People ex rel. Coleman v. Brann: Is Our Zest for Punishment Greater Than Our Value of Life? A Look at Incarceration in the United States During the COVID-19 Pandemic

I. OVERVIEW

For those who are at high risk of contracting and dying from COVID-19, prisons and jails have now become a death sentence.[1] Javier Alvarez, Jessica Pitts, Ronald Harrison, Ken Paraison, and Diamond Purifoy (the "five petitioners") knew this reality all too well.[2] After the five petitioners were convicted of crimes ranging from robbery to violent crimes, they awaited their trial for sentencing.[3] None of the petitioners were sentenced to death for their crimes.[4] However, because of their underlying health conditions, they knew any amount of time in prison would be a death sentence.[5]

A doctor wrote a note for each petitioner stating that they are a high-risk population for contracting COVID-19.[6] The petitioners had a range of underlying health issues including asthma and HIV.[7] The petitioners claimed that not only were they more susceptible because of these underlying health risks, but because of these health issues, they were in contact with the health staff more frequently than other incarcerated people.[8] As one doctor wrote to the court:

> I am writing to you . . . to identify that [Ms. Purifoy] . . . identified as LGBTQ+, is part of a population currently facing elevated risk of illness and death from COVID-19. LGBTQ+ defendants are at

1. People *ex rel.* Coleman v. Brann, 126 N.Y.S.3d 315, 320–21 (N.Y. Sup. Ct. 2020).
2. *Id.*
3. *Id.*
4. *Id.* at 319.
5. *Id.* at 319-21.
6. *Id.*
7. *Id.*
8. *Id.* at 320-21.

> higher risk of being in an immunosuppressive state due to . . . HIV . . . . LGBTQ+ prisoners are at an increased risk of injury during periods of heightened tension, both from other prisoners and DOC personnel. Because LGBTQ+ defendants are in more frequent contact with medical staff (for injectable hormone therapy), the likelihood of their being exposed to COVID-19 is much higher than for other prisoners.[9]

Due to the COVID-19 pandemic, the five petitioners filed a petition for writ of habeas corpus seeking temporary release from custody until sentencing.[10] The New York Supreme Court *held* that: (1) habeas corpus petitions were a permissible vehicle to seek relief from threat of infection; (2) inmates detained pending sentencing after entering guilty pleas were convicts rather than pretrial detainees; (3) the DOC was not deliberately indifferent to health risk posed by COVID-19; and (4) inmates' high risk of flight rendered temporary release from custody unwarranted. *People ex rel. Coleman v. Brann*, 126 N.Y.S.3d 315 (N.Y. Sup. Ct. 2020).

II. BACKGROUND

The five petitioners claim their confinement during the ongoing pandemic violates their Due Process rights and constitutes "cruel and unusual punishment" under the United States and New York Constitutions.[11] For a remedy, petitioners seek writs of habeas corpus directing respondent DOC to release them temporarily from custody until their sentencing.[12] The petitioners claim that the New York City Department of Correction ("DOC") is unable to sufficiently protect them from the COVID-19 infection. According to the petitioners:

> (1) DOC's social distancing policies fall short of the recommendations of the Center for Disease Control (CDC). In fact, petitioners allege, DOC cannot implement adequate social distancing because of the fundamental nature of the jail environment. (2) DOC is separating inmates with confirmed cases of COVID-19 and those with suspected cases from the general population and housing them together in dormitories. According to petitioners, this practice conflicts with CDC guidelines and facilitates the spread of COVID-19. (3) DOC has no plan to protect medically vulnerable inmates, who

9. *Id.*
10. *Id.* at 318.
11. *Id.* at 317.
12. *Id.*

> are at heightened risk if they become infected, by segregating them from the general population. (4) Petitioners allege that DOC's cleaning and disinfecting protocols are inadequate, and not enough cleaning supplies are made available. (5) DOC allegedly has failed to train its correction officers about how to wear protective gear, how to identify COVID-19 cases, and what to do in the event of an exposure or infection. (6) Finally, the policies that DOC has in place to address the pandemic allegedly fall short of the CDC guidelines for correctional facilities, and in any event are not being rigorously followed.[13]

The five petitioners' idea for release is not unfounded. In fact, on the same day the New York Supreme Court heard the petitioners' oral argument, the court also contemplated petitions for writs brought by Rikers Island inmates who had been detained on parole warrants and were awaiting parole revocation hearings.[14] Ultimately the court ordered the release of the Rikers Island inmates.[15] It also granted release for Jessica Pitts, one of the five petitioners.[16]

The court made this decision by first assessing the Due Process claims set forth in *Cooper v. Morin.*[17] *Cooper v. Morin* established a balancing test that seeks to determine "a pretrial detainee's state claim that conditions at his or her jail violate Due Process."[18] The balancing test consists of "a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement."[19] When the Rikers Island inmates brought a claim under the context of COVID-19, the court tailored the balancing test to be "between the harm to each petitioner's health caused by their continued detention at Rikers Island and the government's interest in assuring their presence in court as required for the disposition of their cases." [20]

The writ of habeas corpus primarily has been used by persons accused or convicted of crimes to:

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13. *Id.* at 317-18.
14. *Id.* at 321.
15. People *ex rel.* Giovanniello, No. 260233/20 (N.Y. Sup. Ct. Bronx County Apr. 14, 2020), People *ex rel.* Miller, No. 260251/20 (N.Y. Sup. Ct. Bronx County Apr. 14, 2020); People *ex rel.* Allen, No. 260261/20 (N.Y. Sup. Ct. Bronx County Apr. 14, 2020).
16. *Coleman,* 126 N.Y.S.3d at 318.
17. 49 N.Y.2d 69 (1979).
18. *Coleman* at 321.
19. *Id.*
20. *Id.*

> (1) challenge the State's power to restrain the accused pending trial;
> (2) challenge the manner of pretrial restraint, i.e., either the denial of bail or the severity of bail requirements;
> (3) raise before trial certain matters that if meritorious would bar conviction and perhaps even prosecution; and
> (4) bring post-conviction attacks upon convictions.[21]

A writ of habeas corpus is not available where a judicial determination of the question presented, even if resolved in favor of the defendant, would not result in immediate release.[22]

This idea is important for the five petitioners because if the petitioners are considered "convicts" instead of pretrial detainees (like the Rikers Island inmates), then the Cooper balancing test becomes moot and the standard shifts to cruel and unusual punishment, and not violations of substantive Due Process.[23]

Cruel and unusual punishment is barred in the Eighth Amendment.[24] In the case of the five petitioners, the test for determining cruel and unusual punishment is defining whether or not the respondents were deliberately indifferent to the health risk posed by the conditions on Rikers Island.[25]

This case also looks to the Fourteenth Amendment's Due Process Clause, which protects persons against deprivations of life, liberty, or property without Due Process of law, and those who seek to invoke its procedural protection must establish that one of these interests is at stake.[26] Generally, to establish a substantive Due Process violation, a plaintiff must: (1) identify the constitutional right at stake, and (2) demonstrate that the government's actions were conscience-shocking or arbitrary in the constitutional sense.[27] To test whether a punishment is excessive, it must be determined whether the punishment was greatly disproportionate to the offense for which it was imposed.[28] The second piece of the excessive punishment test is "at least when compared with less stringent punitive measures—it fails to bear a relationship to the accomplishment of legitimate penal objectives or aims which is of sufficient magnitude to

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21. D. MARK ELLISTON & TERRENCE W. KIRK, TEXAS PRACTICE GUIDE: CRIMINAL PRACTICE & PROCEDURE § 26:2 (2021).
22. *Id.*
23. *Coleman,* 126 N.Y.S.3d at 322.
24. *Id.* at 323.
25. *Id.*
26. Horton v. Westling, 284 F. Supp. 3d 213 (N.D.N.Y. 2018).
27. *Id.*
28. 51 A.L.R.3d 111 (originally published in 1973).

justify its severity.[29] In a recent application of this test, Justice Marshall, in his concurring opinion in *Furman v. Georgia*, concluded that the death penalty is a "cruelly and unusually excessive punishment precisely because it serves no legitimate penal purpose more effectively than the less severe punishment of life imprisonment."[30]

III. COURT'S DECISION

In the noted case, the New York Supreme Court held that: (1) habeas corpus petitions were a permissible vehicle to seek relief from threat of infection; (2) inmates detained pending sentencing after entering guilty pleas were convicts rather than pretrial detainees; (3) the city's DOC was not deliberately indifferent to health risk posed by COVID-19; and (4) inmates' high risk of flight rendered temporary release from custody unwarranted.[31]

First, it must be determined what legal analysis will be used to the petitioners' claims that the conditions of their incarceration violate (1) their constitutional Due Process rights and (2) the constitutional prohibition of cruel and unusual punishment. To establish the accurate analysis, the court must decide if the petitioners should be considered as detainees or convicts.[32]

Ultimately, the court sided with the predominant assessment that "persons such as petitioners, who at the time of the alleged constitutional violations were awaiting sentencing after their conviction, are no longer pretrial detainees"[33] Therefore, the court concluded that the petitioners cannot use the foundation of Due Process to challenge the conditions of their confinement.[34] This leads to the *Cooper* balancing test ultimately being inapplicable to their claims because they are seen as convicted criminals and not pretrial detainees.[35] This means that the five petitioners are constrained to arguing this claim through the constitutional prohibition

29. Smith v. Marcellus, 917 F. Supp. 168, 172 (W.D.N.Y. 1995).
30. Furman v. Georgia, 408 U.S. 238, 240, (1972); 51 A.L.R. 3d 111.
31. People *ex rel.* Coleman v. Brann, 126 N.Y.S.3d 315 (N.Y. Sup. Ct. 2020).
32. *Id.* at 321.
33. *See., e.g.,* Darnell v. Pineiro, 849 F.3d 17, 29 (2d Cir. 2017); Tilmon v. Prator, 368 F.3d 521, 523 (5th Cir. 2004) (holding that "a prisoner who has been convicted but has not yet been sentenced has the same status as a sentenced prisoner"); *Coleman*, 68 Misc. 3d 204, 213 (N.Y. Sup. Ct. 2020).
34. *Coleman,* 126 N.Y.S.3d at 323.
35. *Id.*

on cruel and unusual punishment.[36] This requires the five petitioners to make evident that the respondents' acted with deliberate indifference to their health needs.[37]

The reason for this is that convicted criminals can only bring a writ of habeas corpus through the Eighth Amendment and Fourteenth Amendment.[38] The Eighth Amendment states, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[39] The court focused on the concept of cruel and unusual punishment.[40] The test for determining cruel and unusual punishment is defining whether or not the respondents were deliberately indifferent to the health risk posed by the conditions on Rikers Island.[41] The court held that the respondents were not deliberately indifferent to the petitioner's heath and that the respondents have shown that "DOC has made substantial efforts to ameliorate that risk by containing the spread of COVID-19 on Rikers Island."[42] Therefore, petitioners' claim that respondents violated the constitutional prohibition of cruel and unusual punishment fails, and their application must be denied.[43]

Lastly, the New York Supreme Court held that the petitioners' high risk of flight rendered temporary release from custody unwarranted.[44] Although counsel argued that the release would be temporary and the petitioners would return for their sentencing to not risk a lengthier sentence, the court was not persuaded.[45] The court argued that the likeliness of the petitioners to flee is high due to the fact that they all were facing long, definite prison sentences and had already waived their right to appeal.[46] It should also be noted that the amended statute governing bail or recognizance applications, which took effect on January 1, 2020, requires the court to make an individualized determination as to whether the applicant poses a flight risk.[47]

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36. *Id.*
37. *Id.*
38. *Coleman,* 126 N.Y.S.3d at 322.
39. U.S. Const. amend. VIII.
40. *Coleman,* 126 N.Y.S.3d at 323.
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *See* CPL 510.30 (1)(e); *Coleman*, 126 N.Y.S.3d at 323.

The court concluded by rejecting the counsel's position that "the State's only interest is petitioners' appearance for sentencing."[48] In response, the State claims it has an interest in "ensuring that petitioners receive their bargained-for penalty for their illegal conduct."[49]

IV. ANALYSIS

While the New York Supreme Court was correct in holding habeas corpus petitions were a permissible vehicle to seek relief from threat of infection and even that inmates detained pending sentencing after entering guilty pleas were convicts rather than pretrial detainees,[50] their analysis of the cruel and unusual punishment was grossly too literal and shallow. The court held that the respondents were not deliberately indifferent to the petitioner's health and that the respondents have shown that "DOC has made substantial efforts to ameliorate that risk by containing the spread of COVID-19 on Rikers Island." [51] In this holding, the court knowingly did not consider extrinsic factors such as the inherent nature of prisons, a global pandemic, and the populations to which the petitioners belonged. Although the court rejected the counsel's position that "the State's only interest is petitioners' appearance for sentencing," their only retort was that the state has an interest in "ensuring that petitioners receive their bargained-for penalty for their illegal conduct."[52] However, this reasoning is no better in terms of justifying the petitioners being essentially sentenced to likely death. Additionally, the idea that a global pandemic being a part of someone's sentencing could be "bargained for" is deliberately foolish.[53]

Incarcerated individuals are being released from prisons at an unprecedented rate due to COVID-19.[54] In order to address the concerns of the virus spreading in prisons, Attorney General Barr ordered the Federal Bureau of Prisons to identify "at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving

48. *Coleman,* 126 N.Y.S.3d at 323.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *See* Catherine Kim, *Why People Are Being Released From Jails and Prisons During the Pandemic,* VOX (Apr. 3, 2020, 2:10 PM), http://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-COVID-19-incarcerated.

their sentences in home confinement."[55] People rightfully critiqued this mandate as being bias towards white people.[56] Additionally, this is more of a pressing issue for states than federally.[57] There are about 226,000 people incarcerated in federal facilities versus nearly 1.3 million in state prisons, according to the Prison Policy Institute.[58] As of March 31, 2020, it was announced that 900 individuals had been released from Rikers.[59] As of April 1, 2020, more than 231 inmates and 223 staff members had been infected at the Rikers Island jail complex in New York.[60] The rapid spread of COVID-19 in jails and prisons comes from the close living quarters, lack of access to sanitation and hygiene products and insufficient medical care.[61] Prisons were not built to allow for social distancing. It is physically impossible. Prisons do not have nearly enough medical staff or the facilities to be handling a global pandemic and ensuring everyone gets proper care.[62] Even if the DOC was trying their absolute best at controlling the spread, it would still be far from adequate due to the inherent nature and build of detention facilities.[63] Therefore, the DOC, which as a condition of their employment knows the facts mentioned above about prisons, could not be anything other than deliberately indifferent to the health risk posed by COVID-19.

Furthermore, the petitioners all had underlying health conditions and belonged to marginalized communities that made them particularly susceptible to the virus. Individuals with HIV have a history of not getting the treatment they need in prisons and being treated worse than their counterparts.[64] The DOC either knew or should have known that fact. Therefore, knowing the risk was much higher for these petitioners, it seems it was deliberate.[65]

Prisons in the United States have always been used to make those who do not fit into the dominant culture's standards disappear. This includes BIPOC people (specifically Black people), impoverished people, and the LGBTQ+ community. LGBTQ+ people are significantly

55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *See Prison and Jails*, CTR. FOR HIV L. & POL'Y, http://www.hivlawandpolicy.org/issues/prisons-and-jails (last visited Oct. 31, 2020).
65. *Coleman,* 126 N.Y.S.3d at 323.

overrepresented in the carceral state.[66] It is not uncommon to require sex offender registration for queer juveniles convicted of sex crimes as opposed to their heterosexual counterparts.[67] Similarly, "gay and transgender panic defenses—which seek to exculpate a crime of violence when the victim's sexuality or gender identity surprises the accused—remain on the books in a number of jurisdictions, though legislation to ban these defenses is pending in Congress and at least ten states."[68] With this being said, it is clear that the court's refusal to offer release for these specific petitioners is not only based in deliberate indifference to their health, but indifferent or even malevolent towards their identities.[69] The court's refusal to release the petitioners is consistent with the history of the desire to make Black and LGBTQ+ individuals disappear by incarcerating them by any means necessary.[70]

The analysis by the court that the petitioners are more likely to flee has the same algorithmic problems as Barr's federal mandate.[71] Both fail to calculate that this disproportionately releases white, cis, and hetero individuals from sentencing while incarcerating and refusing to release Black, LGBTQ people.[72] This is because Black and queer communities are overpoliced, leading more Black and queer people to be incarcerated and therefore, just by sheer make-up, account for more people fleeing sentencing and those who are incarcerated.[73] This holding, once again, fails to take into account extrinsic factors that should be considered for a more holistic ruling.[74]

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66. *See Prisoners, HIV, and AIDS*, AVERT, http://www.avert.org/professionals/hiv-social-issues/key-affected-populations/prisoners (last visited Oct. 29, 2020).

67. *See* Jessica M. Salerno et. al., *Give the Kid A Break-But Only If He's Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts*, 20 PSYCH. PUB. POL'Y & L. 398, 405 (2014).

68. *See* Matt Kellner, *Queer and Unusual: Capital Punishment, LGBTQ+ Identity, and the Constitutional Path Forward*, 29 TUL. J.L. & SEXUALITY 1, 9–10 (2020).

69. *See* David Artavia, *A Shared Fight: Police Brutality in the LGBTQ+ and Black Communities,* ADVOCATE (Aug. 19 2020, 12:52PM), http://www.advocate.com/exclusives/2020/8/19/shared-fight-police-brutality-lgbtq-and-black-communities.

70. *See* AVERT, *supra* note 66.

71. *See* Catherine Kim, *Why People Are Being Released From Jails and Prisons During the Pandemic,* VOX (Apr. 3, 2020, 2:10 PM), http://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-COVID-19-incarcerated.

72. *See* Criminal Justice, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/criminal-justice (last visited Oct. 30, 2020).

73. *See* Artavia, *supra* note 69; MOVEMENT ADVANCEMENT PROJECT, *supra* note 72.

74. People *ex rel.* Coleman v. Brann, 126 N.Y.S.3d 315, 323 (N.Y. Sup. Ct. 2020).

Is our desire to punish people for wrongdoings so severe that it blinds us to the importance of their humanity and to our own transgressions? This severe desire to punish over the life of a human is cruel and unusual in and of itself. "Eighth Amendment's prohibition against 'cruel and unusual punishments' does not only restrain affirmative conduct, such as prison officials' use of excessive force against prisoners, but also imposes duty upon prison officials to provide humane conditions of confinement and to take reasonable measures to guarantee safety of inmates."[75] Throughout history, the scope of "cruel and unusual punishment" has expanded in meaning.[76] These expansive meanings include inherent cruelty, excessiveness, arbitrariness, and rejection by contemporary society.[77] The court failed to look at each of these factors when they held that no cruel or unusual punishment had occurred.[78]

It is greatly disproportionate to any of the petitioners' crimes to essentially sentence them to death by forcing them into a confined space with thousands of other people, knowing they have severe underlying health conditions that put them at high risk during a global pandemic.[79]

To test for arbitrariness, "[a] penalty should be considered 'unusually' imposed if it is administered arbitrarily or discriminatorily."[80] This test does not have a lot of judicial precedent, which means that it can be interpreted to a large extent.[81] It is arbitrary for someone to prioritize punishment and incarceration in a global pandemic where billions of lives are at risk. Not only is this essentially certain death for the petitioners, but their incarceration also contributes to the spread outside of the prison grounds.[82] Their incarceration directly puts the surrounding community at risk.[83]

It has been uniformly acknowledged that the cruel and unusual punishment clause is not static in scope and "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[84] Therefore, the test for rejection by contemporary society is "if

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75. 51 A.L.R. 3d 111.
76. Furman v. Georgia, 408 U.S. 238, 305 (1972).
77. *Id.*
78. *Coleman,* 126 N.Y.S.3d at 323.
79. *Furman*, 408 U.S. 238, 305 (1972).
80. 51 A.L.R. 3d 111 (Originally published in 1973).
81. *Id.*
82. *See* Edmund L. Andrews, *Stanford Researchers Find COVID-19 Spreads Faster in American Jails Than on Cruise Ships*, STANFORD NEWS (Sept. 24, 2020), http://news.stanford.edu/2020/09/24/covid-19-spread-american-prisons/.
83. *Id.*
84. 51 A.L.R. 3d 111.

popular sentiment abhors it," or if it is found to be "unacceptable to contemporary society" by a court that has reviewed its history and objectively examined society's present practices with respect to it.[85] Since the beginning of the pandemic, there have been mass outcries to release prisoners and to halt incarcerating more people.[86] This is evident through the action of Attorney General Barr, who would not have demanded prisoners be released without the people's demand.[87] "Evolving standards"[88] should not lie with the legal system that is usually far behind the demands of the people, but rather with the progression of humanity as to what we label as cruel and unusual in that time. It is clear that people find incarcerating and keeping people imprisoned during a global pandemic that are at high risk of death from contraction cruel and unusual.[89]

In furtherance, the incarceration of these individuals plays on the paradox of who society deems disposable while simultaneously labeling them as essential during a global pandemic. Prison labor has been even more relied on during the COVID-19 pandemic.[90] Prisons have used incarcerated individuals to mass produce essential items during the pandemic that others, outside of the prison system, stopped producing due to the crowded environments they were forced to work in rapidly spreading the virus.[91] Prisons have heavily relied on the threat of solitary confinement, which also has been debated as cruel and unusual, to compel the incarcerated individuals to work under these conditions regardless of their health.[92] For example, in New York prisons, incarcerated people were forced to produce hand sanitizer for a state-owned corporation that pays the incarcerated workers only $0.26 per hour while the state minimum

85. *Id.*

86. *See* Catherine Kim, *supra* note 54.

87. *See* Sean Collins, *Federal Prisons Are Fighting Coronavirus With Home Release and a Quarantine, But That May Not Be Enough*, VOX (Apr. 1, 2020, 3:10 PM), http://www.vox.com/policy-and-politics/2020/4/1/21202808/coronavirus-federal-prisons-doj-barr-14-day-quarantine.

88. 51 A.L.R. 3d 111.

89. *See* Catherine Kim, *supra* note 54.

90. *See* Eliyahu Kamisher, *Prison Labor is on the Frontlines of the COVID-19 Pandemic*, APPEAL (Oct. 5, 2020), http://theappeal.org/prison-labor-is-on-the-frontlines-of-the-covid-19-pandemic.

91. *See* Savannah Kumar, *Compelling Labor and Chilling Dissent: Creative Resistance to Coercive Uses of Solitary Confinement in Prisons and Immigration Detention Centers*, 36 HARV. BLACKLETTER L.J. 93, 101 (2020).

92. *Id.*

wage is $15.93 Because the pay is not an incentive, the prisons threaten the workers with the disincentive of solitary confinement.[94] Solitary confinement is also used to separate those individuals who are experiencing COVID-19 symptoms.[95] Therefore, the incarcerated individuals feel compelled to work while also hiding COVID-19 symptoms to avoid solitary confinement at all costs.[96] If prisoners tried to stay healthy by using the hand sanitizer they were producing, they could also be sent to solitary confinement because hand sanitizer is considered contraband in prison.[97] Therefore, the petitioners in this case –who all had pre-existing, underlying health conditions – could only consider death or solitary confinement. It is more than possible that the court's decision[98] was based not only on punishing those who are not white, cis, heterosexual males, but also on the desire for profit maximization.[99] All incarcerated conditions, especially during a global pandemic that is certain death for many that have pre-existing, underlying health conditions, are cruel and unusual by nature. No matter what act resulted in carceral punishment, to say that any such conditions could ever be "bargained for"[100] or justified within the means of state sanctioned punishment is a deliberate indifference towards the health risk posed by the conditions of prisons and to human life.[101] The COVID-19 pandemic has made it clear at what point punishment is valued greater than the right to live and who is deemed worthy of that right in the legal system.

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93. *Id.*
94. *Id.*
95. *Id.* at 101-02.
96. *Id.* at 102.
97. *Id.*
98. People *ex rel.* Coleman v. Brann, 126 N.Y.S.3d 315 (N.Y. Sup. Ct. 2020).
99. *See* Savannah Kumar, *Compelling Labor and Chilling Dissent: Creative Resistance to Coercive Uses of Solitary Confinement in Prisons and Immigration Detention Centers*, HARV. J. RACIAL & ETHNIC JUST. 101 (2020).
100. *Coleman,* 126 N.Y.S.3d at 323.
101. *Id.*

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