

Equal Justice Initiative

Criminal Justice Issues and Prisoners' Rights

<https://eji.org/news/supreme-court-sides-with-jail-over-covid-19-safety-measures/>

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08.13.20

The Supreme Court last week in an unsigned, one-paragraph order granted Sheriff Don Barness request and stayed a preliminary injunction requiring the Orange County Jail in Southern California to implement certain safety measures to protect inmates during the Covid-19 pandemic.

Justices Stephen Breyer and Elena Kagan registered their dissents, and Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, wrote an eight-page [dissenting opinion](#).

On April 30, people incarcerated in the Orange County Jail sued the sheriff in federal court for failing to follow CDC Guidelines to protect them from Covid-19. As the court later wrote:

COVID19 is particularly dangerous in jails and prisons, where inmates are often unable to practice the recommended social distancing, lack access to basic hygienic necessities, and are regularly exposed to correctional officers and staff who move in and out of the Jail.

With a population of over 3,000 pretrial detainees and inmates, the Orange County Jail had seen an increase of [more than 300](#) confirmed Covid-19 cases in a little more than a month by late May.

Jail officials responded to the lawsuit by telling the federal court that the jail had already implemented all of the mitigation efforts requested. The jail misrepresented under oath to the District Court the measures it was taking to combat the virus spread, the dissent [wrote](#), by claiming that it had achieved proper social distancing, provided inmates enough soap for frequent handwashing, and isolated and tested all symptomatic individuals.

As Justice Sotomayor detailed, [d]ozens of inmate declarations told a different story. They described being transported in crammed buses, packed into dayrooms with no space to distance physically, lining up next to each other to wait for the phone, sleeping in bunk beds two to three feet apart, and even being ordered to stand closer than six feet apart when inmates tried to socially distance.

The federal court [found](#) that inmates do not receive sufficient cleaning supplies to keep their living areas clean and disinfected. Numerous inmates reported receiving just one small, hotel-sized bar of soap per week. Others said multiple housing units had to share a single bottle of cleaning solution.

The cloth masks provided to inmates are not replaced for weeks or are made from blood and fecesstained sheets, inmates reported. And they were ordered to clean up the belongings of infected inmates without gloves or other protective equipment.

The jail told the court its policy is to test and isolate individuals who reported or exhibited Covid-19 symptoms, but multiple symptomatic detainees described being denied tests, and others reported sharing common spaces with infected or symptomatic inmates.

The district court concluded that the evidence showed that although the jail may have a policy to comply with the CDC Guidelines, actual compliance has been piecemeal and inadequate, creating a risk of harm within the jail that is undeniably high especially to the 488 medically vulnerable inmates who are likely to get very sick and possibly die.

The court imposed a preliminary injunction requiring the jail to take safety measures that closely followed the CDC Guidelines for correctional and detention facilities.

The jail said it was already following the CDC Guidelines, but it nonetheless appealed to the Ninth Circuit Court of Appeals and asked it to stay the injunction. The appeals court credited the lower courts fact findings and left the injunction in place because it found that the jails measures actually fell well short of the CDC Guidelines.

The jail then filed an emergency application asking the Supreme Court to lift the injunction, which the Court granted even though the jail

recently reported 15 new cases in a single week.

The District Court found that, despite knowing the severe threat posed by COVID19 and contrary to its own apparent policies, the Jail exposed its inmates to significant risks from a highly contagious and potentially deadly disease, Justice Sotomayor [wrote](#). Yet this Court now intervenes, leaving to its own devices a jail that has misrepresented its actions to the District Court and failed to safeguard the health of the inmates in its care.

To date, [more than 140,000 people](#) have been infected with Covid-19 in American jails and prisons, and at least 932 inmates and correctional officers have died. Californias San Quentin Prison has become one of the nations largest coronavirus clusters, with more than 2,400 infections and 23 deaths.

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122 Commerce Street Montgomery, AL 36104 [\(334\) 269-1803 \[emailprotected\]](#)

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