

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

MARCUS BARNES, individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

v. )

No. 20-cv-2137

ROB JEFFREYS, in his official )  
Capacity as the Director of the Illinois )  
Department of Corrections, )

Defendant. )

**PLAINTIFF’S MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

Plaintiff Marcus Barnes, individually and on behalf of all others similarly situated, respectfully requests that this Honorable Court enter a temporary restraining order and preliminary injunction granting the following relief:

- An immediate order prohibiting enforcement of 730 ILCS 5/3-3-7(a)(7.6) (hereinafter the “One-Per-Address Statute”) as to Plaintiff Marcus Barnes so he can be released from prison to a host site at 5726 S. Sangamon, Chicago, Illinois; and
- A preliminary injunction prohibiting the IDOC from enforcing the One-Per-Address Statute against individuals who have completed their court-ordered sentences of incarceration and remain in prison due to an inability to identify a host site that satisfies the One-Per-Address Rule.

## INTRODUCTION

Plaintiff Barnes, and the members of the class he seeks to represent, have all completed their court-ordered terms of incarceration and are entitled to release on Mandatory Supervised Release (“MSR”). They remain in prison because they cannot find an approved “host site” at which to live while on MSR.

In *Murphy v. Raoul*, 380 F. Supp. 3d 731, 738 (N.D. Ill. 2019), this Court has already concluded that it is a violation of the Equal Protection Clause and the Eighth Amendment to subject individuals to indefinite incarceration solely because they cannot meet the host-site requirement, holding as follows:

At the very heart of the liberty secured by the separation of powers is freedom from indefinite imprisonment by executive decree. The Attorney General and Director’s current application of the host site requirement results in the continued deprivation of the plaintiffs’ fundamental rights and therefore contravenes the Eighth and Fourteenth Amendments to the Constitution of the United States.

That decision was entered more than a year ago on March 31, 2019. Today, 297 members of the *Murphy* class still remain imprisoned in violation of their constitutional rights. Presently, the world is in the grip of an unprecedented public health emergency that poses a particular danger to incarcerated individuals. On Sunday, April 5, 2020, IDOC confirmed that a staff member at Graham Correctional Center (where Plaintiff is imprisoned) has been diagnosed with COVID-19, putting the entire population of individuals imprisoned at Graham in imminent danger of infection. Every day that the members of the class remain incarcerated poses a grave risk to their health and safety.

Plaintiff Marcus Barnes has a safe place to live outside of prison (5726 S. Sangamon, Chicago, Illinois) that satisfies almost every one of the onerous requirements for where individuals who have been convicted of sex offenses are permitted to reside—*i.e.*, it is not within 500 feet of a school, playground, daycare, or any other location where children congregate. Yet, the IDOC will not permit him to be released to the aforementioned address because another registrant resides at the same address, and a section of the Illinois Uniform Code of Corrections prohibits individuals on MSR for sex offenses from living “at the same address or in the same condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender or has been placed on supervision for a sex offense.” 730 ILCS 5/3-3-7(a)(7.6) (hereinafter the “One-Per-Address Statute”).

Plaintiff now asks this court to enjoin enforcement of the One-Per-Address Statute because, for the reasons set forth below, its application to Plaintiff Barnes and others similarly situated to him violates the Eighth Amendment.

## **FACTUAL BACKGROUND**

### **I. Plaintiff Marcus Barnes**

Plaintiff Marcus Barnes is 42 years old. He was convicted in 2008 of criminal sexual assault and sentenced to serve 12 years in IDOC plus an indeterminate term of “three years to life” on MSR. With good time credits, Barnes completed his prison sentence on December 17, 2018, and was approved for release on MSR by the Prisoner Review Board.

Barnes has a caring family that has worked tirelessly for the past 18 months to find him a place to live while on MSR. Ex. 1, Decl. of Delshay McDaniel at ¶1. Barnes has submitted 11 different potential host sites. *Id.* at ¶¶2, 3. Some of the sites were with family members; others were private residences where Barnes would have lived alone. *Id.* at ¶3. IDOC has rejected every one of these proposed host sites. *Id.* at ¶4. The IDOC has given Barnes various reasons for rejection of the sites, including the proposed site is too close to a daycare; in a “motel”; and within 500 feet of an “after school program.” *Id.*

In February 2020, Barnes’ family found him a place to stay at 5726 S. Sangamon in Chicago. *Id.* at ¶¶5, 6. The building is owned and operated by an organization called Jordan’s Dream, which provides transitional housing and supportive services (such as help with locating employment and connections to mental health providers) to individuals who have been convicted of sex offenses. *Id.* The building is a typical two-flat with two apartments, one on the second floor and one on the first floor. *Id.*

IDOC investigated the address and confirmed that it complies with the statutory restrictions on proximity within 500 feet of schools, playgrounds, daycares and other places where children congregate. The sole reason the address was rejected is that another registrant also lives at the address. *Id.* Because this address has been rejected, Barnes remains imprisoned in IDOC. At the time of filing, Jordan’s Dream still has an opening for Barnes at the Sangamon address and would still like to have Barnes live there. *Id.* at ¶7.

Barnes’ father died on March 31, 2020. *Id.* at ¶8. Barnes remains in prison and

is unable to mourn the loss of his father with the rest of his family, although he has already served his time and should have been released 16 months ago. Barnes has also learned that a guard at Graham Correctional Center has been diagnosed with COVID-19 and fears for his safety remaining imprisoned there. *Id.* at ¶9.

## **II. The *Murphy* Litigation**

The plaintiffs in *Murphy* challenged the constitutionality of the “host site” requirement as it was being applied to individuals who have been sentenced to an indeterminate term of “three years to life” on MSR. Such individuals face the possibility of being imprisoned for life if they are unable to find and/or pay for housing that meets the requirements imposed by Illinois law and IDOC policy because their MSR time never begins to run until they are released from prison to an approved host site. *See* 730 ILCS 5/3-14-2.5(e).

The *Murphy* plaintiffs identified several layers of restrictions that limit where people sentenced to indeterminate MSR can live, which together make it impossible for the members of the class to find host sites. Among the restrictions are the following:

- Sections of the Illinois Criminal Code which make it a crime for any individual classified as a “child sex offender” to live within 500 feet of a school, playground, or daycare (720 ILCS 5/11-9.3 (b-5), (b-10));
- Sections of the Illinois Unified Code of Corrections which prohibit persons required to register as sex offenders from living “near” “parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate without advance approval of an agent of the Department of Corrections” (730 ILCS 5/3-3-7(b-1)(12));
- The One-Per-Address Statute, which requires individuals on MSR for sex offenses to “refrain from residing at the same address or in the same

condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender” (unless residing at a “licensed transitional housing facility for sex offenders,” a facility “operated or licensed by the Department of Children and Family Services or by the Department of Human Services,” or a “licensed medical facility”) (730 ILCS 5/3-3-7(a)(7.6));

- Housing restrictions imposed as a matter of IDOC policy including prohibitions on living in a host site where children visit or reside (including the parolee’s own children), where there are computers or wi-fi access, and/or where there is no land-line telephone;
- The unavailability of half-way houses, transitional housing, homeless shelters or other free or low-cost housing for indigent parolees; and
- The IDOC’s interpretation of the One-Per-Address Statute as prohibiting a sex offender parolee from living in a building adjacent to a building where another registrant lives and/or from living in the same trailer park as another registrant.

*Murphy* was certified as a class action on behalf of “all individuals sentenced to serve three-years-to-life on MSR currently detained in the IDOC who have been approved for release on MSR by the PRB but have been denied release from IDOC custody because of their inability to obtain an approved host site.” *Murphy v. Raoul*, 16-cv-11471, ECF No. 63. Plaintiff Marcus Barnes is a member of the *Murphy* class.

On March 31, 2019, this Court granted the plaintiffs’ motion for summary judgement on their claim that the state’s statutory and regulatory scheme violates the Equal Protection Clause and the Eighth Amendment. *Murphy v. Raoul*, 16-cv-11471, ECF No. 132; *Murphy v. Raoul*, 380 F. Supp. 3d 731 (N.D. Ill. 2019). The Court’s summary judgment decision did not single out a particular Illinois law or IDOC policy that violated the constitution. Rather, the Court held that the state’s “statutory and regulatory scheme” as a whole (*i.e.*, the overlapping restrictions

imposed by Illinois law, the IDOC's interpretation of the law, and the IDOC's policies) violates the *Murphy* class's constitutional rights.

On January 15, 2020, the Court entered a permanent injunction requiring the Illinois Department of Corrections to put forth a plan "setting forth the specific steps [the Defendants] will take to ensure that by no later than January 2, 2021, no member of the class will remain imprisoned due to an inability to comply with the host site requirement." *Murphy v. Raoul*, 16-cv-11471, ECF No. 156. The IDOC filed its compliance plan on February 27, 2020. 16-cv-11471, ECF No. 161. The permanent injunction also calls for the IDOC to provide the court with periodic status reports concerning its implementation of the compliance plan and progress towards the January 2, 2021 compliance deadline. 16-cv-11471, ECF No. 156.

At the time of this filing, it is counsel's understanding that the IDOC has succeeded in releasing only three members of the *Murphy* class from IDOC. Each of those individuals were detained in IDOC for more than eight years beyond the completion of his prison sentence. Presently, the *Murphy* class comprises at least 297 individuals who remain in prison beyond the completion of their court-ordered sentence of imprisonment due to an inability to meet the host site requirement, some for as long as eight years past their MSR date.

The IDOC's compliance plan for meeting the January 2, 2021 deadline includes several worthwhile proposals, including changes to IDOC interpretation of statutory restrictions (*e.g.*, not applying the One-Per-Address Statute to trailer parks and adjacent buildings); changes to IDOC policy (*e.g.*, allowing individuals to reside at

addresses with Wi-Fi, relaxation of the land-line requirement); and contracting with private vendors to provide transitional housing. *Murphy v. Raoul*, 16-cv-11471, ECF No. 161. The plan also notes that “[t]here are many statutory provisions that impede the Department’s ability to approve prospective host sites for sex offenders” states that the Department and “hopes that some of the statutory impediments to identifying host sites can be reduced or eliminated through legislative change.” *Id.* at 3-4.

### **III. Health Risks of Detention in IDOC Amid the COVID-19 Pandemic**

We are in the midst of a world-wide health crisis caused by the rapid spread of coronavirus and COVID-19. The number of known COVID-19 infections is rising at an alarming rate. As of April 5, 2020, there have been more than 1.2 million infections globally<sup>1</sup>; and Illinois alone has nearly 9,000 known cases.<sup>2</sup> Nearly 67,000 people have died.<sup>3</sup>

The risks to the health of individuals detained in close proximity to one another in prisons—as well as the staff, attorneys, medical professionals, and clergy who visit and work in these prisons—cannot be overstated. COVID-19 is highly

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<sup>1</sup> See Johns Hopkins University, Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html> (last visited April 4, 2020).

<sup>2</sup> “Coronavirus in Illinois Updates,” *Chicago Tribune*, April 3, 2020 (available at: <https://www.chicagotribune.com/coronavirus/ct-coronavirus-pandemic-chicago-illinois-news-20200403-dr4twatabrcx5ccwzews4uwngu-story.html>)

<sup>3</sup> See note 1, *supra*.



contagious between people who are in close contact with one another.<sup>4</sup> The virus is transmissible through coughing, sneezing, and contact with surfaces.<sup>5</sup> Experts advise that “talking” and “normal breathing” also likely transmit the disease.<sup>6</sup> The Centers for Disease Control and Prevention (“CDC”) urges social distancing—*i.e.*, every person should remain at least six feet away from every other person—to avoid transmission of the disease.<sup>7</sup> Social distancing is of paramount importance because even entirely asymptomatic persons can be infected with COVID-19 and unknowingly transmit it to others.<sup>8</sup> Proper sanitation measures, including frequent hand washing and frequent cleaning of surfaces with approved disinfectants are also recommended.<sup>9</sup> Governor Pritzker has issued a state-wide “stay at home” order to slow the disease’s spread.<sup>10</sup>

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<sup>4</sup> “How COVID-19 Spreads,” *Centers for Disease Control and Prevention* (available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>)

<sup>5</sup> *Id.*

<sup>6</sup> “Experts tell White House coronavirus can spread through talking or even just breathing, *CNN*, April 2, 2020 (available at: <https://www.cnn.com/2020/04/02/health/aerosol-coronavirus-spread-white-house-letter/index.html>)

<sup>7</sup> “Mitigation Strategies for Communities with Local COVID-19 Transmission,” *Centers for Disease Control and Prevention*, Mar. 12, 2020 (available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>)

<sup>8</sup> *See n. 4, supra.*

<sup>9</sup> “How to Protect Yourself,” *Centers for Disease Control and Prevention* (available at: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>)

<sup>10</sup> “Read the Governor’s Full Order Requiring Illinois Residents to Stay at Home,” *NBC 5 Chicago*, March 20, 2020 (available at: <https://www.nbcchicago.com/news/local/read-the-governors-full-order-requiring-illinois-residents-to-stay-at-home/2241196/>)

None of the recommended measures for mitigating the spread of COVID-19 are possible for persons confined in prisons and those who must interact with them. Many IDOC facilities are overcrowded. For example, Graham Correctional Center, where Plaintiff Barnes is imprisoned, is currently 20 percent above its maximum operating capacity. According to the IDOC's website, Graham has an operational capacity of 1,596 prisoners and currently houses 1,919 prisoners.<sup>11</sup> Prisoners at Graham are housed two men to a cell; 20 men to a wing. All of these individuals are in close proximity to one another day-in and day-out. It is not possible for them to practice "social distancing" from one another. On Sunday, April 5, 2020, IDOC confirmed that a staff member at Graham Correctional Center was diagnosed with COVID-19, thus greatly increasing the likelihood that prisoners at Graham already are, or soon will be, infected.<sup>12</sup>

When a prisoner or staff member at a detention facility is infected with COVID-19, the disease spreads rapidly. For example, at the Cook County Jail, 210 detainees and 34 staff have been diagnosed with COVID-19, despite the jail's having taken the drastic step of releasing approximately 10 percent of its population to alleviate crowding. The disease spread exponentially among detainees

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<sup>11</sup> Graham Correctional Center Facility Data, Illinois Department of Corrections (available at: <https://www2.illinois.gov/idoc/facilities/Pages/grahamcorrectionalcenter.aspx>) (last visited April 3, 2020).

<sup>12</sup> COVID-19 Response, Illinois Department of Corrections (available at: <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx>) (last visited April 5, 2020)

at the jail, from two infections on March 23 to 210 just nine days later.<sup>13</sup> With COVID-19 cases on the rise throughout the state, it is inevitable that IDOC facilities will become loci for the spread of the disease.

#### **IV. The Challenged Statute**

The One-Per-Address Statute is set forth in the Illinois Uniform Code of Corrections at 730 ILCS 5/3-3-7(a)(7.6). The sole mechanism through which the One-Per-Address Statute is enforced is through the IDOC's approval or rejection of parolees' proposed host sites. That is, it is not a criminal offense for an individual on MSR for a sex offense to live at the same address as another registrant.<sup>14</sup>

The One-Per-Address Statute went into effect on July 11, 2005. Prior to that date, individuals on MSR for sex offenses were permitted to live in the same residence as other registrants. On information and belief, the One-Per-Address Statute is a major cause, if not the single largest cause, of the continued imprisonment of members of the *Murphy* class. This is so because other statutes (*e.g.*, the 500-foot rules) already strictly circumscribe the areas where individuals convicted of sex offenses may live. Pursuant to the One-Per-Address Statute, if a building complies with the other restrictions, only one parolee may live there, even if it is a multi-unit building or a large apartment complex with dozens of units.

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<sup>13</sup> “Cook County Jail Now Reports 210 Inmates Have Tested Positive for COVID-19,” *NBC5 Chicago*, April 4, 2020 (<https://www.nbcchicago.com/news/coronavirus/cook-county-jail-now-reports-210-inmates-have-tested-positive-for-covid-19/2250366/>).

<sup>14</sup> In contrast, the statutes prohibiting individuals classified as “child sex offenders” from living within 500 feet of schools, daycares and playgrounds (720 ILCS 5/11-9.3 (b-5) and (b-10)) are part of the criminal code. It is a Class 4 felony for a “child sex offender” to “knowingly” live at a prohibited location. 720 ILCS 5/11-9.3(f).

There is no reason to conclude that people who have been convicted of sex offenses' living near one another contributes to criminality. At least one analysis found that it has the opposite effect: it reduces the incidence of re-offense and improves supervision. A Minnesota Department of Corrections report concluded as follows:

This examination of level three re-offenders does not reveal a negative effect related to a level three offender living with another sex offender. In fact, supervision agents in both Hennepin and Ramsey County have noted benefits from having more than one level three offender living in one location. Closer supervision is possible because travel time between offenders is reduced. Also, level three offenders who live with other level three offenders experience more visits from a supervising agent because agents for both offenders visit the same property. Finally, offenders tend to inform on each other when supervision restrictions are violated or crimes are committed.<sup>15</sup>

There is no logical reason to believe that there is a compelling public safety need to prohibit people on MSR for sex offenses from living at the same address as one another. In the *Murphy* litigation, the IDOC did not come forth with any safety or rehabilitative justification for the One-Per-Address Statute. In acknowledgement of the restriction's excessiveness, IDOC has already reinterpreted the restriction so as not to apply to trailer parks or adjacent apartment buildings. *Murphy v. Raoul*, 16-cv-11471, ECF No. 161.

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<sup>15</sup> See "Level Three Sex Offender Residential Placement Issues," *Minnesota Department of Corrections* (available at: [https://mn.gov/doc/assets/Lvl%203%20SEX%20OFFENDERS%20report%202003%20\(revised%202-04\)\\_tcm1089-272828.pdf](https://mn.gov/doc/assets/Lvl%203%20SEX%20OFFENDERS%20report%202003%20(revised%202-04)_tcm1089-272828.pdf)) (last visited April 3, 2020)

## ARGUMENT

### I. Temporary Restraining Order and Preliminary Injunction Standards

To be entitled to a temporary restraining order a plaintiff must demonstrate that he has “(1) some likelihood of succeeding on the merits and (2) that he has ‘no adequate remedy at law’ and will suffer irreparable harm” if relief is denied. *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992) (internal citations omitted). If these two elements are established, a court should consider “(3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties.” *Id.* In deciding this motion, the court “[is] sitting as would a chancellor in equity,” and should weigh all four factors “seeking at all times to minimize the costs of being mistaken.” *Id.*

Similarly, in order to obtain a preliminary injunction, a plaintiff must establish four elements: (1) some likelihood of success on the merits; (2) the lack of an adequate remedy at law; (3) a likelihood that they will suffer irreparable harm if the injunction is not granted; and (4) the balance of hardships tips in the moving party’s favor. *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

As shown below, Plaintiff meets each element for establishing an entitlement to injunctive relief, and accordingly this Court should issue a temporary restraining order and preliminary injunction to halt enforcement of the One-Per-Address Statute.

## **II. Plaintiff Has a Likelihood of Success on his Claim that Continued Enforcement of the One-Per-Address Statute During the COVID-19 Pandemic Violates The Eighth Amendment**

The Eighth Amendment mandates that persons confined in prisons must “be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (citing *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S. 189, 200 (1989)). In *Helling*, the Supreme Court held that a prisoner stated an Eighth Amendment claim that he was exposed to unsafe levels of environmental tobacco smoke even though he personally experienced no adverse health effects because the health risk posed by involuntary exposure to second-hand smoke is “sufficiently imminent.” *Id.* at 509 U.S. at 35.

Courts have consistently interpreted *Helling* to authorize an Eighth Amendment cause of action when an inmate is exposed to a risk of contracting contagious diseases. *See Loftin v. Dalessandri*, 3 F. App’x 658, 662-63 (10th Cir. 2001) (inmate stated an Eighth Amendment violation where he alleged he was housed in a cell with two cellmates who had tuberculosis); *DeGidio v. Pung*, 920 F.2d 525, 533 (8th Cir. 1990) (failure by prison officials to prevent the unchecked spread of tuberculosis violated the Eighth Amendment). Indeed, in *Helling* itself, the Supreme Court approvingly cited *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974) in which the court held that inmates were entitled to relief under the Eighth Amendment when they proved threats to their personal safety from “the mingling of inmates with serious contagious diseases with other prison inmates.” *Helling*, 506 U.S. at 34.

The Seventh Circuit has similarly recognized that the Eighth Amendment protects prisoners from known exposure to serious diseases, holding that in such a circumstance, “[t]he prison must be allowed to choose between removing the prisoner from the unhealthy environment and protecting him from its consequences . . . provided, of course, that the protection is efficacious.” *Powers v. Snyder*, 484 F.3d 929, 931 (7th Cir. 2007); *see also McDonald v. Hardy*, 821 F.3d 882, 889 (7th Cir. 2016) (explaining that the Eighth Amendment does not excuse deliberate indifference simply because harms “have not yet reached the point of causing acute or life-threatening injuries”).

To succeed on an Eighth Amendment claim, a plaintiff must show that the defendant has acted with “deliberate indifference.” *Board v. Farnham*, 394 F.3d 469, 478 (7th Cir. 2005). That standard is met when the plaintiff establishes that he has been exposed to an “objectively serious” risk of harm and defendant acted with “conscious disregard of known or obvious dangers” to the plaintiff. *Id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Both components of the deliberate indifference standard are met here.

**A. Imprisonment During the COVID-19 Pandemic Exposes Plaintiff Barnes and Others Similarly Situated to an Known and Objectively Serious Risk of Harm**

As outlined in §III of the factual background above, the spread of COVID-19 poses a very serious risk to imprisoned individuals. COVID-19 cases are skyrocketing in Illinois, doubling every two days.<sup>16</sup> Hospitals will soon be

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<sup>16</sup> See <https://fox40.com/news/national/chicagos-covid-19-cases-doubling-every-2-days-says-mayor/>

overwhelmed with patients in need of critical care. *Id.* A case of COVID-19 has already been confirmed at Graham Correctional Center, and additional cases are imminent.<sup>17</sup> At Stateville Correctional Center, 56 inmates have been diagnosed. *Id.*

Illinois officials have publicly acknowledged the severe risk COVID-19 poses to those detained in IDOC and the impossibility of proper mitigation measures in correctional facilities. At Governor Pritzker's April 4, 2020, press briefing,<sup>18</sup> Illinois Department of Public Health Director Dr. Ngozi Ezike stated as follows:

We have seen clusters of cases in ... correctional centers.... I want to touch on the difficulty of preventing the virus from infiltrating these congregate settings and the challenges of stopping that spread. The natural movement of people needing to come in and out of those settings, even when they're decreased to the minimal amount, still ... increases the potential for rapid spread of the virus to people who live, eat and recreate all in the same space. Options for medical isolation of these COVID-19 patients are limited. ... Ideally, people who are positive should be isolated individually, and close contacts should be quarantined individually. However, that can't always be possible given the constraints of space.<sup>19</sup>

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<sup>17</sup> <https://www2.illinois.gov/idoc/facilities/Pages/Covid19Response.aspx>

<sup>18</sup> Available at: <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/media-publications/daily-press-briefings>

<sup>19</sup> This is not the only case that seeks to address the pressing need to reduce the population in IDOC facilities to mitigate the spread of COVID-19. In *Money, et al. v. Jeffreys, et al.*, No. 20-cv-2094, filed April 2, 2020, the plaintiffs have asked the court to require Governor Pritzker to release two classes of individuals from IDOC custody— individuals who have serious underlying medical conditions and people 55 years of age and older who are eligible for medical furlough pursuant to 730 ILCS 5/3-11-1. Expedited briefing has been ordered in that case as follows: Defendants' brief is due on April 6, 2020 by 5 p.m.; Plaintiffs' reply is due on April 8, 2020 by 5 p.m. *See* 20-cv-2094, ECF No. 14. Notably, the plaintiffs in *Money* seek release of individuals who still have time left on their prison sentences. The Plaintiffs here, in contrast, have completed their sentences and are constitutionally entitled to release on MSR.



**B. Despite Knowing of the Serious Risk, Defendant Acts With Deliberate Indifference towards Plaintiff Barnes and the Members of the Class by Continuing to Enforce the One-Per-Address Rule**

As explained in §§I and II of the Factual Background above, Marcus Barnes and the other members of the *Murphy* class have done their time and are entitled to release. This Court has already found that it is a violation of the constitution to keep individuals who have completed their court ordered terms of incarceration in prison simply because they cannot meet the “host-site” requirement. *Murphy v. Raoul*, 380 F. Supp. 3d 731, 738 (N.D. Ill. 2019). The IDOC is under a permanent injunction that requires it to release the members of the *Murphy* class. *Murphy v. Raoul*, 16-cv-11471, ECF No. 156. In the *Murphy* litigation, which has been ongoing for four years and generated hundreds of pages of summary judgment briefing, IDOC never put forth a public safety or rehabilitative justification for the One-Per-Address Statute.

Under these circumstances, continued enforcement of the One-Per-Address Statute constitutes deliberate indifference to Plaintiff’s right to “reasonable safety.” Plaintiff Barnes could be living in a safe place outside of prison where he would be able to comply with the statewide Stay-at-Home order and observe other recommended disease mitigation measures. The proposed host site on Sangamon meets every requirement imposed by Illinois law, save the One-Per-Address Statute. To expose Barnes and others who have completed their sentences and have housing outside of prison to the unmitigated risk of contracting COVID-19 falls

short of the Eighth Amendment's mandates. Accordingly, Plaintiff has a likelihood of success on his Eighth Amendment claim.

### **III. Plaintiff and Others Similarly Situated are Suffering and Will Continue to Suffer Irreparable Injury in the Absence of an Injunction**

If an injunction is not granted, Plaintiff and others similarly situated will suffer two forms of irreparable injury. One, they will continue to be imprisoned in violation of their constitutional right to be released from prison on MSR. And two, they will continue to be exposed to an unreasonable risk of being infected with COVID-19. Such harms unquestionably constitute irreparable injury. *See Adams v. Carlson*, 488 F.2d 619, 629 (7th Cir. 1973) (“Imprisonment in segregation” is “perhaps most paradigmatic” form of “irreparable harm”); *Hampton v. Leibach*, 99 C 5473, 2001 U.S. Dist. LEXIS 20983, at \*5-6 (N.D. Ill. Dec. 18, 2001) (a plaintiff “suffers irreparable harm each day that he is imprisoned in violation of the United States Constitution.”); *Harris v. Board of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) (accepting “pain,” “infection,” and “medical complications” as forms of irreparable harm warranting injunctive relief).

Moreover, it is well established that when a plaintiff establishes a likelihood of success on a claim that a government action violates his constitutional rights, he meets the element of showing irreparable harm. *Ezell v. City of Chi.*, 651 F.3d 684, 699 (7th Cir. 2011) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) (*quoting* 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2948.1 (2d ed. 1995)); *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978)

(“The existence of a continuing constitutional violation constitutes proof of an irreparable harm.”).

#### **IV. The Balance of Harms and the Public Interest Favor Granting Relief**

The public interest also favors the granting of the requested relief. First, other persons imprisoned in IDOC who cannot be released at present are also endangered by overcrowding, which increases the risk of disease transmission; and the public at large is put at risk if medical resources are overwhelmed by the hospitalization of imprisoned people in downstate communities with few hospital beds. Second, the public has a strong interest in protecting constitutional rights that would be well served by granting injunctive relief here. *See ACLU v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012) (“[T]he public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional.”)

Plaintiffs anticipate that Defendant will argue that a balance of equities does not favor Plaintiff’s request because it poses an alleged “public safety” risk. But Plaintiff is not asking this Court to release any individuals from IDOC custody. Plaintiff will still be under IDOC supervision and subject to all the constraints of those on MSR, including GPS monitoring.

#### **V. Notice**

Plaintiff has provided the best practicable notice of this motion to Defendant. The complaint and this motion are being served electronically on counsel for the defendants in *Murphy* on Monday, April 6, 2020.

## CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Honorable Court enter a temporary restraining order and preliminary injunction granting the following relief:

- An immediate order prohibiting enforcement of 730 ILCS 5/3-3-7(a)(7.6) (hereinafter the “One-Per-Address Statute”) as to Plaintiff Marcus Barnes so he can be released from prison to a host site at 5726 S. Sangamon, Chicago, Illinois; and
- A preliminary injunction prohibiting the IDOC from enforcing the One-Per-Address Statute against individuals who have completed their court-ordered sentences of incarceration and remain in prison due to an inability to identify a host site that satisfies the One-Per-Address Rule.

Respectfully submitted,

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/s/ Mark G. Weinberg  
*Counsel for Plaintiff*

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