

The impact of the COVID-19 pandemic on equality in the United States

David B. Oppenheimer*

Introduction

Some have said that a virus does not discriminate, and that we're all in this together; we're not. In the United States, those persons already most at risk of discrimination and inequality are at far greater risk of falling ill and dying from the COVID-19 virus.¹ It has been particularly deadly for older persons, persons with disabilities, people of color, low wage workers, and home care and healthcare workers.² Because of systemic racism, which operates intersectionally to compound disadvantage, within the groups most affected by discrimination the death rates have been disproportionately high,³ as the pandemic surges among older people of color and persons with disabilities living in nursing homes,⁴ and women of color working in low wage home care and healthcare jobs.⁵ Moreover, the members of these groups are also the people most harmed by the economic consequences of the pandemic.⁶ Thus, the pandemic has exacerbated the inequalities of American society like a 'perfect storm'.

As of 10 October 2020, the virus has killed over 210 000 people in the United States.⁷ We have 4 % of the world's population, but over 20 % of the world's COVID-19 deaths.⁸ The per capita death rate in the US is 61.4 per 100 000, compared with 25.06 per 100 000 in Canada, our closest neighbor, 11.34 per 100 000 in Germany, 1.2 per 100 000 in Japan and 0.75 per 100 000 in South Korea.⁹ As discussed below, the death rate in the US for Black Americans is 97.9 per 100 000; for Indigenous Americans, 81.9

* Clinical Professor of Law at the University of California, Berkeley, and Director of the Berkeley Center on Comparative Equality and Anti-Discrimination Law. I am grateful for the assistance of my three Berkeley research assistants, Sindi Cela, Margaret Ebacher-Rini and Jacob Morales.

1 Centers for Disease Control and Prevention (2020), 'Health Equity Considerations and Racial and Ethnic Minority Groups,' available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

2 AMP Research Lab Staff (2020), 'The Color Of Coronavirus: COVID-19 Deaths By Race And Ethnicity In The U.S.,' *APM Research Lab*, available at: <https://www.apmresearchlab.org/covid/deaths-by-race>.

3 Centers for Disease Control and Prevention (2020), 'Health Equity Considerations and Racial and Ethnic Minority Groups,' available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

4 Taylor, J., Mishory, J., Chan, O. (2020), 'Even in Nursing Homes, COVID-19 Racial Disparities Persist,' *The Century Foundation*, available at: <https://tcf.org/content/commentary/even-nursing-homes-covid-19-racial-disparities-persist/?agreed=1&agreed=1>.

5 Machledt, D. (2020), 'Disability, Race, and Structural Inequity: COVID-19 and the Long-term Care Workforce,' *National Health Law Program*, available at: <https://healthlaw.org/disability-race-and-structural-inequity-covid-19-and-the-long-term-care-workforce/>.

6 Knowles, H. (2020), 'Number of working black business owners falls 40 %, far more than other groups amid coronavirus,' *The Washington Post*, available at: <https://www.washingtonpost.com/business/2020/05/25/black-minority-business-owners-coronavirus/>.

7 Coronavirus Resource Center (2020), 'COVID-19 Map,' *Johns Hopkins University of Medicine*, available at: <https://coronavirus.jhu.edu/map.html>.

8 Lopez, G. (2020) 'If the US had Canada's Covid-19 death rate, 100,000 more Americans would likely be alive today,' *Vox*, available at: <https://www.vox.com/future-perfect/2020/9/9/21428769/covid-19-coronavirus-deaths-statistics-us-canada-europe>.

9 Coronavirus Resource Center (2020), 'COVID-19 Map,' *Johns Hopkins University of Medicine*, available at: <https://coronavirus.jhu.edu/map.html>.

per 100 000; for Latinx Americans, 64.7 per 100 000; for Pacific Islander Americans, 71.5 per 100 000; for Asian Americans, 40.4 per 100 000; and for white Americans, 46.6 per 100 000.¹⁰

Although there have been numerous policy initiatives intended to help reduce the human and economic toll of the pandemic, they have for the most part been ineffective. In part the problem has been the failure to recognize that the victims of the pandemic have largely been members of outsider groups, with an especially disastrous impact at the intersection of race and gender. In addition, in many cases, potentially effective policies were undermined by President Trump's erratic behavior or plagued by inefficiency and corruption.

The elderly

The pandemic has had its greatest impact on elderly infirm persons living in nursing homes and the low-wage workers who care for them. Although they represent a very small part of the total US population (less than 1 %), approximately 45 % of the COVID-19 deaths have been among those living in, recently discharged from (to be admitted to hospital), and working at nursing homes.¹¹ What's more, the impact on nursing home residents has hardly been 'color-blind'. As is true of nearly every aspect of American life, nursing homes are largely segregated by race, and the infection fatality rate in homes populated by people of color has been far higher than in largely white nursing homes.¹²

The hospitalization and death rates of older persons, whether living in nursing homes or not, must be understood intersectionally. Although the disparities among Americans 75 years old and older are less pronounced, they grow higher in each subsequent age bracket.¹³ For example, the overall infection fatality rate for Black Americans and Hispanic/Latinx Americans from 75 to 84 years old is 'merely' 2 to 3 times higher than for white Americans, but for those in the 35-44 year-old age bracket it is 9 times higher.¹⁴

Caregivers in nursing homes typically earn low wages, and low-wage jobs in the US are disproportionately filled by people of color, with care-giving jobs largely filled by women of color. For example, Black Americans make up 12.3 % of the US workforce, but 27.6 % of nursing home care-givers, and 30.5 % of home care-givers.¹⁵ Nursing home care-givers, made up disproportionately by women of color, have had disproportionately low rates of health insurance as well as high infection fatality rates.¹⁶ Over 700 US nursing home workers had died of the virus as of 5 September 2020.¹⁷

These data support the conclusion that the status of care workers in nursing homes violates equality norms, and that equality law and policy should provide them with greater protection. This would almost

10 APM Research Lab Staff (updated 16/9/2020), 'The Color of Coronavirus: Covid-19 Deaths By Race And Ethnicity In The U.S.', *APM Research Lab*.

11 Girvan, G. (2020), 'Nursing Homes & Assisted Living Facilities Account for 45 % of COVID-19 Deaths', *The Foundation for Research on Equal Opportunity*, available at: <https://freopp.org/the-covid-19-nursing-home-crisis-by-the-numbers-3a47433c3f70>.

12 King, S., Jacob, J. (2020), 'Near birthplace of Martin Luther King Jr., a predominantly Black nursing home tries to heal after outbreak', *The Washington Post*, available at: <https://www.washingtonpost.com/business/2020/09/09/black-nursing-homes-coronavirus/>.

13 Taylor, J., Mishory, J., Chan, O. (2020), 'Even in Nursing Homes, COVID-19 Racial Disparities Persist', *The Century Foundation*, available at: <https://tcf.org/content/commentary/even-nursing-homes-covid-19-racial-disparities-persist/?agreed=1&agreed=1>.

14 Taylor, J., Mishory, J., Chan, O. (2020), 'Even in Nursing Homes, COVID-19 Racial Disparities Persist', *The Century Foundation*.

15 Bureau of Labor Statistics (2019), 'Household Data Annual Averages 18. Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity', available at: <https://www.bls.gov/cps/cpsaat18.htm>.

16 Machledt, D. (2020), 'Disability, Race, and Structural Inequity: COVID-19 and the Long-term Care Workforce', *National Health Law Program*, available at: <https://healthlaw.org/disability-race-and-structural-inequity-covid-19-and-the-long-term-care-workforce/>.

17 The New York Times (2020), 'How Many of These 68 000 Deaths Could Have Been Avoided?', editorial, 5 September 2020, available at: <https://www.nytimes.com/2020/09/05/opinion/sunday/coronavirus-nursing-homes-deaths.html?referringSource=articleShare>.

certainly require a legislative solution that applied equality principles to provide greater workplace protections, rather than a litigation solution enforcing equality/anti-discrimination law.

Persons with disabilities

US nursing homes also serve as residences for those persons with disabilities who need extra care and cannot receive it (or afford to receive it) at home. Unsurprisingly, they have also been disproportionately affected by COVID-19. Exacerbating the problem, Americans with disabilities are less likely to have private health insurance.¹⁸ And, as with elderly people, they are subject to a pervasive social bias that their lives are worth less than the young and able-bodied.¹⁹ This has seeped into the body politic in discussions about triage at overwhelmed hospitals, where the expectation has been that persons with disabilities and older persons should receive the lowest priority for ventilators and other care.²⁰ In April, as the pandemic surged through New York, approximately 4 % of those diagnosed with the virus succumbed to it. The figure for persons with intellectual/developmental disabilities was close to 10 %.²¹

Here again, the intersection with race is important to note, as persons with disabilities in the US are statistically more likely to be people of color.²² Here again, the equality violations are addressable by policy solutions and legislation, but would be hard to address by enforcing equality law through litigation.

Women

Among people with employment outside the home, the pandemic has had a greater impact on women than men. Unlike previous recessions, women have been more likely than men to lose their jobs, with women's jobs 1.8 times more vulnerable than men's.²³ In part this is because of the growth of childcare responsibilities, which fall more heavily on women, causing four times more women than men to voluntarily quit outside work to take on greater childcare responsibilities.²⁴ At home, with schools and daycare centers closed, and grandparents unavailable in their roles as informal (and free) childcare workers, the lion's share of added uncompensated work goes to women.²⁵ In the case of single parents, who are more likely to be women than men, the added responsibilities have been even greater.²⁶

For those women who kept their jobs, the jobs they hung onto were more likely to put them at risk of contracting the virus. Women in the US experience substantial job discrimination and wage discrimination,

18 Sabatello, M., Landes, S., McDonald, K. (2020), 'People With Disabilities in COVID-19: Fixing Our Priorities,' *The American Journal of Bioethics*, vol. 20, No. 7, pp. 187-190, available at: <https://www.tandfonline.com/doi/full/10.1080/15265161.2020.1779396>.

19 Sabatello, M., Landes, S., McDonald, K. (2020), 'People With Disabilities in COVID-19: Fixing Our Priorities,' *The American Journal of Bioethics*, vol. 20, No. 7, pp. 187-190.

20 Abrams, A. (2020), "This Is Really Life or Death." For People With Disabilities, Coronavirus Is Making It Harder Than Ever to Receive Care,' *TIME*, available at: <https://time.com/5826098/coronavirus-people-with-disabilities/>.

21 Sabatello, M., Landes, S., McDonald, K. (2020), 'People With Disabilities in COVID-19: Fixing Our Priorities,' *The American Journal of Bioethics*, vol. 20, No. 7, pp. 187-190.

22 Sabatello, M., Landes, S., McDonald, K. (2020), 'People With Disabilities in COVID-19: Fixing Our Priorities,' *The American Journal of Bioethics*, vol. 20, No. 7, pp. 187-190.

23 Alon, T., Doepke, M., Olmstead-Rumsey, J., Tertilt, M. (2020), 'The Impact of COVID-19 on Gender Equality,' *NBER Working Paper Series*, National Bureau of Economic Research, available at: <https://www.nber.org/papers/w26947>.

24 Rhubarb, D. (2020), 'Gender Disparities in Caretaking during the COVID-19 Pandemic,' *Lerner Center for Public Health Promotion at Syracuse University*, available at: <https://lernercenter.syr.edu/2020/06/04/ds-18/>.

25 Alon, T., Doepke, M., Olmstead-Rumsey, J., Tertilt, M. (2020), 'The Impact of COVID-19 on Gender Equality,' *NBER Working Paper Series*, National Bureau of Economic Research.

26 Alon, T., Doepke, M., Olmstead-Rumsey, J., Tertilt, M. (2020), 'The Impact of COVID-19 on Gender Equality,' *NBER Working Paper Series*, National Bureau of Economic Research.

are less likely to have jobs that permit telecommuting,²⁷ and more likely to work as caregivers.²⁸ As noted above, caregivers are more likely to work with persons exposed to the virus, often with inadequate personal protective equipment, while they are less likely to have healthcare insurance.²⁹ Thus, they are more likely to contract the virus, and less likely to have access to good, affordable medical care when they do.

Another impact of the pandemic has been an increase in partner/domestic violence, partly because couples are stuck at home with each other; moreover, women who are endangered have a harder time seeking help because they are more likely to lack privacy and because shelters, which if still open could easily become contagion hotspots, are often closed because of the pandemic.³⁰

As noted briefly in the discussion of nursing homes, people who work outside the home as caregivers are usually women, and disproportionately women of color, who constitute nearly half of all direct care workers (personal care aides, home health aides, and nursing assistants). Of the overall healthcare workers infected with COVID-19, three out of four were women.³¹ Another large occupational category for US women is restaurant work, which is at the bottom of the wage scale, and is disproportionately female.³² When the virus reached pandemic proportions most restaurants were forced to close, throwing large numbers of women out of work.³³

Again, women of color experienced all of these compounded and intersecting disadvantages at a higher rate than other groups – and again, policy reform is more likely to address these equality violations than litigation. In particular, policies requiring pay transparency and pay equity would improve the position of women in the workplace, and policies addressing violence in the home would help protect women and their children.

The poor

Poor Americans are more likely to have been affected by the pandemic than others, and women – especially women of color – are more likely to be poor than men, because of intersectional job discrimination, wage discrimination and housing discrimination.³⁴ Poor Americans are more susceptible to the virus because they tend to live in more crowded conditions, have less access to good quality healthcare, are more likely to have lost their jobs, and if still employed are more likely to work in high-risk jobs.³⁵

Because of the pandemic, poor Americans are more likely to experience hunger, with one in eight families now experiencing food insecurity, and with the rate of hunger twice as high among Black and Latinx

27 Alon, T., Doepke, M., Olmstead-Rumsey, J., Tertilt, M. (2020), 'The Impact of COVID-19 on Gender Equality,' *NBER Working Paper Series*, National Bureau of Economic Research, available at: <https://www.nber.org/papers/w26947>.

28 Machledt, D. (2020), 'Disability, Race, and Structural Inequity: COVID-19 and the Long-term Care Workforce,' *National Health Law Program*, available at: <https://healthlaw.org/disability-race-and-structural-inequity-covid-19-and-the-long-term-care-workforce/>.

29 Machledt, D. (2020), 'Disability, Race, and Structural Inequity: COVID-19 and the Long-term Care Workforce,' *National Health Law Program*.

30 Ryan, E. & Ayadi, A. (2020), 'A call for a gender-responsive, intersectional approach to address COVID-19,' *Global Public Health* vol. 15, No. 9, pp. 1404-12, available at: <https://www.tandfonline.com/doi/full/10.1080/17441692.2020.1791214>.

31 Ryan, E. & Ayadi, A. (2020), 'A call for a gender-responsive, intersectional approach to address COVID-19,' *Global Public Health* vol. 15, No. 9, pp. 1404-12.

32 Scharff, X. (2020), 'Why the coronavirus outbreak could hit women hardest,' *Time*, 12 March 2020, available at: <https://time.com/5801897/women-affected-covid-19/>.

33 Scharff, X. (2020), 'Why the coronavirus outbreak could hit women hardest,' *Time*, 12 March 2020.

34 Semega, J. (2019), 'Pay is Up. Poverty is Down. How Women are Making Strides,' *United States Census Bureau*, available at: <https://www.census.gov/library/stories/2019/09/payday-poverty-and-women.html>.

35 Centers for Disease Control and Prevention (2020), 'Health Equity Considerations and Racial and Ethnic Minority Groups,' available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

families as it is among white families.³⁶ The problem is particularly acute for poor children, who will suffer lifelong consequences from hunger and malnutrition.³⁷ Until the virus caused schools to close, most poor children had at least one good meal a day through school food programs, but with the schools closed many more children are going to bed hungry.³⁸ And, poor Americans are more likely than others to live in 'food deserts', where access to food is limited.³⁹

In early 1968, Dr Martin Luther King Jr proposed an Economic Bill of Rights to protect Americans from poverty, and had a sometimes enthusiastic (and other times reluctant) partner in US President Lyndon Johnson.⁴⁰ But Dr King was murdered in April of that year, and President Johnson's term ended nine months later.⁴¹ In the fifty years since, there has been little progress in eradicating poverty, at least in part because poverty is closely associated with race, and is used by politicians to increase white support at the expense of Black Americans.⁴²

People of color

The virus is more likely to affect people of color for several intersecting and compounding reasons, each of which is related to US systemic racism. People of color in the US are more likely to work in jobs requiring contact with people who are infected, are less likely to have healthcare insurance, are likely to earn less and have less wealth than white Americans, are more likely to live in areas with inadequate healthcare facilities, are more likely to live in crowded and overcrowded homes, are less likely to have jobs that allow them to isolate and work remotely, and are more likely to experience harmful implicit bias from healthcare professionals.⁴³

People of color are more likely to work in low-wage jobs like care-giver jobs, Government jobs, low-skilled jobs and laborer jobs.⁴⁴ This is partly because of employment discrimination against people of color, and partly due to the relatively poor education provided to people of color.⁴⁵ As a result, they are more likely to have jobs that cannot be performed remotely, and more likely to have jobs that require them to work with or near people who are infected.⁴⁶ Moreover, people of color have been more likely to lose their jobs during the pandemic, which exacerbates the problem of poverty already disproportionately experienced by people of color because of job discrimination, wage discrimination, and housing discrimination, which reduces the opportunity to save money or build wealth.⁴⁷ The median annual income for white men is more than USD 60 000/year, while for Black women it is less than USD 40 000/year.⁴⁸ And, losing a job

-
- 36 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge', *The New York Times*, 2 September 2020, available at: <https://www.nytimes.com/interactive/2020/09/02/magazine/food-insecurity-hunger-us.html?searchResultPosition=4>.
- 37 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge', *The New York Times*, 2 September 2020.
- 38 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge', *The New York Times*, 2 September 2020.
- 39 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge', *The New York Times*, 2 September 2020.
- 40 Honey, M. (2018), 'Martin Luther King's forgotten legacy? His fight for economic justice', *The Guardian*, 3 April 2018, available at: <https://www.theguardian.com/commentisfree/2018/apr/03/martin-luther-king-50th-anniversary->.
- 41 Honey, M. (2018), 'Martin Luther King's forgotten legacy? His fight for economic justice', *The Guardian*, 3 April 2018.
- 42 Honey, M. (2018), 'Martin Luther King's forgotten legacy? His fight for economic justice', *The Guardian*, 3 April 2018.
- 43 Oppenheimer, D. (2020), 'What Is "Systemic Racism?" How Is It Different from Racist Acts Caused by Bigotry, Prejudice or Bias?' SSRN, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644684.
- 44 Cooper, D. (2018), 'Workers of color are far more likely to be paid poverty-level wages than white workers', *Economic Policy Institute*, available at: <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>.
- 45 Weller, C. (2019), 'African Americans face systematic obstacles to getting good jobs', *Center for American Progress*, available at: <https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systematic-obstacles-getting-good-jobs/>.
- 46 Gould, E., Wilson, V. (2020), 'Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality', *Economic Policy Institute*, available at: <https://www.epi.org/publication/black-workers-covid/>.
- 47 Gould, E., Wilson, V. (2020), 'Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality', *Economic Policy Institute*.
- 48 Gould, E., Jones, J., Mokhiber, Z. (2020), 'Black workers have made no progress in closing earnings gaps with white men since 2000', *Economic Policy Institute*, available at: <https://www.epi.org/blog/black-workers-have-made-no-progress-in-closing-earnings-gaps-with-white-men-since-2000/>.

in the US often means losing healthcare insurance. As noted above, because of job losses, a growing number of Americans, and particularly people of color, are experiencing hunger.⁴⁹

When people of color need medical care, they are far less likely to receive good care. For many years hospitals and other healthcare facilities have been fleeing non-white neighborhoods because operating in white neighborhoods is more profitable.⁵⁰ As a result, the only options available to people living in non-white neighborhoods are public facilities, which were underfunded and crowded even before the pandemic, and were the first to be overwhelmed when the virus hit.⁵¹ At the peak of the pandemic in New York, patients at public hospitals were three times more likely to die than patients at private hospitals in the wealthier parts of the city.⁵² Nationwide, the COVID-19 infection fatality rate for Black Americans (97.9 per 100 000) is 2.4 times higher than for white Americans (40.4 per 100 000).⁵³

Finally, it is a well-known but rarely discussed fact that even when we correct for factors like insurance, type of hospital, diagnosis and demographics, people of color don't receive the same quality of care from US physicians, most of whom are white.⁵⁴ They are likely to receive care that is less aggressive and less effective than that offered to similarly situated white patients.⁵⁵ Multiple studies have shown that these disparities result from healthcare professionals' implicit biases towards people of color.⁵⁶ Such indirect discrimination⁵⁷ suggests the availability of a *Griggs*⁵⁸-type litigation approach, but under U.S. Constitutional law it is insufficient to show a neutral policy with discriminatory effects; the claimant must show an intent to discriminate.⁵⁹

Immigrants

Among those who are suffering the greatest deprivations because of the pandemic is a group hard to measure, because so many of them live in the shadows and work in the informal or underground economy: immigrants. Because we have constitutionally protected birthright citizenship, most non-citizen residents of the United States are immigrants, and many are here without papers. They are disproportionately poor people of color, and suffer all of the disadvantages of American citizens who are poor people of color – and more.⁶⁰ Many work in the service economy, with jobs at restaurants and hotels that have disappeared with the pandemic, but without the benefit of unemployment insurance payments.⁶¹ If they're still

-
- 49 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge,' *The New York Times*, 2 September 2020, available at: <https://www.nytimes.com/interactive/2020/09/02/magazine/food-insecurity-hunger-us.html?searchResultPosition=4>.
- 50 Clark, B. (2006), 'Hospital Flight From Minority Communities: How Our Existing Civil Rights Framework Fosters Racial Inequality In Healthcare,' *DePaul University Journal of Health Law*, available at: <https://ssrn.com/abstract=883730>.
- 51 Timsit, A. (2020), 'France's data collection rules obscure the racial disparities of Covid-19,' *Quartz*, available at: <https://qz.com/1864274/france-doesnt-track-how-race-affects-covid-19-outcomes/>.
- 52 Rosenthal, B., Goldstein, J., Otterman, S., Fink, S. (2020), 'Why Surviving COVID May Come Down to Which Hospital Admits You,' *New York Times*, 1 July 2020, available at: <https://www.nytimes.com/2020/07/01/nyregion/coronavirus-hospitals.html>.
- 53 APM Research Lab Staff (updated 16/9/2020), 'The Color of Coronavirus: COVID-19 Deaths By Race And Ethnicity In The U.S.,' *APM Research Lab*, accessible at: <https://www.apmresearchlab.org/covid/deaths-by-race>.
- 54 Bridges, K. (2018), 'Implicit bias and racial disparities in health care,' *American Bar Association*, available at: https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/.
- 55 Bridges, K. (2018), 'Implicit bias and racial disparities in health care,' *American Bar Association*.
- 56 FitzGerald, C., Hurst, S. (2017), 'Implicit bias in healthcare professionals: a systematic review,' *BMC Medical Ethics*, available at: <https://doi.org/10.1186/s12910-017-0179-8>.
- 57 For the sake of simplicity I use the European concept (as provided for in the EU sex equality directives, as well as EU directives 2000/43 and directive 2000/78) while in the USA we usually use the expression "disparate impact".
- 58 *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), where the Supreme Court ruled that a company's employment requirements (to pass an intelligence test and obtain a high-school diploma) did not pertain to applicants' ability to perform the job, and so were unintentionally discriminating against Black employees.
- 59 Please note that, according to the concept of indirect discrimination under the EU equality directives, the plaintiff does not need to prove intent of the defendant for a court to make a finding of discrimination.
- 60 Lillie-Blanton, M., Hudman, J. (2001), 'Untangling the Web: race/ethnicity, immigration, and the nation's health,' *American Journal of Public Health*, vol.91, No. 11, pp. 1736-41, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446864/>.
- 61 Page, K., Venkataramani, M., Beyrer, C., Polk, S. (2020), 'Undocumented U.S. Immigrants and Covid-19,' *The New England Journal of Medicine*, available at: <https://www.nejm.org/doi/full/10.1056/NEJMp2005953>.

employed, they're without healthcare insurance or sick leave.⁶² Others are migrant agricultural workers, who are among those most likely to be homeless.⁶³ Undocumented immigrants are excluded from the Affordable Care Act – our limited version of a national healthcare plan.⁶⁴ Many have limited English language skills, making it all the more difficult to access any healthcare services. Moreover, a new 'public charge' rule discourages them from seeking any kind of state-supported healthcare as it could interfere with later efforts to gain legal status.⁶⁵ Because they often live in fear of deportation, the contact tracing efforts to control the virus add to their fear of being discovered.⁶⁶ Several policy approaches could reduce the impact of the pandemic on immigrants, but each would conflict with the current administration's policy of deterring immigration, whether legal or illegal.

Economic impact

As is true worldwide, the pandemic has caused severe economic disruption in the United States. It is estimated that 20 % of white-owned small businesses and 40 % of small businesses owned by Black Americans have permanently closed.⁶⁷ Many large businesses have also failed, leaving many Americans unemployed with no hope of returning to their previous jobs.⁶⁸ Unemployed Americans with documented jobs received supplemental unemployment insurance benefits from April through July, but the supplements have now ended.⁶⁹ Food programs run by the federal Government, many states, and many private charities have been expanded, but nonetheless many more Americans are suffering from hunger.⁷⁰

Policy responses

The Trump administration, working with the Congress, has undertaken a number of legislative policy initiatives intended to reduce the economic impact of the pandemic and increase access to healthcare, food and personal protective equipment. Virtually all of the programs have been either heavily criticized for corruption, favoritism, cronyism and mismanagement, or have been abandoned by the administration.

A summary by *The Washington Post* of its 5 October lead story identifies the problem:

'Six months after Congress approved one of the costliest relief efforts in U.S. history, the coronavirus battle is far from over and much of the USD 4 trillion in grants and loans failed to target the neediest or move the country beyond the economic crisis, a Washington Post analysis

-
- 62 Open Society Foundations (2020), 'COVID-19 and Undocumented Workers,' available at: <https://www.opensocietyfoundations.org/explainers/covid-19-and-undocumented-workers>.
 - 63 Galley, C. (2018), 'The Connection Between Homelessness, Immigration, and Displacement,' *Center on Human Rights Education*, available at: <https://www.centeronhumanrightseducation.org/connection-homelessness-immigration-displacement/>.
 - 64 Page, K., Venkataramani, M., Beyrer, C., Polk, S. (2020), 'Undocumented U.S. Immigrants and Covid-19,' *The New England Journal of Medicine*.
 - 65 Page, K., Venkataramani, M., Beyrer, C., Polk, S. (2020), 'Undocumented U.S. Immigrants and Covid-19,' *The New England Journal of Medicine*.
 - 66 Chang, S. (2020), 'Immigration And Privacy Advocates Seek New Law Shielding COVID-19 Contact Tracing Data From Law Enforcement,' *Gothamist*, available at: <https://gothamist.com/news/immigration-privacy-advocates-coronavirus-contact-tracing-data-law-enforcement>.
 - 67 Leatherby, L. (2020), 'Coronavirus is hitting Black business owners hardest,' *The New York Times*, 18 June 2020, available at: <https://nyti.ms/2UWhYH1>.
 - 68 Tucker, H. (2020), 'Coronavirus Bankruptcy Tracker: These Major Companies Are Failing Amid The Shutdown,' *Forbes*, 3 May 2020, available at: <https://www.forbes.com/sites/hanktucker/2020/05/03/coronavirus-bankruptcy-tracker-these-major-companies-are-failing-amid-the-shutdown/#4e30feef3425>.
 - 69 Cohen, P., Casselman, B., Friedman, G. (2020), 'An Extra USD 600 a Week Kept Many Jobless Workers Afloat. Now What Will They Do?' *The New York Times*, 29 July 2020, available at: <https://www.nytimes.com/2020/07/29/business/economy/unemployment-benefits-coronavirus.html>.
 - 70 Kenneally, B.A., LeBlanc, A. N., Arango, T. (2020), 'America at Hunger's Edge,' *The New York Times*, 2 September 2020, available at: <https://www.nytimes.com/interactive/2020/09/02/magazine/food-insecurity-hunger-us.html?searchResultPosition=4>.

has found. More than half was targeted to businesses, including hundreds of billions in tax breaks for companies, many that were unaffected by the pandemic and some that still laid off thousands of workers.⁷¹

The administration has provided a USD 50 billion subsidy to United States airlines to save them from bankruptcy, in return for their agreeing to keep their employees on payroll through the end of September.⁷² As this paper is being completed, it is uncertain whether additional subsidies will be provided, and the airlines have begun laying off many of their employees.⁷³ As they do, we should expect a disproportionate impact on women.

The administration and Congress provided a subsidy program for businesses at a cost of USD 2.3 trillion, which included over USD 600 billion in tax breaks for large companies, large profits for banks asked to administer the loan programs, and other subsidies that were made with little oversight.⁷⁴ There were reports of favoritism and corruption, and of large businesses successfully masquerading as small companies to gain subsidies.⁷⁵ As *The Washington Post* reported, ‘by failing to focus on containing the virus and the particular harms of the pandemic, the relief packages distributed money to those with little need for it while allowing the illness, which is now more widespread than when the bills passed, to outstrip the aid.’⁷⁶

They provided a loan program for those small businesses that agreed to retain their employees on payroll, with a stated goal (but not a guarantee) that the loans would be forgiven. The program has been plagued by delays, cronyism and favoritism.⁷⁷ Congress required the program to pay particular attention to small businesses owned by members of vulnerable communities, but the banks administering the program favored their largest customers, ignoring small businesses owned by people of color.⁷⁸ Very few small businesses owned by Black Americans have been able to obtain loans.⁷⁹ As a result, while 20 % of US small businesses have failed, 40 % of Black-owned small businesses have failed, and half of the Black-owned small businesses in the country expect to close.⁸⁰ As many Black-owned small businesses are restaurants and other service businesses, these closures will have an outsized impact on Black women.⁸¹

-
- 71 MacMillan, D., O’Connell, J., Whoriskey, P. (2020), ‘‘Doomed to fail’’: Why a USD 4 trillion bailout couldn’t revive the American economy, *The Washington Post*, available at: <https://www.washingtonpost.com/graphics/2020/business/coronavirus-bailout-spending/>.
- 72 Hirsch, L., de la Merced, M., Sorkin, A. (2020), ‘Can airlines avoid another bailout?’, *The New York Times*, 15 September 2020, available at: <https://nyti.ms/3iCxOOQ>.
- 73 Chokshi, N. (2020), ‘Airlines, facing a painfully slow recovery, begin furloughing thousands’, *The New York Times*, 1 October 2020, available at: <https://nyti.ms/30GUY1N>.
- 74 MacMillan, D., O’Connell, J., Whoriskey, P. (2020), ‘‘Doomed to fail’’: Why a USD 4 trillion bailout couldn’t revive the American economy, *The Washington Post*.
- 75 Gordon, N., MacNeal, C. (2020), ‘Corrupted: How the PPP loans favored the historically advantaged’, *Project On Government Oversight*, available at: <https://www.pogo.org/analysis/2020/08/corrupted-how-the-ppp-loans-favored-the-historically-advantaged/>.
- 76 MacMillan, D., O’Connell, J., Whoriskey, P. (2020), ‘‘Doomed to fail’’: Why a USD 4 trillion bailout couldn’t revive the American economy, *The Washington Post*.
- 77 Gordon, N., MacNeal, C. (2020), ‘Corrupted: How the PPP loans favored the historically advantaged’, *Project On Government Oversight*, available at: <https://www.pogo.org/analysis/2020/08/corrupted-how-the-ppp-loans-favored-the-historically-advantaged/>.
- 78 DeBarros, A., Hayashi, Y., Omeokwe, A. (2020), ‘PPP money abounded—but some got it faster than others’, *Wall Street Journal*, 6 October 2020, available at: <https://www.wsj.com/articles/ppp-money-abounded-but-some-got-it-faster-than-others-11601976601>.
- 79 UnidosUS (2020), ‘First COVID-19 survey of Black and Latino small-business owners reveals dire economic future, inaccessible and insufficient government relief funds’, press release, 18 May 2020, available at: <https://www.unidosus.org/about-us/media/press/releases/051820-UnidosUS-Press-Release-COVID-19-Survey-Black-and-Latino-Small-Business>.
- 80 Leatherby, L. (2020), ‘Coronavirus is hitting Black business owners hardest’, *The New York Times*, 18 June 2020, available at: <https://nyti.ms/2UWhYH1>.
- 81 Becker-Medina, E. (2016), ‘Women are leading the rise of Black-owned businesses’, *United States Census Bureau*, available at: <https://www.census.gov/newsroom/blogs/random-samplings/2016/02/women-are-leading-the-rise-of-black-owned-businesses.html>.

They provided a supplemental unemployment insurance program that supplemented regular unemployment relief payments with an additional USD 600 a week, but the program ended in July, and the administration has opposed extending it.⁸² While it was in effect it was believed to have had a significant role in bolstering the economy.⁸³ With its expiration, the impact will be hardest on those who have lost their jobs – women and people of color.⁸⁴ It is noteworthy that it did not assist those who participate in the informal economy, and they too are disproportionately women and people of color.

They provided a one-time payment of USD 1 200 to those low and medium income Americans who pay federal income taxes, with an exception for those who are married to non-citizens.⁸⁵ The program was intended to put some immediate cash in everyone's (or almost everyone's) pockets, but was delayed because President Trump ordered that the checks, which, under normal US practice would be signed by the Secretary of the Treasury, must bear Trump's signature.⁸⁶

A proposal was rejected that we simply use the electronic data that reveals the payroll cost of every US small business to send them an automatic payroll subsidy and impose a no layoff order.⁸⁷ In retrospect, it might have avoided the enormously costly rise in unemployment, which rose to nearly 15 % of the US workforce, totaling approximately 25 000 000 workers.⁸⁸

In some regards the administration has pursued policies that do benefit the poor. For example, there have been efforts to address food insecurity.⁸⁹ These initiatives were initially seen as deeply flawed, as the number of children going to bed hungry rose dramatically.⁹⁰ But in the past month there have been reforms that are expected to reduce food insecurity, though probably not to pre-pandemic levels, which were already high for a developed country.⁹¹

Similarly, many scientists report that the 'Operation Warp Speed' project will probably speed the development of a vaccine, though recent attempts by the president to change the safety standards for vaccines are seen as undermining public confidence in the safety of any vaccine released.⁹²

In the healthcare area, the US was woefully unprepared for the demand for medical personal protective equipment (PPE). President Trump initially announced that the federal Government would oversee the distribution of PPE, but as it became clear that the supplies were insufficient, he denied his initial position and insisted it was up to the states to secure the needed supplies. That led to price wars as states

82 Casselman, B. (2020), 'End of USD 600 unemployment bonus could push millions past the brink,' *The New York Times*, 21 July 2020, available at: <https://nyti.ms/2WHLktD>.

83 Casselman, B. (2020), 'End of USD 600 unemployment bonus could push millions past the brink,' *The New York Times*, 21 July 2020.

84 Casselman, B. (2020), 'End of USD 600 unemployment bonus could push millions past the brink,' *The New York Times*, 21 July 2020.

85 Dickerson, C. (2020), 'Married to an undocumented immigrant? You may not get a stimulus check,' *The New York Times*, 28 April 2020, available at: <https://nyti.ms/3bHcfex>.

86 Rein, L. (2020), 'In unprecedented move, Treasury orders Trump's name printed on stimulus checks,' *The Washington Post*, 14 April 2020, available at: https://www.washingtonpost.com/politics/coming-to-your-1200-relief-check-donald-j-trumps-name/2020/04/14/071016c2-7e82-11ea-8013-1b6da0e4a2b7_story.html.

87 Davidson, P. (2020), 'Should Congress follow Europe's lead on stimulus to help U.S. workers and businesses?,' *USA Today*, 8 April 2020, available at: <https://www.usatoday.com/story/money/2020/04/08/coronavirus-wage-subsidy-stimulus-checks-loans-unemployment/2966589001/>.

88 Long, H. (2020), 'U.S. unemployment rate soars to 14.7 %, the worst since the Depression era,' *The Washington Post*, 8 May 2020, available at: <https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report/>.

89 Center on Budget and Policy Priorities (2020), *States Are Using Much-Needed Temporary Flexibility in SNAP to Respond to COVID-19 Challenges*, available at: <https://www.cbpp.org/research/food-assistance/states-are-using-much-needed-temporary-flexibility-in-snap-to-respond-to>.

90 Silva, C. (2020), 'Food Insecurity In The U.S. By The Numbers,' *NPR*, 27 September 2020, available at: <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers>; Turner, C. (2020), 'Children Are Going Hungry': Why Schools Are Struggling To Feed Students,' *NPR*, 8 September 2020, available at: <https://www.npr.org/2020/09/08/908442609/children-are-going-hungry-why-schools-are-struggling-to-feed-students>.

91 Gilkesson, P. (2020), 'P-EBT Extended—States Must Act to Fight Child Hunger,' *The Center for Law and Social Policy*, available at: <https://www.clasp.org/blog/p-ebt-extended-states-must-act-fight-child-hunger-0>.

92 Scott, D. (2020), 'Trump's Operation Warp Speed could be a success. The problem is Trump,' *Vox*, 7 October 2020, available at: <https://www.vox.com/coronavirus-covid19/2020/10/7/21504134/trump-covid-19-vaccine-operation-warp-speed-debate>.

competed for the little equipment available.⁹³ At one point, the Governor of Maryland called out troops to protect equipment purchased by the state from South Korea that the federal Government was trying to seize.⁹⁴ When called on to invoke emergency powers to manufacture masks and other PPE, Trump refused because much of the benefit would go to ‘blue states’ – states that were expected to vote against him in the upcoming election.⁹⁵ As of October 2020, eight months into the pandemic, there are continuing shortages of PPE across the country.⁹⁶

When Government scientists recommended that lockdowns continue and that everyone wear masks, Trump called on militia groups to confront Democratic Party governors to ‘liberate’ their states from the lockdown, and actively discouraged his supporters from wearing masks or from social distancing.⁹⁷ Of the more than 200 000 who have died, it is estimated that half would have been saved simply by Americans exercising full compliance with social distancing and mask wearing.⁹⁸

Conclusion

On 7 February 2020, at a time when there were only a handful of COVID-19 cases in the United States, US President Donald Trump revealed in a private (but taped) conversation with journalist Bob Woodward that the coronavirus was more dangerously deadly than commonly assumed.⁹⁹ His national security advisor had told him that it would be the ‘biggest national security threat you face in your presidency.’¹⁰⁰ He knew that the coming pandemic was potentially catastrophic.¹⁰¹ Yet publicly, he claimed that reports of the danger were a ‘hoax’ and ‘fake news’, encouraged his followers to engage in armed confrontations to ‘liberate’ states that had imposed lockdowns, and discouraged people from wearing masks.¹⁰²

As I write this, we are less than four weeks from election day (3 November 2020) and President Trump is recovering from his own bout of the virus, while falsely claiming that the disease is only dangerous for the elderly, ignoring the tens of thousands of middle-aged and young who have died, and treating the elderly as if their lives didn’t matter.¹⁰³ Perhaps more tellingly (though still falsely), he is claiming that the virus is mostly killing people in ‘blue states’ – states where the electorate is likely to vote for the Democratic Party candidate Joe Biden.¹⁰⁴ In part because of the president’s disregard for science, and even though he knew the risk, the United States is the outlier among developed nations, with far more

-
- 93 Goldberg, D., Ollstein, A. M. (2020), ‘A dangerous new chapter of the outbreak: Every state for itself,’ *Politico*, 14 July 2020, available at: <https://www.politico.com/news/2020/07/14/states-look-to-trump-for-a-national-plan-to-fight-coronavirus-361906>.
- 94 Pickrell, R. (2020), ‘Maryland called in National Guard troops to defend coronavirus tests from South Korea against seizure’ *Business Insider*, April 2020, available at: <https://www.businessinsider.com/maryland-national-guard-police-guard-coronavirus-tests-at-secret-location-2020-4>.
- 95 Goldberg, D., Ollstein, A. M. (2020), ‘A dangerous new chapter of the outbreak: Every state for itself,’ *Politico*, 14 July 2020.
- 96 Cohen, D. (2020), ‘Why a PPE shortage still plagues the U.S.’, *CNBC*, 22 August 2020, available at: <https://www.cnn.com/2020/08/22/coronavirus-why-a-ppe-shortage-still-plagues-the-us.html>.
- 97 Mervosh, S., Shear, M. (2020), ‘Trump encourages protest against governors who have imposed virus restrictions,’ *The New York Times*, 29 April 2020, available at: <https://nyti.ms/3ai5yhx>.
- 98 Kandula, S., Pei, S., Shaman, J. (2020), ‘Differential Effects of Intervention Timing on COVID-19 Spread in the United States,’ *MedRxiv*, available at: <https://doi.org/10.1101/2020.05.15.20103655>.
- 99 Costa, C., Rucker, P. (2020), ‘Woodward book: Trump says he knew coronavirus was ‘deadly’ and worse than the flu while intentionally misleading Americans,’ *The Washington Post*, 9 September 2020, available at: https://www.washingtonpost.com/politics/bob-woodward-rage-book-trump/2020/09/09/0368fe3c-efd2-11ea-b4bc-3a2098fc73d4_story.html.
- 100 Costa, C., Rucker, P. (2020), ‘Woodward book: Trump says he knew coronavirus was ‘deadly’ and worse than the flu while intentionally misleading Americans,’ *The Washington Post*, 9 September 2020.
- 101 Costa, C., Rucker, P. (2020), ‘Woodward book: Trump says he knew coronavirus was ‘deadly’ and worse than the flu while intentionally misleading Americans,’ *The Washington Post*, 9 September 2020.
- 102 Shear, M., Mervosh, S. (2020), ‘Trump encourages protest against governors who have imposed virus restrictions,’ *The New York Times*, 29 April 2020.
- 103 Bella, T. (2020), ‘“It affects virtually nobody”: Trump incorrectly claims covid-19 isn’t a risk for young people,’ *The Washington Post*, 22 September 2020, available at: <https://www.washingtonpost.com/nation/2020/09/22/trump-coronavirus-young-people/>.
- 104 Bump, P. (2020), ‘Trump blames blue states for the coronavirus death toll — but most recent deaths have been in red states,’ *The Washington Post*, 16 September 2020, available at: <https://www.washingtonpost.com/politics/2020/09/16/trump-blames-blue-states-coronavirus-death-toll-but-most-recent-deaths-have-been-red-states/>.

infection and death than anywhere else in the developed world.¹⁰⁵ But although the ‘red states’ have been devastated by the pandemic too,¹⁰⁶ in one regard the president was correct: the principal victims have been the poor, people of color, people with disabilities, and particularly those whose identities intersect multiple disadvantages, with poor women of color particularly at risk, and these are the people the president appears to not care about, and whose support he does not expect.

It was obvious by March to anyone who pays attention to problems of inequality that the pandemic was likely to cause the greatest harm to those already disadvantaged in American society – the poor, people of color, and particularly poor women of color and their children. We might have responded with policies intended to focus on them, and more broadly on workers, in order to protect the most vulnerable. Instead, the policies adopted were focused on protecting the economy by protecting businesses, with an emphasis on large businesses.¹⁰⁷ As a result, the personal wealth of affluent Americans has risen dramatically during the pandemic,¹⁰⁸ while the most vulnerable have seen their ‘safety nets’ collapse. It should surprise no one that the primary beneficiaries of the USD 4 trillion spent to date have been white men.

105 Leonhardt, D. (2020), ‘The Unique U.S. Failure to Control the Virus,’ *The New York Times*, 6 August 2020, available at: <https://www.nytimes.com/2020/08/06/us/coronavirus-us.html>.

106 Bump, P. (2020), ‘Trump blames blue states for the coronavirus death toll — but most recent deaths have been in red states,’ *The Washington Post*, 16 September 2020.

107 Woods, H. (2020), ‘How billionaires got USD 637 billion richer during the coronavirus pandemic,’ *Business Insider*, 3 August 2020, available at: <https://www.businessinsider.com/billionaires-net-worth-increases-coronavirus-pandemic-2020-7>.

108 Woods, H. (2020), ‘How billionaires got USD 637 billion richer during the coronavirus pandemic,’ *Business Insider*, 3 August 2020.