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

PAUL MURPHY, et al.,	)	
	)	
Plaintiffs,	)	No. 16 CV 11471
	)	
v.	)	Judge Virginia M. Kendall
	)	
LISA MADIGAN, Attorney General of Illinois, and JOHN BALDWIN, Director of the Illinois Department of Corrections	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY
IN FURTHER SUPPORT OF MOTION TO DISMISS

The defendants, Lisa Madigan, Attorney General of Illinois; and John Baldwin, Director of the Illinois Department of Corrections ("IDOC"); by their attorney, the Illinois Attorney General, submit the following reply in further support of their motion to dismiss.

INTRODUCTION

Plaintiffs' response to Defendants' motion to dismiss does nothing to overcome the fatal flaws of their complaint. As discussed in Defendants' opening brief and below, Plaintiffs challenge the constitutionality of sentencing statutes, which necessarily means they are challenging their sentences, rather than ancillary administrative decisions or procedures that might or might not ultimately lead to freedom. Because habeas corpus is the only remedy for such a claim, Plaintiffs' Section 1983 complaint should be dismissed.

Even if Plaintiffs could proceed under Section 1983, they have failed to state a claim on the merits. Plaintiffs' case citations do not support their substantive due process or equal protection claims, and accordingly both claims should be dismissed. Plaintiffs' void-for-vagueness claim should be dismissed because the narrow discretion that the statute conveys on

IDOC officers is constitutionally acceptable. Plaintiffs' procedural due process claim fails because their claim that IDOC officers misuse their "broad discretion" to deny approval of host sites for "arbitrary reasons" (Dkt. 23 at 14) does not state a procedural due process claim, and any substantive due process claim fails because the IDOC's decisions are not arbitrary. Finally, Plaintiffs' Eighth Amendment claim fails because the challenged statutes and policies neither impose disproportionate punishments, nor do they punish Plaintiffs for being homeless. Accordingly, Plaintiffs' Complaint should be dismissed in its entirety.

ARGUMENT

I. AUKEMA AND TUCEK'S CLAIMS ARE NOT RIPE FOR REVIEW.

Plaintiffs acknowledge that Plaintiff Smith's claims are moot (Dkt. 23 at 5 n.4), but argue that Aukema and Tucek's claims are not "unduly speculative and/or hypothetical." *Id.* at 3. But Plaintiffs' reliance on *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138 (2013) is misplaced. Like the plaintiffs in *Clapper*, Aukema and Tucek's claims are not based on an injury that is "certainly impending."[1] *Id.* at 1148. Instead, Aukema and Tucek's claims "rel[y] on a highly attenuated chain of possibilities" (*id.*), including their assumption that the Prison Review Board will approve them for mandatory supervised release ("MSR"), and their assumption that there will be no halfway houses or shelters that will accept them at that time. These assumptions are particularly speculative for Tucek, who will not even be eligible to be considered for MSR for three years. Dkt. 1 ¶ 18. The Supreme Court has "decline[d] to . . . endorse standing theories that rest on speculation about the decisions of independent actors" such as the Prison Review Board.

[1] Plaintiffs claim that *Clapper*'s standing rule is that plaintiffs must show a "substantial risks that the harm will occur." Dkt. 23 at 6-7, *quoting Clapper*, 133 S. Ct. at 1150, n.5. However, the Court actually said that "in some instances," the Court has "found standing based on a 'substantial risk' that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm." *Clapper*, 133 S. Ct. at 1150, n.5. Here, because Plaintiffs have not alleged that Aukema and Tucek have incurred any costs to mitigate or avoid the threatened injury, the "substantial risk" standard is irrelevant.

Id. Plaintiffs' cite to *People v. Younger*, 2015 IL App (1st) 130540-U, ¶ 23 (Dkt. 23 at 4) also supports Defendants' argument that Aukema and Tucek lack standing. The Illinois Appellate Court held that the defendant's claim that he would not be released on MSR because of his inability to find suitable housing was "neither ripe nor justiciable." *Younger*, 2015 IL App (1st) 130540-U, at ¶ 24. Because the defendant had not yet been placed on MSR, and the court did know if he would be "violated at the door," the court declined to address the issue. [2] *Id*. This Court should also decline to address Aukema and Tucek's claims, and should dismiss Smith's claims as well.

II. BECAUSE PLAINTIFFS CLEARLY CHALLENGE THEIR CRIMINAL SENTENCES, THEY CANNOT MAINTAIN A SECTION 1983 CLAIM.

Heck v. Humphrey, 512 U.S. 477 (1994), demarcates a line: if a plaintiff is challenging merely the conditions of confinement, or challenging some sort of procedure the correction of which would not inevitably lead to the prisoner's release or a diminution of his sentence, then his claim can be brought under Section 1983. *DeWalt v. Carter,* 224 F.3d 607, 617 (7th Cir. 2000). If success on the claim, however, would necessarily mean invalidation of the conviction or a change in the duration of the sentence, then the claim must be brought as a habeas corpus action. The claims here are clearly of the latter type, and should be dismissed under *Heck.*

Plaintiffs argue that they are not seeking "release from confinement or a change in confinement status, but invalidation of the schemes regulating how MSR is administered." Dkt. 23 at 6. Whether Plaintiffs explicitly seek release or a change in confinement status is irrelevant. The *Heck* rule applies regardless of the relief sought. *Wilkinson v. Dotson,* 544 U.S. 74, 81-82 (2005); *Clayton-El v. Fisher,* 96 F.3d 236, 242 (7th Cir. 1996). Even if only money damages

[2] We are puzzled by the Plaintiffs' citation to *Westefer v. Snyder*, No. 00-162, 2006 WL 2639972, at *9 (S.D. Ill. Sept. 12, 2006) (Dkt. 23 at 4), as the case does not include the quoted text.

were sought, *Heck* still requires dismissal of Section 1983 claims if the nature of the claim itself necessarily constitutes an attack on the conviction or the sentence imposed.

Attempting to avoid *Heck*, Plaintiffs characterize their claims as ones "challenging the statutes and regulations that determine how their MSR sentences are administered—namely, the overlapping regulatory and administrative schemes that force them to remain incarcerated long after the expiration of the prison term to which they were sentenced." Dkt. 23 at 6. This is not a characterization of their claims that avoids *Heck*—it all but acknowledges that they are in fact challenging their sentences. There is no other way to cast it. A challenge to the constitutionality of sentencing statutes necessarily means one is challenging one's sentence, not merely ancillary administrative decisions or procedures that might or might not ultimately lead to freedom. And when Plaintiffs say that these statutes and regulations "*force them* to remain incarcerated long after the expiration of the prison term to which they were sentenced," the Plaintiffs are clearly saying there is an unconstitutional element of compulsion in Illinois statutory law that requires persons to be incarcerated when they should not be. This argument necessarily implies that a successful challenge of the statutes and regulations must result, if Plaintiffs' claims are to mean anything or have any bite, in the invalidation of their sentences by this Court. That is the essence of a habeas claim.

Defendants discussed at some length the Plaintiffs' legal theories and factual allegations in their opening brief, and how a fair examination of those claims must lead to the conclusion that *Heck* bars this Section 1983 case. We return briefly to the complaint to point out three instances among any number that could be cited showing clearly that Plaintiffs are challenging their extended incarcerations, and alleging that their release into the community on MSR status is being illegally hindered. In Paragraph 89, Plaintiffs allege: "Because his MSR term is indefinite,

Lindenmeier faces imprisonment in the Illinois Department of corrections for the rest of his life. Lindenmeier *cannot meet the statutory requirements* discussed above for an approved 'host site,' which is necessary for release on MSR. Moreover, *he can never apply for termination of his MSR* while in prison *pursuant to the terms of 730 ILCS 5/3-14-2.5(d)*." (Emphasis added.) In Paragraph 137, the equal protection claim, Plaintiffs allege: "The *statutory and regulatory schemes* at play here *make it impossible* for an indigent person sentenced to a 'three to life' term of MSR *to be released from prison*." (Emphasis added.) And in Paragraph 159, in their Eighth Amendment claim, Plaintiffs challenge the sentence explicitly: "*Imposition of an effective life sentence on prisoners entitled to release on MSR* simply because they cannot find housing that complies with the restrictions on where they are allowed to live *is grossly disproportionate and without reasonable justification*." (Emphasis added.) It is difficult to see how Plaintiffs could be challenging anything other than the duration of their criminal sentences, despite their efforts now to back away from that assertion to avoid *Heck.*

As we discussed in defendants' opening brief, "[i]f the prisoner is seeking what can fairly be described as a quantum change in the level of custody—whether outright freedom, or freedom subject to the limited reporting and financial constraints of bond or parole or probation . . . then habeas corpus is his remedy." *Graham v. Broglin,* 922 F.2d 379, 381 (7th Cir. 1991). Plaintiffs complain that they remain incarcerated beyond the release date imposed by the sentencing judge. They further complain that Illinois statutes make MSR (the functional equivalent of parole) impossible to attain for them, given the nature of their convictions. These issues concern the "quantum change" in the level of custody that is exclusively the domain of habeas corpus.

Plaintiffs cite *Werner v. Wall,* 836 F.3d 751 (7th Cir. 2016). Dkt. 23 at 6. The argument is that it was a Section 1983 case involving sex offenders allegedly held too long in county jails.

Because the case is totally silent on *Heck*¸ Plaintiffs argue that "by implication" defendants are wrong that *Heck* should have any role here. Dkt. 23 at 6 n.7. Besides *Werner*, one could also cite a similar, recent case from the Seventh Circuit, *Brown v. Randle,* 847 F.3d 861 (7th Cir. 2017), another case involving a sex offender complaining about delays in releasing him from custody because he could not find a suitable host site. Plaintiffs are simply reading too much into the fact that a *Heck* issue was not argued in those cases. Both cases were money damage claims decided on qualified immunity grounds, both in favor of the prison officials. *Heck* would not have come up because there was a preliminary defense, qualified immunity, that would terminate the cases. Moreover, it appears that at the time the suits were filed, neither plaintiff was in custody, or was in custody for a different reason such as a probation violation. *See Werner,* 836 at 756-57 (Werner was released and then re-incarcerated for sending a sexually explicit message to a sixteen year old girl); *Brown,* 847 F.3d at 863 (Brown unconditionally released after 18 months incarceration). Habeas relief was not the relevant issue for the parties or the court; only the individual-capacity damage claims were being decided.

Because Plaintiffs are unquestionably challenging the duration of their sentences, with the necessary implication that they are seeking release from a prison setting to the much greater freedom of MSR, their Section 1983 complaint should be dismissed. Habeas is their remedy.

III. PLAINTIFFS' CLAIMS FAIL ON THE MERITS.

A. Plaintiffs Fail to State a Substantive Due Process Claim.

Plaintiffs argue that the Seventh Circuit's decision in *Werner* supports their substantive due process claim because "it is clear that both the majority and the dissenting opinions assumed that valid constitutional claims had been made in the case and (it is no stretch to say) constitutional violations had in fact occurred." Dkt. 23 at 8. But *Werner* does not support

Plaintiffs' argument. As Plaintiffs acknowledge, *Werner* "was ultimately decided based on qualified immunity and did not 'address definitively the constitutional issue[s]' at stake." *Id*. The qualified immunity inquiry involves "two questions: [1] whether the plaintiff's allegations make out a deprivation of a constitutional right, and [2] whether the right was clearly established at the time of defendant's alleged misconduct." *Werner*, 836 F.3d at 759. However, courts need not resolve the first question before moving to the second question, and the *Werner* court did not do so. *Id*. at 761 ("[W]e believe the proper course is to focus on the second prong of the qualified immunity inquiry and to determine whether the contours of the right involved were clearly established at the time of the defendants' actions.").

Although the dissent in *Werner* does argue that a constitutional violation occurred, the majority opinion makes no such assumption. The quotation that Plaintiffs used to show that the majority reached this opinion is actually an incomplete quotation from the Wisconsin Supreme Court's decision in *Riesch v. Schwarz*, 278 Wis.2d 24, 692 N.W.2d 219 (2005). Not only does this quote not reflect the opinion of the Seventh Circuit, it actually supports Defendants' argument that Plaintiffs have not stated a claim:

> In the end, we are mindful that the DOC is not free to hold inmates indefinitely for such problems as failure to find suitable housing on its part. . . . However, we also recognize that the DOC has substantial discretionary authority to develop the rules and conditions for release. *Where inmates violate these terms immediately and simultaneously with their scheduled mandatory release dates, the DOC should be able to maintain continuous custody*, even though that person's status changes from prisoner serving a sentence to a parolee detained on a parole hold.

Werner, 836 F.3d at 764-65, *quoting Riesch*, 692 N.W.2d at 225-26 (emphasis added in *Werner*).

The Seventh Circuit's subsequent decision in *Brown v. Randle* reinforces this conclusion. In *Brown*, the Seventh Circuit held that qualified immunity barred the damages claims of a sex offender who was not released from IDOC custody because he lacked a suitable host site. 847 F.3d at 863-64. The court rejected the plaintiff's attempt to distinguish *Werner* because Illinois

and Wisconsin use different systems, and because *Werner* involved an Eighth Amendment claim rather than Brown's asserted Fourth Amendment claim:

> The core conclusion of *Werner* is that the federal judiciary has not clearly established that sex offenders who lack a lawful place to live must nonetheless be released from prison. That conclusion does not depend on the particulars of the state systems or the constitutional provision a given plaintiff emphasizes.

Id. at 864. Thus, *Werner* provides no support for Plaintiffs' claims, and Plaintiffs' substantive due process claim should be dismissed.

B. Plaintiffs Fail to State an Equal Protection Claim.

In their opening brief, Defendants explained that Plaintiffs could not maintain an equal protection claim because indigent persons are not a suspect class. Dkt. 20 at 14. In response, Plaintiffs "agree that indigent persons are not a considered a 'suspect class,'" but nevertheless argue that "the restrictions at issue here are still subject to strict scrutiny because they implicate the Plaintiffs' and others' fundamental right to liberty." Dkt. 23 at 11. In support of this argument, Plaintiffs quote *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) as holding that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Dkt. 23 at 11. But as the text itself makes clear, this passage refers to what constitutes a liberty interest under for procedural due process purposes, not what constitutes a fundamental right for equal protection purposes. As Justice Thomas explains in his dissent in *Foucha*, the two are not the same:

> I fully agree with the Court . . . that freedom from involuntary confinement is at the heart of the "liberty" protected by the Due Process Clause. But a liberty interest *per se* is not the same thing as a fundamental right. Whatever the exact scope of the fundamental right to "freedom from bodily restraint" recognized by our cases, it certainly cannot be defined at the exceedingly great level of generality the Court suggests today. There is simply no basis in our society's history or in the precedents of this Court to support the existence of a sweeping, general fundamental right to "freedom from bodily restraint" applicable to *all* persons in *all* contexts. If convicted prisoners could claim such a right, for

> example, we would subject all prison sentences to strict scrutiny. This we have consistently refused to do.

Foucha, 504 U.S. at 117-18 (Thomas, J., dissenting). Moreover, even if Plaintiffs have a liberty interest for purposes of procedural due process, that interest is in "a form of statutory liberty" or "synthetic liberty." *Murdock v. Walker*, No. 08 C 1142, 2014 WL 91992, at *6 (N.D. Ill. Mar. 10, 2014). "Because this liberty interest is more limited than a normal citizen's liberty interest, however, a parolee can be seized and imprisoned anytime there is reasonable suspicion that he has broken one of the terms of his release." *Brown v. Randle*, No. 11 C 50193, 2014 WL 2533213, at *4 (N.D. Ill. June 5, 2014). This limited statutory interest is not a fundamental right for purposes of equal protection.

Plaintiffs' citation to *Williams v. Illinois*, 399 U. S. 235 (1970) (Dkt. 23 at 11), is similarly misplaced. As the Seventh Circuit has observed, *Williams*'s holding is quite limited and does not apply here:

> Doyle's reliance on *Tate* and *Williams* is misplaced. Those cases stand for the proposition that no person may be incarcerated, upon conviction of a crime, for a period longer than the maximum sentence set by statute solely on the basis of his or her inability to pay a criminal fine. They do not stand for the far more sweeping proposition put forward by Doyle that, whenever a person spends more time incarcerated than a wealthier person would have spent, the equal protection clause is violated. Indeed, the *Williams* Court explicitly declined to apply its holding to "the familiar pattern of alternative sentence of '$30 or 30 days,' " id., 399 U.S. at 243, 90 S.Ct. 2023, even though such a sentence obviously imposes imprisonment on the basis of wealth.

Doyle v. Elsea, 658 F.2d 512, 518 (7th Cir. 1981). Thus, Plaintiffs cannot point to their alleged liberty interest under the due process clause as establishing a fundamental right.

Plaintiffs then argue that "even if rational basis is the proper standard of review, Plaintiffs are entitled to establish in discovery that the state lacks a rational basis for its incarceration of individuals approved for release on MSR on the basis of their inability to afford housing." Dkt. 23 at 12. But the rational basis standard is "highly deferential" and courts hold legislative acts

unconstitutional under a rational basis standard in "only the most exceptional circumstances." *Doe v. Moore*, 410 F.3d 1337, 1345 (11th Cir. 2005). Indeed, "a classification 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993), *quoting FCC v. Beach Communications, Inc.,* 508 U.S. 307, 313 (1993). While Plaintiffs may argue that there are "many suitable alternatives to imprisonment" (Dkt. 23 at 12), the availability of "alternative methods of furthering the objective" is irrelevant as long as the State "rationally advances a reasonable and identifiable governmental objective." *Heller*, 509 U.S. at 330; *see also Doyle*, 658 F.2d at 518, *quoting McGinnis v. Royster*, 410 U.S.263, 270 (1973) (the "sole inquiry is whether the challenged action 'rationally furthers some legitimate, articulated (governmental) purpose.'"). As laid out in Defendants' opening brief, there is a rational basis for the challenged statutes and policies (Dkt. 20 at 15), and Plaintiffs are not entitled to discovery to prove otherwise.

C. Plaintiffs Fail to State a Void for Vagueness Claim.

In their opening brief, Defendants explained that, because Plaintiffs were raising a facial challenge to 730 ILCS 5/3-3-7(b-1)(12), they bore the heavy burden of showing that the statute lacked a "plainly legitimate sweep." *Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 449 (2008), *quoting Washington v. Glucksberg,* 521 U.S. 702, 739-40 and n.7 (1997) (Stevens, J., concurring in judgment). Dkt. 20 at 17. In response, Plaintiffs argue that "Supreme Court precedent 'squarely contradict[s] the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.'" Dkt. 23, *quoting Johnson v. United States*, 135 S.Ct. 2551, 2560-61 (2015). But while *Johnson* does seem to reject the formulation articulated in *United States v. Salerno,* 481 U.S. 739

(1987), it does not articulate its own test for facial challenges. And even if the *Salerno* formulation is not accepted, the Supreme Court has "vigorously enforced the requirement that a statute's overbreadth be *substantial,* not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *United States v. Williams*, 553 U.S. 285, 292 (2008) (emphasis in original); *see also Washington State Grange,* 552 U.S. at 449 ("While some Members of the Court have criticized the *Salerno* formulation, all agree that a facial challenge must fail where the statute has a 'plainly legitimate sweep.'"). As discussed in Defendants' opening brief (Dkt. 20 at 16-18), the challenged statute has a plainly legitimate sweep which exceeds any possible vagueness or overbreadth.

Plaintiffs also argue that the use of the term "near" makes the statute vague (Dkt. 23 at 13), but the Supreme Court has held that the term "near the courthouse" was not unconstitutionally vague. *See Cox v. Louisiana*, 379 U.S. 559, 568-69 (1965). In *Cox*, the Court acknowledged that "there is some lack of specificity in a word such as 'near,'" but this lack of specificity did not render the statute unconstitutional. *Id*. at 568. Rather, use of the term "near" "foresees a degree of on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing" the statute." *Id*. The Court has "recognized" such "narrow discretion" as the proper role of responsible officials in making determinations concerning the time, place, duration, and manner of demonstrations." *Id* at 569. Similarly, in this case any possible ambiguity in the provision is remedied by the clause that allows the offender to reside in such places with the "advance approval of an agent of the Department of Corrections." 730 ILCS 5/3-3-7 (b-1)(12). Plaintiffs argue that this clause provides no help because "practically speaking, the parole officer can say whatever he or she wants to support the

decision." Dkt. 23 at 15. But this argument presumes that the IDOC officers routinely act in bad faith when enforcing this statute, and Plaintiffs' Complaint contains no such allegations.

In their opening brief, Defendants also explained that the phrase "any other places where minor children congregate," is not unconstitutionally vague, in part because the provision was "informed by [a] specific list of examples." Dkt. 20 at 18-19, *quoting Doe v. Cooper*, 842 F.3d 833, 839-40 (4th Cir. 2016). In response, Plaintiffs argue that because the "specific list of examples" comes before rather than after the challenged phrase, it does not define the term. Dkt. 23 at 15. But Plaintiffs fail to explain how "*any place* intended primarily for the use, care, or supervision of minors, *including, but not limited to*, schools, children's museums, child care centers, nurseries, and playgrounds" (the North Carolina statute upheld in *Cooper*) is significantly different from "parks, schools, day care centers, swimming pools, beaches, theaters, or *any other places* where minor children congregate." In both formulations, the specific list of examples provides context and definition to "any place" or "any other place." Contrary to Plaintiffs' claim (Dkt. 23 at 15), this list of examples is not a "hodgepodge of locations," but rather a list of places where minors commonly gather for educational or recreational purposes. And because mixed groups of minors and adults gather at parks, swimming pools, beaches, and theaters, this list makes it clear that "any other places where minor children congregate" applies to any place where children or mixed groups of and adults regularly gather, such as dance studios that offer classes for children, a Girl Scout camp, museums, *etc*. For all these reasons, 730 ILCS 5/3-3-7 (b-1)(12) is not unconstitutionally vague, and Count III should be dismissed accordingly.

D. Plaintiffs Fail to State a Procedural Due Process Claim.

In their opening brief, Defendants explained that Plaintiffs failed to state a procedural due process claim because they had notice and an opportunity to be heard with respect to the IDOC's

decisions regarding approval of host sites. Dkt. 20 at 19-20. As other courts in this district have already held, the turnaround procedure provides adequate notice under the due process clause (*see Murdock*, 2014 WL 916992, at *12), and an opportunity to be heard by filing grievances. *See Crayton v. Duncan*, No. 15-CV-399, 2015 WL 2207191, at *6 (S.D. Ill. May 8, 2015).

In response, Plaintiffs argue that "Defendants have misconstrued Plaintiffs' claim," which is that "IDOC officials routinely misuse the broad discretion they have been granted under the statutes . . . to deny approval of proposed "host sites" for arbitrary reasons." Dkt. 23 at 14. But such an allegation is an apparent attempt to state a substantive due process claim, rather than a procedural due process claim. *Strasburger v. Bd. of Educ., Hardin Cty. Cmty. Unit Sch. Dist. No. 1*, 143 F.3d 351, 357 (7th Cir. 1998). To challenge a "government decision on substantive due process grounds (as opposed to challenging the process the decision-makers used on procedural due process grounds)," a plaintiff "must show (1) that the decision was arbitrary and irrational, and (2) that the decision-makers either committed another substantive constitutional violation or that state remedies are inadequate." *Id.* When dealing with allegedly "abusive executive action," the Supreme Court has "repeatedly emphasized that only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

In this case, the IDOC's policy of prohibiting sex offenders from serving their MSR at host sites where there is unfiltered, unmonitored access to the Internet (Dkt. 1 ¶ 153) is neither arbitrary nor irrational. Sex offenders convicted of child pornography may use the Internet to obtain such materials, while sex offenders convicted of sexual assaults may use the Internet to lure additional victims. Accordingly, an IDOC officer's decision that a convicted sex offender should not have such Internet access during his MSR certainly cannot be considered "egregious,"

nor is it irrational. Because Plaintiffs fail to state either a procedural or substantive due process claim, Count IV should be dismissed.

E. Plaintiffs Fail to State an Eighth Amendment Claim.

Finally, Plaintiffs argue that the "challenged legal scheme effectively punishes Plaintiffs for being homeless." Dkt. 23 at 18. But the challenged statutes and policies do not "criminalize the status of homelessness by making it a crime to be homeless." *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated,* 505 F.3d 1006 (9th Cir. 2007). Plaintiffs are being punished for committing various sex offenses, including predatory criminal sexual assault, criminal sexual assault, or aggravated child pornography. *See* Dkt. 20 at 3-4; *see also United States v. Black*, 116 F.3d 198, 201 (7th Cir. 1997) (defendant who claimed to be a pedophile or ephebophile could be punished for possession of child pornography). The IDOC is entitled to place reasonable conditions on offenders who seek supervised release, including the requirement of an appropriate host site. These MSR conditions are not punishments, even if Plaintiffs' inability to comply with those conditions results in their continued incarceration; rather, the purpose of these conditions is "to foster [the inmate's] return to society through a supervised transition from prison life." *U.S. ex rel. Neville v. Ryker*, No. 08 C 4458, 2009 WL 230524, at *6 (N.D. Ill. Jan. 30, 2009); *quoting Hadley v. Montes,* 379 Ill.App.3d 405, 478,883 N.E.2d 703 (4th Dist. 2008). Accordingly, Plaintiffs' Eighth Amendment claim should be dismissed.

CONCLUSION

For these reasons and those given in their opening brief, Defendants Lisa Madigan and John Baldwin respectfully request that this Court dismiss Plaintiffs' Complaint and order any further just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the aforementioned document was filed through the Court's CM/ECF system on March 28, 2017. Parties of record may obtain a copy through the Court's CM/ECF system. The undersigned certifies that no party of record requires service of documents through any means other than the CM/ECF system.

/s/ *Sarah H. Newman*