

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JAMES MONEY, et al., on behalf of themselves	)	
and all similarly situated individuals,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 20 C 2093
	)	
J.B. PRITZKER, et al.,	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION AND MEMORANDUM  
IN SUPPORT OF CLASS CERTIFICATION**

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## INTRODUCTION

The spread of COVID-19 throughout the world has created an unprecedented health crisis. Public health officials throughout the country have implored the general public to exercise social distancing in an effort to curb the threat of the deadly virus. But people in IDOC custody have no ability to social distance—they are forced to live together most often in small, cramped quarters without the means to practice adequate hygiene. As a result of these conditions, COVID-19 has already begun to claim lives of people in IDOC custody.<sup>1</sup> The Defendants have failed to take reasonable measures to stop the spread of COVID-19 by refusing to reduce the number of people living in IDOC custody through the implementation of medical furlough, transfer to electronic monitoring/home detention, and other mechanisms to reduce the prison population. Every single person in IDOC custody faces a substantially increased risk of harm as a result of this failure—even people who lack an available pathway for transfer from prison are harmed because their likelihood of contracting the virus is substantially increased and their ability to access preventative sanitation resources and medical care is adversely affected.

## CLASS DEFINITION

This federal class action seeks to require the Defendants to mitigate the deadly threat of COVID-19 in Illinois prisons by releasing from physical custody people who are already eligible under existing law for medical furlough, home detention and other forms of transfer with an emphasis on protecting those who are particularly vulnerable due to age, disability and/or medical condition. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs move this Court to enter an order that this case may be maintained as a class action on behalf of: “all people who are

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<sup>1</sup> Ill. Dep’t of Pub. Health, “Public Officials Announce 461 New Cases of Coronavirus Disease,” (Mar. 30, 2020), *available at* <http://www.dph.illinois.gov/news/public-health-officials-announce-461-new-cases-coronavirus-disease> (last visited Apr. 1, 2020).

currently or who will in the future be housed in an IDOC prison during the duration of the COVID-19 pandemic.”

Plaintiffs’ request for transfer from physical custody is limited to the six subclasses, as defined below:

**Subclass 1:** 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.

**Subclass 2:** 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.

**Subclass 3:** 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).

**Subclass 4:** People who are currently in custody for Class 2, 3, or 4 offenses and who are eligible for home detention pursuant to 730 ILCS 5/5-8A-3(e).

**Subclass 5:** 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).

**Subclass 6:** People who are scheduled to be released within 180 days and eligible to receive sentencing credit pursuant to 20 Ill. Admin. Code 107.210.

### **BACKGROUND AND SUMMARY OF ARGUMENT**

Plaintiffs' suit for injunctive relief under the Eighth and Fourteenth Amendments, and the Americans with Disabilities Act, arises out of Defendants' failure to take necessary steps that are readily available to them to protect vulnerable populations from harm. In doing so, Defendants have acted with deliberate indifference to the significant risk of harm posed by the threat of the COVID-19 virus, in violation of Plaintiffs' constitutional rights. Specifically, Defendants have arbitrarily denied medical furlough, home detention and/or sentencing credit to people who qualify for it and need it to survive, in violation of the Due Process Clause.

The IDOC is facing an impending outbreak, the likes of which the IDOC has never seen. COVID-19 has been declared a national pandemic, President Trump has declared a national emergency, and the Governor has issued a proclamation declaring a disaster in the State of Illinois. More than 823,000 people across the globe have been infected and the disease has caused more than 40,500 deaths. 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. As with other congregate settings like nursing homes and long-term care facilities, social distancing guidelines can never be fully or effectively implemented in prison. And 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 just to the prisoners and staff, but also to their communities and the hospitals that serve them.

To understand the devastating impact that COVID-19 will have on the Illinois prison system and the communities that house those prisons, one need look no further than Joliet, Illinois. On March 25, 2020, the IDOC announced the first confirmed case of COVID-19 at Stateville Correctional Center. Just five days later, Illinois Department of Public Health Director Dr. Ngozi Ezike announced that twelve prisoners had been hospitalized with confirmed cases of COVID-19, while another 77 prisoners demonstrated symptoms but had not yet been confirmed. That same day, St. Joseph Hospital, where Stateville prisoners had been hospitalized, announced it was “overwhelmed” by inmates suffering from the effects of coronavirus and staff already were “maxed out.” The hospital’s medical director characterized the situation as “a disaster.” 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.

The Governor recently 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.”<sup>2</sup> As of April 1, 2020, there are 52 confirmed individuals in IDOC custody who have COVID-19 in two different correctional facilities (Stateville and North Lawndale ATC) and 25 confirmed staff who have the virus in six different correctional facilities (Stateville NRC, Stateville, Sheridan, Menard, North Lawndale ATC, Joliet Treatment Center, and Crossroads ATC). There are 187 additional

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<sup>2</sup> Gov. Pritzker, Executive Order 2020-13 (Mar. 26, 2020), *available at* [https://www2.illinois.gov/IISNews/21288-Gov.\\_Pritzker\\_Stay\\_at\\_Home\\_Order.pdf](https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf) (last visited Apr. 1, 2020).



prisoners who were tested and are awaiting results.<sup>3</sup> Despite the immense risk posed by this burgeoning outbreak in IDOC facilities, Defendants have deliberately taken little action to protect those in its custody—ensuring that the death toll will continue to rise.

The claims of the class and subclasses are ideally suited to proceed as a class action under Federal Rule of Civil Procedure 23(b)(2). This is so because (a) every member of the class and subclasses have the same legal theory as to why their federal rights are being violated; (b) the IDOC's failure to take reasonable measures to reduce IDOC's population adversely affects the rights of every class member; (c) every member of the class will use similar or overlapping evidence in support of his or her cause of action; and (d) every single member of the class seeks a uniform injunction requiring the Defendants to take immediate actions to institute medical furloughs, utilize home detention/electronic monitoring, and to maximize other release mechanisms to redress class members' substantial risk of harm from COVID-19. In other words, the named Plaintiffs and the putative class and subclasses share all legal claims, all factual questions are common to the named Plaintiffs and the putative class, and the named Plaintiffs and the class all seek the same injunctive relief.

In addition to commonality, the class and subclasses easily satisfy the other requirements of Rule 23(a), as well as the requirements of Rule 23(b)(2). Joinder is impracticable because the number of people in custody exceeds 36,000 on any given day, and each subclass contains hundreds and sometimes thousands of people.

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<sup>3</sup> Ill. Dep't of Corrs., COVID-19 Response, (Mar. 31, 2020), <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx> (last visited Apr. 1, 2020 at 7:00 p.m.).

The claims of the named Plaintiffs are typical of those of the class as a whole. That typicality stems from their claim that Defendants have placed them at significant risk of harm by failing to take appropriate steps to address the risk of COVID-19 throughout the IDOC.

Named Plaintiffs have no conflicts with the unnamed members of the proposed class. Their lawyers are experienced in federal court civil rights class actions, particularly those involving prisons and jails. Thus, named Plaintiffs and their counsel will adequately represent the interests of the proposed class.

Finally, Defendants have refused to act in a manner that applies generally to the class as a whole, rendering class-wide injunctive relief appropriate under Federal Rule of Civil Procedure 23(b)(2).

### **ARGUMENT**

For a district court to certify a class action, the Named Plaintiffs or the proposed class must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and at least one requirement of Rule 23(b). *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). Because the Named Plaintiffs and the proposed class and subclasses meet all four Rule 23(a) requirements and the requirements of Rule 23(b)(2), this Court should certify Plaintiffs' proposed class. Rule 23(c)(5) further allows for a class to be divided into subclasses, where the subclasses are treated as a class under Rule 23. *See Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 368 (7th Cir. 2012). As demonstrated below, each subclass additionally meets all requirements of Rule 23(a) and Rule 23(b) and this Court should similarly certify each of Plaintiffs' proposed subclasses.

**I. Plaintiffs Satisfy Rule 23(a): They Are Numerous and Raise Common Questions, and the Named Plaintiffs Are Adequate Representatives With Typical Claims.**

**A. Numerosity is Satisfied: The Class and Subclasses Each Include Thousands of Members.**

Federal Rule of Civil Procedure 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[A] class including more than 40 members is generally believed to be sufficient.” *Barragan v. Evanger's Dog & Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009); *Streeter v. Sheriff of Cook Cty.*, 256 F.R.D. 609, 612 (N.D. Ill. 2012) (same); accord William B. Rubenstein, et al., *Newberg on Class Actions*, § 3:12 (5th ed. 2011) (“a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone”). Numerosity is easily satisfied here. IDOC has approximately 36,944 individuals in its custody.<sup>4</sup> The threat posed by COVID-19 is such that every person in IDOC custody faces the risk of significant harm. Everyone is 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. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. The CDC also warns of “community spread” where the virus spreads easily and sustainably within a community where the source of the infection is unknown.

The proposed subclasses also easily meet the numerosity threshold. Subclass 1 is comprised of people who are medically vulnerable to COVID-19 because of underlying medical conditions—including people who live with diabetes and asthma, among other conditions.

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<sup>4</sup> Ill. Dep’t of Corrs., Agency Overview, <https://www2.illinois.gov/idoc/aboutus/Pages/IDOCOverview.aspx> (last visited Mar. 31, 2020).

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 as well. The WHO-China Joint Mission Report indicates that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.<sup>5</sup>

According to one study, “asthma prevalence is 30%–60% higher among individuals with a history of incarceration as compared with the general population.”<sup>6</sup> 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% have hypertension.<sup>7</sup> Based on these estimates and assuming some overlap in these diagnoses, a fair estimate of the number of people who live with one or more of these medical vulnerabilities is approximately 12,000.

Subclass 2 is comprised of the 4,807 people in IDOC custody who are medically vulnerable to COVID-19 because they are 55 and older. People over the age of 55 face greater chances of serious illness or death from COVID-19. In a February 29, 2020 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

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<sup>5</sup> Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19), World Health Organization (Feb. 28, 2020), at 12, *available at* <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (last visited Apr. 1, 2020).

<sup>6</sup> Elizabeth M. Vigilanto et al., *Mass Incarceration and Pulmonary Health: Guidance for Clinicians*, 15 *Ann. Am. Thoracic Soc.* 409, 409 (2019).

<sup>7</sup> Laura M. Marushack et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept. of Justice (2014).

50-59 had a 1.3% mortality rate.<sup>8</sup> 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%.<sup>9</sup>

According to IDOC data, 700 people are over age 55 and have less than one year left on their sentence, comprising Subclass 3; more than 9,000 people comprise Subclass 4, consisting of people eligible for release on home detention; 2,401 people are members of Subclass 5 because they are currently in custody for Class 1 or Class X offenses with less than 90 left to serve; and 5,308 people are eligible to be released in six months and thus members of Subclass 5.

The class and subclasses are clearly too numerous for joinder to be considered practicable.

**B. Commonality is Satisfied: The Legality of IDOC’s Response to the Pandemic Involves Numerous Common Questions of Fact and Law.**

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “A common nucleus of operative fact is usually enough to satisfy the commonality requirement.” *Rosario*, 963 F.2d at 1018; *Streeter*, 256 F.R.D. at 612 (same). “Rule 23 must be liberally interpreted” and should be read to favor maintenance of class actions, *King v. Kan. City S. Indus.*, 519 F.2d 20, 25-26 (7th Cir. 1975); *Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992) (“[T]he commonality requirement has been characterized as a ‘low hurdle’ easily surmounted.”).

Plaintiffs must demonstrate that there is “some glue” holding the claims together; the class claims “must depend upon a common contention” that is “of such a nature that it is capable

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<sup>8</sup> Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart, <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/> (date analysis based on WHO-China Joint Mission Report).

<sup>9</sup> *Id.*

of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). (“What matters to class certification . . . is not the raising of common ‘questions . . . but, rather the capacity of a classwide proceeding to generate common answers . . .’)” (citations and quotations omitted; emphasis and first ellipsis in original). In numerous post-*Walmart* cases, district courts have found that systemic constitutional challenges to prison and jail conditions provide the “glue” necessary to hold a class together. *E.g.*, *Olson v. Brown*, 284 F.R.D. 398, 410-11 (N.D. Ind. 2012) (jail policies and conditions); *Ross v. Gossett*, 2020 WL 1472072, at \*3-4 (S.D. Ill. Mar. 26, 2020) (unconstitutional practices regarding shakedowns); *Rosas v. Baca*, 2012 WL 2061694, at \*3 (C.D. Cal. June 7, 2012) (jail violence case); *Jones v. Guzman*, 296 F.R.D. 416, 465-66 (E.D. La. 2013) (jail violence case); *Hughes v. Judd*, 2013 WL 1821077, at \*23 (M.D. Fla. Mar. 27, 2013) (unconstitutional conditions for juvenile detainees); *M.D. v. Perry*, 294 F.R.D. 7, 35 (S.D. Tex. 2013) (foster children facing abuse); *Parsons v. Ryan*, 289 F.R.D. 513, 516-23 (D. Ariz. 2013) (inadequate medical and mental health care in state prisons); *Butler v. Suffolk Cnty.*, 289 F.R.D. 80, 98 (E.D.N.Y. 2013) (jail sanitation case); *Abadia-Piexoto v. United States Dep’t of Homeland Sec.*, 277 F.R.D. 572, 577 (N.D. Cal. 2011) (shackling of detainees during judicial proceedings).

As the Supreme Court explained in *Wal-Mart*, “for purposes of Rule 23(a)(2) [e]ven a single [common] question will do . . .” 564 U.S. at 359 (citation and internal quotations omitted; alterations in original). Here, Plaintiffs allege that all members of the proposed class are at significant risk of contracting a fatal illness due to Defendants’ systemic failure to implement policies and practices necessary to reduce the number of people in IDOC custody and thus reduce the risk of COVID-19 for all members of the class and subclasses. The questions of law and fact common to the class and each subclass are the following:

- (1) Does COVID-19 present a substantial risk of harm to people in the custody of the Illinois Department of Corrections?
- (2) Do Defendants Pritzker and Jeffreys have available to them measures that could reduce the number of people living in IDOC prisons, including those who are especially vulnerable to COVID-19?
- (3) Have the Defendants failed to act reasonably to mitigate the spread of COVID-19 and protect those in custody who are vulnerable by not fully utilizing medical furlough, home detention, and other mechanisms to reduce the prison population?

Resolving these questions will yield exactly the kind of “common answer” to Plaintiffs’ Eighth and Fourteenth Amendment claims that the Supreme Court requires. See *Wal-Mart*, 564 U.S. at 351.

An injunctive challenge to a systemic failure to protect class members from significant harm is a textbook example of a case that satisfies the commonality requirement and warrants class certification. Indeed, “[a] class action is . . . an appropriate vehicle to address what is alleged to be a systemic problem.” *Coleman v. County of Kane*, 196 F.R.D. 505, 507 (N.D. Ill. 2000) (finding commonality in case against sheriff regarding bond fees). Plaintiffs here challenge the Defendants’ systemic failure to respond reasonably to the deadly threat of COVID-19. The commonality requirement is therefore easily met. See *Corey H. v. Bd. of Educ. of City of Chi.*, 2012 WL 2953217, at \*7 (N.D. Ill. Jul. 19, 2012) (“Plaintiffs have attacked . . . systemic failures and district-wide policies that apply to every member of the certified class.”).

**C. Typicality is Satisfied: The Named Plaintiffs’ Claims are Representative of Those of the Class at Large.**

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The standard for determining

typicality is not an identity of interest between the named plaintiffs and the class, but rather a “sufficient homogeneity of interest.” *See, e.g., Jones v. Blinziner*, 536 F. Supp. 1181, 1190 (N.D. Ind. 1982) (citing *Sosna v. Iowa*, 419 U.S. 393, 403 n.13 (1975)). “[T]he typicality requirement is liberally construed.” *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996).

In this case, the claims of the Plaintiffs are typical of the class and subclasses as a whole. *See Fonder v. Sheriff of Kankakee County*, 2013 WL 5644754, at \*6 (C.D. Ill. Oct. 15, 2013) (typicality satisfied where “Plaintiff is challenging the same strip search policy as the class he seeks to represent”); *Olson*, 284 F.R.D. at 411 (typicality satisfied where class representative and members of proposed class had legal mail opened improperly by correctional officers); *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24-25 (2d Cir. 1971) (finding typicality in lawsuit challenging excessive force by guards, despite individual factual differences); *Ingles v. City of New York*, 2003 WL 402565, at \*5 (S.D.N.Y. Feb. 20, 2003) (same); *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1385 (N.D. Ga. 1997) (finding typicality in prison excessive force case even though “when compared to the Plaintiffs’ claims, the unnamed class members may have suffered different injuries under different circumstances”). Every member of the class faces a substantial risk of contracting COVID-19 if the IDOC fails to take meaningful action to reduce the in-custody population. Some people, like the medically vulnerable members of Subclasses 1 and 2, face an increased risk of death if they contract the virus. Others, like those in Subclasses 3-5 have statutory pathways to release that the Defendants have arbitrarily failed to implement in violation of their due process rights.

Of course “[t]ypical does not mean identical.” *Gaspar*, 167 F.R.D. at 57; *see also De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983) (“The typicality requirement may be satisfied even if there are factual distinctions between the claims of the



named plaintiffs and those of other class members.”), *overruled on other grounds*, *Green v. Mansour*, 474 U.S. 64 (1985); *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (same). Thus, the typicality requirement is satisfied when the representative’s injuries arise from the same practice affecting the rest of the class, even if factual differences exist. *Streeter*, 256 F.R.D. at 612-13 (certifying class of detainees strip searched upon entry to Cook County Jail, despite the Sheriff’s argument that there were differences in the circumstances of each search “because the likelihood of some range of variation in how different groups of . . . detainees were treated does not undermine the fact that the claims of each class [member] share a common factual basis and legal theory.” (internal quotation marks omitted)); *Areola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008) (typicality satisfied where plaintiff was in the “same boat” as other Cook County Jail detainees who had been denied crutches); *Parish v. Sheriff of Cook County*, 2008 WL 4812875, at \*4 (N.D. Ill. Oct. 24, 2008) (certifying class of Cook County Jail detainees who were denied adequate medical care and rejecting the Sheriff’s argument that commonality did not exist because “the named plaintiffs’ claims vary as to the type of illness complained of and the type of medication at issue”); *Bullock v. Sheahan*, 225 F.R.D. 227, 230 (N.D. Ill. 2004) (“[p]otential factual differences” relating to individual searches held insufficient to defeat typicality in a jail strip search case).

While members of Subclasses 1-2 have an increased risk of severe illness or death as a result of the threat of COVID-19 and Subclasses 3-5 suffer due process violations, the overarching nature of the threat of COVID-19 to every person confined in IDOC custody is sufficient to satisfy typicality.

**D. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class and Subclasses.**

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This adequate representation inquiry consists of two parts: (1) the adequacy of the named plaintiffs as representatives of the proposed class’s myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel.” *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011). All Plaintiffs here are represented by counsel experienced in the protection and enforcement of constitutional and statutory rights. Plaintiffs each have a strong personal stake in the proceedings that will “insure diligent and thorough prosecution of the litigation.” *Rodriguez v. Swank*, 318 F. Supp. 289, 294 (N.D. Ill. 1970), *aff’d*, 403 U.S. 901 (1971).

**1. Absence of Conflict within the Class**

The ten Named Plaintiffs in this case are set forth below:

1. 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 20 Ill. Adm. Code 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

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. Mr. Money is a member of Subclasses 1, 5, and 6.

2. 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 on electronic monitoring. Mr. Richard is a member of Subclasses 1, 2, 3, and 6.

3. 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 730 ILCS 5/3-11-1, Mr. Reed is eligible for medical furlough at his mother's home. Mr. Reed is a member of Subclasses 1 and 2.

4. 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. Ms. Watters is a member of Subclass 4.

5. 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. Ms. Green is a member of Subclass 1.

6. 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. Mr. Labosette is a member of Subclasses 1, 2, and 3.

7. 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. Mr. Reed is a member of Subclasses 1 and 2.

8. 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. Ms. Tate is a member of Subclass 1.

9. 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.

10. 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. Mr. Rodesky is a member of the Class.

As set forth above, these Named Plaintiffs and the class members raise the same claims, which give rise to common questions of fact and law. The class representatives do not have interests antagonistic to those of the class. Both the representatives and the class members have a common interest in the reduction of harm posed by COVID-19. There is no suggestion of any collusion between any of the Named Plaintiffs and any of the named Defendants. Moreover, no conflicts exist that could hinder the Named Plaintiffs' ability to pursue this lawsuit vigorously on behalf of the class. The Named Plaintiffs are committed to a class-wide resolution, and they will fairly and adequately protect the interests of the class.

## **2. Adequacy of Representation**

Plaintiffs' counsel are eminently qualified, experienced in conducting federal class action litigation, and have adequate resources to undertake the proposed litigation to its resolution. Plaintiffs are represented by attorneys from the Community Justice and Civil Rights Litigation Clinic at Northwestern Pritzker School of Law, Equip for Equality, Illinois Prison Project, Loevy & Loevy, the Roderick and Solange MacArthur Justice Center, and Uptown People's Law Center. Counsel's qualifications are more explicitly set forth in the attached declarations.

## **II. Plaintiffs Satisfy Fed. R. Civ. P. 23(b)(2): This Case Seeks Declaratory and Injunctive Relief from Omissions that Place the Entire Proposed Class at Risk of Serious Illness and Death.**

The final requirement for class certification is satisfaction of at least one of the subsections of Rule 23(b). Subsection (b)(2) requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). Courts have repeatedly held that civil rights class actions are the paradigmatic 23(b)(2) suits, "for they seek classwide structural relief that would clearly redound

equally to the benefit of each class member.” *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir. 1979, vacated on other grounds, 442 U.S. 915 (1979)); see also *Johnson v. General Motors Corp.*, 598 F.2d 432, 435 (5th Cir. 1979). As stated in the leading treatise on class actions:

Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits. Most class actions in the constitutional and civil rights areas seek primarily declaratory and injunctive relief on behalf of the class and therefore readily satisfy Rule 23(b)(2) class action criteria.

A. Conte & H. Newberg, *Newberg on Class Actions* § 25.20 (4th ed. 2002). In addition, the Seventh Circuit has recognized that prisoners, because of many factors “may not . . . [be] in a position to seek . . . [relief] on their own behalf,” and that this fact militates in favor of class certification. *United States ex rel. Morgan v. Sielaff*, 546 F.2d 218, 222 (7th Cir. 1976).

Injunctive challenges to prison and jail conditions routinely proceed as class actions. See, e.g., *Brown v. Plata*, 563 U.S. 493, 506 (2011); *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 374 (1992); *Jones 'El v. Berge*, 374 F.3d 541 (7th Cir. 2004); *Bruscino v. Carlson*, 854 F.2d 162, 164 (7th Cir. 1988); *Hadi v. Horn*, 830 F.2d 779, 781 (7th Cir. 1987); *French v. Owens*, 777 F.2d 1250, 1251 (7th Cir. 1985); *Jones v. Diamond*, 519 F.2d 1090, 1097 (5th Cir. 1975) (“Realistically, class actions are the only practicable judicial mechanism for the cleansing reformation and purification of these penal institutions.”); *Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994) (noting that subsection (b)(2) “is almost automatically satisfied in actions primarily seeking injunctive relief”); *Bradley v. Harrelson*, 151 F.R.D. 422, 427 (M.D. Ala. 1993) (stating that subsection (b)(2) “is particularly applicable to suits such as the one *sub judice* which involve conditions of confinement in a correctional institution”). Here, the practice of high-level officials failing to take reasonable measures to abate the deadly threat posed by COVID-19 places all class members at risk of serious illness or death. Rule 23(b)(2) is accordingly satisfied.



## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify a class comprised of “all people who are currently or who will in the future be housed in an IDOC prison during the duration of the COVID-19 pandemic.”

The Plaintiff further requests that the Court certifies the following subclasses:

**Subclass 1:** 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.

**Subclass 2:** 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.

**Subclass 3:** 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).

**Subclass 4:** People who are currently in custody for Class 2, 3, or 4 offenses and who are eligible for home detention pursuant to 730 ILCS 5/5-8A-3(e).

**Subclass 5:** 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).

**Subclass 6:** People who are scheduled to be released within 180 days and eligible to receive sentencing credit pursuant to 20 Ill. Admin. Code 107.210.

Finally, the Plaintiffs request that this Court appoint James Money, William Richard, Gerald Reed, Amber Watters, Tewkunzi Green, Danny Labosette, Carl Reed, Carl “Tay Tay” Tate, Patrice Daniels, and Anthony Rodesky as class representatives for the class, and the subclasses of which they are a member; and that the Court appoint the undersigned attorneys as Class Counsel.

Respectfully submitted,

s/Sheila A. Bedi

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**CERTIFICATE OF SERVICE**

I, Sheila Bedi, an attorney, hereby certify that on April 2, 2020, I caused a copy of the foregoing Plaintiffs' Motion and Memorandum in Support of Class Certification to be filed using the Court's CM/ECF system. I further certify that I, or another one of Plaintiffs' attorneys, will promptly serve a copy of the same on IDOC's Chief Legal Counsel, Deputy Legal Counsel for the Office of the Governor, and the Illinois Attorney General's Chief Deputy.

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