Is Sickness a Crime? Arizona Man with TB Locked Up Indefinitely in Solitary Confinement

27-year-old Robert Daniels is being held against his will in a Phoenix hospital ward reserved for sick prisoners. If state officials have their way, he could be there for the rest of his life. Daniels is suffering from a deadly strain of tuberculosis known as XDR-TB. Doctors say he is virtually untreatable. He has been forced to live in a hospital cell in complete isolation. [includes rush transcript]

TRANSCRIPT

This is a rush transcript. Copy may not be in its final form.

AMY GOODMAN: Is sickness a crime? We turn now to the case of an Arizona man, who’s been jailed without committing a single crime. Twenty-seven-year-old Robert Daniels is being held against his will in a Phoenix hospital ward reserved for sick prisoners. If state officials have their way, he could be there for the rest of his life. Daniels is suffering from a deadly strain of tuberculosis known as XDR-TB. Doctors say he’s virtually untreatable.

Daniels contracted the disease while living in Russia. He returned to the United States last year, agreed to a voluntary quarantine in residential care. But Daniels violated his agreement when he went outside without a mask. Daniels says he misunderstood how much of a health risk he posed, in part because he hadn’t been forced to wear a mask in Russia.

Today, Daniels has been forced to live in a hospital cell in complete isolation. His only visitors are medical staff. Sheriff’s deputies have taken away his television, his radio, his phone and his computer. He’s under 24-hour surveillance. The light in his room is never turned off, even at night. His only contact with the outside world is a pay phone.
Daniels recently described his ordeal in a phone interview with the Arizona radio station KJZZ.

**ROBERT DANIELS:** I never thought that this could happen. I’m telling you, I’m sometimes sitting on a bed, and I’m just crying because of all the quietness. I don’t have, you know, a permission to take a normal shower, and I have to spit wash. It’s really cold, especially at this time. I can’t, you know, even — I can’t even spit wash normally.

They’re telling me I’m an inmate. They gave me a booking number, you know, which is for what? For having TB? Booking number? It’s just being all ridiculous. If they want me to be isolated, that’s fine with me, but, you know, they don’t have the right to isolate me from the other world, especially my family, especially from the media, the news, the everything. I mean, I’m all alone here. I don’t even know what the hell is going on in the world. I’m not being isolated. I’m being incarcerated, and I have nobody to talk to. My mental health is going down. I’m just slowly dying.

**AMY GOODMAN:** Robert Daniels is speaking to the Arizona radio station KJZZ. On Wednesday, Democracy Now! spoke to a former worker at the Maricopa County Medical Center who has kept in touch with Daniels. She spoke to us on condition that she not be identified and that we disguise her voice.

**FORMER MARICOPA COUNTY MEDICAL CENTER WORKER:** He says he cries a lot, says he’s very depressed. You have to understand that he is in what, for all practical purposes, is in solitary confinement. He is in a room in the hospital that, number one, has no hot water, has no privacy, has no natural lights. The windows are blocked.

He has no visitation. He can make calls, but who can afford to accept their collect calls? At 4:00, they turn the telephone on. He doesn’t really have magazines. If he does, it’s rare. He doesn’t have TV. He does not have a radio. So all he has is the quietness of the room and then the nurses coming in when they bring him his medicine.
He cannot take a shower. There are no showers right now. There are no showers on the floor. But he has not had a shower since January. So he gets nothing for personal hygiene other than a basin of water and some, you know, washcloths. So he's unable to shampoo his hair, because the faucet in a detention unit is very small, and, of course, with no warm water in there, he can't shampoo anyway.

AMY GOODMAN: That was a former worker at the Maricopa County Medical Center, speaking about the tuberculosis patient, Robert Daniels. We also spoke with Daniels’s wife Alla Danielova. She lives in Moscow in Russia with their son, five-year-old Dmitry. Alla has not seen her husband in over a year.

ALLA DANIELOVA: I would like the government to give him a room without guards, without handcuffs or chains, because he’s not a criminal.

AMY GOODMAN: Robert Daniels’s harsh incarceration has sparked a controversial debate over whether Arizona officials have gone too far in the name of public safety. Dan Pochoda is legal director for the American Civil Liberties Union in Arizona, considering taking up Daniels’s case. Dan joins us on the phone from Phoenix. And we’re also joined by Lawrence Gostin, director of the Center for Law and the Public’s Health at Johns Hopkins and Georgetown Universities. On the line with us from Boston is George Annas, a professor of health law at Boston University’s School of Public Health.

I want to begin with Dan Pochoda. Just tell us further what’s happening right now and why Robert Daniels is in jail.

DAN POCHODA: Well, as you mentioned, he is in jail because of an initial decision by the county health officials, that he required to be quarantined and have his liberty taken away. We are not in a position to assess whether that the reasons that underlay that decision made sense in the first instance, but it is clear to us that the conditions that he is being held under — and I do mean "held" — are not medically dictated, but rather dictated by the sheriff, and that despite clear court
cases, he’s being held in an unconstitutional and punitive manner much worse than other persons in the hospital, even persons who have to be isolated and, as admitted by the Sheriff’s Department, like any other jail inmate. He is not a jail inmate, and he will be facing these conditions for many years to come, and they are clearly impacting his mental and physical well-being.

**AMY GOODMAN:** Professor Gostin, can you respond to this situation?

**LAWRENCE GOSTIN:** Well, I actually think that was stated quite well. And there’s no question that if somebody has extremely drug-resistant tuberculosis, that if it’s transmitted to others, it can be very dangerous, because the form of infection that you transmit to the other person is similarly very resistant, if not impossible, to treat. And so, what you’d be doing is causing really serious harm. And so, I think that public health authorities are justified in trying to prevent that, but it needs to be the least restrictive alternative, for the shortest amount of time, and in decent and humane conditions. Courts have stated that this is not a punitive decision. It shouldn’t be. It should be driven by public health and medical authorities, not by police or other corrections officials. And so, in short, the state certainly has a duty to protect the public from extreme health risks, but it needs to do it in a careful, scientific and humane way.

**AMY GOODMAN:** Professor George Annas of Boston University, what do you think should happen here? Does this case of Robert Daniels surprise you?

**GEORGE ANNAS:** Well, it disturbs me more than it surprises me. It’s not surprising that when we get the public basically totally ignorant of infectious, contagious diseases, then they’re told there’s a new disease here that could kill you and it’s not treatable, what do you expect? How do you expect people to react, especially people in law enforcement? They’re going to react, to use the tools they have. And the tools they have are jails and punishment. And Professor Gostin is right: That’s wrong. We shouldn’t be doing that.
We do not want this disease in the United States, although it’s clearly here. And we do want to take reasonable measures to make sure that it’s not spread in the community. But it does not require locking anybody up in a jail. TB is not that easy to get. I mean, if you hang around in homeless shelters, in prisons or in places where a lot of people are immuno-compromised, like have HIV disease, then it’s certainly going to be spread. But just someone walking around, at least if he doesn’t go right up next to you and breathe in your mouth for a couple of hours, you’re not going to get TB that way. So we have to learn something about tuberculosis, as well as something about the inappropriateness and, I think, unconstitutionality of locking people up with the disease.

AMY GOODMAN: Professor Gostin, what kind of rights does Robert Daniels have right now? What can he do?

LAWRENCE GOSTIN: Well, Professor Annas did state it correctly and wisely. There is a constitutional right to humane treatment. The courts have basically said that when there’s a civil confinement, whether it’s the mentally ill or for reasons of infectious diseases, it needs to be necessary for the public’s health, and it is absolutely correct that TB is not as easily transmissible as the public believes, but it can be transmitted. And when that happens, there needs to be humane conditions. It can’t be punitive; it can’t be in correctional or prison kinds of environments. So you need to give somebody basic, decent humane care and treatment. It doesn’t sound at all like that’s the case here, and I would have thought that the courts would be very sympathetic to this. My judgment is that the courts would uphold only the minimal necessary to confine him for the sake of the public, but would not allow an indefinite confinement the way they’re proposing, and certainly not in the conditions they’re proposing.

AMY GOODMAN: Professor Gostin, can you explain what tuberculosis is? What about the outbreak of the 1990s here in New York City? New York forced TB patients into detention in that outbreak.
LAWRENCE GOSTIN: Yeah, I mean, it’s --- TB is a bacterial infection. It’s very prevalent throughout world. In fact, one out of every three or four people have tuberculosis infection, but don’t get the disease. So only a small number of those will go on to get the disease. It’s prevalent in other parts of the world. It exists in the United States. And in the 1990s in New York and a number of other cities, there was a rise of cases of what they called multidrug-resistant tuberculosis. And more recently, not in the United States particularly, but in other countries, like Russia and South Africa and other places, there’s been something called extremely drug-resistant tuberculosis, which means that it really can’t even be treated with second— and third-line medications. And that’s what I gather we’re talking about here, something that is extremely resistant to treatment. And the reason is, is that the bacteria just simply adapt to the medications and become resistant and resist them.

AMY GOODMAN: So we’re talking about a man who’s been in prison now for almost, what, a year — nine, 10 months. Last July, he was detained. Dan Pochoda, what are the ACLU’s plans now in Arizona? Are you going to take up Robert Daniels’s case?

DAN POCHODA: We are, as the situation has changed over the months. He was initially confined, as was stated, by a civil proceeding in the Arizona state courts, that was brought by the Maricopa County Health Department. And things were OK, in terms of the conditions, for a while. It was a decision by the Maricopa County Health Department to turn over the body, so to speak, and control of the decisions of most of the routines of Mr. Daniels to the Maricopa County Sheriff’s Department. And the Sheriff’s Department, predictably, has stated, "We will treat this person in our jail ward as any other jail inmate." And flowing from that is the deprivations of loss of things like a TV set and hot water and a computer and any type of music player, light on in his cell, because — things that would be allowed any other patient, no less a patient that has to stay in a room. And no one is disputing the need for a locked room here.
We have recently been in touch with the attorney for Mr. Daniels, who was appointed on the initial underlying decision, and we will be working with him to change, at a minimum, the conditions of confinement. As has been stated, it’s cruelly unconstitutional to hold someone who is civilly committed in this punitive manner. Nothing could be more punitive than the stark conditions facing Mr. Daniels. If necessary, it would be constitutional litigation that we would be involved in.

AMY GOODMAN: Well, Dan Pochoda I want to thank you for being with us, of the ACLU in Arizona. Professor Lawrence Gostin and Professor George Annas of Boston University and of Georgetown and Johns Hopkins, thank you all.