No. 17-1558

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LIBERIAN COMMUNITY ASSOCIATION OF CONNECTICUT, on behalf of themselves and those similarly situated, LOUISE MENSAH-SIEH, on behalf of herself and her minor children B.D. and S.N., on behalf of themselves and those similarly situated, VICTOR SIEH, on behalf of themselves and those similarly situated, EMMANUEL KAMARA, on behalf of themselves and those similarly situated, ASSUNTA NIMLEY-PHILLIPS, on behalf of themselves and those similarly situated, LAURA SKRIP, on behalf of themselves and those similarly situated, RYAN BOYKO, on behalf of themselves and those similarly situated, ESTHER YALARTAI, on behalf of themselves and those similarly situated, BISHOP HARMON YALARTAI, on behalf of themselves and those similarly situated, MARY JEAN O, on behalf of themselves and those similarly situated,

Plaintiffs–Appellants,

NATHANIEL SIEH, on behalf of themselves and those similarly situated,

Plaintiff,

v.

DANNEL P. MALLOY, Governor, RAUL PINO, Commissioner of Public Health, JEWEL MULLEN, Former Commissioner of Public Health,

Defendants–Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF CONNECTICUT, AND DOCTORS WITHOUT BORDERS/MEDÉCINS SANS FRONTIÈRES USA IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization of more than 1 million members dedicated to defending the civil liberties guaranteed by the Constitution. The ACLU has been at the forefront of numerous state and federal cases addressing civil liberties and civil rights, and co-authored a report on the civil liberties implications of state responses to the 2014-2015 Ebola outbreak, entitled *Fear, Politics, and Ebola: How Quarantines Hurt the Fight Against Ebola and Violate the Constitution.*[2] The ACLU Foundation of Connecticut is a state affiliate of the National ACLU.

Doctors Without Borders/Médecins Sans Frontières ("MSF") is an international, independent, medical humanitarian organization that delivers emergency aid to people affected by armed conflict, epidemics, natural disasters, and exclusion from health care in nearly 70 countries. MSF offers assistance to people based on need, irrespective of race, religion, gender, or political affiliation.

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[1] Pursuant to Fed. R. App. P. 29(a), counsel for *amici curiae* certifies that all parties have consented to the filing of this brief, and that no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] *See* American Civil Liberties Union & Yale Global Health Justice Partnership, *Fear, Politics, and Ebola: How Quarantines Hurt the Fight Against Ebola and Violate the Constitution* (Dec. 2015), https://www.aclu.org/sites/default/files/field_document/aclu-ebolareport.pdf [hereinafter "ACLU-Yale Report"].

During the West Africa Ebola epidemic, more than 1,300 MSF international staff and 4,000 local staff were deployed in West Africa, where they have cared for nearly 5,000 confirmed Ebola patients.

SUMMARY OF ARGUMENT

A quarantine imposed in the name of public health is a serious deprivation of liberty that is subject to constitutional limits. In order to satisfy constitutional requirements, a quarantine must be the least restrictive means to achieve a state's compelling interest. In practice, that means that a state may only impose a quarantine that is scientifically justified and necessary. During the 2014-2015 Ebola outbreak, the Defendants quarantined the Plaintiffs, who had arrived in the United States from Liberia, without adequate scientific justification, thereby violating their constitutional rights.

There is little question that preventing the spread of Ebola is a compelling governmental interest. However, there is a broad scientific consensus that quarantines and other restrictions on the movements of asymptomatic individuals are not narrowly tailored to effectuate that interest, because there are a number of alternatives to quarantine that are equally effective at preventing the spread of Ebola. Therefore, quarantines of individuals who are asymptomatic for Ebola are unconstitutional.

Furthermore, procedural due process requires that individuals be provided adequate and timely notice of the basis for their quarantine as well as an opportunity to contest it before a neutral decisionmaker. The Plaintiffs were not provided with these procedural protections.

Even in the context of public health, the courts must ensure that essential civil liberties are preserved and that states do not react based on fear in depriving individuals of their liberty. There is an additional risk that when quarantines are imposed without sound scientific justification, individuals from particular countries or communities will be disproportionately affected, as has happened with past quarantines.

This Court should therefore make clear that the quarantines imposed on the Plaintiffs violated their due process rights.

ARGUMENT

I. The Quarantines Imposed on the Plaintiffs Did Not Satisfy Substantive and Procedural Due Process.

The quarantines to which Plaintiffs-Appellants (the "Plaintiffs") were subjected violated the constitutional safeguards of substantive and procedural due process. Quarantines that are scientifically unjustified are unconstitutional, because they are not the least restrictive means of accomplishing a state's compelling interest in preventing the transmission of disease. Additionally, procedural due process requires that individuals subject to quarantine be given timely and adequate notice of the basis for the restriction and the process for challenging it, as well as a timely hearing before a neutral decisionmaker. The quarantines imposed on the Plaintiffs in this case by the Defendants-Appellees (the "Defendants") satisfied none of these constitutional requirements.

It is particularly important for this Court to address the merits of Plaintiffs' constitutional claims before deciding whether qualified immunity for the Defendants is warranted, because individual liberties are at stake. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (allowing courts discretion to first determine whether a constitutional right was violated before deciding whether the right was clearly established). Determining whether the Defendants' conduct violated the Constitution "promotes the development of constitutional precedent and is especially valuable with respect to questions that do not frequently arise in cases in which a qualified immunity defense is unavailable." *Id*.; *see also Plumhoff v. Rickard*, 134 S. Ct. 2012, 2020 (2014) ("Heeding our guidance in *Pearson*, we begin in this case with the question whether the officers' conduct violated the Fourth Amendment."). In cases like this one, deciding the constitutional question first ensures that officials are put on notice of what conduct is unlawful and that people are protected against violations of their rights, by ensuring that state officials are not perpetually shielded by qualified immunity for future constitutional violations. *See Saucier v. Katz*, 533 U.S. 194, 207–09 (2001); *Kelsey v. Cty. of Schoharie*, 567 F.3d 54, 61–62 (2d Cir. 2009) (addressing merits of constitutional claim because otherwise "the constitutionality of clothing exchange procedures in jails may never be developed"); *Wilkinson ex rel. Wilkinson v. Russell*, 182 F.3d 89, 107 (2d Cir. 1999) (noting that deciding the constitutional

question before turning to qualified immunity analysis "promote[s] clarity in the legal standards for official conduct" (internal quotation marks omitted)).

There are especially strong reasons to address the merits of the constitutional claims here. The law regarding the limits on states' quarantine powers is particularly underdeveloped and largely dates from before the Supreme Court's modern jurisprudence on substantive and procedural due process. The factual circumstances that led to the quarantines at issue are likely to recur in the future, because of the substantial risk that a future Ebola outbreak will occur, *see* J.A.84–88, 92–93, or because there will be another public health crisis at some future date, at which time public officials may consider or impose quarantines. For these reasons, it is imperative that this Court provide guidance on the constitutional limitations that apply to any public health quarantines.

A. Quarantines that are scientifically unjustified violate constitutional rights, because they are not the least restrictive means of accomplishing a state's compelling interest in preventing the spread of disease.

Quarantines and other movement restrictions imposed in the name of public health deprive individuals of fundamental liberty interests, and must be scientifically justified to satisfy constitutional due process requirements and strict scrutiny review. Where the disease at issue is Ebola, the broad scientific consensus is that quarantine of asymptomatic individuals is not justified, because it is unnecessary except in extraordinary circumstances. *See infra* Part I.A.2. Because

asymptomatic individuals cannot transmit Ebola, quarantining them is not necessary and is not the least restrictive means of preventing the spread of the disease. Thus, while in the future there may be outbreaks of diseases that raise difficult questions about when a quarantine is justified for the sake of public health, the answer with respect to Ebola is clear: quarantining asymptomatic individuals is not constitutionally permissible.

1. A state must satisfy strict scrutiny to impose a quarantine.

States derive the legal authority to ensure the public health—including the power to quarantine individuals for public health reasons—from their general "police power[s]." *See, e.g.*, *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905). Like all exercises of state authority, these powers are subject to constitutional constraints. *See, e.g.*, *Mugler v. Kansas*, 123 U.S. 623, 661 (1887). One of these constitutional constraints is the Fourteenth Amendment, which provides that no state may "deprive any person of life, liberty, or property without due process of law; nor deny to any person . . . the equal protection of the laws." U.S. Const. amend. XIV. It is this provision that protects individuals against arbitrary or unreasonable state deprivations of liberty. When a state deprives an individual of certain "fundamental" rights, the state must satisfy the highest constitutional standard to justify its action. Under this strict scrutiny standard, a state must show that its action is narrowly tailored to serve a compelling governmental interest.

In the case of quarantines or other movement restrictions imposed on individuals that amount to involuntary confinement, it is clear that the state deprives an individual of fundamental liberty rights protected by the Constitution, including the right to be free from restraint, the right to free association, and the right to travel. *See, e.g.*, *Jacobson*, 197 U.S. at 26 (recognizing a liberty interest in being free from restraint while acknowledging limits on that liberty in the name of public health); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) (applying strict scrutiny to a law interfering with the fundamental right of interstate travel); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617–18 (1984) (describing the contours of the right to freedom of association).

The Supreme Court's decision in *Jacobson* is one of the few to directly address a constitutional challenge to a state public health measure, and in upholding the state's power to mandate vaccination against smallpox, it nonetheless recognized the individual liberty interests at stake. The Court stated that a community's power "to protect itself against an epidemic . . . might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons." *See Jacobson*, 197 U.S. at 28; *see also id.* at 31 (noting that a public health measure must have a "real or substantial

relation" to its object (citing *Mugler*, 123 U.S. at 661)). The Supreme Court thus acknowledged that a state's public health authority is not limitless, and that a state does not have *carte blanche* to infringe on individual liberties even in the realm of public health. Rather, the courts must ensure that constitutional limits on the exercise of such authority are complied with.

Given the fundamental liberty interests at stake, state-imposed quarantines and movement restrictions must serve a compelling governmental interest and be narrowly tailored to serve that interest. The application of strict scrutiny to state-imposed quarantines is consistent with the Supreme Court's jurisprudence in other contexts implicating fundamental constitutional rights. *See Foucha v. Louisiana*, 504 U.S. 71, 80–81 (1992) (affirming the "'fundamental nature' of the individual's right to liberty" and emphasizing that government intrusions on such liberty must be "narrowly focused" in service of a "legitimate and compelling" interest (citation omitted)); *see also Lawrence v. Texas*, 539 U.S. 558, 593 (2003); *Covington v. Harris*, 419 F.2d 617, 623 (D.C. Cir. 1969) ("A statute sanctioning such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law.").

Jacobson should not be read to the contrary: it was decided over 100 years ago, before the development of constitutional jurisprudence on substantive and procedural due process, particularly in the context of civil commitment. Courts

have had little opportunity since *Jacobson* to evaluate the constitutionality of state public health quarantines. One notable exception was a state court in Maine, which held that the quarantine of an asymptomatic health care worker returning from West Africa during the height of the 2014-2015 Ebola outbreak was not necessary to protect the public health. *See Mayhew v. Hickox*, No. CV-2014-36 (Me. Dist. Ct., Fort Kent, Oct. 31, 2014).[3]

In sum, states may not fight Ebola "by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

2. Ebola quarantines of asymptomatic individuals do not satisfy strict scrutiny because they are not scientifically justified or necessary to protect public health.

There is no doubt that states have a compelling interest in preventing the spread of Ebola. But in order to satisfy strict scrutiny, a public health measure such as a quarantine or movement restriction must be scientifically justified—in other words, it must be necessary to protect public health on the basis of sound, scientific evidence. If a quarantine is not necessary because there are less restrictive alternatives available to protect the public health, then the quarantine cannot be

[3] In the healthcare worker's subsequent lawsuit seeking damages for an earlier quarantine imposed on her by the state of New Jersey, the district court held that the quarantine did not violate clearly established law for purposes of qualified immunity on her constitutional claims. *See Hickox v. Christie*, 205 F. Supp. 3d 579 (D.N.J. 2016).

constitutionally imposed. In the case of Ebola, the overwhelming scientific consensus is that quarantines of asymptomatic individuals are not necessary absent extraordinary circumstances, and that less restrictive alternatives, such as close monitoring, are sufficient. *See infra*. Because asymptomatic individuals cannot transmit Ebola, and the less restrictive alternatives are equally effective in preventing the spread of Ebola, quarantines of asymptotic individuals are not justified.

While courts have given deference to the determinations of public health authorities regarding the necessity of a public health measure, such determinations must be grounded in scientific evidence. *Cf. Jacobson*, 197 U.S. at 31 (stating that a public health measure must have a "*real or substantial* relation" to that purpose (emphasis added)). Indeed, even before the development of modern due process jurisprudence, at least one court invalidated a quarantine for being scientifically unjustified. The court in *Jew Ho v. Williamson*, 103 F. 10, 26 (C.C.N.D. Cal. 1900), held that the quarantine of an entire district in San Francisco was "unreasonable, unjust, and oppressive." The court relied on the affidavit of a medical professional who testified that the quarantine was "unscientific," and, for that reason, "not a reasonable regulation to accomplish the purposes sought." *Id*. at 21, 23*; see also id.* at 23 ("The court cannot but see the practical question that is

presented to it as to the ineffectiveness of this method of quarantine against such a disease as this." (quoting medical professional's affidavit)).

Although there are few recent cases squarely addressing the justification needed for public health measures that affect fundamental liberty interests, some courts have held that segregation of asymptomatic individuals for tuberculosis does not meet the requirement of employing the least restrictive means. *See, e.g.*, *Jolly v. Coughlin*, 76 F.3d 468, 479–80 (2d Cir. 1996) (finding that prisoner's confinement was not least restrictive means of protecting inmates from tuberculosis where prisoner was not contagious and could be monitored for the development of active tuberculosis); *Jihad v. Wright*, 929 F. Supp. 325, 330–32 (N.D. Ind. 1996) (holding that prison officials should not have removed an inmate at risk of developing active tuberculosis to a medical isolation unit because a less restrictive alternative would have been periodic testing to determine if the inmate became capable of infecting others).

Similarly, a quarantine or movement restriction of an asymptomatic individual for purposes of preventing the spread of Ebola contravenes sound scientific evidence and is not the least restrictive measure. *See* ACLU-Yale Report at 15–18 (documenting the consensus in the scientific community that, because the risk of transmission from asymptomatic individuals infected with Ebola is so low, quarantines of asymptomatic individuals with potential Ebola exposure are

unnecessary); *see also* Complaint ¶ 32 at J.A.29. Indeed, the Centers for Disease Control ("CDC") guidelines on Ebola did not at any point during the 2014-2015 outbreak recommend quarantine for asymptomatic individuals.[4] The CDC guidelines were created by integrating risk categories (which were determined based on exposure to and risk of having contracted Ebola) with the presence or absence of symptoms of Ebola. Even for health care workers returning from fighting Ebola in West African countries, who were most often placed in the "Some Risk" category because of having had direct contact with Ebola patients while using protective measures, the CDC guidelines did not recommend that asymptotic individuals in that category be quarantined. *See* CDC Guidance; ACLU-Yale Report at 23. Rather, the guidelines recommended alternatives to quarantine, and movement restrictions only in narrow circumstances, if individual circumstances warranted them. *See id*.[5]

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[4] *See* CDC, *Interim U.S. Guidance for Monitoring and Movement of Persons with Potential Ebola Virus Exposure* (Dec. 24, 2014), http://www.cdc.gov/vhf/ebola/exposure/monitoring-and-movement-of-persons-with-exposure.html [hereinafter "CDC Guidance"].

[5] The CDC Guidance was a revision to the CDC's original guidelines and was issued in the midst of the 2014-2015 Ebola epidemic. The revised Guidance gave officials discretion to impose movement restrictions on asymptomatic individuals in certain narrow circumstances, even though such restrictions are not necessary. While the original CDC guidelines, which did not recommend movement restrictions for such individuals, were scientifically sound, even the revision did not recommend blanket quarantines of asymptomatic individuals. *See* ACLU-Yale Report at 24.

Indeed, there are less restrictive alternatives to imposing a quarantine on asymptomatic individuals to limit the spread of Ebola that are grounded in scientific evidence. These alternatives include the close monitoring of individuals who may have been exposed to Ebola, either by the individuals themselves or by public health authorities, such that they can be isolated should they develop symptoms of Ebola. Because of the nature of the Ebola virus, such measures are equally effective in combatting the spread of the disease as any movement restrictions, and involve a far less severe intrusion on liberty. *See* ACLU-Yale Report at 16–18. Additionally, certain narrow and specific movement restrictions may be justified in particular circumstances (such as limits on long distance travel on public carriers where there are no facilities to deal with someone who becomes ill).

Only in extraordinary circumstances might quarantine of an asymptomatic person be justified, such as where a person refuses to, or is unable to, engage in the required monitoring regimen and no less restrictive alternatives are workable. Such extraordinary circumstances do not include unsubstantiated speculation that an individual will be non-compliant. In a prior case involving the isolation of an individual with tuberculosis—which, unlike Ebola, is air-borne and thus highly contagious through casual contact—a court required that the state make a particularized showing specific to the individual in question that there was a

"substantial likelihood" of non-compliance with public health measures. *See City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008, 1015 (N.Y. Sup. Ct. 1995).

In this case, the Plaintiffs were quarantined even though they had had no known exposure to Ebola and were asymptomatic (and, in one case, had tested negative for Ebola). They were quarantined even though the less restrictive alternative of close monitoring was available. *See* Complaint ¶¶ 35, 53, 64, 66, 131 at J.A.29–30, 33–35, 45. Given these circumstances, the quarantines imposed on the Plaintiffs were scientifically unjustified. The District Court did not properly apply the correct legal standard in finding that "[w]hile asymptomatic individuals cannot transmit Ebola, quarantining an individual during the incubation period is . . . substantially related to preventing any potential transmission of a highly infectious illness." J.A.182. The District Court appeared to consider the quarantine justified merely because the Defendants imposed it for the duration of the incubation period for Ebola (which is the time from infection to the onset of symptoms), but without requiring the Defendants to provide any scientific justification for that choice. *See* J.A.181–82.

By contrast, one court to consider the legality of an Ebola quarantine of an asymptomatic individual during the height of the 2014-2015 epidemic did so under a Maine statute requiring the state to show by clear and convincing evidence that

the quarantine was "necessary." *See Mayhew*, No. 2014-36 at 1–2.[6] When Kaci Hickox, an asymptomatic health care worker in Maine, challenged her quarantine order, the court held that the state had failed to prove that quarantine was necessary. *Id*. at 3. The court came to the same conclusion as the public health consensus—and it did so at the height of the national panic over Ebola. The court noted that it was "fully aware of the misconceptions, misinformation, bad science and bad information being spread from shore to shore in our country with respect to Ebola." *Id*. at 3. Instead of ordering a quarantine as requested by the state, the court held that Hickox need only comply with direct active monitoring, a less restrictive measure that would accomplish the state's public health goals. *Id*. at 2.

B. Procedural due process requires that individuals who are quarantined be given timely and adequate notice and an opportunity to contest their quarantine before a neutral decisionmaker.

The Plaintiffs were deprived of their procedural due process rights when some of them were not provided timely and adequate notice of the basis for the quarantines and when they were denied the opportunity to contest them before a neutral decisionmaker.

[6] Several other states' laws require that the government prove the need for a quarantine by "clear and convincing evidence." *See, e.g.*, Alaska, Alaska Stat. § 18.15.385 (2016); Illinois, 20 Ill. Comp. Stat. § 2305/2 (2015); Minnesota, Minn. Stat. § 144.4195 (2014).

The imposition of a quarantine is a deprivation of liberty subject to procedural protections under the Due Process Clause. *See, e.g.*, *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). One of the core requirements of procedural due process is that individuals be provided notice of the basis for the deprivation of their liberty. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Another requirement is the opportunity for a hearing before a neutral decisionmaker to contest the deprivation. *See id*. at 333.

In *Vitek v. Jones*, the Supreme Court assessed what would comprise constitutionally adequate procedures for a prisoner being transferred from a state prison to a mental hospital. The Court considered the following to be among the minimum requirements: written notice that a transfer was being considered; a hearing that was "sufficiently after the notice to permit the prisoner to prepare;" "disclosure to the prisoner . . . of the evidence being relied upon for the transfer;" an opportunity to present testimony and cross-examine witnesses at the hearing; and an independent decisionmaker. 445 U.S. 480, 494–95 (1980) (internal quotation marks omitted). Furthermore, "effective and timely notice of all the foregoing rights" was also required. *Id*. at 495.These bedrock requirements ensure that an individual can meaningfully challenge the state's actions. *See City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999) (notice that is constitutionally

adequate is that which "ensure[s] that the opportunity for a hearing is meaningful").

In the context of quarantine orders, constitutionally adequate procedures include at a minimum a written notice of the reasons for the quarantine, including any evidentiary support, and notice of the hearing at which the quarantine can be contested. Yet in this case, some of the Plaintiffs were provided no written notice of their quarantines at all, Complaint ¶¶ 111–12, 116 at J.A.41–43, while another received written notice only five days after she had been quarantined, Complaint ¶¶ 73–74 at J.A.36.

Furthermore, none of the Plaintiffs were given an opportunity to contest their quarantines at a hearing initiated by the Defendants. Due process requires that the state affirmatively initiate the hearing at which the individual can contest a quarantine. *See, e.g.*, *Vitek*, 445 U.S. at 494–95. Such a hearing must ordinarily take place before the deprivation of liberty occurs,[7] or, at the very least, *promptly* afterward.[8] Connecticut law places the onus on an individual to request a hearing

[7] *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (holding that the state must provide a pre-termination evidentiary hearing when it terminates a welfare recipient's benefits because termination "may deprive an eligible recipient of the very means by which to live while he waits").

[8] *See, e.g.*, *Mathews*, 424 U.S. at 349 ("All that is necessary is that the procedures be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard,' to insure that they are given a meaningful opportunity to present their case." (quoting *Goldberg*, 397 U.S. at 254)); *Kapps v.*

rather than on the state to initiate one, *see* Conn. Gen. Stat. § 19a-131b(f), thereby failing procedural due process requirements. By contrast, several states provide for the required opportunity to contest a quarantine by requiring a judicial order of quarantine. Under the Maine public health emergency statute, for example, the state must initiate a hearing no later than 48 hours after a quarantine begins. *See* Me. Rev. Stat. Ann. tit. 22 § 820 (2005) ("A hearing must be held before a judge . . . as soon as reasonably possible but not later than 48 hours after the person is subject to prescribed care to determine whether the person must remain subject to prescribed care."). At the judicial hearing, the individual may contest the basis for a quarantine order by, for example, presenting evidence and argument, and cross-examining witnesses.

The Plaintiffs were deprived of their procedural due process rights when they were denied timely and adequate notice of the basis for their quarantines and when the Defendants failed to provide any opportunity for them to contest their quarantines before a neutral decisionmaker.

Wing, 404 F.3d 105, 120 (2d Cir. 2005) ("The requirement that the government afford individuals an opportunity to be heard is among the most fundamental requirements of the Due Process Clause.").

C. State-imposed quarantines that are unjustified can disproportionately affect individuals from particular countries or communities.

Close judicial scrutiny of state-imposed quarantines is particularly necessary because the consequences of imposing an unjustified quarantine can be severe and can disproportionately affect individuals from particular countries or communities. The history of quarantines in the United States demonstrates that vulnerable communities have often been the target of such measures, as a result of public officials reacting based on fear or irrational stereotypes. *See Jew Ho*, 103 F. 10 at 23 ("The evidence here is clear that this [quarantine] is made to operate against the Chinese population only."); Felice Batlan, *Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future*, 80 TEMP. L. REV. 53, 72–76 (2007) (noting that during the 1892 typhus epidemic, New York officials chose to quarantine all Russian Jewish and Italian immigrants, as well as Russian Jewish residents, regardless of whether they had traveled on a ship with an outbreak).

Furthermore, individuals and communities subject to unjustified quarantines face a host of consequences. The Supreme Court recognized in *Addington* that "it is indisputable that involuntary commitment to a mental hospital after a finding of probable dangerousness to self or others can engender adverse social consequences to the individual" and that such "stigma" could "have a very significant impact on the individual." 441 U.S. at 425–26. Similarly, an individual who has been

subjected to an unwarranted quarantine by the state suffers not only a loss of liberty, but can also face social ostracization, employment consequences, and other negative effects. *See* ACLU-Yale Report at 31–32.

During the 2014-2015 Ebola outbreak, West African and other immigrant communities in the United States were particularly affected by the public hysteria fomented by the response of many states to Ebola. For example, in response to parents' fears in Connecticut and Iowa, school districts excluded students from schools after they took trips to African countries *without* Ebola outbreaks, reinforcing a belief that anyone associated with Africa represented a risk.[9] While the public health authorities did not officially back those actions, they had been consulted by the school districts and failed to oppose the exclusions. *See id*. at 29–30. West African immigrants who had been in America for many years faced stigma in all spheres of their day-to-day lives because of the perceived risk that they might be carrying Ebola. According to Reverend Edwin Lloyd, the leader of a

[9] *See* Amanda Cuda and John Burgeson, *Milford Girl in Ebola Scare wants to Return to School*, CTPost (Oct. 30, 2014), http://www.ctpost.com/local/article/Milford-girl-in-Ebola-scare-wants-to-return-to-5856494.php; Brian Mastre, WOWT News, *Iowa Mission Family Agrees to Self-Quarantine* (Oct. 23, 2014), http://www.wowt.com/home/headlines/Iowa-Mission-Family-Agrees-to-Self-Quarantine-280254462.html.

Liberian church in Maryland, people exhibited fear of West Africans if they merely showed symptoms of the common cold.[10]

For these reasons, it is particularly important that public health officials not react based on fear or public perceptions when considering whether to impose quarantines, but rather ground their decisions in sound scientific evidence. Anything less risks individuals being deprived of their liberty based on stereotypes or fears of who is a public health threat. In this case, the District Court erroneously ratified the decision to quarantine the Plaintiffs from the Mensah-Sieh family solely because of their "immigration to Connecticut from an area facing a severe epidemic" and in spite of their statements that they had not been exposed to the Ebola virus. J.A.185 (finding that such a decision was "objectively reasonable"). By that standard—which is untethered from any scientific justification—public health officials might have imposed quarantines on anyone arriving from a West African country during the 2014-2015 Ebola epidemic, out of fear, or even out of a sincere belief that an abundance of caution is preferable. Such a standard gives states too much latitude to impose quarantines on entire communities or on those who are simply associated with individuals who have been exposed to Ebola, while giving short shrift to those individuals' constitutional rights.

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[10] CBS News, *Friends, Family of 1st U.S. Ebola Patient Reach Milestone* (Oct. 19, 2015), http://www.cbsnews.com/news/ebola-outbreak-friends-family-of-1st-u-s-patient-thomas-eric-duncan-reach-milestone/.

CONCLUSION

For the foregoing reasons, this Court should hold that the quarantines imposed on the Plaintiffs violated their constitutional rights.

July 12, 2017

Respectfully submitted,

/s/ Esha Bhandari

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CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), it contains 4,950 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

/s/ *Esha Bhandari*

Esha Bhandari

July 12, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of July, 2017, the foregoing Brief of *Amici Curiae* American Civil Liberties Union, et al. was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

/s/ *Esha Bhandari*

Esha Bhandari