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,	)	
Plaintiffs,	)	
v.	)	No. 20-cv-2137
ROB JEFFREYS, in his official capacity as the Director of the Illinois Department of Corrections,	)	
Defendant.	)	

PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE THEIR SECOND AMENDED COMPLAINT AND AMENDED MOTION FOR CLASS CERTIFICATION INSTANTER

Plaintiffs, through counsel, respectfully request that this Court grant them leave to file their second amended complaint and amended motion to certify the class *instanter*. In support, Plaintiffs state as follows:

1. Plaintiffs, individually and on behalf of a proposed class, challenge the constitutionality of 730 ILCS5/3-3-7(a)(7.6) (hereinafter the "One-Per-Address Statute" or "the Statute"), a section of the Illinois Code of Corrections that prohibits an individual on Mandatory Supervised Release ("MSR") for a sex offense 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." Plaintiffs filed their initial complaint on April 5,

2020, and their First Amended Complaint on April 28, 2020. Defendant has not yet filed a responsive pleading.

2. Plaintiffs request leave to file a Second Amended Complaint (attached hereto as Exhibit 1) for the purpose of adding additional named Plaintiffs who seek immediate injunctive relief. The Second Amended Complaint also expands the definition of the proposed class. In particular, the initial proposed class definition encompassed only those individuals who remained in prison and were unable to secure their release on MSR because of the One-Per-Address Statute. The class definition in the Second Amended Complaint includes those individuals who have been released on MSR into the community but face a risk of having their MSR revoked and being sent back to prison for violation of the One-Per-Address Statute. The Second Amended Complaint puts forth the same legal theories as the First Amended Complaint.

3. Plaintiffs also seek leave to file an amended motion to certify the class (attached hereto as Exhibit 2) to address this broader class definition. In their amended motion for class certification, Plaintiffs offer a proposed class definition encompassing both those who are unable to secure their release from prison due to the One-Per-Address Statute and those who face a risk of revocation due to the Statute.

4. Defendant does not oppose Plaintiffs' request for leave to file a Second Amended Complaint and Amended Motion for Class Certification.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant them leave to file instanter their Second Amended Complaint and Amended Motion for Class Certification.

Respectfully submitted,

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

MARCUS BARNES (R01946), COLUMBO GALINDO (M08407), ANDRA SAMPSON (R70879), DeJUAN WRIGHT (R58500), JERRAND MILLER (R60718), JOHN MARGARELLA (M36976), KENNETH GREEN (R72403), FREDRICK CHAMBLIS (M32848), COREY CROWE (M41508), DANA MONSON (M08651), DAVID EASTON (K63639), JOSHUA ATKINS (Y12324), KENNETH SCHROEDER (M35946), WADE COUNCIL (M25987), CHRISTOPHER SHELTON (R34928), MARK FALLER (K78827), PAUL D. HUBBARD (M07217), JUAN MEDINA (K67974), ADAM ESCAMILLA (M27513), AISHEF SHAFFER (R73825), EDWARD BARTGEN (R62783), REGINALD HARRIS (R29434), JOHNNY HARRIS (K84472), LAVONNE GIVENS (M37946), LASHAUN DEAN (R68665), JUSTIN FLUCKERT (M41103), DONTAE BOYKIN (Y14234), RONALD GARRISON (S11118), JOSHUA HUDDLESTON (M44423) MANUEL ALEMAN (M11213), ARNOLD LLOYD (Y41718), MELVIN KELLEY (R48255), ANDRE DUNN (M32088), THOMAS SMITH (S10842), ALVIN GOLDBERG (M36526), LUIS APONTE (M26368), and KEVIN MANSON (M10708), individually and on behalf of all others similarly situated,	)	No. 20-cv-2137 Judge Kendall

Plaintiffs,	)
	)
v.	)
	)
ROB JEFFREYS, in his official capacity as the director of the Illinois Department of Corrections,	)
	)
Defendant.	)

SECOND AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, individually and on behalf of all others similarly situated, complain against Defendant Rob Jeffreys, Director of the Illinois Department of Corrections, as follows:

NATURE OF THE CASE

1. All of the named Plaintiffs are in the custody of the Illinois Department of Corrections ("IDOC") and have been convicted of sex offenses.

2. Plaintiffs challenge the constitutionality of 730 ILCS 5/3-3-7(a)(7.6) (hereinafter the "One-Per-Address Statute" or "the Statute"), a section of the Illinois Code of Corrections that prohibits an individual on Mandatory Supervised Release ("MSR") for a sex offense 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," on its face and as applied to them.

3. In order to be released from the physical custody of an IDOC facility at the completion of their court-imposed sentences of incarceration, Plaintiffs must identify an approved "host site" at which to reside while on MSR.

4. As of this filing, 25 of the named Plaintiffs have completed their court-imposed sentences of incarceration and are approved for release on MSR, but they all remain imprisoned because they do not have an approved "host site" at which to reside while on MSR. Each of these individuals has a suitable place to live outside of prison that would meet IDOC approval but for the One-Per-Address Statute.[1]

5. Eleven of the named Plaintiffs have been released from prison to host sites in the community, but they all are at risk of having their MSR revoked and being sent back to IDOC because their housing does not comply with the One-Per-Address Statute.[2]

6. One of the named Plaintiffs (Thomas Smith) has not yet completed his sentence of incarceration, but is currently making a plan for his release on MSR (scheduled for January 2021). Solely because of the One-Per-Address Statute, he will be unable to obtain IDOC approval to serve his MSR at his parents' home.

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[1] The 25 Plaintiffs who remain imprisoned are Columbo Galindo, Andra Sampson, DeJuan Wright, Jerrand Miller, John Margarella, Kenneth Green, David Easton, Paul D. Hubbard, Juan Medina, Adam Escamilla, Aishef Shaffer, Edward Bartgen, Reginald Harris, Johnny Harris, Lavonne Givens, Lashaun Dean, Justin Fluckert, Dontae Boykin, Ronald Garrison, Joshua Huddleston, Manuel Aleman, Arnold Lloyd, Melvin Kelley, Andre Dunn, and Alvin Goldberg.

[2] The 11 Plaintiffs who have been released but are at risk of revocation are Marcus Barnes, Luis Aponte, Kevin Manson, Fredrick Chamblis, Corey Crowe, Dana Monson, Joshua Atkins, Kenneth Schroeder, Wade Council, Christopher Shelton and Mark Faller.

7. Plaintiffs, individually and on behalf of all others similarly situated, contend that continued enforcement of the One-Per-Address Statute violates the Eighth Amendment and the Equal Protection Clause and seek an injunction prohibiting Defendant Jeffreys from continuing to enforce the Statute.

JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 2201. Pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, this Court has jurisdiction to declare the rights of the parties and to grant all further relief deemed necessary and proper.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to the claims asserted herein occurred in this district.

THE PARTIES

10. Defendant Rob Jeffreys is sued in his official capacity as director of the Illinois Department of Corrections. In his capacity as the director of IDOC, he has final authority to set the Department of Corrections' policies with regard to approval of prisoners' host sites. The Department of Corrections' power to approve or deny proposed host sites is the sole mechanism through which the One-Per-Address Statute is enforced.

11. The named Plaintiffs are individuals who have been convicted of sex offenses and have identified places to live outside of IDOC that would be approvable host sites but for the One-Per-Address Statute.

12. The named Plaintiffs seek to represent a class of all individuals who have been convicted of sex offenses and cannot identify a host site at which to live while on MSR that satisfies the One-Per-Address Statute.

RELEVANT FACTS

The *Murphy* Litigation

13. The plaintiffs in *Murphy v. Raoul,* 16-cv-11471, 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).

14. The *Murphy* plaintiffs identified several layers of restrictions that limit where people sentenced to indeterminate MSR can live, which, taken together, make it virtually 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 purely as a matter of IDOC policy, including prohibiting 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.

15. On April 6, 2018, this Court certified *Murphy* 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.

16. On March 31, 2019, this Court granted the *Murphy* 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).

17. This 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 IDOC's policies) violates the *Murphy* class's constitutional rights.

18. On January 15, 2020, this Court entered a permanent injunction requiring the Illinois Department of Corrections to put forth a compliance 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.

19. 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. *Id*.

20. As of this filing, the *Murphy* class comprises more than 300 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.

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

22. The compliance plan also notes that "[t]here are many statutory provisions that impede the Department's ability to approve prospective host sites for sex offenders" and states that the Department "hopes that some of the statutory impediments to identifying host sites can be reduced or eliminated through legislative change." *Id*. at 3-4.

The Challenged Statute

23. 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).

24. The sole mechanism through which the One-Per-Address Statue 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.[3]

25. 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.

26. 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 proposed 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,

[3] 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).

and the One-Per-Address Statute makes it so only one parolee can live at each compliant property, even if it is a large apartment complex with many units.

27. There is no reason to conclude that allowing people who have been convicted of sex offenses to live 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.[4]

28. 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, and in the *Murphy* litigation the IDOC did not come forth with any safety or rehabilitative justification for the One-Per-Address Statute.

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[4] *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) (last visited April 3, 2020)

Plaintiffs and the Members of the Proposed Class Would Have Compliant Places to Live while on MSR But for the One-Per-Address Statute

A. NewDay Apartments Has Valid Host Sites Available for Class Members

29. NewDay Apartments, located in Lake County, Illinois, has partnered with the IDOC to provide housing to individuals with sex offense convictions being released from prison onto MSR.

30. NewDay specializes in providing compliant housing to registrants. It currently owns seven properties, all of which comply with the prohibition on residence within 500 feet of schools, playgrounds and daycares.

31. NewDay currently leases four of these properties to IDOC for the purpose of housing *Murphy* class members who cannot otherwise secure housing. Placement at NewDay is intended to give individuals who do not have the means or ability to secure a host site an opportunity to get out of prison and begin their MSR time in the community.

32. *Murphy* class members released to NewDay are given three to four months rent-free to give them an opportunity to find work, obtain government benefits to which they are entitled, and to secure housing of their own.

33. IDOC has begun releasing *Murphy* class members to NewDay Apartments. To date, four *Murphy* class members have been placed at NewDay. IDOC has been prioritizing the release of individuals who have done the most "dead time" (*i.e.*, extra time in prison beyond the completion of their sentence).

34. Due to the One-Per-Address Statute, the IDOC is only using half of its capacity for housing *Murphy* class members at the properties it leases from

NewDay. That is, the units IDOC leases from NewDay have eight separate bedrooms and could comfortably accommodate eight parolees at no additional cost to the IDOC. But because of constraints imposed by the One-Per-Address Statute, IDOC has only released four *Murphy* class members to these properties—one at each separate address.

35. Plaintiffs DeJuan Wright, Jerrand Miller and Andra Sampson are members of the *Murphy* class. Wright, Miller and Sampson have each spent more than eight years of "dead time" in prison due to their indigence and inability to secure housing. On information and belief, they are the next three individuals in line for placement at NewDay Apartments because they have done the most "dead time" among the members of the *Murphy* class who remain in prison.

36. Plaintiff John Margarella is a prisoner at Dixon Correctional Center. In 2012, he was convicted of possession of child pornography and sentenced to three years in IDOC plus three-years-to-life MSR. With "good time" credits, he completed his prison term on December 30, 2013, and has been entitled to release from prison on MSR since that date, but remains imprisoned because he has been unable to secure compliant housing. Because of his inability to find housing, Margarella has spent more than six years of "dead time" in prison.

37. Margarella is at high risk for suffering serious health complications if he contracts COVID-19 while imprisoned. Margarella has suffered two heart attacks, internal bleeding, and dangerously low blood pressure while imprisoned at Dixon Correctional Center beyond his out date.

38. Margarella does not have any friends or family outside of prison who can offer him a place to live while on MSR or help pay for his housing. He remains imprisoned indefinitely until a unit at NewDay Apartments becomes available.

39. There is no reason why the properties IDOC leases from NewDay Apartment should sit half vacant when individuals such as Plaintiffs Miller, Wright, Sampson and Margarella are entitled to release and could be serving their MSR time in the community at no additional expense to IDOC.

40. Pursuant to this Court's May 13, 2020, Order (ECF No. 22), Plaintiffs Miller, Wright, Sampson and Margarella have been approved for release to these units and can reside at NewDay Apartments pending further order of the Court. In the absence of permanent injunctive relief, however, this housing will no longer be considered compliant, and these individuals will be at risk of having their MSR revoked and being sent back to prison because of the One-Per-Address Statute.

41. In addition to the units NewDay Apartments leases to IDOC, NewDay also owns several other multi-unit properties that it privately rents to registrants. These properties are considered compliant addresses for individuals subject to the prohibition on living within 500 feet of schools, playgrounds and daycares.

42. Because of the One-Per-Address Statute, these properties are currently only available to registrants who are off MSR. But for the One-Per-Address Statute, NewDay would be willing to lease to individuals on MSR the apartments it currently makes available only to individuals who are off MSR.

43. Plaintiff Alvin Goldberg is a prisoner at Taylorville Correctional Center. With "good time" credits, Goldberg completed his prison term on November 11, 2018, and has been entitled to release from prison on MSR since that date, but he remains imprisoned because he has been unable to secure compliant housing. Because of his inability to find housing, Goldberg has spent more than 18 months of "dead time" in prison.

44. Goldberg, who is 81 years old, is at high risk for suffering serious health complications if he contracts COVID-19 while imprisoned.

45. Plaintiff Goldberg and his family are able to privately pay for an apartment through NewDay Apartments. Goldberg is on the waiting list to rent a unit from NewDay, subject to his being able to obtain "a court order allowing NewDay to house Alvin with other registrants who live in other units at the same address."

46. Pursuant to this Court's May 13, 2020, Order (ECF No. 22), Plaintiff Goldberg has been approved for release to NewDay when a unit becomes available and can reside at NewDay pending further order of the Court. In the absence of permanent injunctive relief, however, this housing will no longer be considered compliant because of other registrants at the same address, and Goldberg will be at risk of having his MSR revoked and being sent back to prison because of the One-Per-Address Statute.

B. Wayside Cross Ministries Has Valid Host Sites Available for Class Members

47. Wayside Cross Ministries is a Bible-based mission that has operated in Aurora, Illinois, for more than 90 years.

48. The Master's Touch Ministry at Wayside Cross is a Bible-based, residential life-transformation program for troubled men. The program offers room and board at no cost, and empowers its participants to change their lives through prayer, Bible study, daily church services, mentoring with local clergy, and work rehabilitation programs. It takes a minimum of seven months for a resident to complete the Master's Touch Ministry program. The end goal of the program is to give the men the tools they need to live healthy, law abiding lives, and the ability to secure their own employment and housing.

49. The participants in the Masters Touch Ministry all reside together in a dormitory setting at Wayside Cross, located at 215 E. New York Street in Aurora. Thus, placement at Wayside Cross does not comply with the One-Per-Address Statute.

50. Pursuant to this Court's May 13, 2020, Order (ECF No. 22), Plaintiffs Atkins, Schroeder, Chamblis, Crowe, Faller, Shelton, Monson and Council have been released to Wayside Cross Ministries and are currently participating in the Master's Touch Ministry program. Pursuant to the preliminary injunction order, these Plaintiffs may reside at Wayside Cross pending further order of the court. In the absence of permanent injunctive relief, however, these individuals will be at risk of having their MSR revoked and being sent back to prison because of the One-Per-Address Statute.

51. Wayside Cross currently has additional openings in the Master's Touch Ministry and is willing to accept additional members of the *Murphy* class at no cost to the IDOC or to the parolees.[5]

52. Plaintiffs Kenneth Green, Paul Hubbard, David Easton, Juan Medina, Adam Escamilla, Ashief Shaffer, Reginald Harris and Edward Bartgen are all members of the *Murphy* class who have completed their sentences of incarceration and are entitled to release from IDOC on MSR, but remain imprisoned because they do not have resources to secure compliant housing. Each of these Plaintiffs would like to participate in the Master's Touch Ministry at Wayside Cross.

53. On information and belief, each of these Plaintiffs meets the criteria for release to Wayside Cross and participation in the Master's Touch Ministry.

54. But for the One-Per-Address Statute, Wayside Cross Ministries would be willing to accept these Plaintiffs and other individuals being released from IDOC on MSR for admission to the Master's Touch Ministry.

C. Jordan's Dream Has Valid Host Sites Available for Class Members

55. Plaintiff Marcus Barnes 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.

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[5] Because of its proximity to a playground, Wayside Cross cannot accept into its program individuals who are classified as "child sex offenders," but it can accept individuals whose offenses involved an adult victim. Undersigned counsel has confirmed with Aurora Corporation Counsel Rick Veenstra that Aurora police are willing to register parolees at Wayside Cross provided they are not classified as "child sex offenders." The Plaintiffs seeking placement at Wayside Cross are not classified as "child sex offenders."

56. Barnes' family identified 11 different potential host sites, all of which IDOC rejected for various reasons, including proximity to daycares and schools. Because of his inability to secure compliant housing, Barnes spent more than 18 months of "dead time" in prison.

57. In February 2020, Barnes' family found him a place to stay on the 5700 block of South Sangamon in Chicago. 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, religious services, and connections to mental health providers) to individuals who have been convicted of sex offenses.

58. 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.

59. However, IDOC rejected the host site pursuant to the One-Per-Address Statute because another registrant resided there.

60. Pursuant to this Court's April 8, 2020, Order (ECF No. 11), Plaintiff Barnes was released to Jordan's Dream on April 14, 2020, and can reside there pending further order of the court. In the absence of permanent injunctive relief, however, this housing will no longer be considered compliant, and Barnes will be at risk of having his MSR revoked and being sent back to prison because of the One-Per-Address Statute.

61. But for the One-Per-Address Statute, Jordan's Dream would be willing to offer housing to other registrants being released from IDOC on MSR whenever openings become available.

D. New Beginnings Has Valid Host Sites Available for Class Members

62. New Beginnings is a Chicago-based not-for-profit corporation. New Beginnings owns and operates five buildings on the South Side of Chicago at which it provides affordable transitional housing, meals and supportive services to individuals who have been released from prison or have experienced homelessness.

63. All five of the buildings New Beginnings owns are compliant with the restriction on living within 500 feet of schools, playgrounds and daycares.

64. Plaintiffs Galindo, Huddleston, Givens, Dean, Fluckert, Boykin, Garrison, Harris, Aleman, Lloyd and Kelley have all completed their sentences of incarceration and are entitled to release from IDOC on MSR, but they all remain imprisoned because they have been unable to secure compliant housing. Each of these Plaintiffs would like to reside while on MSR at properties operated by New Beginnings. Galindo, Huddleston, Givens, Dean, Boykin, Garrison, Harris and Dunn would like to be released to 6655 S. Perry, Chicago, Illinois 60621; and Fluckert, Aleman, Lloyd, and Kelley would like to be released to 11934 S. Lowe, Chicago, Illinois 60628.

65. Plaintiffs and/or their families are prepared to pay for their placements at these locations.

66. New Beginnings has sufficient beds available at each of these locations and is prepared to accept the Plaintiffs immediately.

67. In the future, New Beginnings is prepared to offer housing to other members of the proposed class, space permitting.

68. The sole reason IDOC cannot approve Plaintiffs for release to New Beginnings properties is the One-Per-Address Statute.

E. Individuals Who Have Been Released to Host Sites Outside of Prison are at Risk of Revocation

69. Plaintiff Luis Aponte was released from IDOC onto MSR in January 2020 to his father's home in Waukegan, Illinois.

70. The host site is in a four-story apartment building that contains approximately 12 separate units. When Aponte was released, no other registrant lived in the building. IDOC determined that the address complies with the prohibition on residing within 500 feet of a school, playground or daycare, and approved Aponte to live there while on MSR.

71. Aponte is doing well on MSR. He has full-time employment in a warehouse and has been attending required sex offender therapy regularly.

72. In March 2020, another registrant (not on MSR) moved into a different unit in the same building where Aponte resides with his father.

73. Aponte has received notice from his parole agent that if he does not find somewhere else to live, he will have his MSR revoked and will be sent back to prison because the One-Per-Address Statute prohibits him from living in the same apartment building as another registrant.

74. Aponte has not been able to find another host site that IDOC will approve and that he can afford. He wants to keep residing with his father.

75. If the One-Per-Address Statute is enforced against Aponte, he will have his MSR revoked and be sent back to prison, resulting in loss of his job, halting the progress he has made on MSR so far, and forcing him to serve dead time until he can secure a new place to live.

76. Plaintiff Kevin Manson was released from IDOC onto MSR on May 6, 2020. He currently resides in Chicago Heights, Illinois, with his aunt.

77. IDOC approved Manson for release to his aunt's home, but the approval was given in error. When Manson tried to register with Chicago Heights police after his release, he was informed that his aunt's house is too close to a school. Chicago Heights police told him that he must move because he in violation of the prohibition on residing within 500 feet of a school.

78. Manson does not have funds to pay for housing of his own at present. The Cook County Justice Advisory Council ("CCJAC"), a governmental entity that provides reentry assistance to citizens returning to Cook County after imprisonment, is willing to pay for Manson's housing.

79. New Beginnings has a bed available for Manson at 11934 S. Lowe Chicago Illinois, 60628, and is able to take him immediately. As set forth above, this placement complies with the restriction on residence within 500 feet of schools, playgrounds and daycares. CCJAC is prepared to pay to house Manson at this location.

80. IDOC cannot approve Manson to move to New Beginnings pursuant to the One-Per-Address Statute because another registrant already lives at that address.

81. If the One-Per-Address Statute is enforced against Manson, he will have his MSR revoked and be sent back to prison. He will also be at serious risk of new criminal charges for failure to register and/or for residing too close to a school.

F. Class Members Could Be Released to Placements with Family

82. Plaintiff Thomas Smith is an individual who is currently imprisoned in IDOC and is seeking a host site at which to reside while on "three-to-life" MSR.

83. Plaintiff Smith's mother Tammy and step-father Jerry would like to have Thomas live with them at their home in Pocahontas, Illinois, while he is on MSR.

84. Plaintiff Smith's parents have a three-bedroom home and can give Thomas his own bedroom and bathroom. The home is in a rural area, and it is not within 500 feet of any schools, playgrounds, or daycares.

85. Plaintiff Smith submitted his parents' home as a proposed host site. IDOC rejected the host site because his stepfather was convicted of a sex offense 34 years ago (in 1986), and the One-Per-Address Statute (730 ILCS 5/3-3-7(a)(7.6)) prohibits Thomas from residing at the same address as another person who has been convicted of a sex offense—no matter how long ago.

86. The only barrier to Plaintiff Smith's being allowed to serve his MSR time at his parents' home is the One-Per-Address Statute.

CLASS ALLEGATIONS

87. Pursuant to Fed. R. Civ. P. 23(b)(2), Plaintiffs seek certification of this complaint as a class action for purposes of equitable relief on behalf of a class defined as follows.

- All individuals who are or will in the future be on Mandatory Supervised Release for a sex offense and cannot secure housing that complies with the One-Per-Address Statute, 730 ILCS 5/3-3-7(a)(7.6).

88. The class seeks a declaration that the One-Per-Address Statute violates the Eighth Amendment and the Equal Protection Clause on its face and as applied to them and an injunction prohibiting Defendant from continuing to enforce the Statute.

89. The proposed class is numerous. According to the final report of the Illinois Sex Offenses & Sex Offender Registration Task Force, published in December 2017, "[o]n average, the Illinois Department of Corrections houses 1,200 to 1,400 offenders who may not be released from custody because they are unable to secure permanent, stable housing meeting Illinois statute requirements or agency policy."[6] On information and belief, the number of individuals imprisoned in IDOC due to a lack of compliant housing has grown substantially since the publication of that report. This complaint identifies 37 people who have been unable to secure housing solely because of the challenged Statute and there are likely hundreds more who are, or will be in the future, in the same situation.

[6] Available at: http://www.icjia.state.il.us/news/sex-offenses-and-sex-offender-registration-task-force-final-report

90. There are questions of law and fact common to all class members, including but not limited to the following:

- What are the rationales for the One-Per-Address Statute;
- Whether there is any compelling interest served by the Statute;
- Whether the Statute violates the Eighth Amendment and Equal Protection Clause as applied to the members of the class.

91. All individuals falling within the class definition are subject to the same Statute. Given the commonality of the questions pertinent to all class members, a single judgment would provide relief to each member of the class.

92. Defendant has acted and continues to act in a manner adverse to the rights of the proposed class, making final declaratory relief appropriate with respect to the class as a whole.

93. The named Plaintiffs will fairly and adequately represent the interests of the class; and the named Plaintiffs' claims are typical of the claims of all members of the proposed class.

94. Plaintiffs' counsel has extensive experience and has devoted substantial professional and financial resources to representing individuals in cases involving the same type of claim raised here—namely, the *Murphy* class action. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

COUNT I
42 U.S.C. §1983 – EIGHTH AMENDMENT

95. Plaintiffs, individually and on behalf of the class they seek to represent, reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

96. In *Murphy v. Raoul*, 380 F. Supp. 3d 731, 738 (N.D. Ill. 2019), this Court has already concluded that it violates 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.

97. The One-Per-Address Statute is the sole reason the named Plaintiffs and the members of the proposed class cannot secure housing that will enable them to be released on MSR (or remain in the community while on MSR).

98. Thus, the One-Per-Address Statute violates the Eighth Amendment on its face and as applied to the named Plaintiffs and the members of the proposed class.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

c) Enter judgment declaring that 730 ILCS 5/3-3-7(a)(7.6) violates the Eighth Amendment of the U.S. Constitution;

d) Enter a permanent injunction prohibiting Defendant from continuing to enforce 730 ILCS 5/3-3-7(a)(7.6);

e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and

f) Grant such other relief as this Court deems just and proper.

COUNT II
42 U.S.C. §1983 – FOURTEENTH AMENDMENT – EQUAL PROTECTION

99. Plaintiffs, individually and on behalf of the class they seek to represent, reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

100. The One-Per-Address Statute violates the Equal Protection Clause on its face and as applied to the named Plaintiffs and the members of the proposed class.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

c) Enter judgment declaring that 730 ILCS 5/3-3-7(a)(7.6) violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;

d) Enter a permanent injunction prohibiting Defendant from continuing to enforce 730 ILCS 5/3-3-7(a)(7.6);

e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and

f) Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Adele D. Nicholas
/s/ Mark G. Weinberg
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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,	)	
Plaintiffs,	)	
v.	)	No. 20-cv-2137
ROB JEFFREYS, in his official capacity as the Director of the Illinois Department of Corrections,	)	
Defendant.	)	

PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23(B)(2) AND FOR APPOINTMENT OF CLASS COUNSEL PURSUANT TO FED. R. CIV. P. 23(G)(1)

Plaintiffs, through counsel, respectfully request that this Court enter an order pursuant to Federal Rule of Civil Procedure 23(b)(2) certifying this case as a class action on behalf of a class defined as follows:

- All individuals who have been convicted of sex offenses and completed their court-imposed sentence of incarceration who cannot find housing that complies with 730 ILCS 5/3-3-7(a)(7.6) at which to reside while on Mandatory Supervised Release.

Plaintiffs further request that this Court enter an order appointing the undersigned attorneys as class counsel. In support thereof, Plaintiffs state as follows.

INTRODUCTION

Plaintiffs challenge the constitutionality of 730 ILCS 5/3-3-7(a)(7.6) (hereinafter "the One-Per-Address Statute" or "the Statute"). The Statute prohibits any

individual on Mandatory Supervised Release ("MSR") for a sex offense 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 or has been placed on supervision for a sex offense." *Id*.

The named Plaintiffs and the members of the class they seek to represent have all completed their court-ordered terms of incarceration and are entitled to release on MSR. As of this filing, 25 of the named Plaintiffs remain imprisoned because they do not have an approved "host site" at which to reside while on MSR. Eleven of the named Plaintiffs have been released from prison to host sites in the community, but they are at risk of having their MSR revoked and being sent back to IDOC because their housing does not comply with the One-Per-Address Statute.

Plaintiffs claim the enforcement of the Statute against them and others similarly situated violates the Eighth Amendment and Equal Protection Clause. Plaintiffs seek injunctive and declaratory relief on behalf of the class against Rob Jeffreys in his official capacity as Director of the Illinois Department of Corrections. Mr. Jeffreys is the public official with ultimate authority for enforcement of the One-Per-Address Statute.

Plaintiffs' claims are ideally suited to proceed as a class action under Federal Rule of Civil Procedure 23(b)(2). As set forth below, the proposed class satisfies each element of Rule 23(a) because (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class;

(3) the claims of the named Plaintiffs are typical of the claims of the class; and (4) the named Plaintiffs will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Moreover, this matter meets the requirements for class certification under Rule 23(b)(2) because Defendant has acted in a manner that applies generally to the class as a whole, rendering class-wide injunctive and declaratory relief appropriate under Fed. R. Civ. P. 23(b)(2).

ARGUMENT

I. The Court Should Certify the Proposed Class

For a district court to certify a class action, the proposed class must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and the requirements of at least one subsection of Rule 23(b). *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). Here, because the proposed class meets all four Rule 23(a) requirements and the requirements of Rule 23(b)(2), the class should be certified.

A. The Proposed Class Meets All of the Requirements of Fed. R. Civ. P. 23(a) and 23(b)(2)

1. Numerosity

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" generally meets this standard. *Barragan v. Evanger's Dog and Cat Food Co.*, 259 F.R.D. 330, 333 (N.D.Ill. 2009); *Streeter v. Sheriff of Cook County*, 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.")

Here, the proposed class easily satisfies this standard. According to the final report of the Illinois Sex Offenses & Sex Offender Registration Task Force, published in December 2017, "[o]n average, the Illinois Department of Corrections houses 1,200 to 1,400 offenders who may not be released from custody because they are unable to secure permanent, stable housing meeting Illinois statute requirements or agency policy."[1] Many such individuals remain incarcerated solely because of the One-Per-Address provision. Plaintiffs' pleadings to date have identified 36 individuals who have otherwise compliant addresses that have not been approved because of the One-Per-Address Statute.

As explained in Plaintiffs' Second Amended Complaint, these individuals fall into four broad categories: (1) individuals, such as Marcus Barnes, Dana Monson, and Columbo Galindo, who would like to reside at charitably operated transitional housing such as Jordan's Dream, New Beginnings or Wayside Cross Ministries; (2) individuals, such as Alvin Goldberg, who could obtain privately financed housing at addresses where other individuals with sex offense convictions already reside; (3) individuals, such as Andra Sampson and John Margarella, who are eligible for placement at the units IDOC leases from NewDay Apartments; and (4) individuals, such as Luis Aponte and Thomas Smith, who could reside with members of their

[1] Available at: http://www.icjia.state.il.us/news/sex-offenses-and-sex-offender-registration-task-force-final-report

families but for the One-Per-Address restriction. Each of these categories likely contains dozens of other people who could identify housing but for the restriction on residing at the same address as another offender.

Moreover, as noted in Plaintiffs' motion for a preliminary injunction (ECF No. 17), membership in the class is growing as additional individuals finish their sentences of incarceration and become eligible for release on MSR but remain imprisoned due to an inability to obtain compliant housing. Accordingly, the class easily meets the numerosity requirement of Rule 23(a)(1).

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Where, as here, the named Plaintiffs and the members of the class they seek to represent bring a facial challenge to an allegedly unconstitutional statute, the central questions of law and fact are necessarily common to all members of the class. *See Smiley v. Calumet City*, No. 08 C 3017, 2009 U.S. Dist. LEXIS 41701, at *15-16 (N.D. Ill. May 15, 2009) (Where the Plaintiff brings "a facial challenge to the validity of [a statute] … the statute itself serves as the required 'common nucleus of operative fact.'") (*citing Keele v. Wexler*, 149 F. 3d 589, 594 (7th Cir. 1998) and *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)).

Here, the named Plaintiffs and all members of the proposed class are challenging the constitutionality of the same statute. Accordingly, all of the core

factual and legal questions are appropriate for resolution on a class-wide basis. These common questions include the following:

- What are the rationales for the One-Per-Address Statute;
- Whether there is any compelling interest served by the Statute;
- What evidence supports the restriction imposed by the Statute;
- Whether the Statute violates the Eighth Amendment and/or Equal Protection Clause as applied to the members of the class.

Because there are common questions of law and fact pertaining to all members of the class, this matter meets the commonality requirement of Fed. R. Civ. P. 23(a)(2).

3. Typicality

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." *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). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and [is] based on the same legal theory." *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). This requirement "is meant to assume that the named representative's claims 'have the

same essential characteristics as the claims of the class at large.'" *Oshana v. Coca–Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006).

Where, as here, the named Plaintiffs' injuries arise from a generally applicable statute affecting all members of the class, typicality exists even if there are factual differences in precisely how the statute was applied to each plaintiff. *Sherman v. Twp. High Sch. Dist. 214*, 540 F. Supp. 2d 985, 992 (N.D. Ill. 2008) ("variations in factual circumstances … do not defeat the typicality of the class representative's defenses.") (*citing Brown v. Kelly*, 244 F.R.D. 222, 230 (S.D.N.Y. 2007) ("if factual distinctions could preclude findings of commonality and typicality under Rule 23(a), they would be the death knell for class actions challenging the systemic enforcement of an unconstitutional statute."); *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).

In this case, the named Plaintiffs' claims are typical of the class as a whole. Each named Plaintiff has a place to live that would meet IDOC approval but for the One-Per-Address Statute. The members of the proposed class are in the same situation—that is, they will be imprisoned beyond the completion of their court-ordered term of incarceration unless and until they find housing that satisfies this rule. Moreover, the named Plaintiffs and each class member have the same legal theories—that is, the application of the challenged Statute keeps them in prison in violation of the Eighth Amendment and the Equal Protection Clause. Accordingly, the named Plaintiffs satisfy Rule 23(a)(3)'s typicality requirement. *See Fonder v. Sheriff of*

Kankakee County, No. 12-CV-2115, 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 v. Brown*, 284 F.R.D. 398, 411 (N.D. Ind. 2012) (typicality satisfied where class representative and members of proposed class had their legal mail opened improperly by correctional officers).

4. Adequacy

Rule 23(a)(4) requires that the named plaintiffs "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy inquiry consists of two parts: "(1) the adequacy of the named plaintiffs as representatives of the proposed class' 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). Both elements are met here.

a. The Named Plaintiffs Are Appropriate Representatives of the Interests of the Class

The named Plaintiffs will fairly and adequately protect the interests of the class. The named Plaintiffs and the class members raise the same claims, seek the same relief, and their interests are aligned. The named Plaintiffs are a diverse group who represent the various ways in which the One-Per-Address Statute results in the unnecessary imprisonment of individuals who have completed their sentences of incarceration and who should be permitted to serve their MSR time in the community. Each of the named Plaintiffs has 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).

At present, there are 25 named Plaintiffs who remain in prison because of the One-Per-Address Statute and 11 named Plaintiffs who are at risk of revocation because of the Statute.[2] Even if every named Plaintiff is released pursuant to preliminary injunctive relief, they will remain invested in seeing this litigation through to its conclusion because in the absence of permanent injunctive relief, they risk being returned to prison on a technical violation of their parole (*i.e.*, their housing will no longer be valid because of the One-Per-Address Statute). Accordingly, the named Plaintiffs will adequately represent the interests of the class.

b. Adequacy of Representation

The named Plaintiffs are represented by experienced civil rights counsel who are well qualified to represent the interests of the members of the class and have devoted substantial time and resources to vigorously prosecuting this case. Ms. Nicholas and Mr. Weinberg have successfully litigated numerous constitutional cases in which broad equitable relief was sought, including the *Murphy* class action which raised claims closely related to the claims raised here. *See*, *Murphy v. Raoul*, 16 C 11471, 380 F. Supp. 3d 731 (N.D. Ill., 2019) (Kendall, J.) (certified class action; obtained permanent injunction governing IDOC procedures for releasing sex

[2] The 25 Plaintiffs who remain imprisoned are Columbo Galindo, Andra Sampson, DeJuan Wright, Jerrand Miller, John Margarella, Kenneth Green, David Easton, Paul D. Hubbard, Juan Medina, Adam Escamilla, Aishef Shaffer, Edward Bartgen, Reginald Harris, Johnny Harris, Lavonne Givens, Lashaun Dean, Justin Fluckert, Dontae Boykin, Ronald Garrison, Joshua Huddleston, Manuel Aleman, Arnold Lloyd, Melvin Kelley, Andre Dunn, and Alvin Goldberg. The 11 Plaintiffs who have been released but are at risk of revocation are Marcus Barnes, Luis Aponte, Kevin Manson, Fredrick Chamblis, Corey Crowe, Dana Monson, Joshua Atkins, Kenneth Schroeder, Wade Council, Christopher Shelton and Mark Faller.

offenders on MSR); *RCP Publications Inc. v. City of Chicago*, 15 C 11398 (certified class action; obtained permanent injunction prohibiting enforcement of City's sign-posting ordinance and class-wide damages); *Adair v. Town of Cicero*, No. 18 C 3526, 2019 U.S. Dist. LEXIS 110949 (N.D. Ill. July 3, 2019) (pending certified class action on behalf of women detained in Town of Cicero police lockup); *Koger v. Dart*, 114 F. Supp. 3d 572 (N.D. Ill., 2015) (obtained declaratory judgment holding ban on newspapers in the Cook County Jail unconstitutional); *Pindak v. Dart*, 10 C 6237 (N.D. Ill. 2016) (Pallmeyer, J.) (obtained a permanent injunction ordering the sheriff to train deputies concerning First Amendment rights); *Norton v. City of Springfield*, 806 F. 3d 411 (7th Cir. 2015) (obtained an injunction barring the City of Springfield from enforcing its municipal panhandling ordinance).

Because the named Plaintiffs have demonstrated a commitment to vigorously pursuing class-wide relief and because they are represented by competent and experienced counsel, they satisfy Rule 23(a)(4)'s adequacy requirements.

5. Plaintiffs Satisfy Fed. R. Civ. P. 23(b)(2) Because this Case Seeks Declaratory and Injunctive Relief from Policies that Impact the Entire Proposed Class

The final requirement for class certification is that the named plaintiff must meet the requirements 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 long recognized that civil rights class

actions are the paradigmatic 23(b)(2) suits. *See Alliance to End Repression v. Rochford*, 565 F. 2d 975, 979 n.9 (7th Cir. 1977) ("Rule 23(b)(2) … is devoted primarily to civil rights class actions which allege violations of constitutional rights.") (*citing* Advisory Committee Notes to the 1966 Amendments to Rule 23); *Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.*, 797 F.3d 426, 441 (7th Cir. 2015) ("23(b)(2) is the appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would benefit the whole class. Not surprisingly, civil rights cases … are prime examples of Rule 23(b)(2) classes.") (citations omitted).

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). Because this case seeks class-wide injunctive and declaratory relief, it is appropriate for certification as a class action under Fed. R. Civ. P. 23(b)(2).

II. The Court Should Designate Plaintiffs' Counsel as Class Counsel Under Rule 23(g)(1)

Federal Rule of Civil Procedure 23(g) requires that the district court appoint class counsel for any class that is certified. Fed. R. Civ. P. 23(g)(1). The attorneys appointed to serve as class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). The appointed class counsel must be listed in a court's class certification order. Fed. R. Civ. P. 23(c)(1)(B).

Rule 23(g) provides four factors for a court to consider in appointing class counsel: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law"; and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

The undersigned attorneys satisfy each of these requirements. First, Plaintiffs' counsel have invested substantial work into preparation of this case, including speaking to numerous families and individuals affected by the challenged Statute, drafting a Complaint and two amended Complaints, drafting two successful motions for a preliminary injunctive relief, and conducting extensive legal research concerning the class members' claims. Second, as set forth in §I(A)(4)(c) above, Plaintiffs' counsel have devoted substantial professional resources to litigation on behalf of individuals who have been convicted of sex offenses and have significant experience in handling complex civil rights litigation, including the kind of claims asserted in this case. Finally, Plaintiffs' counsel have dedicated and will continue to commit substantial resources to the representation of this class. In sum, Plaintiffs' counsel fully satisfy the criteria for class counsel set forth in Rule 23(g), and Plaintiffs respectfully request that the Court appoint undersigned counsel to represent the class.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the motion for class certification and appoint the undersigned attorneys as Class Counsel.

Respectfully submitted,

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/s/ Mark G. Weinberg
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