

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF ILLINOIS

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

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**MOTION FOR LEAVE TO FILE  
PETITION FOR WRIT OF MANDAMUS**

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Pursuant to Supreme Court Rule 381(a), Petitioners respectfully move this Court for leave to file a Complaint seeking a writ of *mandamus*. The Petitioners, people in the physical custody of the Illinois Department of Corrections and their family members, seek a writ of Mandamus ordering Illinois Department of Corrections (“IDOC”) Acting Director Rob Jeffreys to mitigate the continued spread of the COVID-19 infection in prisons and their surrounding communities by transferring all eligible people, particularly those who are elderly and/or

medically vulnerable, who have a place in the community where they can safely self-quarantine, and who can be released without jeopardizing public safety, from IDOC prisons to medical furlough, home detention or release. In the alternative, Petitioners ask that this Court issue a writ of Mandamus ordering Director Jeffreys to identify all eligible individuals and determine, pursuant to his authority under Illinois law, whether they should be transferred or released.

In support of said motion, Petitioners state as follows:

1. The World Health Organization has declared COVID-19 to be a global pandemic.<sup>1</sup> The number of known COVID-19 infections is increasing daily. As of April 1, 2020, there were more than 823,000 reported COVID-19 cases throughout the world and more than 40,500 people had died as a result of the virus.<sup>2</sup> In the United States alone, there are over 186,000 confirmed cases and over 3,600 deaths.<sup>3</sup> In Illinois, there are over 6,900 confirmed cases and 141 deaths.<sup>4</sup> The number of COVID-19 cases in the United States is expected to grow exponentially.

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<sup>1</sup> Rolling updates on coronavirus disease (COVID-19), World Health Organization, <https://www.who.int/emergencies/diseases/novel-COVID-19-2019/events-as-they-happen> (last visited Mar. 29, 2020)

<sup>2</sup> 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](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200401-sitrep-72-covid-19.pdf?sfvrsn=3dd8971b_2)

<sup>3</sup> Coronavirus Disease 2019 (COVID-19): Cases in U.S., Centers for Disease Control and Prevention, [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](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) (last visited Apr. 1, 2020).

<sup>4</sup> Coronavirus Disease 2019 (COVID-19), Ill. Dept. of Pub. Health, <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus> (last visited Apr. 1, 2020).

2. All individuals are at risk of transmission of COVID-19. There is no available vaccine to protect against infection from COVID-19 and no medications approved to treat it.<sup>5</sup> The only way to reduce risks to vulnerable people is to prevent them from becoming infected. The Centers for Disease Control (“CDC”) and other public health agencies have universally prescribed social distancing—every person should remain at a distance of at least six feet from every other person and avoid gatherings of ten or more people, along with rigorous hygiene as the best and only ways to mitigate the spread of this virus.<sup>6</sup> People of any age who suffer from certain underlying medical conditions are also at elevated risk, including 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; and people who have had or are at risk of stroke.<sup>7</sup> People living with these

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<sup>5</sup> Coronavirus Disease 2019 (COVID-19): Situation Summary, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last visited Mar. 29, 2020).

<sup>6</sup> Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html) (last visited Mar. 29, 2020).

<sup>7</sup> Coronavirus Disease 2019 (COVID-19): People Who Need Extra Precautions, CDC, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html) (last visited Mar. 29, 2020).

conditions are significantly over-represented in the prison population relative to those in the general public.<sup>8</sup>

20. None of the recommended measures for mitigating the spread of COVID-19 are possible for persons confined in correctional facilities and for those who must interact with them. Correctional facilities are congregate environments, where large groups of people live, eat, and sleep in close contact with one another. It is impossible to achieve social distancing standards in these settings.<sup>9</sup> Therefore infectious diseases, particularly airborne diseases, such as COVID-19, are more likely to spread rapidly between individuals in correctional facilities.<sup>10</sup> 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.<sup>11</sup> This means there are more people who are susceptible to getting infected all congregated together in a context in which fighting the spread of an infection is nearly impossible.

3. Director Jeffrey has an affirmative duty to provide for the health, welfare, and safety of people in IDOC custody under both the Illinois Constitution and the United States Constitution. He is aware of a substantial risk of serious harm to people in IDOC custody due to the COVID-19 outbreak.<sup>12</sup> The Director has failed to take the action within his power to mitigate

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<sup>8</sup> Greifinger Aff., Exhibit 1.

<sup>9</sup> Greifinger Aff., Exhibit 1; Haney Decl., Exhibit 3.

<sup>10</sup> Beyrer Aff., Exhibit 4; Meyer Decl., Exhibit 2.

<sup>11</sup> Greifinger Aff., Exhibit 1; Meyer Decl., Exhibit 2; Beyrer Decl., Exhibit 4; Haney Decl., Exhibit 3.

<sup>12</sup> COVID-19 Response, Illinois Department of Correction, <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx> (last visited April 1, 2020).

the risk of serious harm to people in IDOC custody due to the COVID-19 outbreak. Defendant's failure to take action to mitigate the substantial risk of serious harm, of which he is aware, violates Art. 1 § 11 of the Illinois Constitution and the Eighth Amendment of the United States Constitution. The Director has no discretion to violate these constitutional requirements.

4. COVID-19 is already rapidly spreading in Illinois prisons. 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).<sup>13</sup> On March 30, 2020, health officials announced that a prisoner in his 50s housed at Stateville Correctional Center had died from COVID-19.<sup>14</sup>

5. Multiple public health experts with experience in correctional settings have concluded that reducing the populations of correctional facilities is essential to meaningfully mitigating the risks posed by COVID-19 not only to the prison population but also to the public at large.<sup>15</sup> Each day, thousands 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

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<sup>13</sup> COVID-19 Response, Illinois Department of Correction, <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx> (last visited April 1, 2020).

<sup>14</sup> Emily Hoerner, Elderly inmates are at high risk for coronavirus. Why are there so many of them in Illinois's prisons?, InjusticeWatch, <https://www.injusticewatch.org/news/2020/elderly-inmates-are-at-high-risk-for-coronavirus-why-are-there-so-many-of-them-in-illinois-prisons/>

<sup>15</sup> Greifinger Aff., Exhibit 1; Haney Decl., Exhibit 3; Beyrer Decl., Exhibit 4; Meyer Decl., Exhibit 2.

just to the prisoners and staff, but also to their communities and the hospitals that serve them.

Reducing the population Illinois prisons will improve the effectiveness of preventative measures to contain the spread of the virus and will reduce the need for already scarce medical resources and personal preventative equipment in both the prisons and in the community hospitals that provide care to severely ill incarcerated people.

6. The Director of IDOC has authority pursuant to various Illinois statutes to reduce the population in Illinois prisons. 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 5/3-6-3(a)(3) (authorizing the Director to issue up to 180 days of discretionary sentence credit to some prisoners); 20 Ill. Adm. Code 107.210 (same).

7. Defendant's failure to exercise his authority to provide for the health, welfare, and safety of people in IDOC custody, as required by the United States and Illinois Constitutions, is the subject of Plaintiffs' Complaint for a Writ of *Mandamus*, which accompanies this motion. Plaintiffs ask this Court to order Director Jeffrey to transfer eligible people to medical furlough or home detention or to release them to mitigate the risk of COVID-19. Even if this Court finds that the United States and Illinois Constitutions do not require this action, it still has the authority to order Director Jeffreys to act pursuant to his statutory authority. "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). Plaintiffs 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.

8. Under art. VI, § 4(a) of the Illinois Constitution, this Court “may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.” ILL. CONST. Art. VI, § 4(a). This Court has articulated several reasons that justify original jurisdiction in *mandamus*, several of which are directly applicable here.

9. First, this case involves a question of public right. In a series of cases dating back more than one hundred years, the Illinois Supreme Court has held that, “as a general rule, . . . this court will not take original jurisdiction to issue the writ of *mandamus* in contests which respect merely private rights, but will confine the exercise of its original jurisdiction in the matter of issuing the writ to questions of public right.” *People ex rel. Dickinson v. Board of Trade of the City of Chicago*, 193 Ill.577, 584-85 (1901). In elaborating upon the distinction between private rights and public rights, the Court explained:

In conferring original jurisdiction by constitutional provision in such cases as mandamus, it was not contemplated that the supreme court would take jurisdiction of all mandamus cases which parties might think best to bring before it, but that such original jurisdiction was conferred that the court of highest authority in the state should have the power to protect the rights, interests, and franchises of the state, and the rights and interests of the whole people, to enforce the performance of high official duties affecting the public at large.

*People ex rel. Kocourek v. City of Chicago*, 193 Ill. 507, 522, (1901). See also *North Chicago Hebrew Congregation v. Board of Appeals of Cook County*, 358 Ill. 549, 556 (Ill. 1934).

10. Both the State of Illinois and the People of the State of Illinois have a right and an interest in ensuring the health and safety of Illinois residents. Indeed, providing for the “health, safety, and welfare of the people” is enshrined in the preamble of the Illinois Constitution as one of the primary purposes of that document. ILL. CONST. Preamble. (“We, the People of the State of Illinois . . . in order to provide for the health, safety and welfare of the people . . . do ordain and establish this Constitution for the State of Illinois.”). The failure of Director Jeffrey to mitigate the spread of COVID-19 in Illinois’s prisons threatens the health and safety of the “whole people” and affects the “public at large.” In addition to the 37,000 prisoners who are housed in IDOC facilities and the 11,600 individuals who are employed in them, outbreaks of the virus threaten every member of the communities where Illinois’s 28 prisons are located; staff and others enter and leave prisons on a daily basis and it is impossible to adequately screen staff for asymptomatic infection. Thus, once the virus spreads within a prison, it most likely will not stay there. It will spread to surrounding communities and beyond. In short, the Director’s inaction impacts the health and safety of the entire population of Illinois, and thus by necessity involves a “question of public right.”

11. In *People ex rel. Rice v. Cunningham*, 61 Ill.2d 353, 356 (1975), this court stated that it “may consider the issuance of a writ of *mandamus* when the matters involved are of a compelling and general importance.” There can be no greater matter of “compelling and general importance” than the lives of tens of thousands of people.

12. Second, in addition to involving issues of public right, the circumstances of this case constitute an emergency, which also allows this Court to exercise original jurisdiction. This



Court has stated that the court of highest authority in the state has the power to exercise original jurisdiction “in [an] emergency (of which the court itself is to determine) [over] . . . cases affecting local public interests, or private rights, where there is no other adequate remedy, and the exercise of such jurisdiction is necessary to prevent a failure of justice.” *Kocourek*, 193 Ill. at 522. The COVID-19 pandemic is a global health catastrophe the likes of which has not been seen in generations. It undoubtedly qualifies as an emergency.

13. Furthermore, confirmed COVID-19 cases in Illinois, including inside IDOC, are increasing exponentially by the day. Any delay in this matter will have deadly and irreversible consequences. Requiring Plaintiffs to file first in the Circuit Court would effectively deprive Plaintiffs of their ability to vindicate, in a prompt and final manner, the vital public interests at stake here because of the delays inherent in the appellate process. In this case, even an expedited appellate process would likely come at the cost of people’s lives. That in itself is a reason for the Court to assume original jurisdiction. In election cases, for example, this Court has repeatedly seen fit to grant original writs of *mandamus* “where the time factor alone would usually render an appeal futile.” *People ex rel. Meyer v. Kerner*, 35 Ill.2d 33, 37 (1966); *Dooley v. McGillicuddy*, 63 Ill.2d 54, 58 (1976). Because COVID-19 is highly contagious and already spreading in IDOC facilities, the Court should assume original jurisdiction of Plaintiffs’ Complaint.

14. Third, although Plaintiffs have met the requirements for this Court to exercise its original jurisdiction to issue a writ of *mandamus* in this case, even if they had not, the Court can still exercise original jurisdiction over this matter because this case presents a “novel issue.” This Court has stated that “even when all of the normal requirements for the writ’s award are not met

initially, we may still consider a petition for a writ of mandamus if it presents a novel issue that is of crucial importance to the administration of justice.” *People v. Latona*, 184 Ill.2d 260, 277 (1998); *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457 (2004). Given the unprecedented nature of the current global emergency, this case clearly presents a “novel issue.” The last time the world faced a pandemic of this scale, the 1918 Spanish flu, the United States did not have over 2.2 million people in prisons or jails, so the particular issue of the spread of the disease in correctional facilities was not as acute. Therefore, the novelty of these circumstances provides yet another basis for the Court to exercise original jurisdiction in this case.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for leave to file their Complaint for a Writ of *Mandamus*.

Respectfully submitted,

/s/Sheila A. Bedi  
Attorney for Plaintiffs

Sheila A. Bedi  
Luke Fernbach\*  
Emily M. Grant\*  
Terah Tollner\*  
Community Justice Civil Rights Clinic  
Northwestern Pritzker School of Law  
375 East Chicago Avenue  
Chicago, IL 60611  
(312) 503-2492  
sheila.bedi@law.northwestern.edu  
LukeFernbach2021@nlaw.northwestern.edu  
EmilyGrant2021@nlaw.northwestern.edu  
ttollner@nlaw.northwestern.edu

Carolyn E. Shapiro  
565 W. Adams  
Chicago, Illinois 60661  
(312) 906-5392  
cshapiro1@kentlaw.iit.edu

Alan Mills  
Elizabeth Mazur  
Uptown People’s Law Center  
4413 N. Sheridan  
(773) 769-1411  
alan@uplcchicago.org  
liz@uplcchicago.org

*\*Law student licensed pursuant to Illinois  
Supreme Court Rule 711*

Vanessa del Valle  
Roderick and Solange MacArthur Just  
Northwestern Pritzker School of Law  
375 East Chicago Avenue  
Chicago, IL 60611  
(312) 503-5932  
vanessa.delvalle@law.northwestern.edu

Jennifer Soble  
Illinois Prison Project  
53 W. Jackson, Suite 1056  
Chicago, IL 60616  
(312) 324-4465  
jennifer@illinoisprisonproject.org

*Counsel for Plaintiffs*

Sarah Grady  
Loevy & Loevy  
311 North Aberdeen St., 3rd Floor  
Chicago, IL 60607  
(312) 243-5900  
sarah@loevy.com

Amanda Antholt  
Samantha Reed  
Equip for Equality  
20 N. Michigan Ave., Suite 300  
Chicago, IL 60602  
amanda@equipforequality.org  
samantha@equipforequality.org

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he filed the foregoing document via the Electronic Filing system and served an copy via email to:

Brent D. Stratton  
Chief Deputy Attorney General  
Office of the Illinois Attorney General  
100 W. Randolph Street, 12th Floor  
bstratton@atg.state.il.us

/s/ Sheila A. Bedi \_\_\_\_\_  
Sheila A. Bedi