

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

IN RE STATE AND NATIONAL EMERGENCY)	
AND PROTECTION OF THE LIFE AND)	2020 Misc. # _____
HEALTH OF DETAINEES IN THE COUNTY)	
JAIL AND THOSE WHO INTERACT WITH)	The Hon. Leroy K. Martin, Jr.
)	Presiding Judge of the
)	Criminal Division

**BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE
PETITION BY THE COOK COUNTY PUBLIC DEFENDER**

Amici curiae The Roderick and Solange MacArthur Justice Center, The Chicago Community Bond Fund, Illinois Justice Project, and Chicago Appleseed Fund for Justice, through their counsel Riley Safer Holmes & Cancila LLP, and in support of the Petition by the Cook County Public Defender requesting the expeditious release of certain residents of the Cook County Jail, state to this Court as follows:

INTRODUCTION

As noted in the Petition, there is a dire emergency facing the over 5,500 people currently in the custody of the Cook County Department Corrections. The urgent need to rectify this dangerous situation extends beyond the incarcerated people themselves. Once the COVID-19 infection is contracted in the Cook County Jail, it can be expected to rapidly spread to the various staff and personnel who are required to work in jail throughout this pandemic, as well as to the general public as people leave the jail. This in turn will inevitably be passed on to the families and neighbors of those persons moving in and out of the jail. Continued incarceration creates an unnecessary risk of increased exposure to a deadly disease not just to them, but to all the residents of Cook County. About this there can be no credible debate.

INTEREST OF THE *AMICI*

The Roderick and Solange MacArthur Justice Center, The Chicago Community Bond Fund, Illinois Justice Project, and Chicago Appleseed Fund for Justice are public interest organizations and advocacy groups that have, collectively, worked for decades to further the interests of social justice and human rights in the criminal legal system. The *amici* organizations are deeply concerned about the failure of the Cook County Jail and the criminal legal system to respond decisively to the crisis created within the jail by the threat of spread of COVID-19.

DISCUSSION

The World Health Organization has characterized COVID-19 as a global pandemic, with nearly 250,000 people reported infected with the virus worldwide.¹ While initially described by some media outlets as a “flu,” current data shows that COVID-19 is roughly 34 times as deadly as common influenza, as well as significantly more infectious. This respiratory illness has proven especially dangerous for the elderly and individuals with compromised immune systems.² In response, on March 13, the United States government declared the spread of COVID-19 a national emergency.³ Meanwhile, in response to the growing threat, the Centers for Disease Control (“CDC”) recommends that citizens engage in “social distancing” – namely, maintaining a distance

¹ “WHO Characterizes COVID-19 as a Pandemic,” *World Health Organization* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>; see also “Coronavirus Map: Tracking the Spread of the Outbreak,” *The New York Times* (Mar. 19, 2020), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (updating regularly).

² Coronavirus Disease 2019 (COVID-19) Situation Report 46, *World Health Organization* (Mar. 6, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_2.

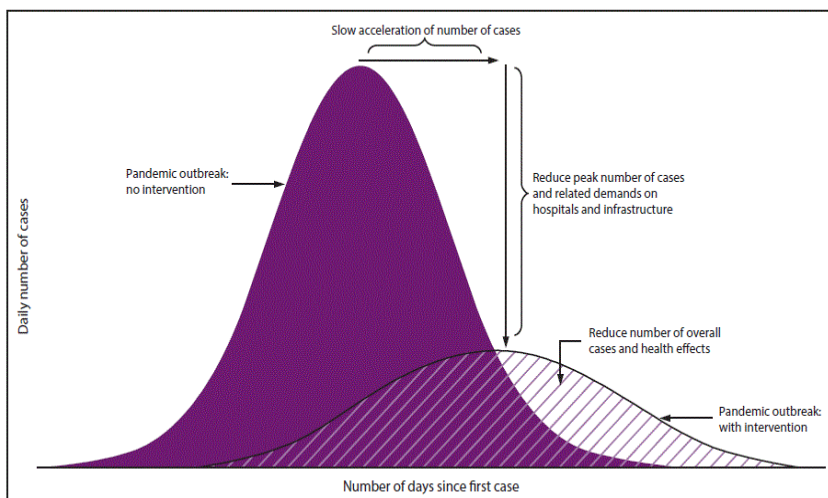
³ Declaration of National Emergency in Response to COVID-19, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

of approximately six feet from others when possible. The CDC also recommends more stringent food safety procedures, frequent hand-washing and sanitizing, and avoiding large gatherings.⁴

As of this filing, there are hundreds of diagnosed cases in the State of Illinois, and the situation continues to evolve daily and hourly. On March 9, Governor Pritzker issued a disaster proclamation. Consistent with CDC guidelines, on March 13, he announced the closure of all public and private schools statewide. On March 16, Governor Pritzker closed dine-in service at all restaurants and bars and restricted crowd sizes to fewer than 50 people. On March 17, he activated 60 members of the Illinois National Guard to assist with logistical support and medical staffing. On March 18, the Village of Oak Park issued the first shelter-in-place order in Illinois.

The purpose of these precautions is to slow the spread of COVID-19:

FIGURE 1. Goals of community mitigation for pandemic influenza



Source: Adapted from: CDC. Interim pre-pandemic planning guidance: community strategy for pandemic influenza mitigation in the United States—early, targeted, layered use of nonpharmaceutical interventions. Atlanta, GA: US Department of Health and Human Services, CDC; 2007. <https://stacks.cdc.gov/view/cdc/11425>.

If COVID-19 spreads quickly, it will have a devastating effect on hospitals as they flood with patients more quickly than those patients can be treated. If rapid infections create a demand

⁴ Interim U.S. Guidance for Risk Assessment and Public Health Management of Person with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-Confirmed Cases, *Centers for Disease Control* (updated Mar. 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

that cannot be met by hospital capacity, the risk of death for infected individuals increases dramatically. Social distancing is the single most effective tool we have to “flatten the curve” of transmission of the virus so that our healthcare system can keep up.⁵ Yet the realities of incarceration make compliance with these guidelines impossible.

A. Risk Factors for Incarcerated People and Detainee Populations

Cook County Jail (“CCJ”), one of the largest single-site jails in the country, presents a perfect breeding ground for COVID-19. If there has not yet been a confirmed case of the COVID-19 virus among incarcerated individuals in Cook County, that will likely occur soon. Based on the documented rate of transmission of this particular disease, the proliferation of that infection will be rapid once it is inside the jail. Contributing to this is poor hygiene access for incarcerated people, the sharing of facilities, and the unavoidable gathering of people in large groups. Social distancing is impossible inside a jail.

As of this filing, roughly 5,600 people are incarcerated in CCJ. Nearly 500 of them are over age 55.⁶ Jail populations also include disproportionately high numbers of individuals who may be particularly vulnerable to COVID-19, such as those with asthma, heart disease, lung disease, diabetes, autoimmune diseases, or other conditions resulting in a suppressed immune system⁷:

⁵ Katie Pearce, “What is social distancing and how can it slow the spread of COVID-19?,” *Johns Hopkins University* (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>.

⁶ Cook County Sheriff’s Jail Population Daily Report (Mar. 18, 2020), <https://www.cookcountysheriff.org/data/jail-population-march-18-2020/>.

⁷ See Peter Wagner & Emily Widra, “No need to wait for pandemics: The public health case for criminal justice reform,” *Prison Policy Initiative* (Mar. 6, 2020), www.prisonpolicy.org/blog/2020/03/06/pandemic/; see also Laura M. Maruschak et al., “Medical Problems of State and Federal Prisoners and Jail Inmates,” *Bureau of Justice Statistics* (2015), <https://www.bjs.gov/content/pub/pdf/mpsfjil112.pdf>.

Health condition	Prevalence of health condition by population			
	Jails	State prisons	Federal prisons	United States
Ever tested positive for Tuberculosis	2.5%		6.0%	0.5%
Asthma	20.1%		14.9%	10.2%
Cigarette smoking	n/a	64.7%	45.2%	21.2%
HIV positive	1.3%		1.3%	0.4%
High blood pressure/hypertension	30.2%		26.3%	18.1%
Diabetes/high blood sugar	7.2%		9.0%	6.5%
Heart-related problems	10.4%		9.8%	2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

*Health conditions that make respiratory diseases like COVID-19 more dangerous are far more common in the incarcerated population than in the general U.S. population. Pregnancy data come from our report, [Prisons neglect pregnant women in their healthcare policies](#), the CDC's [2010 Pregnancy Rates Among U.S. Women](#), and data from the [2010 Census](#). Cigarette smoking data are from a 2016 study, [Cigarette smoking among inmates by race/ethnicity](#), and all other data are from the 2015 BJS report, [Medical problems of state and federal prisoners and jail inmates, 2011-12](#), which does not offer separate data for the federal and state prison populations. Cigarette smoking *may be part of the explanation* of the higher fatality rate in China among men, who are far more likely to smoke than women.*

Moreover, conditions of confinement – including overcrowding, barracks-style housing, communal dining, and restricted access to hygiene products – make local jails like CCJ particularly susceptible to outbreaks of communicable diseases; according to public health experts, incarcerated individuals “are at special risk of infection, given their living situations” and are “less able to participate in proactive measures to keep themselves safe.”⁸ Flu outbreaks occur regularly in jails. For example, in 2013, an outbreak of the stomach flu required the quarantine of 700 people.⁹ Likewise, during the H1N1 epidemic in 2009, many jails and prisons faced high numbers

⁸ Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States, (Mar. 2, 2020), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

⁹ Carlos Sadovi, “Virus quarantines 700 inmates at Cook County Jail,” *Chicago Tribune* (Feb. 6, 2013), <https://www.chicagotribune.com/news/ct-xpm-2013-02-06-chi-flu-cook-county-jail-20130206-story.html>.

of cases.¹⁰ In China, officials have confirmed the rapid spread of COVID-19 in Chinese prisons, with more than 500 reported cases across five facilities in three provinces.¹¹

Cermak Health Services of Cook County, the medical facility within CCJ, and Stroger Hospital are not equipped to accommodate the medical needs of these incarcerated patients. Depending on the age and compromised immune systems of these patients, severity of the symptoms will vary. It is predictable that the seriousness of the illnesses expected to develop among incarcerated people will be greater than the population as a whole. The choices to be made about humane treatment for gravely ill people in jail will be stark.

B. Risk Factors for the Broader Community

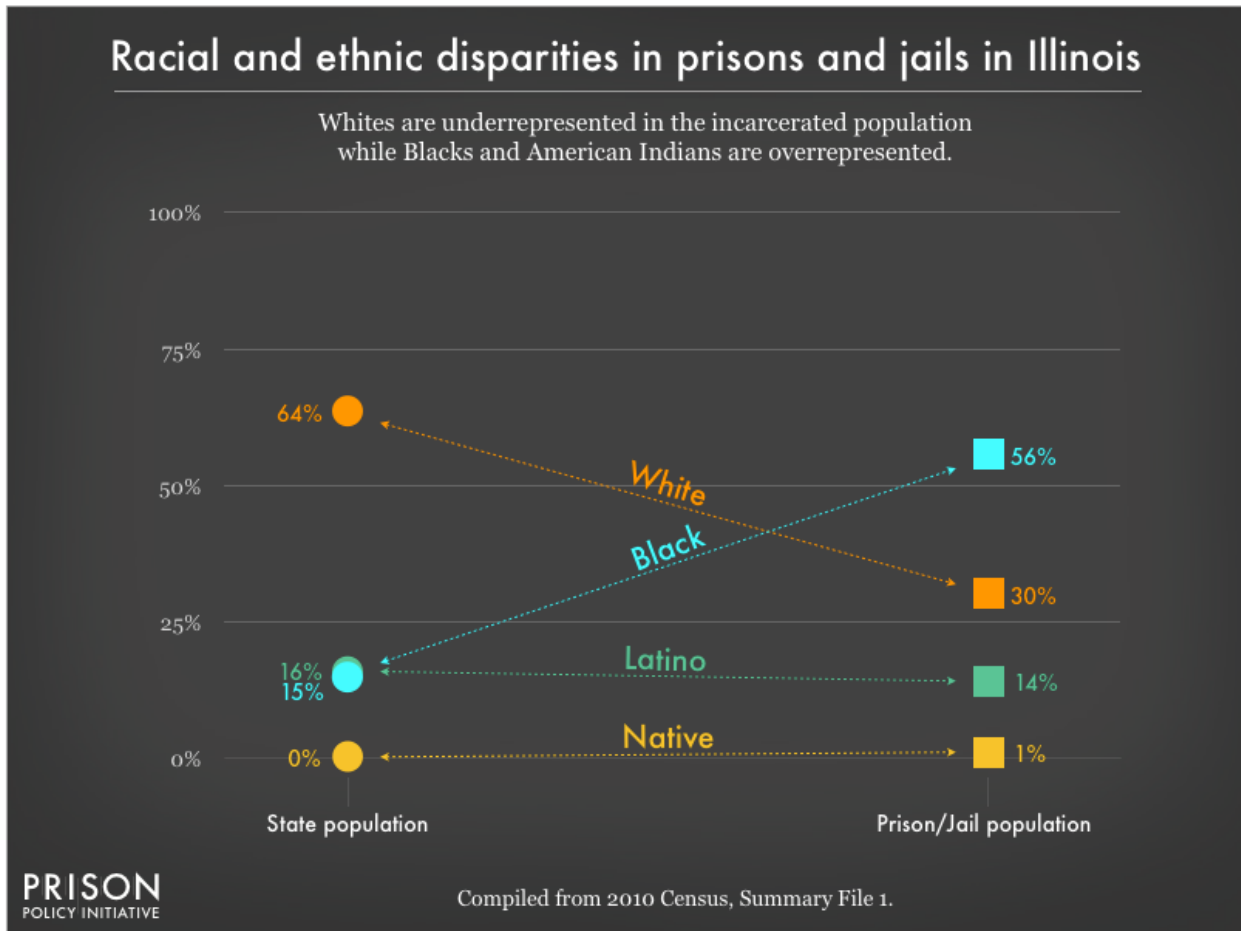
An outbreak of COVID-19 in the CCJ also poses a threat to the broader community. The CCJ employs on various shifts hundreds of guards, sheriff's deputies, medical staff, and other persons with administrative, social work, and clerical responsibilities. These employees are in daily contact with incarcerated people, often in close quarters. When their shifts conclude, they go home. Jails also have extremely high turnover rates, as individuals are admitted and released on a daily basis. CCJ logs many thousands of admissions each year, and a substantial majority of discharged individuals return directly to their communities. This regularly cycling in and out of jails is particularly hazardous now.

Further, "jail churn" has the potential to disproportionately endanger communities of color in Cook County. It is no secret that people of color are overrepresented in prisons and jails in

¹⁰ David M. Reutter, "Swine flu widespread in prisons and jails, but deaths are few," *Prison Legal News* (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

¹¹ Rhea Mahbubani, "Chinese jails have become hotbeds of coronavirus as more than 500 cases have erupted, prompting the ouster of several officials," *Business Insider* (Feb. 21, 2020), <https://www.businessinsider.com/500-coronavirus-cases-reported-in-jails-in-china-2020-2>.

Illinois; for example, Black people comprise 15% of the population of Illinois, but 56% of its incarcerated individuals.¹²



If incarcerated people are discharged from CCJ after being exposed to COVID-19, they risk carrying the virus back to local communities of color at disproportionate rates.

On March 18, the Cook County Sheriff issued a press release addressing CCJ's response to the public health crisis, including screening measures, limiting visitation, and housing

¹² Illinois Profile, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/IL.html>.

changes.¹³ Ongoing modification of jail policies on an ad hoc basis will be ineffective once this highly infectious sickness takes hold in the jail and propagates uncontrollably, as has been seen in countries, cities, and communities worldwide. The only effective method to deal with this impending crisis is to move aggressively to de-populate the jail and allow these presumptively innocent members of our society to take steps available to the rest of us to avoid infection.

CONCLUSION

It is essential that the changes urged in the Public Defender's petition be implemented immediately so as to avoid the inevitable spread of this virus through the jail. It is imperative to immediately reduce the number of people in Cook County Jail. Eliminating unnecessary pre-trial detention is a vital step to protecting these incarcerated populations and the community at large.

Dated: March 20, 2020

Respectfully submitted,

/s/ Jeffrey Urdangen

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¹³ Cook County Sheriff Press Release (Mar. 18, 2020), <https://www.cookcountysheriff.org/update-on-efforts-to-reduce-population-at-cook-county-jail-and-ongoing-precautions-to-prevent-covid-19/>.

¹⁴ Appendix A constitutes a list of organizations and entities all of whom join the *amici* in this request to the Court.

APPENDIX A

ACLU of Illinois	Loevy & Loevy
American Friends Service Committee - Chicago	Love & Protect
Believers Bail Out	Lucy Parsons Labs
Black Lives Matter: Chicago	Moms United Against Violence and Incarceration
Chicago Alliance Against Racist and Political Repression	The People's Law Office
Chicago Council of Lawyers	The People's Lobby
Chicago Desi Youth Rising	Organized Communities Against Deportations
Chicago Freedom School	Restore Justice
Chicago Torture Justice Center	Southsiders Organized for Unity and Liberation
Chicago Votes Action Fund	Trinity United Church of Christ
First Defense Legal Aid	Uptown People's Law Center
Gay Liberation Network	Westside Justice Center
Liberation Library	