five homeless people](#) in three separate shelters across the city [tested positive](#) for COVID-19 on March 31.¹⁴²

a. Initial State actions across the US¹⁴³

State Actions

Connecticut	Foreclosures and evictions have been paused by Court Order.
Delaware	Evictions have been paused by the Judiciary.
Indiana	There has been a Governor-ordered pause on tenant evictions
Kentucky	Evictions have been paused by the Judiciary.
Maryland	Foreclosures and evictions have been paused by order of the Governor where nonpayment of rent was caused by reduced income due to the pandemic.
Massachusetts	Legislation banning evictions has been introduced in the state legislature.
Minnesota	Both foreclosure and evictions have been defined by the judiciary as “low-priority cases” and are to be paused .
New York	Evictions have been paused , and the Governor has announced a suspension of mortgage payments.

¹⁴² A. Gomez, “As COVID-19 Cases Increase in Homeless Shelters, D.C. Provides Hotel Rooms for Some Unsheltered Residents”, (April 1, 2020), as cited from: <https://www.washingtoncitypaper.com/news/city-desk/article/21125628/as-covid19-cases-increase-in-homeless-shelters-dc-provides-hotel-rooms-for-some-unsheltered-residents>.

¹⁴³ National Low-Income Housing Coalition, “Eviction and Foreclosure Moratoriums”, (April 4, 2020), as cited from: <https://nlihc.org/eviction-and-foreclosure-moratoriums>.

New Jersey	The Governor has declared an indefinite moratorium on evictions and the removal of people from foreclosed homes. The state legislature is also working to pass legislation expanding the order.
North Carolina	All non-emergency legal matters have been paused (interpreted as banning evictions and foreclosure proceedings).
Pennsylvania	All tenant and foreclosure evictions have been paused by the Judiciary.
South Carolina	All evictions and foreclosures will be paused by the Judiciary.
Texas	All evictions will be paused by the Judiciary.
Virginia	Non-emergency legal matters will be paused by the Judiciary.
Washington	The eviction of tenants has been paused by the Governor.

b. Coalition for the Homeless: A Model Response

NYC's Coalition for the homeless has created a holistic model for addressing the urgent needs of the homeless and people who live in hotels, vacant homes, or encampments who are at imminent risk of eviction or arrest during the COVID-19 pandemic.¹⁴⁴ The Coalition continually models the city's responses and formulates policy recommendations. The Coalition has created a Crisis Hotline, which is open to all homeless individuals, and has partnered with Doctors without Borders to provide unsheltered homeless people with showers, toilets, bottled water, snacks, socks, and other essentials. Their Grand Central Food Program has increased meal production by 40%; they are distributing over 20,000 bottles of hand sanitizer, supplying more than 100,000 surgical masks, and distributing thousands of prepaid cash cards.¹⁴⁵

The Coalition's permanent housing programs also continue to provide the dignity and safety of a home to more than 100 formerly homeless families and single adults. Coalition for the Homeless and other housing and health care advocates sent a letter calling on Mayor de Blasio and Governor Cuomo to open vacant hotel rooms for sick and vulnerable homeless New Yorkers during the COVID-19 crisis.¹⁴⁶ They have conducted community education and outreach and, in

¹⁴⁴ Coalition for the Homeless, "Coalition for the Homeless COVID-19 Response", as cited from: <https://www.coalitionforthehomeless.org/coalition-for-the-homeless-covid-19-response/>.

¹⁴⁵ Id.

¹⁴⁶ Coalition for the Homeless, "Housing, Health Care, and Other Advocates Call on Mayor de Blasio and Governor Cuomo to Open Vacant Hotel Rooms for Sick and Vulnerable Homeless New Yorkers During COVID-19 Crisis", (April 3, 2020), as cited from: <https://www.coalitionforthehomeless.org/press/housing-health-care-other-advocates-call->

partnership with the Western New York Law Center, prepared COVID-10-related materials for the government and non-profit leaders.

c. Policy Statements

Both the American Medical Association and American Public Health Association have adopted official policy statements supporting the protection of the civil and human rights of individuals experiencing homelessness and opposing laws and policies that criminalize individuals experiencing homelessness for carrying out life-sustaining activities conducted in public spaces when there is no private space available.¹⁴⁷

The National Lawyers Guild (NLG) has declared housing to be a human right.¹⁴⁸ People have the opportunity to send a [letter](#) or issue a [press release](#) calling for communities to stop sweeps and place people into individual housing units in accordance with the CDC guidance.¹⁴⁹

C. Best Practices

Many questions remain about how legal advocates can adequately address needs during a time when health dangers to the homeless are higher than ever before. Their high mobility and increased exposure to abuse, neglect, and crime place them among the most vulnerable populations. The following are some of the best practices that have emerged in the development of effective approaches to addressing the needs of the homeless or those at risk of being homeless:

Collaboration across public health and homeless/housing providers is critical. Responses during COVID-19 to assist the homeless require the close and ongoing collaboration of service providers for the homeless, health systems, and others in developing swift and effective responses to the acute needs of the homeless. Furthermore, it is critical for organizations to share best practices with guidance from the World Health Organization and the CDC.¹⁵⁰

The use of **ongoing assessment and mapping tools** in crafting time-sensitive and evidence-based approaches is another key practice. A dizzying array of mapping and assessment strategies and toolkits have evolved, which will enable advocates to share information so as to not “reinvent the wheel.” For example, the Eviction Lab: [COVID-19 Housing Policy Scorecard¹⁵¹](#) and [Regional](#)

on-mayor-de-blasio-governor-cuomo-to-open-vacant-hotel-rooms-for-sick-and-vulnerable-homeless-new-yorkers-during-covid-19-crisis/.

¹⁴⁷ American Public Health Association, “Housing and Homelessness as a Public Health Issue”, (November 7, 2020), as cited from: <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2018/01/18/housing-and-homelessness-as-a-public-health-issue>.

¹⁴⁸ National Lawyers Guild, “Statement from the NLG Housing and Homelessness Committee on COVID-19”, (April 1, 2020), as cited from: <https://www.nlg.org/statement-from-the-nlg-housing-and-homelessness-committee-on-covid-19/>.

¹⁴⁹ National Law Center on Homelessness and Poverty, “Take Action”, as cited from: <https://nlchp.org/coronavirus/>.

¹⁵⁰ National Health Care for the Homeless Council, “COVID-19 & the HCH Community: Needed Policy Responses for a High-Risk Group”, Issue Brief, (March, 2020), as cited from: <https://nhchc.org/wp-content/uploads/2020/03/Issue-brief-COVID-19-HCH-Community.pdf>.

¹⁵¹ Eviction Lab, “COVID-19 Housing Policy Scorecard”, as cited from: <https://evictionlab.org/covid-policy-scorecard/>

Housing Legal Services: [Eviction Moratoriums Mapping](#)¹⁵² provide updated information about national developments, which can inform such efforts.

Moreover, thinking through a **comprehensive continuum of care** that includes recommendations for various constituencies, as well as provides short-, medium-, and long-term approaches will be vital in attempts to respond to this ongoing crisis.

Finally, the U.S. Department of Housing Urban Development has put together an [Infectious Disease Toolkit for Continuums of Care: Preventing & Managing the Spread of Infectious Disease for People Experiencing Homelessness](#). It states that first, public health emergencies can now be declared by governors or lead health officials in a state or county, as designated by state law authorization. This new tactic saves lives because it allows jurisdiction flexibility in responding to emergency situations. Second, training and education are crucial during the preparation phase. Equipping responders with sufficient information and contingency plans will help prevent more losses when a crisis hits. “Officials may provide infection-specific instructions and local directives.” Third, investing in CoC (Continuum of Care) support is vital. CoC can supplemental staffing, replenish supplies, and identify housing resources. Lastly, organizing communication responses is mandatory. “During a public health emergency, public health officials will lead communication response with the primary-affected parties.”¹⁵³

With each day that we don’t take quick action to advance housing for the homeless—both in times of crisis and times of calm—we place everyone’s health at greater risk.

¹⁵² Regional Housing Legal Services, “Eviction Moratorium”, as cited from: <https://www.rhls.org/evictionmoratoriums/>.

¹⁵³ The Cloudburst Group, Landover, MD, “Infectious Disease Toolkit for Continuums of Care: Preventing & Managing the Spread of Infectious Disease for People Experiencing Homelessness”, (March 2020), as cited from: <https://files.hudexchange.info/resources/documents/Infectious-Disease-Toolkit-for-CoCs-Preventing-and-Managing-the-Spread-of-Infectious-Disease-for-People-Experiencing-Homelessness.pdf>.

Immigrant Justice

A. Introduction

Immigrants and those who serve the immigrant community have been among the most impacted by the COVID-19 crisis. The challenges faced by undocumented immigrants and those seeking asylum have been amplified in ways that pose a grave danger to many Americans.¹⁵⁴

Detained Immigrants: The nearly 400,000 people detained in ICE centers at over 200 centers across the country are already living in unsanitary, crowded conditions, with limited access to food. Detained immigrants are at serious risk of exposure to COVID-19 and, at the same time, are unable to access medical care.¹⁵⁵ The rapid advancement of the global COVID-19 pandemic has caused a public health emergency and presents a dire threat to the patchwork of detention facilities in the U.S., which comprises federal immigrant detention facilities, private detention facilities, and local jails and prisons contracted by the Department of Homeland Security (DHS) to hold immigrant detainees.¹⁵⁶

B. Responses

Organizations have used a range of strategies in addressing the many concerns facing detained immigrants such as litigation, coalition building, and proactive outreach:

a. Litigation

The federal docket is quickly enforcing a broad range of impact *litigation* and advocacy to protect the due process rights of *immigrant detainees* during the COVID-19 pandemic.

Some examples:

The Rutgers Immigrant Rights Deportation and Defense Initiative. This is a groundbreaking New Jersey universal representation pilot program to provide legal representation to detained, low-income immigrants facing possible deportation. Through this project, students are providing pro-bono immigration court representation to individuals detained at the Essex County Correctional Facility (ECCF) or Elizabeth Detention Center (EDC).

¹⁵⁴ M. Chishti and S. Pierce, Migration Policy Institute, “Crisis within a Crisis: Immigration in the United States in a Time of COVID-19”, (March 26, 2020), as cited from: <https://www.migrationpolicy.org/article/crisis-within-crisis-immigration-time-covid-19>.

¹⁵⁵ A. Saadi, M-E. Young, C. Patler, J. Estrada, and H. Venters, “Understanding U.S. Immigration Detention Reaffirming Rights and Addressing Social-Structural Determinants of Health”, *Health and Human Rights Journal*, (May 19, 2020), as cited from: <https://www.hhrjournal.org/2020/05/understanding-us-immigration-detention-reaffirming-rights-and-addressing-social-structural-determinants-of-health/>.

¹⁵⁶ National Immigration Project of the National Lawyers Guild, “NIPNLG Responds to the Coronavirus (COVID-19) Pandemic”, (April 29, 2020), as cited from: https://nipnlg.org/our_lit/practice_advisories/2020_21Mar_COVID_19.html.

Washington DC: “The federal docket is quickly becoming a hotbed for litigation seeking to force officials to protect detained immigrants and inmates during the COVID-19 pandemic.”¹⁵⁷

Portland OR: The response from the Southern Poverty Law Center, the Innovation Law Lab, and Perkins Coie LLP “sought a temporary restraining order mandating that immigration courts take appropriate measures to protect immigrants, attorneys, court staff and the public from COVID-19 without endangering the rights of people in removal proceedings.”¹⁵⁸

Boston MA: “The Worker & Immigrant Rights Advocacy Clinic (WIRAC) at Yale Law School joined the Boston-based Lawyers for Civil Rights (LCR) and the Brazilian Worker Center in filing a class-action lawsuit against Bristol County Sheriff Thomas Hodgson, Bristol County Superintendent Steven Souza, and top federal Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS) officials. The complaint alleges that the dozens of detainees like Ceballos who are held in civil immigration detention at Bristol are at undue risk of contracting and suffering from the novel coronavirus.”¹⁵⁹

“**The American Association of Medical Colleges** ... warned in an amicus brief to the U.S. Supreme Court of a severe shortage in healthcare professionals nationwide [and] explained that the country now very much relies on more than 27,000 grown children of undocumented immigrants in healthcare and medicine, authorized to work under an Obama-era program introduced in 2012, called Deferred Action for Childhood Arrivals (DACA).”¹⁶⁰

Public Interest organizations and coalitions have filed class-action lawsuits, calling for the release of detained immigrants across the U.S. As dozens of courts around the country have found, the legal standards are clear: people in civil detention cannot be detained in circumstances that threaten their health and safety, and they are entitled to seek relief from federal courts through habeas petitions.

The Southern Law Center, the Innovation Law Lab, and Perkins Coie LLP, “Sought a temporary restraining order mandating that immigration courts take appropriate measures to protect immigrants, attorneys, court staff and the public from COVID-19 without endangering the rights of people in removal proceedings.”¹⁶¹

¹⁵⁷ J. Thomsen, “Coronavirus Complaints Against Feds Start Piling Up in DC Trial Court”, (March 31, 2020), as cited from: <https://www.law.com/nationallawjournal/2020/03/31/coronavirus-complaints-against-feds-start-piling-up-in-dc-trial-court/?sreturn=20200429001201#>.

¹⁵⁸ L. Vinson, “SPLC, Partners Seek Temporary Restraining Order to Prevent Immigration Courts from Becoming Public Health Hazard”, (April 1, 2020), as cited from: <https://www.splcenter.org/news/2020/04/01/splc-partners-seek-temporary-restraining-order-prevent-immigration-courts-becoming-public>.

¹⁵⁹ T. Breen, “Covid Concerns Spur Lawsuit Against ICE”, (April 2, 2020), as cited from: https://www.newhavenindependent.org/index.php/archives/entry/ice_lawsuit_covid/.

¹⁶⁰ E. Livni, “Will the U.S. Supreme Court let Trump Deport 27,000 Healthcare Workers Despite Coronavirus?” (March 31, 2020), as cited from: <https://qz.com/1828756/daca-will-scotus-let-trump-deport-27000-healthcare-workers-despite-coronavirus/>.

¹⁶¹ L. Vinson, “SPLC, Partners Seek Temporary Restraining Order to Prevent Immigration Courts from Becoming Public Health Hazard”, (April 1, 2020), as cited from: <https://www.splcenter.org/news/2020/04/01/splc-partners-seek-temporary-restraining-order-prevent-immigration-courts-becoming-public>.

b. Coalition Building

Freedom for Immigrants has formed a coalition of partners, mobilizing a national advocacy campaign for the immediate release of individuals from these centers: <http://bit.ly/flattenICE> and <https://www.freedomforimmigrants.org/>.

c. ICE Monitoring by Congress

- Detention Accountability Toolkit

The U.S. immigration detention system has grown by nearly 50 percent under the Trump administration, and over 50,000 immigrants are held in Immigration and Customs Enforcement (ICE) facilities each day. The lack of transparency and congressional oversight and abuse and neglect have sparked the need for this toolkit. This toolkit is a step-by-step guide to help members of Congress engage in oversight when they visit ICE detention facilities in their district. “This toolkit provides suggestions and recommendations for how to maximize impact prior to, during, and following a congressional visit to an ICE facility.”¹⁶²

d. Policy Reports

- IDLO’s Policy Statement about a Law-Based Response to COVID-19

Good governance and the Rule of Law are crucial for managing the COVID-19 crisis and enhancing recovery in all countries, according to the International Development Law Organization.¹⁶³

- ACLU of the NJ Report on Detained Immigrants

This report provides a comprehensive outlook on the changes made to the immigration detention system under the Trump administration. This includes an in-depth examination of the oversized immigration detention system and why it was never prepared to safely handle the crisis outbreak situation that COVID-19 presented. The flawed system promoted immigrant isolation

¹⁶² National Immigration Justice Center, “Immigration Detention Oversight and Accountability Toolkit”, (May 2019), as cited from: https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-05/Detention-accountability-toolkit_May2019_FINAL.pdf.

¹⁶³ IDLO, “Statement by the Director General of IDLO, Jan Beagle: A Rule of Law Based Response to the COVID-19 Pandemic”, (March 27, 2020), as cited from: <https://www.idlo.int/news/policy-statements/statement-director-general-idlo-jan-beagle-rule-law-based-response-covid-19>.

from legal counsel, limited opportunity for release, and their subjection to mistreatment, abuse, and medical and mental health neglect.¹⁶⁴

- **NYLPI: Detained and Denied Report**

The report urges ICE to immediately release individuals in its custody, basing this dire need on the fact that the facilities are already experiencing difficulty in meeting basic medical needs for those in custody under normal circumstances.¹⁶⁵

e. Legislative Reform

A new Coronavirus Relief Bill is being drafted to ensure that all people residing in the U.S. have access to COVID-19 testing and treatment, regardless of their immigration status.

f. Reports, frameworks and Interventions

COVID-19 has exacerbated existing discrimination and has had a disproportionate impact on people living in poverty, including prisoners, the sur, and immigrants.

Recent policy reports from the ACLU and Detention Accountability serve as models of collaborative, coordinated responses that call upon multiple constituencies to coordinate in ensuring strategic assessment, monitoring, and intervention.

The ACLU issued a comprehensive report that went to print in April 2020, and the following findings, in particular, were of serious concern in the wake of the COVID-10 outbreak: lack of access to proper hygiene, unsanitary conditions, and very crowded conditions with as many as 100 people in one room.¹⁶⁶ The ACLU outlines critical legal mechanisms for tackling these challenges, including detailed recommendations for Congress, Homeland Security, and state and local governments. The ACLU's report provides advocates with critical quantitative and qualitative data about the crisis in ICE detention and recommendations to all of its constituencies, reflecting the kind of comprehensive approach required, i.e., one that coordinates efforts by the city and state governments, Congress, and, to the extent possible, Homeland Security.¹⁶⁷

Detention Accountability also provides robust information requests and strategic interventions at both the local and federal levels to maximize the impact of their monitoring. It is well documented that throughout the ICE detention systems, there are issues with inadequate medical care, poor food quality, and abuse.¹⁶⁸ Detention Watch Network and many other nonprofit

¹⁶⁴ ACLU Research Report, "Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration", (April 30, 2020), as cited from: https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2020-04/Justice-Free%20Zones_Immigrant_Detention_Report_ACLU-HRW-NIJC_April-2020.pdf.

¹⁶⁵ Justice Through Community Power, "Still Detained and Denied", (April 2, 2020), as cited from: <https://nylpi.org/wp-content/uploads/2020/04/NYLPI-report-Detained-Denied.pdf>.

¹⁶⁶ National Prison Project of the American Civil Liberties Union, "Abandoned and Abused: Complete Report", pp 82., as cited from: <https://www.aclu.org/report/abandoned-abused-complete-report>.

¹⁶⁷ National Prison Project of the American Civil Liberties Union, "Abandoned and Abused: Complete Report", pp. 10-13, as cited from: <https://www.aclu.org/report/abandoned-abused-complete-report>.

¹⁶⁸ *Id.* at 17.

organizations are available to assist in identifying relevant stakeholders and facilitating meetings. Some key stakeholders to consider contacting include families of detained individuals or people who have previously been detained at the facility, visitation groups that are regularly at the facility, local civil rights or human rights advocacy groups that are familiar with issues in the facility, and legal service organizations that provide representation or know-your-rights programming at the facility.

Finally, a number of organizations, including Human Rights Watch and others, have articulated an international human rights framework that offers a trans-national perspective on these issues and provide additional ways for litigators, policymakers, and activists to craft a long-term strategy.¹⁶⁹

C. Best Practices

a. Emerging Best Practices for Addressing Detained Immigrants

The issues impacting those in detention are a confluence of immigrant health, human rights, and public policy issues at the state, national, and global levels. Given the complexity of the problems, including the current political context in which immigration laws have become increasingly punitive and detention is indefinite, it is all the more important for us to develop new partnerships between health care professionals, legal experts, and others in identifying collective actions, and the stakeholders need to shift the system at the macro, global, and multinational levels.

In crafting effective short- and long-term approaches, we have noted a number of promising developments:

- First, in assessing, monitoring, and identifying the ongoing issues, we noted that more organizations are using more rigorous System Mapping and other tools that assist in untangling the complex constellation of issues and developing effective solutions.¹⁷⁰
- Second, lawyers are working closely with public health professionals and experts. As such, they have been able to act with more informed data at hand and respond directly to the underlying root issues that confront detained immigrants and others.¹⁷¹
- Third, in advocating for more partnerships of international human rights networks and using an international rights framework in advocating for this agenda, COVID-19 responses must be evidence-based, legal, necessary to protect public health, non-

¹⁶⁹ S. D. Burgerman, “Mobilizing Principles: Role of Transnational Activists in Promoting Human Rights Principles”, *Human Rights Quarterly*, Vol. 20, No. 4 (1998), at 1–3, as cited from: https://www.jstor.org/stable/762793?seq=1#metadata_info_tab_contents.

¹⁷⁰ Systems Grantmaking Resource Guide, “Systems Mapping”, as cited from: <http://systems.geofunders.org/systems-resources/systems-mapping#header-2>.

¹⁷¹ A. Saadi, M-E. Young, C. Patler, J. Estrada, and H. Venters, “Understanding U.S. Immigration Detention Reaffirming Rights and Addressing Social-Structural Determinants of Health”, *Health and Human Rights Journal*, (May 19, 2020), as cited from: <https://www.hhrjournal.org/2020/05/understanding-us-immigration-detention-reaffirming-rights-and-addressing-social-structural-determinants-of-health/>.

discriminatory, time-bound, and proportionate. The rule of law approach framework, emphasizing the inclusion of public health law, is consistent with international health regulations and would allow for distress emergency measures. Moreover, the rule of law provides concrete pathways or post-emergency recovery to ensure that initial responses are suitable and will address the continuing health and socioeconomic consequences of the pandemic. It must also build and strengthen conditions to support the resilience of communities against future crises. The rule of law is critical to governments' capacity to respond to emergencies, lay groundwork for recovery, and help communities build resilience against future shock.¹⁷²

In conclusion, COVID-19 responses must be evidence-based, legal, devoted towards protecting public health, non-discriminatory, time-bound, and proportionate.

¹⁷² Human Rights Watch, "COVID-19: A Human Rights Checklist", (April 14, 2020), as cited from: <https://www.hrw.org/news/2020/04/14/covid-19-human-rights-checklist>.

Prisoners' Rights

A. Introduction

Although, in theory, prisoners have the same rights to health as anyone else, the reality is very different.¹⁷³

Incarcerated Population: The Epicenter of the Epicenter

Incarcerated individuals are particularly vulnerable to the ravages of COVID-19 for a variety of reasons. First, nearly 50% of prisoners have chronic health issues, putting them at significantly heightened risk of COVID-19 infection and severe complications. In addition, even in the best of times, prisons and jails suffer from overcrowding and are places where people come into close contact with each other on a near-constant basis. Further compounding the problem is the lack of hygienic practices, where prisoners are often denied access to common hygiene products, including soap water and toilet paper, thereby creating a breeding ground for the virus. Finally, the notorious lack of access to medical care for the incarcerated has led to one of the highest infection rates of any population. In short, close quarters, unsanitary conditions, and low quality of healthcare conspire to make prisoners among the most vulnerable populations during this pandemic. According to the Justice Collaborative, the outbreak in prisons poses a threat not only to the 2.3 million incarcerated Americans but, in some sense, to the entire nation.¹⁷⁴

See: The Marshall Project is [compiling data](#) on the prevalence of COVID-19 infection in prisons across the country.¹⁷⁵ The following table was last updated on 25th May, 2020.

State	Total Cases	Per 100,000 Prisoners
Federal	4,664	2,706
Ohio	4,550	9,330
Michigan	3,262	8,656
Tennessee	2,649	12,525
Texas	2,214	1,580
Arkansas	1,246	6,853
Florida	1,191	1,297
California	915	772
Virginia	902	3,158

¹⁷³ T. Burki, "Prisons are 'in no way equipped' to Deal with COVID-19", (May 2, 2020), as cited from: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30984-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30984-3/fulltext).

¹⁷⁴ N. Wetsman, "Prisons and Jails are Vulnerable to COVID-19 Outbreaks", (March 7, 2020), as cited from: <https://theintercept.com/2020/05/06/coronavirus-prison-jail-mass-incarceration/>
<https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

¹⁷⁵ The Marshall Project, "A State-by-State Look at Coronavirus in Prison", (Updated May 22, 2020), as cited from: <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

Kansas	866	8,756
New Jersey	830	4,587
Connecticut	684	5,598
Indiana	657	2,443
North Carolina	644	1,906
Colorado	486	2,791
New York	471	1,101
Louisiana	438	1,386
Georgia	415	758
Massachusetts	375	4,588
Kentucky	358	3,039
Pennsylvania	227	515
Illinois	204	553
Arizona	151	362
Oregon	143	989
Delaware	141	3,049
Minnesota	116	1,343
Maryland	102	543
South Carolina	65	366
Vermont	45	3,201
Missouri	44	169
Wisconsin	40	177
Washington	34	201
Iowa	23	274
New Mexico	22	334
Mississippi	20	107
Utah	10	163
North Dakota	10	804
Rhode Island	9	393
Alabama	9	43
Nebraska	7	125
West Virginia	2	39
South Dakota	2	54
Oklahoma	2	8
Montana	2	53
Alaska	2	40

Nevada	1	8
Maine	1	50
Wyoming	0	0
New Hampshire	0	0
Idaho	0	0
Hawaii	0	0

B. Responses

Nationwide efforts are intensifying to implement strategies for containment among community members.

a. Litigation

Across the country, lawyers have brought class action suits, challenging the failure to provide prisoners and jails adequate care and, in some cases, requesting the immediate release of people with preexisting medical conditions. The ACLU-DC and the DC Public Defender's Office [brought](#) a class-action lawsuit against the DC Department of Corrections alleging that the DOC has not adequately screened or tested inmates for COVID-19 and that it has not done enough to prevent the virus from spreading. The ACLU of Kansas [filed](#) a class-action petition asking the Kansas Supreme Court to immediately release incarcerated people in Kansas DOC facilities who have preexisting medical conditions, which leave them especially vulnerable to COVID-19. The Los Angeles-based COVID-19 Rapid Response, as well as a number of incarcerated individuals, sued Los Angeles County for its failure to implement constitutionally mandated procedures to protect incarcerated people from contracting COVID-19 and to comply with guidelines issued by the CDC and the CA Department of Public Health. See Professor Margo Schlanger's COVID-19 class action and group litigation cases tracker at the Civil Rights Litigation Clearinghouse.

b. Statewide Coalitions Focus on Related Criminal Reform

Across the country, courts, prosecutors, and defenders are attempting to expedite bail hearing, expand pre-trial release, and expedite the release of non-violent offenders in an attempt to address the issue of prison overcrowding. For example, in a New Jersey [order](#), the culmination of collaborative work with the ACLU, the State Public Defenders, and the County Prosecutor's office stated that all county jail inmates would be released. However, prosecutors and the attorney general's office could file individual objections with the court, explaining why an inmate would pose a "significant risk" to the safety of the public.¹⁷⁶ In Cook County, Illinois, a March-23 court order to make COVID-19-based jail motions detail an expedited bond process for inmates who are elderly, pregnant, or have underlying conditions, such as asthma, diabetes, or a heart condition. Inmates arrested for misdemeanors, nonviolent offenders, people who received bail but

¹⁷⁶ Supreme Court of New Jersey Docket NO. 084230, "In the Matter of the Request to Commute or Suspend County Jail Sentences", Consent Order, (March 22, 2020), as cited from: https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.

cannot afford to pay, and individuals who qualify for electronic monitoring but have no home to go to are also included in the expedited bond process. Cook County Circuit Court operations are limited to emergency matters, including bail reviews, and judges are available seven days a week to hear bail requests.

Columbia Law School’s Live in the Time of COVID-19 features a [Chapter](#) focused on the relevant case law, standards, and potential remedies available to prisoners.¹⁷⁷

c. Proliferation of Tracking Mechanisms

With thousands of jurisdictions making ongoing policy changes and local advocacy groups across the country issuing new demands, it is impossible to track all ongoing developments in one place. More information and an additional list of resources have been presented as follows:

Various organizations, including **the Justice Collaborative**¹⁷⁸ and **Fair and Just Prosecution**¹⁷⁹, have assembled an index of authorities—legal, medical, and governmental—which will serve as a vital tool for advocates who are engaging in litigation or pressuring decision-makers to take action. Other organizations are providing daily updates on reform efforts, as well as responses; they are also providing advocates with timely and comprehensive guidance needed to craft effective solutions. The Justice Collaborative offers a comprehensive list of recommendations for justice system reforms from experts and advocates across the country and other resources.¹⁸⁰

Moreover, the **Justice Action Network** provides daily COVID-19 updates on new reforms, statistics, and advocacy efforts throughout the country.¹⁸¹

A **crowdsourced spreadsheet** that serves as an index of authorities (medical, legal, governmental) is another useful tool for advocates who are writing petitions or pressuring decision-makers to take action.

Professor Sharon Dolovich at the **UCLA School of Law** has shared a growing [comprehensive spreadsheet](#), including results from a state-by-state survey of changes in visitor policies, requests for population reduction, and actions taken to reduce the incarcerated population.

The Justice Management Institute has cataloged updates on criminal justice system responses to COVID-19 at the state and local levels, including changes being made by jail systems, law enforcement agencies, probation and parole systems, prosecutors, and public defenders.

¹⁷⁷ K. Pistor, “Law in the Time of COVID-19”, (April 20, 2020), Chapter 1, as cited from: <https://scholarship.law.columbia.edu/books/240/>.

¹⁷⁸ The Justice Collaborative, “Projects”, as cited from: <https://thejusticecollaborative.com/projects/>.

¹⁷⁹ Fair and Just Prosecution, “Our Work and Vision”, as cited from: <https://fairandjustprosecution.org/about-fjp/our-work-and-vision/>.

¹⁸⁰ The Justice Collaborative, “A Blueprint for a Safer and More Just America”, as cited from: <https://thejusticecollaborative.com/about/blueprint/>.

¹⁸¹ Justice Action Network, “See Daily Updates on COVID-19 and the Justice System”, as cited from: <https://www.justiceactionnetwork.org/>.

The Appeal is tracking demands and local and state government responses to the COVID-19 pandemic. This information is organized both geographically and chronologically and includes policies regarding the justice system, elections, healthcare and insurance, and paid sick leaves.

Prison Policy Initiatives is tracking jails and prisons taking steps to slow down the spread of COVID-19. <https://www.prisonpolicy.org/blog/2020/03/18/detainers/>

C. Best Practices and Policy Reform

*“The unmet needs of incarcerated people have long been ignored. This historic moment requires calculated steps and nationwide preparation for the unforeseen aftermath of COVID-19. We must remember the millions of incarcerated people who cannot plan for themselves yet remain inextricably tied to the core of our public health system.”*¹⁸²

At the same time, a number of organizations are compiling best practices and policy recommendations to inform and guide the efforts of lawyers, activists, judges, and policymakers in their efforts to promote public health and safety. For example, the Urban Institute has compiled resources from all levels of government, advocacy organizations, and academic institutions and includes best practices and reform efforts for all aspects of addressing this crisis.¹⁸³ The Vera Institute for Justice provides guidance for various selected stakeholders, such as the immigration sector, law enforcement, prosecutors, defenders, judges, and youth facilities, as to how to take precautionary measures in light of COVID-19.¹⁸⁴ The Prison Policy Initiative has assembled fact sheets that articulate why incarcerated individuals are at risk, and it offers recommendations for addressing this growing crisis.¹⁸⁵

a. Justice Collaborative Initiatives

1. Articulate why prisons and jails are particularly vulnerable to COVID-19 outbreaks¹⁸⁶
2. Provide a “fact sheet” of practices for jails and prisoners¹⁸⁷
3. Provide recommendations to courts about steps they should take

¹⁸² O. T. Oladeru, A. Beckman, and G. Gonsalves, Health Affairs, “What COVID-19 Means for American’s Incarcerated Population—and How to Ensure It’s Not Left Behind”, (March 10, 2020), as cited from: <https://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/>.

¹⁸³ Urban Institute, “Features”, as cited from: <https://www.urban.org/features/prison-research-and-innovation-initiative>.

¹⁸⁴ Vera Institute of Justice, “Vera Institute of Justice Releases Comprehensive Coronavirus Guidance Briefs for Criminal & Immigration Justice System”, (March 18, 2020), as cited from: <https://www.vera.org/newsroom/vera-institute-of-justice-releases-comprehensive-coronavirus-guidance-briefs-for-criminal-immigration-justice-system>

¹⁸⁵ Prison Policy Initiative, “Fact Sheets”, as cited from: <https://www.prisonpolicy.org/factsheets.html>.

¹⁸⁶ The Justice Collaborative, “Explainer: Prisons and Jails Are Particularly Vulnerable to COVID-19 Outbreaks”, (March 2020), as cited from: <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

¹⁸⁷ The Justice Collaborative, “COVID-19 Fact Sheet: Practices for Jails and Prisons”, (March 2020), as cited from: <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJC-Fact-Sheet-COVID19-Practices-for-Jails-and-Prisons.pdf>.

b. How We Can Best Address Health Care Needs in Our Most Vulnerable Populations

Several themes have emerged from the growing number of policy experts about how we can best address health care needs among our most vulnerable populations. First, it is critical that policymakers and litigators collaborate in their efforts to ensure that health care concerns are met through a coordinated response that includes policy reform and litigation. Second, while there are many concerns, it would seem that the single most urgent concern is to reduce overcrowding through a number of interrelated initiatives, including releasing prisoners near the end of their term, reducing the number of arrests and bookings, releasing people held pre-trial, reducing admissions to state prisoners, and suspending medical copays. Finally, there is a consensus that the toll that COVID-19 has taken on jails and prisons has now become a toll that our entire society will bear. Therefore, the time is now for local, state, and federal officials to put “health before punishment” and to protect vulnerable populations.

c. Suggestions Offered by the Prisoner Policy Initiatives

- Admissions can be reduced. This may be the simplest strategy that would show quick results because of the high turnover in jails.
- Police can reduce the number of arrests, particularly for what they determine to be “petty offenses.”
- Prosecutors can refuse to prosecute certain offenses and consent to release on one’s own recognizance.
- Courts can vacate “bench warrants” (warrants for unpaid court fines/fees and for failure to appear for hearings) so that law enforcement can focus on public safety concerns and so that people with active bench warrants do not avoid seeking medical attention in fear of arrest. Recognizing the extreme economic stress that most low-income people will experience during this time, courts should refuse to jail anyone for unpaid fines and fees, automatically postpone any court hearings related to fines and fees, or just proactively forgive these debts. In addition, jails should refuse to admit people accused of violating technical rules of their state probation or parole. As we recently found, technical violators can make up a huge part of a jail’s population. State and local legislatures can expand the list of “non-jailable” offenses, which are not subject to arrest but can only be fined or cited.
- Release more people. Jail administrators can also accelerate the release of people currently in custody. In situations where administrators and sheriffs may not have the authority to do this on their own, they are still well-positioned to make suggestions to courts, prosecutors, and defense attorneys about who could be released. Here are some suggested categories for release eligibility: people nearing the end of their sentence (35% of people in jails are serving a sentence, typically under a year); people who are medically fragile; people held on low bail amounts; people held for offenses that would not result in detention if they were arrested today, now that some offense-based changes have already been implemented in response to the pandemic.

IV. Conclusion

We would love to believe that our hope for reformation is not misplaced. Even physicians believe that there is healing power in hope.¹⁸⁸

*“We must emerge from this historic moment stronger and fortified in our collective determination to use our gifts, talents, and skills to further justice, fairness, and equity. As Dr. Martin Luther King Jr. penned in his Letter from a Birmingham Jail, “... I am cognizant of the interrelatedness of all communities and states... Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.” As in 1963, we must embrace our shared reality, our mutuality, and acknowledge that unless all of us can breathe, all of us suffer.”*¹⁸⁹

Unfortunately, speculation of a second wave of COVID-19 has begun to emerge in the United States, as new infection counts surpass 2 million as of June 11, 2020. New outbreaks appear weeks after some states began to reopen after Memorial Day.¹⁹⁰ “The Coronavirus has now killed more Americans than every war since the start of the Korean War – combined”¹⁹¹ This is why we hope that this document provides some insight into the effective initial responses and best practices that have emerged, in hopes that they are adopted and built upon in case of a second wave.

¹⁸⁸ E. Leap, “Even During COVID-19, Hope Remains- Dust off your Latin: dum spiro spero”, (April 30, 2020), as cited from: <https://www.medpagetoday.com/infectiousdisease/covid19/86222>.

¹⁸⁹ C. Nelson, “Message from Dean Nelson to the WCL Community”, (June 1, 2020), as cited from: <https://www.wcl.american.edu/news-events/news/message-from-dean-nelson-to-the-wcl-community/>.

¹⁹⁰ Bloomberg, “A Second Wave of COVID-19 is Emerging as States Reopen”, (June 10, 2020), as cited from: <https://fortune.com/2020/06/10/second-wave-of-covid-19-coronavirus-us-states-arizona-florida-texas-california-new-cases-hospitals-case-count/>.

¹⁹¹ L. Lambert, “The Coronavirus has now Killed More Americans than Every War Since the Start of the Korean War – Combined”, (June 10, 2020), Fortune, as cited from: <https://fortune.com/2020/06/10/coronavirus-deaths-us-covid-19-killed-more-americans-korean-war-vietnam-iraq-persian-gulf-combined-how-many-died/>.