

Submission: IACHR Social Forum COVID/USA

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The situation of COVID-19, the public response, and the impact on the realization of rights of people in the United States (U.S.) is dynamic and ongoing – the information provided in this submission is only a snapshot in time. Nevertheless, it is abundantly clear that the pandemic, and the government’s response to it, have highlighted and magnified existing inequalities and injustices long-present in the U.S., in the areas of housing, food security, access to healthcare, education, public corruption and transparency, and racism. This submission will be limited to discussion of the impact of COVID-19 on the U.S. criminal legal system, which has been seriously impacted by the pandemic and insufficient political response to it.

The virus disproportionately affects incarcerated people, the majority of whom are Black, Indigenous, and Latinx. Places of detention have become epicenters and engines of COVID’s spread to a scale not seen in other countries fighting the pandemic. Furthermore, fair trial rights are being undermined by delayed and remote proceedings, which may extend periods of pre-trial detention and interfere with the right to be present at trial and to engage in confidential communications with counsel, in addition to exacerbating inequality of access to communication technology (i.e. internet).

1. Detention

Poor Conditions: COVID-19 is particularly¹ subject to transmission in prisons, jails, police stations and other places of arrest and detention, where physical distancing may be difficult to achieve. This vulnerability to infectious disease is exacerbated in U.S. facilities by overcrowding² and poor access to basic sanitation.³ Due to harsh

¹Carroll, Jenny E., *Pretrial Detention in the Time of COVID-19* (April 14, 2020). Northwestern University School of Law, Northwestern University Law Review Online (2020, Forthcoming) . Available at SSRN: <https://ssrn.com/abstract=3576163>

² Dara Lind, *The Prison Was Built to Hold 1,500 Inmates. It Had Over 2,000 Coronavirus Cases*, ProPublica, <https://www.propublica.org/article/the-prison-was-built-to-hold-1500-inmates-it-had-over-2000-coronavirus-cases> (June 18, 2020).

³ Keri Blakinger and Beth Schwartzapfel, *Soap and Sanitizer Can Keep Coronavirus at Bay, But Many Prisoners Can't Get Them*, USA Today,

sentencing regimes, 11-12% of the incarcerated population in the U.S. is over 55,⁴ and many more live with comorbidities⁵ that can make COVID infection more dangerous. Much of medical care for imprisoned people is regularly inadequate⁶ and delayed.⁷ The set-up can make social distancing impossible:⁸ prisons hold two inmates in a cell no more than 10 feet by 12 feet⁹ and public spaces may be no better; for example, if cafeteria tables are closer than six feet together.¹⁰ Corrections officers in some prisons fail to wear masks. Because of¹¹ these conditions, eight of the top ten Covid-19 hotspots in the U.S. are jails or prisons.¹² The top hotspot is an Ohio prison where more than 80% of the prisoners are infected.¹³ Spread of the virus, and associated deaths, continue to rise in U.S. facilities even where it is controlled in the community, rising 73% in the month of May.¹⁴ In total, there have been at least 46,249 reported cases in prisons.¹⁵

Insufficient Testing: In many cases prisoners are simply not being tested; for example, California has tested only 7% of its prisoners, and New York State only 3%. Of those

<https://www.usatoday.com/story/news/investigations/2020/03/07/prison-policies-inmates-best-coronavirus-practices/4978412002/> (Mar. 9, 2020).

⁴ United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. National Corrections Reporting Program, 1991-2016: Selected Variables. Inter-university Consortium for Political and Social Research [distributor], 2018-08-30. <https://doi.org/10.3886/ICPSR37021.v1>

⁵ Laura M. Maruschak, et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf> (Feb. 2015).

⁶ Steve Coll, *The Jail Health-Care Crisis*, New Yorker, <https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis> (Feb. 25, 2019).

⁷ Carroll, Jenny E., *Pretrial Detention in the Time of COVID-19* (April 14, 2020). Northwestern University School of Law, Northwestern University Law Review Online (2020, Forthcoming). Available at SSRN: <https://ssrn.com/abstract=3576163>

⁸ Ear Hustle, *Episode 39: Us and Them*, <https://static1.squarespace.com/static/5bd0d552e8ba44146721bb3c/t/5e8b44ac193bd13cc7f36f46/1586185400241/Us+and+Them+Transcript.pdf> (Apr. 1, 2020).

⁹ Federal Bureau of Prisons, *Program Statement: Rated Capacities Facilities*, https://www.bop.gov/policy/progstat/1060_011.pdf (June 30, 1997).

¹⁰ Christopher Blackwell, *In Prison, Even Social Distancing Rules Get Weaponized*, The Marshall Project, <https://www.themarshallproject.org/2020/05/28/in-prison-even-social-distancing-rules-get-weaponized> (May 28, 2020).

¹¹ Eileen Guo, *Obsessed With Staying Alive*, StatNews, <https://www.statnews.com/2020/06/12/california-institution-for-men-covid19-outbreak/> (June 12, 2020).

¹² C.J. Ciaramella, *8 of the Top 10 Biggest U.S. Coronavirus Hotspots are Prisons and Jails*, <https://reason.com/2020/04/29/8-of-the-top-10-biggest-u-s-coronavirus-hotspots-are-prisons-and-jails/> (Apr. 29, 2020).

¹³ *Id.*

¹⁴ Jessica Corbett, *This Is Mass Murder*, Salon, https://www.salon.com/2020/06/17/this-is-mass-murder-covid-19-deaths-in-us-prisons-have-risen-by-73-the-past-month_partner/ (June 17, 2020).

¹⁵ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (June 18, 2020).

New York has tested, 40% were infected.¹⁶ The lack of testing (and consequently low reported numbers) has allowed officials to downplay the seriousness of Covid-19 in prisons. Even so, the available numbers have Covid-19 affecting prisoners at a higher rate than the rest of the population: approximately 2% of confirmed cases are in prisons¹⁷, despite prisoners making up only .7% of the U.S. population¹⁸. As inmates are primarily people of color^{19,20} the high levels of Covid-19 in jails and prisons primarily impact minority communities.

Case Study: Andrea Circle Bear²¹

Andrea Circle Bear was a pregnant mother of five, and a member and resident of the Cheyenne River Sioux nation in South Dakota. She became the first female prisoner to die of Covid-19 in federal custody. Her case is an object lesson in the way that inequalities arising from the harshness of the criminal legal system, intersecting with systemic gender and ethnic discrimination, create conditions for excessive and preventable illness and death. Ms. Circle Bear was sentenced to over two years in prison for a minor and accessory offence of maintaining a premises in which drugs were sold. Because she resided on an American Indian Reservation, the case was transferred to federal jurisdiction and subject to harsh federal drug sentencing guidelines. In March, while eight and half months pregnant, she was transferred to a overcrowded federal prison in Fort Worth, Texas (where a whistleblower had recently filed a complaint in relation to lack of COVID testing and treatment) despite her late-term, high-risk pregnancy putting her and her baby at a higher risk for the virus. She developed a fever and cough and was transferred to a prison medical facility, where she was put on a ventilator. Her baby was delivered the next day via Caesarean section, while she was unconscious. Andrea died three weeks later.

¹⁶ Timothy Williams, et al., *Coronavirus Cases Rise Sharply in Prisons Even As They Plateau Nationwide*, New York Times, <https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html> (June 16, 2020).

¹⁷ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (June 18, 2020).

¹⁸ Peter Wagner and Wanda Bertram, *What Percent of the U.S. is Incarcerated?*, Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/> (Jan. 16, 2020).

¹⁹ Federal Bureau of Prisons, *Statistics: Inmate Race*, https://www.bop.gov/about/statistics/statistics_inmate_race.jsp (June 20, 2020), Federal Bureau of Prisons, *Statistics: Inmate Ethnicity*, https://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp (June 20, 2020).

²⁰ United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. National Corrections Reporting Program, 1991-2016: Selected Variables. <https://www.icpsr.umich.edu/web/NACJD/studies/37021/datasets/0001/variables/RACE?archive=nacjd>

²¹ Michael Balsamo, *First Federal Inmate—Who Gave Birth While on A Ventilator—Dies of Coronavirus*, USA Today, <https://www.usatoday.com/story/news/nation/2020/04/29/coronavirus-federal-inmate-who-gave-birth-while-ventilator-dies/3046282001/> (Apr. 29, 2020).

Pre-trial Detention: Pre-trial detainees face similar conditions as convicted prisoners: overcrowding, unsanitary spaces, and a lack of social distancing. These conditions are exacerbated by court closures and delays, which leave more people in jail for longer. New York, for example, has already had to suspend its six day limit on detention for unindicted suspects.²² Additionally, some state prisons have stopped accepting inmates, forcing county jails to hold even more people.²³ These conditions incentivize detainees to plead guilty instead of remaining in a Covid-19 hotspot, waiting for a jury trial that may not happen for months.²⁴

Institutional Responses: Some jails and prisons are trying to ameliorate the dangers of overcrowding. States are attempting to reduce their numbers of pre-trial detainees by eliminating bail, are authorizing release of people being held on nonviolent charges, or motivating police to make fewer arrests.²⁵ Unfortunately, there is some indication that this commitment to releasing people from jail may not be sustained, particularly in the face of mass arrests at recent protests against police violence.²⁶ For example, Cook County jail, which is the origin of 1 in 6 COVID cases in the Chicago area,²⁷ and where 90% of incarcerated people are there merely for lack of money to pay bail, had succeeded in reducing its population to levels unseen for decades, but the population is already again on the rise.²⁸

Many state prisons are releasing inmates early, choosing releases based on how much of the sentence the inmate has served, the nature of the offense, and/or the inmate's

²²Simon Weichselbaum, *Can't Make Bail, Sit in Jail Even Longer Thanks to Coronavirus*, The Marshall Project, <https://www.themarshallproject.org/2020/05/01/can-t-make-bail-sit-in-jail-even-longer-thanks-to-coronavirus/> (May 21, 2020).

²³Chris W. Surprenant, *Covid-19 and Pretrial Detention*, Mercatus, <https://www.mercatus.org/publications/covid-19-policy-brief-series/covid-19-and-pretrial-detention> (Mar. 30, 2020).

²⁴Thomas Maher, *Plea Bargaining in the Shadow of Covid-19*, Duke Law CSJ Blog, <https://sites.law.duke.edu/cs-j-blog/2020/05/19/plea-bargaining-in-the-shadow-of-covid-19/> (May 19, 2020).

²⁵Prison Policy Initiative, *Responses to the Covid-19 Pandemic*, <https://www.prisonpolicy.org/virus/virusresponse.html#state> (June 17, 2020).

²⁶Alice Ollstein and Dan Goldberg, *Mass Arrests Jeopardizing the Health of Protesters, Police*, Politico, <https://www.politico.com/news/2020/06/04/police-arrest-coronavirus-301913> (June 4, 2020).

²⁷Matt Masterson, *Report: 1 in 6 Chicago Covid-19 Cases Can Be Tied to Cook County Jail*, <https://news.wttw.com/2020/06/04/report-1-6-chicago-covid-19-cases-can-be-tied-cook-county-jail> (June 4, 2020).

²⁸Madison Pauly, *Nearly 1 in 6 Coronavirus Cases in Illinois Could Be Tied to Cook County Jail*, Mother Jones, <https://www.motherjones.com/coronavirus-updates/2020/06/nearly-1-in-6-coronavirus-cases-in-illinois-could-be-tied-to-cook-county-jail/> (June 5, 2020).

risk level for infection.²⁹ For most states this means prisoners over 55 years old, convicted of a non-violent drug offense, and within three months of release. However, releases within these parameters are selected based on a “risk assessment” algorithm, which favors white-collar offenders over those convicted for drug-based crimes. In practice, this means that 30% of white inmates are eligible for release while only 7% of black inmates are.³⁰ Moreover, the Bureau of Prisons, though directed to release vulnerable prisoners to home confinement, has not been proactive, forcing many prisoners to instead petition judges for compassionate release.³¹ Such petitions place releases at the discretion of judges and vulnerable to prosecutorial influence, as well as delaying potential release. Some federal releases appear to be political: Paul Manafort and Michael Cohen, both closely connected to President Trump, were released despite having served less than a third of their sentences.³²

Local jails have reduced their populations by an average of 31%.³³ Federal and state prisons have reduced their populations by an average of only 5%.³⁴ By the end of April, approximately 16,600 inmates had been released—out of 2.3 million.³⁵ This is not sufficient to lower the risk posed by overcrowding.

Prisoners who are released have always faced barriers to re-entry such as difficulty finding work or housing and adapting to new technology. Covid-19 has exacerbated these problems. The unemployment rate has been over 13% since May.³⁶ Familiarity with technology has gone from useful to necessary. Where DMV offices closed, getting

²⁹ Prison Policy Initiative, *Responses to the Covid-19 Pandemic*,

<https://www.prisonpolicy.org/virus/virusresponse.html#state> (June 17, 2020).

³⁰Eli Hager, *How Bill Barr’s Covid-19 Prisoner Release Plan Could Favor White People*, The Marshall Project, <https://www.themarshallproject.org/2020/03/28/how-bill-barr-s-covid-19-prisoner-release-plan-could-favor-white-people> (Mar. 28, 2020).

³¹ Walter Pavlo, *Federal Judge Rulings Across Country Inconsistent on Compassionate Release*, Forbes, <https://www.forbes.com/sites/walterpavlo/2020/06/19/federal-judge-rulings-across-country-inconsistent-on-compassionate-release/#6805d7bb4c38> (June 19, 2020).

³²Joseph Neff and Keri Blakinger, *Michael Cohen and Paul Manafort Got to Leave Federal Prison Due to Covid-19. They’re the Exception*, The Marshall Project, <https://www.themarshallproject.org/2020/05/21/michael-cohen-and-paul-manafort-got-to-leave-federal-prison-due-to-covid-19-they-re-the-exception> (May 21, 2020).

³³Dan Berger, *Why Has Covid-19 Not Led to More Humanitarian Releases?*, Boston Review, <http://bostonreview.net/race/dan-berger-jalil-muntaqim-carceral-state> (June 10, 2020).

³⁴ Prison Policy Initiative, *Responses to the Covid-19 Pandemic*, <https://www.prisonpolicy.org/virus/virusresponse.html#state> (June 17, 2020).

³⁵Nick Givas, *Over 16K US Inmates Have Been Released As Coronavirus Crisis Has Progressed*, Fox News, <https://www.foxnews.com/us/here-is-how-many-prisoners-have-been-released-covid-19> (Apr. 16, 2020).

³⁶ Bureau of Labor Statistics, *The Employment Situation—May 2020*, <https://www.bls.gov/news.release/pdf/empisit.pdf> (June 5, 2020).

an official photo ID is impossible, and without an ID it can be impossible to find a job, get housing, or access basic government benefits.³⁷

2. Solitary Confinement

Solitary confinement is considered a form of torture³⁸ and use of it in the U.S. had been declining—but the pandemic reversed that trend. As a result of Covid-19, use of solitary confinement has risen approximately 500%.³⁹ Prisons are placing symptomatic prisoners in solitary confinement instead of taking them for testing and medical care. Because of this essentially punitive response, prisoners underreport symptoms, allowing the virus to continue to spread. Use of solitary has also increased as a way to punish prisoners who protest or speak to the press about unsafe rules and conditions.⁴⁰

3. Policing

Covid-19 has changed policing as cities push to lower their arrest numbers in order to reduce jail populations. Police have been directed to refrain from arresting people for low-level offenses in San Francisco, Philadelphia, Denver, and Fort Worth.⁴¹ The “cite-and-release” alternative to arrest has been expanded in Chicago, Nashville, Detroit, Los Angeles, Tucson, and Washington, D.C., as well as in various smaller municipalities.⁴²

Abusive U.S. police practices caused the country-wide civil rights protests, which raise Covid-19 concerns. The protests, a response to racist police brutality, bring large groups of people into close quarters. However, footage of the protests show most protesters wearing masks and in some cases attempting a level of social

³⁷Christie Thompson, *No Photo ID, No Services: Coronavirus Poses Steep Hurdles After Prison*, The Marshall Project, <https://www.themarshallproject.org/2020/05/26/no-photo-id-no-services-coronavirus-poses-steep-hurdles-after-prison> (May 26, 2020).

³⁸J. Wesley Boyd, *Solitary Confinement: Torture, Pure and Simple*, Psychology Today, <https://www.psychologytoday.com/us/blog/almost-addicted/201801/solitary-confinement-torture-pure-and-simple> (Jan. 15, 2018).

³⁹Jean Casella, *Report: 500% Increase in Use of Solitary Confinement During Covid-19 Puts Hundreds of Thousands of People at Risk*, Solitary Watch, <https://solitarywatch.org/2020/06/15/new-report-finds-that-500-increase-in-use-of-solitary-confinement-during-covid-19-puts-hundreds-of-thousands-of-people-at-risk/> (June 15, 2020).

⁴⁰*Id.*

⁴¹Brennan Center for Justice, *Police Responses to Covid-19*, <https://www.brennancenter.org/our-work/research-reports/police-responses-covid-19> (May 30, 2020).

⁴²*Id.*

distancing.⁴³ The greater danger is presented by the police officers at protests, many of whom do not wear masks.⁴⁴ Most police departments do not penalize officers for not wearing masks.⁴⁵

The police's use of tear gas on the protesters may be promulgating Covid-19.⁴⁶ Tear gas injures and inflames the respiratory system, which hampers the body's immune defenses. The coughing and confusion caused by tear gas may cause protesters to remove their masks. Additionally, the mass arrests resulting from the protests create overcrowded police stations in which social distancing can be impossible. Stations may even overflow: protesters have reported being held in crowded buses, without water to wash their hands.⁴⁷ Many reported that police made no effort to give out masks or sanitizer, and that the officers themselves were not wearing masks.⁴⁸

4. Courts

The pandemic has led to court closures and to the implementation of remote proceedings held via videoconferencing platforms.

Delays: Suspensions of court proceedings have created a backlog that will cause pre-trial detainees to remain in jail for much longer than before the pandemic, possibly years.⁴⁹ Remaining in pre-trial detention raises a person's risk of contracting Covid-19 (see above), but it carries its own problems, such as lost wages (or even jobs), possible eviction, lack of mental health and addiction treatments, and not least,

⁴³Alexis Madrigal and Robinson Meyer, *America Is Giving Up on the Pandemic*, The Atlantic, theatlantic.com/science/archive/2020/06/america-giving-up-on-pandemic/612796/ (June 7, 2020).

⁴⁴ Michael Wilson, *Why Are So Many N.Y.P.D Officers Refusing to Wear Masks at Protests?*, New York Times, <https://www.nytimes.com/2020/06/11/nyregion/nypd-face-masks-nyc-protests.html> (June 15, 2020).

⁴⁵Terry Nguyen, *It Matters That Police Officers Aren't Wearing Masks*, Vox, <https://www.vox.com/the-goods/2020/6/12/21288340/police-officers-masks-protests-coronavirus> (June 12, 2020).

⁴⁶Will Stone, *Tear-Gassing Protesters During An Infectious Outbreak Called 'A Recipe for Disaster'*, NPR, <https://www.npr.org/sections/health-shots/2020/06/05/870144402/tear-gassing-protesters-during-an-infectious-outbreak-called-a-recipe-for-disast> (June 5, 2020).

⁴⁷ Alice Ollstein and Dan Goldberg, *Mass Arrests Jeopardizing the Health of Protesters, Police*, Politico, <https://www.politico.com/news/2020/06/04/police-arrest-coronavirus-301913> (June 4, 2020).

⁴⁸Rosa Goldensohn, et al., *Scores Arrested Amid Floyd Protests for More Than 24 Hours in NYC: Lawsuit*, The City, <https://www.thecity.nyc/2020/6/2/21278679/george-floyd-death-protesters-locked-up-over-24-hours-in-nyc-lawsuit-says> (June 2, 2020).

⁴⁹Seaborn Larson, *Covid Closures Threaten a 'Staggering' Backlog in Court Cases*, Missoulian, https://missoulian.com/news/local/covid-closures-threaten-a-staggering-backlog-in-court-cases/article_e77bd6b0-4bae-5d87-956c-861c4de3e153.html (May 16, 2020).

separation from one's community.⁵⁰ Single mothers held in pre-trial detention may lose custody of their children. These burdens fall most heavily on minority communities.

Court Watchers: Court watch organizations, which help to hold courts accountable, have had difficulties with remote proceedings, in some cases not being able to attend at all.⁵¹ Even when watchers can call in, following the proceedings can be difficult.⁵² New York City is using a different, but still problematic, system: court watchers must go to the courthouse and watch on a screen there, risking contracting the virus.⁵³ Allowing courts to proceed without being held accountable opens the door for violations of due process and undermines trust in the justice system.

5. Defense Rights

The U.S. has not yet held a remote criminal jury trial, but other hearings have gone forward remotely. Remote justice has impacted access to and effectiveness of counsel; has the potential to magnify decision-makers' biases; and negatively affects those with less access to technology.

Counsel: Defense lawyers have expressed frustration over their lack of ability to communicate confidentially when they are not allowed to visit their clients in jail. Not all jails have sufficient and private video-conferencing capability.⁵⁴ Lawyers have expressed distrust of jail phone calls, as recordings of supposedly confidential conversations have been leaked before.⁵⁵ Balancing safety and communication with

⁵⁰Carroll, Jenny E., *Pretrial Detention in the Time of COVID-19* (April 14, 2020). Northwestern University School of Law, Northwestern University Law Review Online (2020, Forthcoming). Available at SSRN: <https://ssrn.com/abstract=3576163>

⁵¹ Jamiles Lartey, *The Judge Will See You on Zoom, but the Public Is Mostly Left Out*, The Marshall Project, <https://www.themarshallproject.org/2020/04/13/the-judge-will-see-you-on-zoom-but-the-public-is-mostly-left-out> (Apr. 13, 2020).

⁵² *Id.*

⁵³ *Id.*

⁵⁴Julie Riddle, *Defense Attorneys Struggle to Protect Clients in the Pandemic*, Alpena News, <https://www.thealpenanews.com/news/local-news/2020/04/defense-attorneys-struggle-to-protect-clients-in-the-pandemic/> (Apr. 6, 2020), Chrissy Madjary, et al., *"How Do I Defend People Now?"*, The Marshall Project, <https://www.themarshallproject.org/2020/04/17/how-do-i-defend-people-now> (Apr. 17, 2020).

⁵⁵Lynn Walsh and Tom Jones, *Millions of Jail Phone Records Possibly Leaked*, NBC San Diego, <https://www.nbcsandiego.com/news/local/securus-technologies-prison-phone-leak-san-diego/104650/> (Nov. 17, 2015), Pine Tree Watch, *Leaked Somerset County Jail Recording Sparks Breach of Attorney-Client Privilege Accusations*, Bangor Daily News, <https://bangordailynews.com/2020/05/07/news/leaked-somerset-county-jail-recording-sparks-breach-of-attorney-client-privilege-accusations/> (May 7, 2020).

non-detained clients also presents issues. Not all clients have phones or internet access, particularly those who are insecurely housed. Lawyers are thus forced to choose between protecting themselves by self-isolating and effectively defending their clients.

Technological Hurdles: Defendants have the right to attend their own trials, but remote trials can make exercising that right impracticable. Attending requires access to a computer and reliable internet access, as well a level of computer literacy. Indigent and elderly defendants are at a disadvantage. Juries are also impacted by the technological requirements. Some courts have tried to combat this: one New Jersey court promised to supply grand jurors with laptops or tablets if necessary—yet required jurors have their own internet access.⁵⁶ When jury pools include only people with reliable internet access, juries will likely skew wealthier, which, in the U.S., means whiter.⁵⁷ Defendants who are Black, Indigenous, and people of color will be facing juries who are more likely to hold biases against them.

Bias: Even when defendants are able to be present, remote hearings have negative effects. They can result in harsher responses from the court, such as judges setting higher bail.⁵⁸ Racial bias towards accused people can increase when they are not physically present in the courtroom and it is more difficult to document evidence of police abuse and torture.

6. Conclusion

The pandemic has increased the disparity of experience between white people and people of color in the U.S. criminal justice system, to the detriment of the latter. Covid-19 has turned jails and prisons, primarily populated by people of color, into viral hotspots where inmates are unable to take precautions and medical care is lacking. Prisons have increased the use of solitary confinement, a recognized torture. The increase in compassionate releases, intended to reduce overcrowding, has disproportionately benefited white inmates. Although many police forces have

⁵⁶Charles Toutant, *Ready or Not, Remote Grand Juries Via Zoom Getting Test Run in New Jersey Due to Covid-19*, Law.com, <https://www.law.com/njlawjournal/2020/05/15/ready-or-not-remote-grand-juries-via-zoom-getting-test-run-in-new-jersey-due-to-covid-19/> (May 15, 2020).

⁵⁷Michael Waters, *Video-Chat Juries and the Future of Criminal Justice*, Wired, <https://www.wired.com/story/video-chat-juries-and-the-future-of-criminal-justice/> (May 21, 2020).

⁵⁸Camille Gourdet et al., *Court Appearances in Criminal Proceedings Through Telepresence: Identifying Research and Practice Needs to Preserve Fairness While Leveraging New Technology*, Santa Monica, CA: RAND Corporation, 2020. https://www.rand.org/pubs/research_reports/RR3222.html.

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stopped arresting for very minor offenses, the mass arrests of protesters against police brutality have filled holding cells and put protesters in danger of contracting the virus. Police have exacerbated this both by the use of tear gas and by their personal refusals to wear masks. Covid-19 has delayed court proceedings, forcing accused persons to stay in jails longer. Remote court proceedings reduce accountability, disadvantage indigent defendants and can magnify racial bias.