

IN THE
SUPREME COURT OF ILLINOIS

JAMES MONEY, et al.,)	Original Petition for Writ of
)	Mandamus
Petitioners,)	
)	
v.)	
)	
ROB JEFFREYS,)	Case No.
Director of the Illinois Department of)	
Corrections)	
)	
Respondent)	
)	
)	

Without urgent action by the Illinois Department of Corrections (“IDOC”) Director Rob Jeffreys to drastically reduce Illinois’s prison population, the novel coronavirus is likely to spread not just inside the walls of Illinois’s 28 prisons, but throughout prison communities as well.

Director Jeffreys has the constitutional duty, *see* U.S. CONST. Am. XIII; ILL. CONST. Art. 1 § 11, and the statutory authority to release from physical custody thousands of people through the use of medical furlough, home detention, and discretionary sentence credit for early release. 730 ILCS 5/3-11-1(a)(2) (authorizing medical furlough); 730 ILCS 5/5-8A-1 et seq. (authorizing home detention for certain categories of prisoners) 730 ILCS 5/3-11-1 (authorizing director to grant 180 days of good time credits); 20 Ill. Admin. Code § 107.210 (same). Over 2,650 of the people eligible for home detention are in custody for non-violent offenses, including theft under \$300, possession of a controlled substance, forgery, and damage to property. People

eligible for release also include 5,308 people with less than six months to serve and over 12,000 people who by virtue of age or medical conditions have an increased risk of death if they contract COVID-19.¹ Director Jeffreys has failed to exercise his authority to transfer, furlough, or release these eligible individuals.

To mitigate the continued spread of the COVID-19 infection in prison and in surrounding communities, Petitioners seek a writ of mandamus ordering Director Jeffreys to medically furlough, transfer to home detention, or release all who qualify under the law, particularly those who are elderly and medically vulnerable, those who have a place in the community where they can safely self-quarantine and those who can be released without jeopardizing public safety. In the alternative, Petitioners seek a writ of mandamus ordering Director Jeffreys to identify such individuals and determine, pursuant to his authority under Illinois law, whether each such individual should be medically furloughed, transferred to home detention, or released.

Nearly 37,000 people are incarcerated in Illinois, living in close quarters where all aspects of daily life, including healthcare and food service, take place. Social distancing guidelines can never be fully or effectively implemented in the prison.² And each day, thousands

¹ Population Data Sets, Illinois Department of Corrections, available at <https://www2.illinois.gov/idoc/reportsandstatistics/Pages/PopulationDataSets.aspx>

² On March 30, 2020, following the death of a COVID-19 patient at Stateville, Illinois Department of Public Health Director Ngozi Dr. Ezike again acknowledged the heightened risk posed by correctional settings and the inability to conform them to public health standards:

“Congregate settings such as Stateville, any other correctional center, pose unique challenges in stopping the spread of disease and protecting the health of individuals who live and work there. Those who are incarcerated obviously live and work and eat and study and recreate all within that same environment, heightening the potential for COVID-19 to spread really quickly once it’s introduced.

The options for isolation of COVID-19 cases are limited in this focused setting and it becomes very difficult depending on the size of the facility and the population that’s already in the

of staff must come and go from prison facilities, potentially carrying with them the novel coronavirus for days, even weeks, without ever showing symptoms. These settings pose a particular risk of spreading the virus, with catastrophic consequences not just to the prisoners and staff, but also to their communities and the hospitals that serve them.

As of April 1, 2020, there are 52 confirmed prisoners who have COVID-19 in two different correctional centers (Stateville and North Lawndale ATC) and 25 confirmed staff who have the virus in seven different correctional centers (Stateville NRC, Stateville, Sheridan, North Lawndale ATC, Menard, Joliet Treatment Center, and Crossroads ATC).³ There are 187 additional prisoners who were tested and are awaiting results.⁴ The actual number of individuals with COVID-19 in IDOC is likely much higher.

To understand the devastating impact that COVID-19 is already having on the Illinois prison system and the communities that house those prisons, one need look no further than The Stateville Prison. St. Joseph Hospital in Joliet, Illinois, where Stateville prisoners had been hospitalized, announced on March 30, 2020 that it was “overwhelmed” by inmates suffering

facility. Ideally, all cases should be isolated individually and close contact should be quarantined individually. I know our partners at the Department of Corrections are working innovatively to try to create the best situations for these, for these facilities. But some facilities and correctional centers do not have enough individual cells, and so we are considering isolating multiple laboratory confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group.”

The Governor’s Press Conferences are available for streaming at:
<https://www.nbcchicago.com/news/local/watch-live-daily-coronavirus-briefing-from-illinois-health-officials/2234359/> (last visited March 31, 2020).

³ COVID-19 Response, Illinois Department of Correction,
<https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx> (last visited April 1, 2020).

⁴ *Id.*

from the effects of coronavirus and staff already were “maxed out.”⁵ The following day, Governor Pritzker confirmed at least one prisoner had died from the virus, while the number of confirmed cases among staff and prisoners continues to grow.⁶

Stateville and St. Joseph’s Hospital’s reality might have been avoided if the Governor and IDOC had exercised his authority to release numerous incarcerated individuals who have homes in which they could safely self-quarantine. Instead, IDOC has continued to house thousands of elderly, disabled, and medically vulnerable prisoners who could be furloughed, transferred to home detention or released. A writ of mandamus is warranted to protect the constitutional rights of thousands of incarcerated individuals and the lives and health of millions of Illinois residents.

I. This Court has the Authority to Issue a Writ that will Significantly Reduce the Risk of COVID-19 to Illinois Prisons and Surrounding Communities

1. The COVID-19 pandemic is an extraordinary circumstance that presents an unprecedented public health risk to both people in prison and the general public. A failure to adequately respond to the risk of COVID-19 in prison will heighten the risk faced by the communities surrounding prisons both because the spread of COVID-19 behind prison walls places prison employees and their families at risk and because sick prisoners will tax already over-burdened health systems. This precise scenario has played out in Joliet, Illinois.

2. Public health experts with experience in correctional settings have recommended the release from custody of people most vulnerable to COVID-19 to protect the communities

⁵ Chuck Goudie et al., *Illinois Prisoners Sick With COVID-19 “Overwhelm” Joliet Hospital*, ABC News (Mar. 30, 2020), <https://abc7chicago.com/health/illinois-prisoners-sick-with-covid-19-overwhelm-joliet-hospital/6064085/>.

⁶ The Governor’s Press Conferences are available for streaming at: <https://www.nbcchicago.com/news/local/watch-live-daily-coronavirus-briefing-from-illinois-health-officials/2234359/> (last visited March 31, 2020)

inside and outside the prisons, and to slow the spread of the COVID-19 infection. When the COVID-19 virus occurs and spreads within a prison, all persons, staff and prisoners alike, are at heightened risk of contracting the virus and, in turn, spreading the virus to others with whom they come in contact in their own homes and neighborhoods.⁷ Population reduction protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for all people held or working in a correctional facility. Because prisons are often located in small communities (like Joliet, IL), removing the most vulnerable people from custody also reduces the burden on those region's limited health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time and require hospitalization in these small communities.

3. On March 26, 2020, the Governor acknowledged that “certain populations are at a higher risk of experiencing more severe illness as a result of COVID-19, including older adults and people who have serious chronic health conditions, such as heart disease, diabetes, lung disease or other mental or physical conditions.”⁸ The Governor also acknowledged that “the vast majority” of those housed within IDOC are in “close proximity and contact with each other in housing units and dining halls,” making them “especially vulnerable to contracting and spreading COVID-19.”⁹ The Governor further acknowledged that “the IDOC currently has limited housing capacity to isolate and quarantine inmates who present as symptomatic of, or test positive for, COVID-19.”¹⁰ Public health experts across the nation have affirmed the

⁷ Greifinger Aff., Exhibit 1.

⁸ Executive Order 2020-13 (March 26, 2020), https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf (last visited Apr. 1, 2020).

⁹ *Id.*

¹⁰ *Id.*

Governor’s statements about the harm facing people in IDOC custody, concluded that COVID-19 outbreaks in prison threatened surrounding communities and call for the release of all eligible people in custody as a measure to mitigate these risks. At the Governor’s March 29, 2020, daily briefing on the coronavirus situation, IDPH Director Dr. Ngozi Ezike acknowledged the present danger that when the infection enters prisons, the congregate nature of these facilities, with staff coming and going from the community each day in large numbers, will “increase the rate of infection and its fast spread through these facilities.”¹¹

4. Public health experts across the nation corroborate the Governor’s and Dr. Ezike’s statements about the harm facing people in IDOC custody, conclude that COVID-19 outbreaks in prison threaten surrounding communities, and call for the release of all eligible people in custody as a measure to mitigate these risks Dr. Robert Greifinger, a correctional health expert, has concluded that “[r]isk mitigation is the only viable public health strategy available to limit transmission of infection, morbidity and mortality in prisons, and to decrease the likely public health impact outside of the prisons. Even with the best-laid plans to address the spread of COVID-19 in prisons, the release of individuals, prioritizing the most medically vulnerable individuals, is a key part of a risk mitigation strategy . . . Additionally, the release of detainees who present a low risk of harm to the community is also an important mitigation strategy as it reduces the total number of detainees in a facility.”¹² Dr. Greifinger explains that reducing the prison population “has a number of valuable effects on public health and public safety: it allows for greater social distancing, which reduces the chance of spread if virus is introduced; it allows

¹¹ The Governor’s Press Conferences are available for streaming at: <https://www.nbcchicago.com/news/local/watch-live-daily-coronavirus-briefing-from-illinois-health-officials/2234359/> (last visited March 31, 2020).

¹² Greifinger Aff. Ex. 1.

easier provision of preventive measures such as soap for handwashing, disinfecting supplies for surfaces, frequent laundering and showers, etc.; and it helps prevent overloading the work of detention staff, which will likely be reduced by illness, such that they can continue to ensure the safety of detainees.”¹³

5. Similarly, Dr. Craig W. Haney, a Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz, recommends that “adult prisons must reduce their populations urgently in order to allow the necessary social distancing in response to the COVID-19 Pandemic.”¹⁴

6. Corrections systems around the country have heeded the call of public health experts and taken urgent action to reduce their prison population. In California, Governor Newsom announced his plans to accelerate the release of over 3,500 people from state prisons in an effort to reduce the population as COVID-19 infections continue to spread in the prisons.¹⁵ This announcement comes in advance of a court hearing schedule to begin later this week to determine if more individuals should be released. The Iowa Department of Corrections has announced that the DOC is expediting the release of about 700 prisoners, or 7% of its population, who are approved for parole or work release.¹⁶ In New York, Governor Cuomo ordered the release of more than 7% people who are in prisons and jails across the state on the

¹³ *Id.*

¹⁴ Haney Decl. Ex. 3.

¹⁵ Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, LA Times (Mar. 31, 2020), <https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>.

¹⁶ *Officials Cut Prison, Jail Numbers; Iowa Virus Cases Hit 105*, Newton Daily News (Mar. 24, 2020), <https://www.newtondailynews.com/2020/03/23/officials-cut-prison-jail-numbers-iowa-virus-cases-hit-105/acs5xbk/>.

basis of a parole violation.¹⁷ In Colorado, Governor Polis issued an executive order that suspended the caps and criteria Colorado places on the accrual of good time credits in order to allow the DOC to award earned time credits to “facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons.”¹⁸ The Vermont Department of Corrections has worked to reduce its population by over 11%, “[t]he goal is to reduce our (inmate) population so we can start spreading out the remaining population.”¹⁹ Cleveland, Ohio has reduced its jail population by 17% and the population of the LA County jail was reduced by almost 4%.²⁰

7. In sharp contrast, on March 31, 2020, the IDOC publicly stated that it has released less than 1% of the overall IDOC population—despite the fact that 12,000 of the people in IDOC custody are eligible for transfer to medical furlough or home detention.²¹ Director Jeffrey’s failure to take reasonable action to ameliorate the risk COVID 19 poses to Illinois prisons and communities is in violation of the U.S. Constitution and his duties under state law.

¹⁷ Brendan J. Lyons, *NY to Release 1,100 Parole Violators as Coronavirus Spreads*, Times Union (Mar. 27, 2020), <https://www.timesunion.com/news/article/Deaths-surge-again-in-New-York-from-coronavirus-15160973.php>.

¹⁸ State of Colorado, *Executive Order D 2020 016* (March 25, 2020) at pg. 2, available at: <https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view>.

¹⁹ Anna Merriman, *“It’s Very Difficult to Control”*: Many Vermont Inmates Released so That Those Who Remain Can be Spread Out, Valley News (Mar. 26, 2020), <https://www.vnews.com/Vermont-NH-prisons-working-to-reduce-population-to-prevent-virus-spread-33512589>.

²⁰ Cory Shaffer, *Courts, Attorneys Reduce Cuyahoga County Jail Population by 300 Inmates in “Herculean” Eight Days Prompted by Coronavirus*, Cleveland.com (Mar. 20, 2020), <https://www.cleveland.com/court-justice/2020/03/courts-attorneys-reduce-cuyahoga-county-jail-population-by-300-inmates-in-herculean-eight-days-prompted-by-coronavirus.html>.

²¹ The Governor’s Press Conferences are available for streaming at:

<https://www.nbcchicago.com/news/local/watch-live-daily-coronavirus-briefing-from-illinois-health-officials/2234359/> (last visited March 31, 2020).

8. “If public officials have failed to comply with requirements imposed upon them [by law] a court may compel them to do so by a writ of mandamus.” *Noyola v. Board of Educ. of the City of Chicago*, 179 Ill. 2d 121, 132 688 N.E.2d 81, 86 (Ill. 1997). A writ of mandamus must “must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ.” *Id.* Each of these three requirements are met here.

9. First, as described more fully below, in the absence of action from this Court the Petitioners in custody will continue to experience violations of their constitutional rights and face the risk of serious illness or death. The family member Petitioners face the risk of losing a loved one to a preventable illness. These Petitioners have a clear right to seek the relief requested here. *See Noyola*, 179 Ill. 2d at 134-35 (in a mandamus action regarding the misuse of public school funds, finding that the parents of student meant to benefit from those funds could seek relief through a mandamus).

10. Second, mandamus is an appropriate remedy for constitutional violations. *See Crump v. Illinois Prisoner Review Bd.*, 181 Ill. App. 3d 58, 62 536 N.E.2d 875, 878 (1st Dist. 1989) (explaining that “in certain cases, allegations of constitutional violations . . . can state a cause of action for mandamus relief”); *Clayton-El v. Lane*, 203 Ill. App. 3d 895, 561 N.E.2d 183 (5th Dist. 1990) (analyzing the prisoner’s constitutional claims in the context of a mandamus petition). As described in detail below, the threat of COVID 19 poses a serious risk to the lives of people in IDOC custody. The United States Supreme Court has long held that when state officials “strip [prisoners] of virtually every means of self-protection and foreclose[] their access to outside aid, [they] are not free to let the state of nature take its course.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). State officials instead have a responsibility under the Eighth

Amendment to “take reasonable measures to guarantee the safety of the inmates.” *Id.* at 832. In *Helling v. McKinney*, 509 U.S. 25, 35 (1993), the Supreme Court held that the Eighth Amendment forbids deliberate indifference to something that “pose[s] an unreasonable risk of serious damage to . . . future health.” The Supreme Court itself addressed exposure to secondhand smoke, but it explicitly recognized that “deliberate indifference to the exposure of inmates to a serious, communicable disease” would be similarly infirm under the Eighth Amendment, even if a prisoner currently shows no serious symptoms. *Id.* at 33. Art. 1, § 11 of the Illinois Constitution provides identical prohibitions against conditions that constitute cruel and unusual punishment. *See People v. Boeckmann*, 932 N.E.2d 998, 1007(Ill. 2010) (“The proportionate penalties clause in the Illinois Constitution is coextensive with the federal constitution's prohibition of cruel and unusual punishment.”). As demonstrated by the expert declarations attached to this petition, a constitutional response to the threat of COVID-19 requires transferring a significant percentage of the current IDOC population from IDOC prisons to medical furlough or home detention.²² Director Jeffrey is ultimately responsible for ensuring that the IDOC comply with all aspects of state and federal law, so mandamus here is appropriate.

11. Third, and finally, Director Jeffrey has the authority to comply with the relief request in this writ. Illinois law explicitly empowers Director Jeffrey with the ability to transfer eligible individuals from IDOC prisons to medical furlough or home detention and to provide release to certain other individuals. Pursuant to 730 ILCS 5/3-11-1(a)(2), the IDOC may release a person from prison on medical furlough “to obtain medical, psychiatric or psychological services when adequate services are not otherwise available.” Director Jeffrey

²² *See* Greinfinger Aff. Ex. 1; Meyer Decl. Ex. 2; Haney Decl. Ex. 3; Beyrer Decl. Ex. 4; Pacholke Decl. Ex. 5.

therefore has statutory authority to release on medical furlough individuals who are medically vulnerable to COVID-19 either due to age or pre-existing medical conditions and who therefore need to quarantine in a place where social distancing is possible.

12. Pursuant to the Electronic Monitoring and Home Detention Law, 730 ILCS 5/5-8A-1 et seq. (“Home Detention Law”), Director Jeffrey has the authority and obligation to implement procedures through which eligible prisoners may serve a portion or all of their custodial sentence in home detention. The Home Detention Law directs the Department to issue administrative directives to allow for categories of state prisoners to serve portions of their sentence in home detention. Pursuant to 730 ILCS 5/5-8A-3(d), Director Jeffrey may place a prisoner in an electronic monitoring or home detention program if that person is over 55 years old, has 12 months or less to serve on their sentence, has served at least 25% of their sentenced prison term, and is serving a sentence for conviction of an offense other than for certain sex offenses.

13. Pursuant to 730 ILCS 5/5-8A-3(e), Director Jeffrey may place a person of any age serving a sentence for conviction of a Class 2, 3, or 4 felony offense which is not an excluded offense in an electronic monitoring or home detention program at any time.

14. Illinois law also provides Director Jeffrey the authority to award to eligible prisoners up to 180 days of discretionary good conduct credit, pursuant to 730 ILCS 5/3-6-3(a)(3) and 20 Ill. Adm. Code 107.210.

15. Over 2,650 of the people eligible for home detention are in custody for non-violent offenses, including theft under \$300, possession of a controlled substance, forgery, and damage to property. People eligible for release also include 5,308 people with less than six months to serve and over 12,000 people who by virtue of age or medical conditions have an

increased risk of death if they contract COVID-19.²³ Director Jeffrey has failed to exercise his authority to transfer, furlough, or release these eligible individuals.

16. If Director Jeffrey does not act immediately to reduce the Illinois prison population, COVID-19 will spread rapidly throughout IDOC, overburdening IDOC's medical care program and resulting in entirely preventable serious illness—the risk of death. Petitioner's continued confinement while COVID-19 spreads unabated through IDOC facilities constitutes cruel and unusual punishment under the United States and Illinois Constitutions. U.S. Const. amend. VIII; Ill. Const art. 1 § 11.

17. A writ of mandamus may also be sought in order to prevent or correct a manifest injustice. *See People ex rel. PPG Indus., Inc. v. Schneiderman*, 92 Ill. App. 3d 546, 548, 414 N.E.2d 1059, 1061 (1981). The inevitable result of Director Jeffrey's continued failure to fully employ his authority to transfer people from the physical custody of IDOC to medical furlough or home detention is that thousands of people including prisoners who are not eligible for transfer, furlough, or release, IDOC staff, and members of the public at large, will become seriously ill and that many of those people will die. There is no not greater injustice than a preventable, unnecessary loss of life.

18. This Petition requests that the IDOC take immediate action to protect the health and wellbeing not only of people in its custody but also people who live in communities surrounding prisons. This Court regularly issues mandamus to prevent a manifest injustice in disputes with far less serious consequences. *See Guzzo v. Snyder*, 326 Ill. App. 3d 1058, 1063, 762 N.E.2d 663, 668 (2001) (mandamus issued to compel the IDOC director to release a prisoner

²³ Population Data Sets, Illinois Department of Corrections, available at <https://www2.illinois.gov/idoc/reportsandstatistics/Pages/PopulationDataSets.aspx>

to correct the manifest injustice of miscalculated good time); *Kermeen v. City of Peoria*, 65 Ill. App. 3d 969, 973, 382 N.E.2d 1374, 1376-77 (1978) (mandamus issued to prevent the manifest injustice that would result from a financial investment in building permits); *Shell Oil Co. v. City of Chicago*, 9 Ill. App. 3d 242, 246, 292 N.E.2d 84, 87 (1972) (mandamus issued to prevent the manifest injustice that would result from the withholding of construction permits); *People ex rel. Collins v. Young*, 83 Ill. App. 2d 312, 318-19, 227 N.E.2d 524, 526-27 (1967) (mandamus issued to prevent a manifest injustice related to public school boundary lines).

19. Finally, in the event that this Court finds that the Constitution does not require the full use of Director Jefferey's authority medical furlough, transfer or release eligible prisoners to mitigate the risk of COVID-19, it still has the authority to direct Director Jeffreys to take action. Approximately 12,000 in IDOC are eligible for medical furlough, transfer or release. Director Jeffreys has failed to act and to exercise the discretion afforded to him by the Illinois Legislature to decide whether these people should remain in custody during this public health emergency or if public safety and public health concerns mandate their transfer to medical furlough or home detention. "Although mandamus may not be used to direct or alter the manner in which discretion is to be exercised, it may be used to compel a public official to in fact exercise the discretion that he possesses." *Freeman v. Lane*, 129 Ill. App. 3d 1061, 1063, 473 N.E.2d 584, 585-86 (1985). Petitioners therefore ask, in the alternative, that this Court issue a writ of mandamus ordering Director Jeffreys to identify all eligible individuals and determine whether to transfer them out of IDOC prisons.

II. The COVID-19 Outbreak Has Created a National and Global Health Emergency

20. We are living in the midst of an extreme, unprecedented worldwide health emergency caused by the rapid spread of the coronavirus, COVID-19. The World Health

Organization has declared COVID-19 to be a global pandemic.²⁴ On March 9, 2020, Illinois Governor J.B. Pritzker issued a proclamation declaring a disaster in the State of Illinois.²⁵ On March 13, 2020, President Trump declared a national emergency.²⁶

21. The number of known COVID-19 infections is increasing daily. As of April 1, 2020, there were more than 823,600 reported COVID-19 cases throughout the world and more than 40,598 people had died as a result of the virus.²⁷ In the United States alone, there are over 186,10 confirmed cases and over 3,600 deaths.²⁸ In Illinois, there are over 6,900 confirmed cases and 141 deaths.²⁹ The number of COVID-19 cases in the United States is expected to grow exponentially. The Centers for Disease Control and Prevention (“CDC”) projects that without swift and effective public health interventions, over 200 million people in the U.S. could be infected with COVID-19 over the course of the epidemic, with as many as 1.7 million deaths.³⁰

²⁴ *Rolling Updates on Coronavirus Disease (COVID-19)*, World Health Organization (Mar. 31, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

²⁵ *Gubernatorial Disaster Proclamation* (Mar. 9, 2020), <https://www2.illinois.gov/sites/gov/Documents/APPROVED%20%20Coronavirus%20Disaster%20Proc%20WORD.pdf>.

²⁶ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

²⁷ *Coronavirus Disease 2019 (COVID-19) Situation Report – 72*, World Health Organization (Apr. 1, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200401-sitrep-72-covid-19.pdf?sfvrsn=3dd8971b_2.

²⁸ *Coronavirus Disease 2019 (COVID-19): Cases in U.S.*, Centers for Disease Control and Prevention (Apr. 1, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html.

²⁹ *Coronavirus Disease 2019 (COVID-19)*, Ill. Dept. of Pub. Health (Apr. 1, 2020), <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus>.

³⁰ Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, The New York Times, (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

22. On March 20, 2020, Illinois Governor Pritzker took the strictest measure yet to fight the virus's spread, issuing a "stay at home" executive order for all residents effective starting March 21, 2020 through at least April 7, 2020, which was then extended to April 30, 2020.³¹ The order directs all non-essential business and operations to cease. People are allowed to leave their homes only for essential activities. Any gathering larger than 10 people is prohibited, and people are recommended to stay at least six feet away from others. Restaurants, bars, schools, parks, and libraries have all been shut down. In a statement to the public, Governor Pritzker explained that his order was based on his conversations with "some of the best medical experts, epidemiologists, mathematicians, and modelers," and all recommended a stay at home order "to avoid the loss of potentially tens of thousands of lives."³² Governors around the country, including in California, New York, and Connecticut, have issued similar stay at home orders to curb the spread of the virus.³³

III. Incarcerated People Are Particularly Vulnerable to Infection from COVID-19

23. None of the recommended measures for mitigating the spread of COVID-19 are available for persons confined in correctional facilities and for those who must interact with them. Correctional facilities are inherently congregate environments, where large groups of people live, eat, and sleep in close contact with one another. It is impossible to achieve social

³¹ *Executive Order In Response to COVID-19 (COVID-19 Executive Order No.8)*, https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf (last visited Apr. 1, 2020); *Illinois' Stay-at-Home Order Extended Through April, Pritzker Announces*, NBC Chicago (Mar. 31, 2020) <https://www.nbcchicago.com/news/local/illinois-stay-at-home-order-expected-to-be-extended-sources/2247274/>.

³² Dan Petrella et al., *Gov. J.B. Pritzker Issues Order Requiring Residents to "Stay at Home" Starting Saturday*, Chicago Tribune (Mar. 20, 2020), <https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-shelter-in-place-lockdown-order-20200320-teedakbfw5gvdgmnaxle154hau-story.html>.

³³ *Id.*

distancing standards in these settings.³⁴ Therefore infectious diseases, particularly airborne diseases, such as COVID-19, are more likely to spread rapidly between individuals in correctional facilities.³⁵

26. The risk of contracting an infectious disease is also higher in correctional facilities because the facilities are not sanitary environments. People share toilets, sinks, and showers, and often have limited access to soap, hand sanitizer, hot water, and other necessary hygiene items. Surfaces are infrequently washed, if at all, and cleaning supplies are in short supply.³⁶ These needs are now multiplied and also compounded by the lack of personal protective equipment (PPE) such as masks and gloves for either staff or prisoners.

27. Given the history of epidemiologic outbreaks in correctional facilities, such as Tuberculosis, influenza, and MRSA, medical and public health experts expect that COVID-19 will also readily spread in prisons, especially when people cannot engage in proper hygiene and adequately distance themselves from infected residents or staff.³⁷

28. The people who live in these environments—environments that defy all current public safety standards—are themselves at high risk due to the high rates of chronic health conditions, substance use, mental health issues, and aging and chronically ill populations who may be vulnerable to more severe illnesses, and to death, after infection from COVID-19.³⁸ As Dr. Craig Haney, a correctional health expert, explains, prisoners are “unusually vulnerable to stress-related and communicable diseases. Formerly incarcerated persons suffer higher rates of

³⁴ Greifinger Aff. Ex. 1; Haney Decl. Ex. 3.

³⁵ Beyrer Aff. Ex. 4; Meyer Decl. Ex. 2.

³⁶ Greifinger Aff. Ex. 1; Meyer Decl. Ex. 2; Beyrer Decl. Ex. 4; Haney Decl. Ex. 3.

³⁷ Beyrer Decl. Ex. 4.

³⁸ *Id.*

certain kinds of psychiatric and medical problems. Incarceration leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).”³⁹

29. People of any age who suffer from certain underlying medical conditions, including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorder (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and asthma, are at elevated risk of death if they contract COVID-19.⁴⁰ People over the age of fifty-five also face greater chances of serious illness or death from COVID-19. In the WHO-China Joint Mission Report, the preliminary mortality rate analyses showed that individuals age 70-79 had an overall 8% mortality rate, individuals age 60-69 had a 3.6% mortality rate, and individuals age 50-59 had a 1.3% mortality rate.⁴¹ For individuals age 40-49, the mortality rate was 0.4%, and for individuals 40 years and younger, the mortality rate was as low as 0.2%.

30. According to one study, “asthma prevalence is 30%–60% higher among individuals with a history of incarceration as compared with the general population.”⁴² One study estimates that up to 15% of people who are in custody have asthma, 10% of people in custody live with a heart condition that requires medical care, 10% live with diabetes, and 30%

³⁹ Haney Aff. Ex. 3.

⁴⁰ *Coronavirus Disease 2019 (COVID-19): People Who Need Extra Precautions*, CDC, https://www.cdc.gov/coronavirus/2019ncov/needextraprecautions/peopleathigherrisk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html (last visited Apr. 1, 2020).

⁴¹ *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart*, Worldometers (Feb. 29, 2020), <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (data analysis based on WHO-China Joint Mission Report).

⁴² Emily A. Wang et al., *Cardiovascular Disease in Incarcerated Populations*, 69 J. Am. C. Cardiology 2967 (2017).

have hypertension.⁴³ There are currently 4,807 people in IDOC physical custody who are age 55 or older. Based on these estimates and assuming some overlap between these categories, a conservative approximate calculation is that 12,000 people in IDOC prisons live with one or more of these medical vulnerabilities that greatly increase the chances of death upon contracting COVID- 19. In the absence of this writ, 12,000 people face exposure to a substantial risk of serious illness and death.

31. Additionally, many correctional facilities lack an adequate medical care infrastructure to treat high-risk people in custody.⁴⁴ Prison health units are not equipped with sufficient emergency medical equipment, such as oxygen tanks, nasal cannulae, and oxygen face masks, to respond to an outbreak of patients with respiratory distress. For these reasons, among others, experts have warned that, “widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate.”⁴⁵ Prisons and jails rely on outside community hospitals to provide more advanced and intensive medical care, and during an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves, as has already occurred at St. Joseph’s Hospital in Joliet.⁴⁶

⁴³ Elizabeth M. Vigilanto et al., *Mass Incarceration and Pulmonary Health: Guidance for Clinicians*, 15 Ann. Am. Thoracic Soc. 409, 409 (2019); Laura M. Marushack et al., *Medical Problems of State and Federal Prisoners and Jail Inmates*, 2011-12, U.S. Dept. of Justice (2014).

⁴⁴ Greifinger Aff. Ex. 1; Meyer Decl. Ex. 2.

⁴⁵ AMEND, *COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses*, (March 23, 2020), <https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions-1.pdf>; see also Brie Williams et al., *Correctional Facilities in the Shadow Of COVID-19: Unique Challenges and Proposed Solutions*, Health Affairs Blog (Mar. 26, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

⁴⁶ Meyer Decl. Ex. 2.

32. Prisons are not closed environments. By necessity, members of the free community, including correctional officers, social workers, attorneys, medical personnel, and many others must enter and leave the prisons on a daily basis. Staff arrive and leave each facility three times a day in large numbers, and it is impossible to adequately screen staff for new, asymptomatic infection. When the COVID-19 virus occurs and spreads within a prison, all persons, staff and prisoners alike, are at heightened risk of contracting the virus and, in turn, spreading the virus to others with whom they come in contact in their own homes and neighborhoods.⁴⁷

IV. IDOC's Medical Care Program is Gravely Under-Resourced and Under-Functioning, and is Not Capable of Managing COVID-19

33. Even before COVID-19, IDOC's medical care program was ill-equipped to meet the medical needs of prisoners in its care. For over a decade, IDOC has been mired in litigation over its consistent failure to maintain a minimally adequate system. *See Lippert v. Jeffreys*, No. 10 cv 4603 (N.D. Ill. filed May 30, 2013). In 2014 and again in 2018, the *Lippert* court appointed teams of independent experts to conduct exhaustive reviews of IDOC's medical system, both of which exposed a system in dire need of reform. In October 2018, the team of experts issued a 1200-page report, reaching the following the conclusions:

- a. The clinical care provided within IDOC was “extremely poor” and “resulted in preventable morbidity and mortality”;
- b. IDOC lacked an adequate infections disease control program;
- c. IDOC's Infectious Disease Coordinator position was vacant and had been vacant since at least 2014;

⁴⁷ Greifinger Aff. Ex.1.

- d. Systemic sanitation problems existed in at multiple IDOC facilities;
- e. IDOC’s medical staff vacancy rates were “very high” and staffing was a “critical problem” throughout IDOC;
- f. Physician staffing at IDOC was “very poor,” with “persistent and ongoing vacancies” in site medical director positions, high rates of turnover, and an overreliance on “traveling” medical directors who go from site to site;
- g. Physicians who worked at IDOC were improperly credentialed, which was “a major factor in preventable morbidity and mortality” and “significantly increase[ed] the risk of harm to patients within IDOC.”⁴⁸

34. Less than one year ago, IDOC agreed to a consent decree, which was approved and entered by the Court in May 2019, to begin needed reforms. *See Lippert v. Jeffreys*, No. 10 cv 4603 (N.D. Ill.), Doc. No. 1238 (consent decree). The consent decree called for the appointment of an independent monitor and a near complete overhaul of IDOC’s medical system.

35. In the nine months since the *Lippert* consent decree was entered, IDOC has taken preliminary steps to comply, but circumstances within the facilities remain largely unchanged. IDOC is still only in early stages of developing a compliance plan. There has been no meaningful on the ground change yet; facilities are still critically under-staffed and under-resourced. IDOC is simply unable to adequately meet the serious medical needs of IDOC’s population even under non-pandemic circumstances.

36. Even before the COVID-19 outbreak, in November 2019, the *Lippert* court monitor warned that the prevalence of elderly and infirm individuals in IDOC was straining the

⁴⁸ *Lippert* Expert Report Ex. 8 (October 2018), at 9–10, 21–31, 84–91.

system.⁴⁹ Regarding this population, the monitor noted: “It is the position of the monitor that in the short term additional IDOC resources must be directed to properly house and care for this population but in the near future the IDOC must take the lead to create a pathway to discharge those men and women whose mental and medical conditions make them no longer a risk to society to appropriate settings in the community.”⁵⁰

40. Since the outbreak of COVID-19, IDOC administrators have issued memos to prisoners notifying them that their medical resources were “stretched thin” and that they needed to focus “on [their] most vulnerable patients at this time.”⁵¹

V. Petitioners In IDOC Custody are Particularly Vulnerable to Serious Illness and Death

41. James Money (S11097) is 28 years old and is housed at Illinois River Correctional Center in Canton, Illinois. In 2016, Mr. Money was diagnosed with Stage 3 metastatic thyroid cancer. He has undergone several surgeries, most recently in January 2020, resulting in the removal of over 80 lymph nodes and a full thyroidectomy, and is now immunocompromised. He was scheduled to begin chemotherapy treatment on March 24, 2020, but IDOC cancelled his treatment, presumably to focus instead on COVID-19. Mr. Money has already served nearly 5 years of his sentence for residential burglary out of Adams County, and he is currently scheduled to be released on June 19, 2020. He is eligible for medical furlough pursuant to 730 ILCS 5/3-11-1 and discretionary good time pursuant to Ill. Admin. Code tit. 20, § 107.210. Mr. Money is also within 90 days of his release date, is eligible for release to home detention pursuant to 730 ILCS 5/5-8A-3(b). Mr. Money’s parole conditions have already been

⁴⁹ *Lippert* Court Monitor Report, Ex. 9 (November 24, 2019), at 9-10.

⁵⁰ *Id.*

⁵¹ IDOC Memorandum, COVID-19 Response, Ex. 10.

determined and he is approved to reside with his fiancée's residence in Warsaw, Illinois. His fiancée is fully prepared to provide for his medical needs.

42. William Richard (M52774) is 66 years old and lives in the healthcare unit at Dixon Correctional Center. Mr. Richard has COPD, emphysema, and heart disease, and uses a wheelchair for movement. His respiratory disease requires continuous oxygen and a breathing treatment two to three times per day. He shares his roughly 12 feet by 15 feet cell with three other individuals, making social distancing impossible--his bunk is less than 5 feet from his cellmate's bunk, and all four men share a toilet, sink, and the chuckhole through which they receive their meals. Mr. Richard has less than four months remaining on his sentence and is eligible under 730 ILCS 5/5-8A-3(d) to transfer to home detention at his mother's home.

43. Gerald Reed (N32920) is housed at the Northern Reception Center. He is 57 years old. Mr. Reed has heart failure, hypertension, and is pre-diabetic. Mr. Reed uses a wheelchair for mobility because of a decades-old leg injury that adversely affects his mobility. Within the last year, Mr. Reed has been hospitalized for a heart attack and for pneumonia. At the NRC, he is prohibited from accessing commissary and is only provided a single, small bar of soap. Pursuant to 75 ILCS 5/3-11-1, Mr. Reed is eligible for medical furlough at his mother's home.

44. Amber Watters (Y39454) is 30 years old and is housed at Logan Correctional Center in Lincoln, Illinois. Ms. Watters has neurological complications from a broken back she suffered prior to her incarceration in 2019. Prior to her incarceration, Ms. Watters was the primary caretaker for her three minor children. She is serving two three-year sentences for low level drug offenses out of Livingston County; a Class 4 sentence for possession of heroin, and a Class 2 sentence for possession with the intent to distribute a small amount of heroin. Ms.

Watters is scheduled to be released on May 1, 2020, and is eligible under 730 ILCS 5/5-8A-3(e) to transfer to home detention to her mother's home.

45. Tewkunzi Green (R84568) is housed at Logan Correctional Center in Lincoln, Illinois. She has asthma and severe hypertension for which she takes multiple medications. In January 2019, she fainted related to hypertension and was held in the cardiology unit of an off-site hospital for several days. At Logan, Ms. Green shares a room with three other women. Ms. Green has a pending commutation petition, which was filed by the January 23, 2020, filing deadline; her hearing date of April 7, 2020 was postponed and she is now being scheduled for a non-public hearing. She is also eligible for medical furlough under 730 ILCS 5/3-11-1. Ms. Green has a stable housing plan in that her mother, who owns her own home in Peoria, Illinois, where she also cares for Tewkunzi's 13-year-old son, is willing and able to receive Ms. Green at any time.

46. Danny Labosette (B23629) is currently housed at Robinson Correctional Center in Robinson, Illinois. Mr. Labosette is 56 years old and is a double amputee; his left leg has been amputated above the knee, and his right foot has been amputated. Mr. Labosette uses a wheelchair. Mr. Labosette also has untreated Hepatitis C. Mr. Labosette is housed in the Transitions Unit, a treatment facility within Robinson Correctional Cell. Social distancing is impossible for Mr. Labosette—he resides in a dorm with roughly 20 other men. He sleeps in the bottom bunk of a bunk bed, which is 3 feet away from the neighboring beds. Mr. Labosette has less than six months remaining on his sentence, and is eligible under 730 ILCS 5/5-8A-3(d) to be transferred to home detention at his mother's home in Florida, which has already been modified to accommodate his disabilities.

47. Carl Reed (R48993) is currently housed at Graham Correctional Center in Hillsboro, Illinois. He is 59 years old and he suffers from chronic kidney disease—requiring dialysis three days per week—diabetes, hypertension, and underlying neurological impairments. A doctor who is an expert in correctional health care has reviewed Mr. Reed’s medical records and recommends his immediate release for Mr. Reed’s health and safety. Mr. Reed has eight years left on his sentence, and he is eligible for medical furlough pursuant to 730 ILCS 5/3-11-1. He has a pending petition for executive clemency, and he has a stable housing plan for his release: he can live with his sister in Chicago.

48. Carl “Tay Tay” Tate (R12529) is a 40-year-old transgender woman diagnosed with Gender Dysphoria, who is housed at Danville Correctional Center. Ms. Tate has almost six years left of her sentence to serve. Ms. Tate lives with hypertension, for which she takes medication. Ms. Tate also lives with severe anxiety, and the COVID-19 outbreak has only increased her anxiety. She shares a small cell with one other person. Even with current limits on the number of people in the unit who are allowed out of their cells to use the communal dayroom, Ms. Tate estimates that around 24 people may be in the dayroom at a time. She estimates that around 75 people may be in the yard. Ms. Tate also works as a laundry porter, which places her in frequent contact with other prisoners and staff. She has asked for gloves to use, and has been denied. She has also asked for more cleaning supplies to clean the dayroom, including the phones, and has been denied. It is impossible for Ms. Tate to practice social distancing in her living situation. Ms. Tate has a pending clemency petition—which has the support of 40 organizations across the state—and her hearing date of April 7, 2020 was postponed and is being rescheduled. Ms. Tate has a stable housing plan in place for when she is released: she will live with her sister who resides in Lansing, Illinois.

49. Patrice Daniels (B70662) is 45 years old, serving a life sentence and not eligible for release. He is incarcerated at Joliet Treatment Center. Although this is one of the few facilities that has single occupant cells, he still shares a shower and dayroom with the other residents of this housing unit. Even with current limits on the number of people in the unit who are allowed out of their cells to use the communal dayroom, up to 8 people may be in the dayroom at a time. Mr. Daniels also works as a dietary aide, which places him in frequent contact with other prisoners and staff from outside of his housing unit each day. Mr. Daniels estimates that even with in-unit meal delivery, each person's meal is handled by approximately 6-8 other people between preparation and delivery. Mr. Daniels describes feeling "like a sitting duck" waiting for the coronavirus to strike. Mr. Daniels is a member of the Class.

50. Anthony Rodesky (R47057) is currently housed at Pontiac Correctional Center in Pontiac, Illinois. He is 49 years old and has diabetes and other chronic health conditions, and in 2015 he had a below-knee amputation. Mr. Rodesky is a New Jersey prisoner who is in Illinois custody pursuant to an interstate compact agreement between New Jersey and Illinois and he is not eligible for release. Mr. Rodesky has ongoing medical needs, and he must interact with Pontiac health care staff at least twice daily, in order to receive his insulin shots. He also must stand next to other prisoners when he leaves his cell to obtain his insulin shots. Mr. Rodesky is deeply fearful of contracting COVID-19 on account of his pre-existing medical vulnerabilities. Even if Mr. Rodesky is not exposed to COVID-19, an outbreak at Pontiac would drain medical resources at Pontiac that he and other prisoners with chronic health conditions rely on for every day survival.

VI. Petitioners Include the Family Members of People in Custody Who will Provide Their Loved Ones with A Safe Place to Self-Quarantine

51. Amanda Shackelford is Petitioner Gerald Reed's mother. She lives in fear that her son, who lives with serious medical issues that increase his likelihood of death should he contract COVID-19, will contract the virus and die while in the physical custody of the IDOC. If Mr. Reed were to receive a medical furlough she would allow him to live with her for the duration of the furlough.

52. Sharon Gray is John Shores's mother. Mr. Shores is currently confined at Hill Correctional Center. Hill Correctional Center has taken few precautions to manage COVID-19 and social distancing is impossible. If John were to be released, Sharon Gray would allow him to live in her home and he would be welcome in many of his family members' homes throughout Illinois.

53. Oholibamah Clark is Duane Moore's fiancé. Mr. Moore is currently confined at Dixon Correctional Center. Mr. Moore has underlying medical issues and is living in fear of the transmission of COVID-19. If Mr. Moore were to be released, he can live with Ms. Clark for the duration of his furlough.

54. LaTonya Jenkins-Lucas is Petitioner Frank Sykes's mother. Frank Sykes is currently confined at Stateville Correctional Center. Mr. Sykes has had asthma since he was born and lived with weak lung capacity while growing up. Ms. Jenkins-Lucas lives in fear that COVID-19 could be deathly for her son and that Stateville Correctional Center and the IDOC are not able to manage COVID-19. If Mr. Sykes were to be released on furlough, he would have a safe place to live with Ms. Jenkins-Lucas.

VII. Conclusion and Request for Relief

55. For the forgoing reasons, the Petitioners respectfully request this Court to issue a Writ of Mandamus requiring Director Jeffreys to:

56. Satisfy his duties under art. 1, § 11 of the Illinois Constitution, and the Eighth Amendment of the United States Constitution, by identifying and ensuring the immediate medical furlough and/or transfer to home detention of all people incarcerated in any IDOC facility who have a home in the community in which they can safely quarantine and who fall into any one of the following six categories:

- i. People who have serious underlying medical conditions that put them at particular risk of serious harm or death from COVID-19, including but not limited to: people with respiratory conditions including chronic lung disease or moderate to severe asthma; people with heart disease or other heart conditions; people who are immunocompromised as a result of cancer, HIV/AIDS, or any other condition or related to treatment for a medical condition; people with chronic liver or kidney disease or renal failure (including hepatitis and dialysis patients); people with diabetes, epilepsy, hypertension, blood disorders (including sickle cell disease), inherited metabolic disorders; people who have had or are at risk of stroke; and people with any other condition specifically identified by CDC either now or in the future as being a particular risk for severe illness and/or death caused by COVID-19, and who are eligible for medical furlough pursuant to 730 ILCS 5/3-11-1;

- ii. People who are medically vulnerable to COVID-19 because they are 55 years of age and older and who are eligible for medical furlough pursuant to 730 ILCS 5/3-11-1;
- iii. People who are 55 years of age and older with less than one year remaining on their sentence and eligible for home detention pursuant to 730 ILCS 5/5-8A-3(d);
- iv. People who are currently in custody for Class 2, 3, or 4 offences and who are eligible for home detention pursuant to 730 ILCS 5/5-8A-3(e);
- v. People who are currently in custody for Class 1 or Class X offenses with less than 90 days remaining on their sentence and eligible for home detention pursuant to 730 ILCS 5/5-8A-3(b) and (c);
- vi. People who and are scheduled to be released within 180 days and eligible to receive sentencing credit pursuant to 20 Ill. Adm. Code 107.210.
- vii. Or, in the alternative, order Director Jeffrey to identify all individuals who fall into these categories and determine whether they should be transferred or released.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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