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

CHRISTINE M. FINNIGAN, Plaintiff, v. JAMES MENDRICK, in his official capacity as Sheriff of DuPage County; ANTHONY ROMANELLI, in his official capacity as the Chief of the Corrections Bureau of the DuPage County Sheriff's Office, Defendants.	Civil Action No. 1:21-cv-00341 Hon. Steven C. Seeger Mag. Sheila M. Finnegan

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a) and Local Rule 77.2, Plaintiff Christine Finnigan seeks emergency injunctive relief to require Defendants to provide her with continued access to her medically necessary, physician-prescribed medication to treat her opioid use disorder (OUD) when she is incarcerated at the DuPage County Jail on February 25, 2021, and throughout her 30-day incarceration.

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INTRODUCTION

Ms. Finnigan is diagnosed with OUD, a chronic brain disease resulting from years of active opioid addiction. She has achieved and maintained recovery because of prescribed methadone. Prescription methadone is a medication used in "medication for addiction treatment" (also known interchangeably as "medication-assisted treatment" or "MAT", and "medication for opioid use disorder" or "MOUD"). MAT is the standard of care for treating OUD.

On January 28, 2021, Ms. Finnigan pled guilty to one count of driving under the influence. She expects to serve 30 days[1] in the DuPage County Correctional Facility ("DuPage County Jail" or "the Jail"). Defendants, who are the Sheriff and Chief of the Corrections Bureau for the DuPage County Sheriff's Office, run the Jail and oversee the Jail operations. It is their de facto policy and practice to refuse to provide MAT to individuals with OUD in the DuPage County Jail ("de facto Mandatory Withdrawal policy"), even to those who, like Ms. Finnigan, have a prescription for such medication and whose recovery depends on access to the medication. Policies like this one stem from outdated stigma and stereotypes that MAT is not like other necessary medical care for chronic conditions, such as insulin for diabetes or ACE inhibitors for high blood pressure. Indeed, in 2018, the Health Services Administrator of the DuPage County Jail mischaracterized treatment with methadone as "another form of addiction." Declaration of Rebekah Joab ("Joab Decl.") ¶ 8 and Exhibit 3 thereto.

Absent an injunction, Defendants' de facto Mandatory Withdrawal policy will cause Ms. Finnigan to suffer from painful withdrawal and will place her at high risk of relapse, overdose, and death. Ms. Finnigan seeks emergency injunctive relief to require Defendants to provide her

[1] Ms. Finnigan was sentenced to 60 days of incarceration but expects to earn one day off her sentence for every day served with good behavior. Finnigan Decl. ¶ 12 and Exhibit 1 thereto; County Jail Good Behavior Act 730 ILCS 130/3. Thus, she expects to serve 30 days.

with continued access to her physician-prescribed medication, including by taking necessary and appropriate steps before her incarceration begins on February 25, 2021.

The relief Ms. Finnigan seeks is well-supported by precedent. Other federal courts have granted preliminary injunctions requiring jails to provide individuals with their prescribed MAT, based upon findings that failure to do so likely violates the Eighth Amendment and the Americans with Disabilities Act (ADA). *See Pesce v. Coppinger*, 355 F. Supp. 3d 35 (D. Mass. 2018); *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146 (D. Me.), *aff'd*, 922 F.3d 41 (1st Cir. 2019) (decided only on the ADA).

This Court should reach a similar conclusion. As applied to Ms. Finnigan, Defendants' de facto Mandatory Withdrawal policy violates the Eighth Amendment's guarantee against cruel and unusual punishment, which prohibits deliberate indifference to incarcerated persons' serious medical needs. Defendants' de facto Mandatory Withdrawal policy also violates the ADA, which bans discrimination against people with disabilities, including OUD. Emergency injunctive relief should be granted.

FACTS

A. MAT is the Standard of Care for Treating OUD.

OUD is a chronic brain disease that involves structural changes in the brain, particularly to the parts of the brain responsible for assessing and responding appropriately to risk and reward. Declaration of Dr. Ross MacDonald ("MacDonald Decl.") ¶¶ 9, 10. It is characterized by compulsive use of opioids despite negative consequences. *Id.* OUD and overdose deaths are a national health crisis. *See id*. ¶ 5. In Illinois, thousands of people die each year from opioid overdose, with more than 2,000 dying in 2019. *Id.* ¶ 9.

The standard of care for OUD is treatment with medications for opioid use disorder, such as methadone and buprenorphine. *Id*. ¶¶ 5, 16; Declaration of Dr. Robert Reeves ("Reeves Decl.") ¶ 6. These medications help normalize brain function and reduce the symptoms of OUD, including withdrawal, cravings, and opioid misuse. MacDonald Decl. ¶ 16; Reeves Decl. ¶ 7. It is well established that access to methadone improves physical and mental health for people with OUD and reduces the likelihood of overdose and death associated with OUD. MacDonald Decl. ¶ 17. "Methadone is a life-saving medication that helps people enter and stay in recovery." Reeves Decl. ¶ 7. Forced withdrawal is not medically appropriate for patients being treated with MOUD, because it increases the risk of relapse into active OUD and makes patients more likely to suffer from overdose and potential death. MacDonald Decl. ¶ 26. OUD medications are not interchangeable; what works for one person does not work for all. Reeves Decl. ¶ 15. The type of medication and length of time someone takes it are clinical decisions between the patient and their provider. *Id*.

The risks of relapse, overdose, and death are even higher for people who are released from incarceration after disruption of their treatment with MAT. MacDonald Decl. ¶¶ 15, 18–23; Reeves Decl. ¶ 14. When individuals are inappropriately deprived of their medication, their brain functioning does not return to what it was pre-OUD. *See* MacDonald Decl. ¶¶ 12, 13. Instead, they experience cravings, which can place them at elevated risk of relapse, overdose, or death. *See id*. Counseling or therapy unaccompanied by medication is not a treatment supported by evidence. *Id*. ¶ 29; *see also* Reeves Decl. ¶ 16. Additionally, post-release care cannot reverse the harm of forced withdrawal and does not address this risk of relapse and overdose. MacDonald Decl. ¶ 30.

B. Methadone Is Medically Necessary to Treat Ms. Finnigan's OUD.

Ms. Finnigan is diagnosed with OUD. [redacted]; Declaration of Christine Finnigan ("Finnigan Decl.") ¶¶ 2, 14. She has struggled with opioid addiction for over twenty years, making it difficult for her to maintain employment, maintain relationships with her family, concentrate, or even wake up in the morning. Finnigan Decl. ¶¶ 5, 6, 10. Throughout this time, Ms. Finnigan made many attempts to stop her illicit use of opioids, including through unmedicated detoxification, which was unsuccessful. *See id.* ¶¶ 6, 9–10.

In August 2019, Ms. Finnigan began treatment at the Bobby Buonauro Clinic ("BBC") in Evanston, Illinois, where a physician diagnosed her with OUD and prescribed methadone. [redacted]; Finnigan Decl. ¶¶ 13–14. After beginning methadone treatment, both Ms. Finnigan and BBC noticed immense improvements in her life. [redacted]; Finnigan Decl. ¶ 16. With methadone, [redacted] is not currently engaging in illicit opioid use, is able to think more clearly, and take care of herself. [redacted]; Finnigan Decl. ¶ 16. Ms. Finnigan currently goes to the BBC twice every month, so that she can take home two weeks-worth of her methadone, [redacted]; Finnigan Decl. ¶ 18. Ms. Finnigan takes her medication every day, which is critical to the continued success of her treatment. Finnigan Decl. ¶ 18; s*ee also* MacDonald Decl. ¶ 40 ("[I]t is urgent that there be no lapse in treatment . . .").

If, against [redacted] the standard of care, Ms. Finnigan does not receive her medication at the DuPage County Jail, she will suffer from painful withdrawal, including symptoms of abdominal cramps, diarrhea, vomiting, tremors, body aches, chills, hot flashes, muscle pain, depressed mood, anxiety, and insomnia, and be placed at high risk of relapse, overdose, and death. [redacted]; MacDonald Decl. ¶¶ [redacted], 9, 11, 13.

[redacted] Ms. Finnigan has gone through withdrawal before, when her life went into a "tail spin" and she "lost [her] job, [her] salon, [her] home, [her] mind, and the progress [she] made in my recovery." Finnigan Decl. ¶ 10. The prospect of forced detox at the jail "feels like a panic attack that never ends." *Id.* ¶ 24.

It is imperative that there be no lapse in treatment while Ms. Finnigan is incarcerated, and that Defendants have a detailed and articulated plan of how they will provide immediate access to treatment upon intake. *See* MacDonald Decl. ¶¶ 40–42. Without such a plan, delays in conducting a medical evaluation and facilitating access to treatment could force individuals, like Ms. Finnigan, into withdrawal. *Id*. ¶ 42.

C. Defendants' Mandatory Withdrawal Policy Will Interrupt Ms. Finnigan's Life-Saving Methadone Treatment.

Ms. Finnigan faces the immediate prospect of confinement in the DuPage County Jail without access to her life-saving medication due to a conviction stemming from an incident that occurred in 2016, before her current treatment regimen. *See* Finnigan Decl. ¶¶ 12, 14 and Exhibit 1 thereto. On January 28, 2021, Ms. Finnigan pled guilty to a single count of driving under the influence. Finnigan Decl. ¶ 12. She expects to serve 30 days in the DuPage County Jail, which is run and overseen by Defendants. *Id.* and Exhibit 1 thereto; *see* 730 ILCS 130/3. Ms. Finnigan will report to the jail on February 25, 2021 to serve her sentence. Finnigan Decl. ¶ 12.

Ms. Finnigan fears that she will be forced into withdrawal upon entering the Jail. *Id.* ¶¶ 2, 15, 19, 24. Her fear is well-founded: Defendants have a longstanding de facto policy and practice to deny access to MAT to individuals with OUD in the DuPage County Jail, even to those who, like Ms. Finnigan, have a prescription for such medication and are in sustained recovery as a result of MAT. *See* Joab Decl. ¶¶ 3–8. A 2018 Chicago Tribune article reported the lack of a

methadone program at DuPage County Jail, explaining that "[b]y policy, almost all detainees there go through detox." *Id.* ¶ 8 and Exhibit 3 thereto. The Chicago Tribune quoted the Health Services Administrator of the Jail at the time criticizing methadone treatment as "another form of addiction." *Id.* Additionally, on January 9, 2021, as she was trying to figure out what a possible stay in jail would mean for her recovery, Ms. Finnigan reached out to Defendant Mendrick through Facebook Messenger to inquire about the availability of MAT in the Jail. Finnigan Decl. ¶¶ 21, 22 and Exhibit 2 thereto. Defendant Mendrick described the Jail's addiction services as including "full detox" and counseling. *Id.* ¶ 21. He acknowledged the value of MAT generally and mentioned the possibility of providing injectable buprenorphine in the future, but when Ms. Finnigan asked specifically if someone who comes into the jail on MAT is stopped "cold turkey," he did not respond. *Id.* ¶¶ 21, 22.

The Jail's de facto Mandatory Withdrawal policy and practice has had lethal consequences. The 2018 Chicago Tribune article reported on the death of a twenty-one-year-old man who was enrolled in a MAT program prior to incarceration in the DuPage County Jail, but was forced into detox during his six-week incarceration at that facility. Exhibit 3 to Joab Decl. He died of accidental overdose soon after his release from the Jail. *Id.* In 2016, the DuPage County Jail denied a twenty-four-year-old man access to his prescribed Suboxone during his incarceration, calling it "a narcotic."[2] Declaration of Louis Lamoureux ("Lamoureux Decl.") ¶ 3. The young man tragically died of a heroin overdose five days after release. *Id.* ¶ 5.

Ms. Finnigan's counsel has communicated with counsel for the Defendants in an attempt to facilitate Ms. Finnigan's access to methadone while she is incarcerated. Counsel sent a

[2] These facts establish that Defendants sustain a de facto policy and a practice of Mandatory Withdrawal. To obtain additional evidence that is in the possession of the Defendants, Plaintiff intends to file an Emergency Motion for Expedited Discovery on this issue.

demand letter to Defendants on January 19, 2021, asking that they provide Ms. Finnigan access to her medication while incarcerated. Declaration of Joseph Longley ("Longley Decl.") ¶ 3 and Exhibit 1 thereto. To date, they have not agreed to do so. *See generally id.* [redacted] Counsel for Ms. Finnigan also provided Defendants a recommendation for a third-party consultant to answer any questions they may have about providing access to methadone within the Jail. *Id.* ¶ 8 and Exhibit 4 thereto.

In response, Defendants have made unsubstantiated representations that they may permit Ms. Finnigan to take methadone while incarcerated only if their own evaluation of her and her treatment history showed that methadone was "necessary," and only after an in-person physical evaluation by Jail medical staff after she reports to the Jail for her sentence. *Id.* ¶¶ 5, 15 and Exhibit 4 thereto. According to public reporting from the DuPage County Sheriff's Office, such an evaluation could take up to 14 days to be completed. *See* Joab Decl. ¶ 9 and Exhibit 2 thereto.[3] Defendants have not answered questions from Ms. Finnigan's counsel about the clinical criteria they will use to conduct the evaluation or how they will provide access to Ms. Finnigan's medication. Longley Decl. ¶ 16–19 and Exhibit 4 thereto. They have also declined or ignored

[3] This information comes from the 2019 Annual Report of the DuPage County Sheriff's Office and is posted on the website for the DuPage County Sheriff. *See* DuPage Cty. Sheriff's Office, *DuPage Cty. Sheriff's Office 2019 Annual Report*, *available at* https://www.dupagesheriff.org/AboutUs/57/ (last accessed 02/05/2021). As such, it is proper for judicial notice. *See Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011) ("We have recognized the authority of a court to take judicial notice of government websites.") (internal citations omitted).

four requests for a telephone call to discuss a resolution to this matter. *Id.* ¶¶ 6, 8, 16, 17 and Exhibit 4 thereto.

As a result, there is no plan in place to ensure that Ms. Finnigan receives her dose of methadone her first morning after being booked in the Jail. Defendants' insistence on waiting until Ms. Finnigan reports to the Jail to conduct a medical evaluation to determine whether, in their own view, MAT is medically necessary for Ms. Finnigan is not medically appropriate and exposes her to a significant risk that she will go through forced withdrawal. *See* MacDonald Decl. ¶¶ 40–42. In light of Defendants' de facto Mandatory Withdrawal policy, Ms. Finnigan reasonably believes that the DuPage County Jail will determine, without legitimate medical justification, that it is not "necessary" for her to continue methadone treatment while incarcerated and will not facilitate access to her medication. She is in a state of acute fear and anxiety that she will undergo forced withdrawal upon entering the Jail. Finnigan Decl. ¶ 24.

ARGUMENT

I. THIS MATTER IS RIPE FOR JUDICIAL RESOLUTION.

"Ripeness doctrine is based on the Constitution's case-or-controversy requirements as well as discretionary prudential considerations." *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 148 (7th Cir. 2011). A claim that depends on contingencies that may or may not occur is not ripe for adjudication. *Texas v. United States*, 523 U.S. 296, 300 (1998). That is not to say that civil rights litigants must "await the consummation of a threatened injury" or "await a tragic event" in order to obtain injunctive relief. *Farmer v. Brennan*, 511 U.S. 825, 845 (1994) (internal citations and quotations omitted). Indeed, it is well established that "the Eighth Amendment protects against future harm to inmates." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Injunctive relief is proper to "prevent a substantial risk of serious injury from ripening

into actual harm." *Farmer*, 511 U.S. at 845. The test for ripeness in this context is whether the risk alleged is "sufficiently imminent" to constitute a cognizable claim. *Helling*, 509 U.S. at 34. Preliminary injunctive relief is properly granted to individuals suffering from OUD who challenge, as applied to them, jails' blanket policies denying MAT in advance of a known date of incarceration. *Pesce*, 355 F. Supp. 3d at 43–44, 49; *Smith*, 376 F. Supp. 3d at 155–58, 162.

Here, the risk that Defendants will interrupt Ms. Finnigan's methadone treatment is "sufficiently imminent" to create a case or controversy. *Helling*, 509 U.S. at 34. Ms. Finnigan is due to report to the DuPage County Jail in 17 days. Finnigan Decl. ¶ 12 and Exhibit 1 thereto. She cannot sustain any interruption in her daily methadone treatment. MacDonald Decl. ¶¶ 9–15, 40–41. Defendants' de facto Mandatory Withdrawal policy and historical practices, *see* Fact Section C, *supra*; Joab Decl. ¶¶ 3–8, alone create an imminent risk of interruption to Ms. Finnigan's daily methadone treatment while she serves her sentence. Additionally, Defendants' failure to confirm that Ms. Finnigan will receive methadone treatment while incarcerated in the Jail, despite her extensive efforts to facilitate a pre-incarceration decision, further raises the imminent risk that her MAT will be interrupted in the Jail. With assistance of legal counsel, Ms. Finnigan executed a release authorizing the Jail to review her relevant medical records, Longley Decl. ¶ 14 and Exhibit 4 thereto; [redacted]; and she stands willing to submit to a pre-incarceration evaluation by Jail medical staff while she awaits her report date, Finnigan Decl. ¶ 23.

Despite Ms. Finnigan's efforts, Defendants refuse to take the necessary steps to ensure she does not suffer any interruption in her treatment. [redacted]

[redacted] In light of Defendants' conduct, de facto Mandatory Withdrawal policy, and the history of deaths caused by denial of MAT in the Jail, at best, Ms. Finnigan faces an imminent risk of painful and potentially dangerous withdrawal and increased risk of overdose following intake while the Jail makes its own medical assessment and determines whether and how to facilitate her access to methadone. MacDonald Decl. ¶¶ 9–15, 40–42. At worst, she faces a total and complete interruption of her treatment plan resulting in potential relapse and death. *Id.*

II. PRELIMINARY INJUNCTIVE RELIEF IS WARRANTED.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008); *Speech First v. Killeen*, 968 F.3d 628, 637 (7th Cir. 2020) (a preliminary injunction requires showing, "some likelihood of prevailing on the merits," a lack of "traditional legal remedies," "irreparable harm," and balancing the harm to the movant without relief against any harm to other parties and the public) (internal citations omitted). "[T]he more likely it is the plaintiff will succeed on the merits, the less the balance of irreparable harms need weigh towards its side; the less likely it is the plaintiff will succeed, the more the balance need weigh toward its side." *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 12 (7th Cir. 1992).

In this case, each of the four factors favor granting Ms. Finnigan emergency injunctive relief.

A. Ms. Finnigan is Likely to Succeed in Showing that Denial of Continued MAT is Deliberate Indifference to a Serious Medical Need and Violates the Eighth Amendment.

Ms. Finnigan is likely to succeed on the merits of her claim that denying medication to treat her OUD constitutes cruel and unusual punishment. Prison officials have an affirmative

obligation under the Eighth Amendment to provide medical care to individuals in their custody. *See Farmer*, 511 U.S. at 832; *Helling*, 509 U.S. at 31–32; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "[T]he Constitution's ban on cruel and unusual punishment does not permit a state to deny effective treatment for the serious medical needs of prisoners." *Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011). The Eighth Amendment is deemed violated upon a showing that (1) a plaintiff suffers from an objectively serious medical condition or need, and (2) the individual defendant's deliberate indifference to that condition or need. *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016), *as amended* (Aug. 25, 2016). Here, Ms. Finnigan will prove that her OUD constitutes a serious medical need, and that arbitrary and sudden withholding of her prescribed medication to treat that serious medical need constitutes deliberate indifference by the Defendants. *See Pesce*, 355 F. Supp. 3d at 47.

1. Opioid Use Disorder is an Objectively Serious Illness.

"A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Foelker v. Outagamie Cty.*, 394 F.3d 510, 512 (7th Cir. 2005) (internal citations omitted). Even a lay person would recognize that a chronic brain disease, like OUD, that wreaked havoc on Ms. Finnigan's life and kills thousands of people in Illinois every year creates a "necessity for a doctor's attention." *Id.* at 512; MacDonald Decl. at ¶ 9; Finnigan Decl. ¶¶ 6, 9–12.

Ms. Finnigan's OUD is an objectively serious illness. *See, e.g.*, *Foelker*, 394 F.3d at 513; *Estate of Unborn Child of Jawson v. Milwaukee Cty.*, No. 19-C-1008, 2020 WL 4815809, at *3 (E.D. Wis. Aug. 19, 2020). Her physician has diagnosed her with OUD and prescribed MAT with methadone. *See* [redacted]; Finnigan Decl. ¶14. MAT is the standard of care for

OUD. MacDonald Decl. ¶ 16; Reeves Decl. ¶ 6. [redacted] it would violate the medical standard of care to involuntarily remove her from this treatment. *See* [redacted]; MacDonald Decl. ¶¶ [redacted], 26, 41. A patient who is in recovery on MAT should not be discontinued involuntarily from that treatment "barring a specific and unusual reason." MacDonald Decl. ¶ 42. Courts have held that failure to provide methadone to treat OUD poses an objectively serious danger to incarcerated individuals. *See, e.g.*, *Estate of Unborn Child*, 2020 WL 4815809 at *3. Ms. Finnigan's condition thus satisfies the objective prong of the Eighth Amendment.

2. Arbitrarily and Abruptly Interrupting Physician-Prescribed Methadone Constitutes Deliberate Indifference.

Deliberate indifference occurs where "a prison official subjectively know[s] of and disregard[s] a substantial risk of harm." *Davis v. Carter*, 452 F.3d 686, 696 (7th Cir. 2006) (citing *Haley v. Gross*, 86 F.3d 630, 640–41 (7th Cir. 1996)). "Deliberate indifference may occur where a prison official, having knowledge of a significant risk to inmate health or safety, administers blatantly inappropriate medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner's treatment for non-medical reasons, thereby exacerbating his pain and suffering." *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015) (internal citations and quotations omitted). Denying MAT to incarcerated individuals pursuant to a de facto Mandatory Withdrawal policy, in contravention of their physician's recommendations and the opinions of health care professionals familiar with their recovery, constitutes deliberate indifference. *See Pesce*, 355 F. Supp. 3d at 48. ("Because Pesce has alleged that Defendants' [no-MAT] policy 'ignore[s] treatment prescriptions . . . by [his] doctors,'" Pesce was likely to succeed in establishing deliberate indifference).

The Seventh Circuit has held that a jail's inordinate delays and inadequate processes to ensure timely provision of methadone treatment can constitute deliberate indifference. *Davis*, 452 F.3d at 695–97 (holding that jail official's failure to provide timely methadone and to treat withdrawal could constitute deliberate indifference); s*ee also Foelker*, 394 F.3d at 513–14 (jury could conclude that jail official's failure to treat opioid withdrawal constituted deliberate indifference). In addition, district courts in this Circuit have ruled that failing to provide MAT to incarcerated persons can amount to deliberate indifference. *See, e.g.*, *Estate of Unborn Child*, 2020 WL 4815809 at *6 (as applied to pregnant plaintiff, finding that a de facto policy of failing to provide incarcerated individuals with needed methadone treatment may constitute deliberate indifference); *Parish v. Sheriff of Cook Cty.*, No. 07 C 4369, 2019 WL 2297464, at *17 (N.D. Ill. May 30, 2019) (finding a jury could reasonably conclude that jail officials were deliberately indifferent to a serious medical need based on practice of tapering detainees off of methadone). Notably, *Chencinski v. Zaruba*, No. 17 C 5777, 2018 WL 10705083 (N.D. Ill. June 21, 2018), involved the same jail at issue in this case: the DuPage County Jail. In that case, the court found that allegations that the DuPage County Jail failed to respond to the *pro se* plaintiff's request for continued methadone treatment (and treatment for another condition) stated a claim of deliberate indifference. *Id.* at *3. Additionally, the United States Department of Justice recently issued a notice to a New Jersey jail that there was reasonable cause to believe it was violating the Eighth and Fourteenth Amendments to the Constitution by withholding MAT to incarcerated individuals. *Investigation of The Cumberland County Jail (Bridgeton, New Jersey)*, U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION (January 14, 2021), https://www.justice.gov/opa/press-release/file/1354646/download.[4]

[4] *See Pickett*, 664 F.3d at 648 (government websites proper subject of judicial notice).

Regarding Defendants' subjective intent, it is well established that OUD is a life-threatening disease that kills thousands of people every year nationwide and in Illinois. MacDonald Decl. ¶ 9. In the last year, DuPage County has seen an overwhelming increase in opioid-related overdose deaths.[5] OUD, when untreated, leads to particularly high rates of overdose and death among people who are incarcerated. *Id.* ¶ 13–15. The severe and well-documented loss of life associated with the opioid epidemic is, by itself, enough to allow a factfinder to conclude that Defendants know of the risk of not treating an opioid use disorder. *See Farmer*, 511 U.S. at 841–42 (1994) ("[A] prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable . . . if the risk was obvious and a reasonable prison official would have noticed it.").

Moreover, Defendants are on notice of the significant risks to Ms. Finnigan's health and life if her OUD medication is interrupted or stopped. [redacted]; *see Chencinski*, 2018 WL 10705083 at *1–3 (allegations that DuPage County Jail officials failed to provide plaintiff methadone after he told officials he was in a methadone program, were sufficient to state a claim of deliberate indifference). Yet Defendants have deferred any decision concerning methadone access until after Ms. Finnigan is incarcerated, and the DuPage County Jail completes its own medical evaluation and concludes that continued treatment with methadone is necessary. Longley Decl. ¶

[5] *See* Ill. Dep't of Pub. Health, *Semiannual Opioid Overdose Report 2020* 4 (Sept. 2020), https://www.dph.illinois.gov/sites/default/files/publications/semiannual-opioid-overdose-report9292020final.pdf; The Cty. of DuPage, *Public Safety Announcement: Surge in Overdose Deaths* (May 13, 2020), https://www.dupageco.org/Coroner/Coroner_News/2020/62840/. These webpages are proper for judicial notice. *See Pickett*, 664 F.3d at 648 (government websites proper subject of judicial notice).

5; Def's Motion to Dismiss, Dkt. No. 15, at 3 n.2. *Cf. Hadix v. Caruso*, 420 F. App'x 480, 487 (6th Cir. 2011) (adoption of process whereby psychiatrists would issue "bridge orders" to continue previously prescribed psychiatric medications upon intake "promise[d] meaningful reduction in abrupt, potentially dangerous interruptions in psychiatric medications" and contributed to a finding that there was not an objective risk of serious harm in the intake process).

Defendants' de facto Mandatory Withdrawal Policy, which includes refusing to take necessary and appropriate measures to ensure Ms. Finnigan's uninterrupted access to prescribed methadone treatment in advance of her incarceration, is medically unsound and constitutes deliberate indifference. *See* [redacted]; MacDonald Decl. ¶¶ [redacted], 26, 40, 41 ("Forced withdrawal is not medically appropriate for patients being treated with MOUD . . ."); *Chencinski*, 2018 WL 10705083, at *1–3. Ms. Finnigan reasonably expects that the DuPage County Jail will not provide her with methadone, causing her to endure forced withdrawal. *See generally* Longley Decl. and Exhibit 4 thereto; Finnigan Decl. ¶¶ 21–22, 24–25; Joab Decl. ¶¶ 3–8 and Exhibit 2 thereto; Lamoureux Decl. ¶¶ 3–5. Despite a request by Plaintiff's counsel, Defendants have not provided the clinical criteria they would use to make their determination about Ms. Finnigan's receipt of MAT. Longley Decl. ¶¶ 16, 18 and Exhibit 4 thereto. Even if Defendants ultimately agree with her physician that MAT is necessary, there would be further delay caused by the need to arrange for the provision of the medication. *See* MacDonald Decl. ¶¶ 40, 42. The delay from making those arrangements after Ms. Finnigan is incarcerated and evaluated could result in painful and life-threatening withdrawal and/or relapse, overdose, and death. *See* [redacted]; MacDonald Decl. ¶¶ 9, 11, 13, 40, 42; *Parish*, 2019 WL 2297464, at *19.

In sum, there is no medical justification for interrupting Ms. Finnigan's medically necessary, prescribed methadone treatment. The Jail's de facto Mandatory Withdrawal policy places Ms. Finnigan at substantial and imminent risk of being denied access to this medication upon booking into the Jail, plunging her into life-threatening withdrawal and significantly increasing her risk of relapse, overdose, and death during incarceration and upon release. *See Foelker*, 394 F.3d at 513–14; *Davis*, 452 F.3d at 695–97. Under these circumstances, emergency relief is warranted.

B. Ms. Finnigan is Likely to Succeed on the Merits of Her ADA Claim.

Ms. Finnigan is also likely to succeed on the merits of her claim that denying her access to medical services because she suffers from OUD constitutes unlawful discrimination under Title II of the ADA. The ADA prohibits a "public entity," such as the DuPage County Jail, from discriminating against a qualified individual on the basis of a disability. 42 U.S.C. § 12132; 42 U.S.C. § 12131(1)(B); *Pa. Dep't of Corrections v. Yeskey*, 524 U.S. 206, 210 (1998).

In order to state a claim under Title II of the ADA, a plaintiff must allege three elements: that she is a "qualified individual with a disability," that she was denied "the benefits of the services, programs, or activities" or otherwise subjected to discrimination by the prison, and that the denial or discrimination was "by reason of" her disability. *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 560–61 (7th Cir. 1996) (internal citations omitted). Each of these elements is satisfied here.

1. Ms. Finnigan is a Qualified Individual with a Disability.

Ms. Finnigan is an "individual with a disability" because she is in recovery from a substance use disorder: OUD. Finnigan Decl. ¶ 14. The term "disability" includes "a physical or mental impairment that substantially limits one or more major life activities of such individual."

42 U.S.C. § 12102. By regulation, the phrase "physical or mental impairment includes . . . drug addiction," 28 C.F.R. § 35.108(b)(2), and numerous courts have so held. *See, e.g., A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356, 367 (4th Cir. 2008); *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 336 (6th Cir. 2002); *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002). As a chronic brain disease, OUD "substantially limits" major life activities such as caring for oneself, learning, concentrating, thinking, communicating, and working, and major bodily functions, such as neurological and brain function. *See* 42 U.S.C. §§ 12102(2)(A) and (B); MacDonald Decl. ¶ 10; Finnigan Decl. ¶ 6 (stating that her OUD, when untreated, substantially limits her major life activities of thinking, concentrating, caring for herself, and interacting with others).

Although Title II does not prohibit discrimination against an individual based on their "current illegal use of drugs," the law's protections apply to individuals like Ms. Finnigan who are participating in a supervised drug rehabilitation program and are "no longer engaging in the illegal use of drugs." *See* 42 U.S.C. § 12210(a) & (b); 28 C.F.R. § 35.131(a); Finnigan Decl. ¶ 16. Even people who do engage in current illegal use of drugs cannot be denied health services, including those of a jail, on the basis of such use. 42 U.S.C. § 12210(c); 28 C.F.R. § 35.131(b).

Ms. Finnigan is a "*qualified* individual with a disability" because, when incarcerated, she will meet "the essential eligibility requirements" for the DuPage County Jail's medical services. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104. Indeed, prison officials have an affirmative obligation under the Eighth Amendment to provide individuals in their custody with the necessities of life, including medical care. *See Farmer*, 511 U.S. at 832.

2. Ms. Finnigan will be Denied the Benefit of Health Care Services and Discriminated against Because of Her Disability.

Ms. Finnigan also satisfies the second and third elements for demonstrating an ADA violation. Jail medical care is a service within the meaning of the ADA from which disabled individuals must not be excluded or subjected to discrimination. *See, e.g.*, *Pa. Dep't of Corr.*, 524 U.S. at 210; *Estate of Crandall v. Godinez*, No. 14-CV-1401, 2015 WL 1539017, at *6 (C.D. Ill. Mar. 31, 2015); *Pesce*, 355 F. Supp. 3d at 45; s*ee also Love*, 103 F.3d at 560 (affirming prison's substance use disorder program was a "service" within the meaning of the ADA). Defendants' de facto Mandatory Withdrawal policy violates the ADA because (1) it will deny that service to Ms. Finnigan by reason of her disability (disparate treatment), and (2) it denies her a reasonable accommodation. *See Smith*, 376 F. Supp. 3d at 159–61 (holding the jail's denial of MAT likely violated the ADA as both disparate treatment and failure to provide a reasonable accommodation).

A jail engages in disparate treatment discrimination in violation of the ADA when it fails to provide medication because of the individual's disability. *See Estate of Crandall*, 2015 WL 1539017, at *6 ("[P]laintiff could plead a plausible claim under the ADA if he pleaded that Defendants deprived [him of]. . . access to medical services that were available to other inmates.) (internal citations omitted). In *Smith*, the district court found that the defendants' policy of denying access to MAT (except for pregnant women) "denied [plaintiff] necessary medication because she suffers from OUD." 376 F. Supp. 3d at 159. Similarly, in *Pesce*, the court held that a jail's denial of methadone pursuant to its blanket policy was because of the plaintiff's disability (OUD). 355 F. Supp. 3d at 45–47. The court explained that the lack of any legitimate medical or individualized security considerations justifying the denial of this "medically necessary

treatment" implied that it was "arbitrary or capricious" or a "'pretext for some discriminatory motive' or 'discriminatory on its face.'" *Id.* at 47 (internal citations omitted).

Even when there is no explicit blanket policy denying access to a particular medication or treatment, discrimination can be shown when the correctional facility's decision in an individual case "is so unreasonable . . . that it was a pretext for some discriminatory motive, such as animus, fear, or apathetic attitudes." *Kiman v. N.H Dep't of Corr.*, 451 F.3d 274, 284–85 (1st Cir. 2006) (finding a fact issue whether a prison's denial of prescription medication was a discriminatory "denial of medical services" under the ADA rather than a "medical 'judgment.'") (internal citation omitted); *see also Tate v. Wexford Health Source Inc.*, No. 3:16-cv-00092, 2016 WL 687618, at *1 and *5 (S.D. Ill. Feb. 19, 2016) (finding denial of medical services without a legitimate medical basis to be cognizable claim under the ADA); *Payne v Arizona*, No. CV 09-01195, 2012 WL 1151957, at *9–10 (D. Ariz. Apr. 5, 2012) (same); *Sumes v Andres*, 938 F. Supp. 9, 11–12 (D.D.C. 1996) (same, on claim under the Rehabilitation Act, 29 U.S.C. § 794).

In this case, Defendants' de facto Mandatory Withdrawal policy, including the arbitrary refusal to take necessary measures in advance of Ms. Finnigan's incarceration to ensure uninterrupted access to prescribed methadone, constitutes discriminatory denial of medical services. Defendants have no legitimate basis for refusing to provide Ms. Finnigan with access to methadone. Insofar as they claim they will do an individualized evaluation, there is no reason to believe it will be based on legitimate medical criteria. They already possess the records they need to continue Ms. Finnigan's treatment at the Jail, *see* [redacted]; *see also* MacDonald Decl. ¶ 42, and could make a conditional decision, subject to change in specified conditions. Instead, they have refused to answer questions about the medical criteria they will use in their evaluation and how they will provide

the methadone, should they ever decide to do so. Longley Decl. ¶¶ 13–18 and Exhibit 4 thereto. That their decision-making process (and refusal to make a timely decision) is not based on any legitimate medical justification is further clear from their long history of not providing MOUD. *See* Facts Section C, *supra*.

To the extent Defendants might cite generalized safety and security concerns, these excuses have been rejected in similar cases due to their lack of specificity, inapplicability to the plaintiff, and the fact that safe provision of MAT is becoming "common practice" in jails and prisons. *See, e.g.*, *Pesce*, 355 F. Supp.3d at 46 (noting that the jail's concerns about misuse of medication "are not applicable to Pesce or the liquid methadone prescription at issue here"); *Smith*, 376 F. Supp. 3d at 159–60 ("Defendants' out-of-hand, unjustified denial of the Plaintiff's request for her prescribed, necessary medication—and the general practice that precipitated the denial—is so unreasonable as to raise an inference that the Defendants denied the . . . request because of her disability.") (internal citations omitted). Just as other jails in Illinois and elsewhere safely provide MAT, so can Defendants. Joab Decl. ¶ 12 and Exhibit 5 thereto; Exhibit G, Declaration of Edmond Hayes ("Hayes Decl.") ¶¶ 8–12 (explaining that corrections facilities can safely provide MAT and implement safety protocols including watching individuals take medication, requiring mouth checks, having them eat something after, etc.); MacDonald Decl. ¶¶ 31–39 (explaining that many corrections facilities, including in Illinois, safely provide MAT and providing examples of safety protocols).

Defendant's de facto Mandatory Withdrawal policy also improperly withholds reasonable accommodation for OUD. "Discrimination" under the ADA includes failing to make reasonable accommodations for a qualified individual with a disability. *Richard v. Pfister*, No. 17 C 4677, 2020 WL 5210829, at *2 (N.D. Ill. Sept. 1, 2020) (citing *Wisc. Cmty. Servs., Inc. v. City of*

Milwaukee, 465 F.3d 737, 753 (7th Cir. 2006)). In *Smith*, the court found that it violated the ADA to deny MAT as a reasonable accommodation when it was "the only form of treatment shown to be effective at managing [the plaintiff's] disability . . ." and that by withholding it, the jail denied "meaningful access to the Jail's health care services." 376 F. Supp. 3d at 160 (internal citations and quotations omitted); *see also Cook v. Illinois Dep't of Corr*., No. 3:15-CV-83, 2018 WL 294515, at *2–3 (S.D. Ill. Jan. 4, 2018) (holding that there was a fact issue about whether failure to accommodate incarcerated person's mobility impairment denied him access to jail's substance use disorder treatment program).

Here, Ms. Finnigan sought a reasonable accommodation for her OUD: her prescribed methadone treatment. The simplest way to provide Ms. Finnigan her prescription methadone may be to take her to an off-site clinic. The Jail's willingness to take incarcerated persons to off-site medical providers for other health conditions underscores the reasonableness of such an accommodation. *See* Joab Decl. ¶ 10 and Exhibit 2 thereto. Defendants also have a "Periodic Imprisonment Program" in which incarcerated individuals are able to leave the facility to attend outside counseling services. *Id.* ¶ 11 and Exhibit 4 thereto.

Additionally, Ms. Finnigan sought a reasonable modification of any practice by the jail to defer decisions about medication until after the person is incarcerated. Longley Decl. ¶ 16 and Exhibit 4 thereto. Such an accommodation is a reasonable and appropriate measure to avoid a devasting interruption of her medication. *See, e.g.*, *Hadix*, 420 F. App'x at 487 (describing use of "bridge orders" to continue previously prescribed psychiatric medications at intake). Defendants' failure to take reasonable measures to continue her methadone treatment places her at heightened risk of painful and dangerous withdrawal, relapse, overdose, and death, and constitutes failure to provide a reasonable accommodation for her OUD.

For these reasons, Ms. Finnigan is likely to prevail on her ADA claim.

C. Ms. Finnigan Will Suffer Immediate Irreparable Injury if She is Denied Access to MAT While Incarcerated.

An irreparable harm is one that "cannot be undone following the adjudication and a final determination on the merits of his underlying claim." *Foster v. Ghosh*, 4 F. Supp. 3d 974, 983 (N.D. Ill. 2013) (citing *Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980)); *see also Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (an irreparable harm is one that "cannot be repaired and for which money compensation is inadequate") (internal citations and quotations omitted). The loss of constitutional rights, such as the right to adequate health care while incarcerated, is an irreparable harm. *See Foster*, 4 F. Supp. 3d at 984 (N.D. Ill. 2013) (granting preliminary injunction on Eighth Amendment claim to incarcerated person requiring medical attention for his deteriorating vision); *Tay v. Dennison*, 457 F. Supp. 3d 657, 687 (S.D. Ill. 2020) ("The ongoing deprivation of Plaintiff's Eighth . . . Amendment rights . . . is an irreparable harm sufficient to warrant a preliminary injunction." (citing *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978)); *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1012 (C.D. Ill. 2009) (finding irreparable harm and no adequate remedy at law where the prison's failure to treat the plaintiff's serious medical need in accordance with the standard of care would decrease the plaintiff's quality of life and life expectancy); *Jones v. Obaisi*, No. 15-CV-7963, 2016 WL 4429890, at *2 (N.D. Ill. Aug. 22, 2016) (finding irreparable harm to support a preliminary injunction where prison officials did not meet incarcerated plaintiff's request for effective medication to treat his pain).

Absent injunctive relief requiring Defendants to provide MAT, Ms. Finnigan will be forced into acute methadone withdrawal. *See* [redacted]; MacDonald Decl. ¶ 9. It is hard to fathom injury more severe or irreparable. Both withdrawal and relapse are serious and

potentially life-threatening medical conditions. MacDonald Decl. ¶ 9; Reeves Decl. ¶ 14. There is significant suffering associated with withdrawal, including muscle pain, vomiting, diarrhea, depressed mood, insomnia and anxiety. MacDonald Decl. ¶ 11; *see* Reeves Decl. ¶ 17. Furthermore, forced withdrawal is not medically appropriate for patients being treated with MAT, because it "increases the risk of relapse into active OUD and makes patients more likely to suffer from overdose and potential death." MacDonald Decl. ¶ 26; *see also* Reeves Decl. ¶ 14. The risk of overdose and death is especially high upon release from jail or prison, with a study showing that in the first two weeks the risk of overdose death is 129 times higher than among the general population. MacDonald Decl. ¶ 15. Forcing Ms. Finnigan to stop her life-saving treatment will interrupt her recovery and will also increase the risk of her not returning to treatment after she is incarcerated. MacDonald Decl. ¶¶ 21, 26; [redacted].

Putting Ms. Finnigan at risk of these dire consequences is irreparable harm that cannot be undone. *See Pesce*, 355 F. Supp. 3d at 48 (finding the plaintiff "will be irreparably harmed if denied methadone treatment while incarcerated); *Smith*, 376 F. Supp. 3d at 161 (finding irreparable harm where the plaintiff would be forced off of MAT during her incarceration putting her at increased risk of "later relapse, overdose, and death," particularly as someone coming out of a jail where the risk of those harms is greater); *Foster*, 4 F. Supp. 3d at 983 (granting preliminary injunction to incarcerated person needing ophthalmology services because "the consequence of inaction at this stage would be further deteriorated vision in both eyes" constituting irreparable harm for which there is no remedy at law).

The risk to Ms. Finnigan is not speculative. Three of her four brothers died of overdose. Finnigan Decl. ¶ 3. Tragically, she would not be the first person to die of an overdose after being forced into withdrawal from MAT by the DuPage County Jail. *See* Lamoureux Decl. ¶¶ 3, 5.

Absent court intervention, Ms. Finnigan thus faces substantial, imminent, irreparable harm due to Defendants' de facto Mandatory Withdrawal Policy.

D. The Public Interest Strongly Favors the Grant of Emergency Injunctive Relief.

The public interest also favors Ms. Finnigan's requested injunctive relief. It is well established that the vindication of constitutional rights serves the public interest. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest."); *Foster*, 4 F. Supp. 3d at 984 ("Illinois taxpayers have a vested interest in ensuring that the constitutional rights of its citizens are protected"). Defendants' de facto Mandatory Withdrawal policy exacerbates the ongoing opioid crisis by disrupting effective treatment and making relapse and potential overdose more likely. MacDonald Decl. ¶¶ 15, 19–23. Allowing Ms. Finnigan her methadone would also be consistent with maintaining jail security, as demonstrated by the success in implementing MAT programs in correctional settings across the country. *See* MacDonald Decl. ¶¶ 31–32; Hayes Decl. ¶¶ 8–17. "[T]he public interest is better served by ensuring [Ms. Finnigan] receives the medically necessary treatment that will ensure [s]he remains in active recovery." *Pesce*, 355 F. Supp. 3d at 49.

E. The Balance of Harms Strongly Favors the Grant of Emergency Injunctive Relief.

The risk of irreparable harm to Ms. Finnigan absent relief greatly outweighs any potential harm claimed by Defendants. Unlike the concrete and irreversible harm that Ms. Finnigan will suffer absent the injunction, granting injunctive relief would impose no measurable harm on Defendants. Defendants would not have to create a methadone program out of whole cloth; they only need to bring Ms. Finnigan to her clinic or permit the clinic to transport her medication to

the Jail. *See Smith*, 376 F. Supp. 3d at 162 (finding that allowing the plaintiff access to MAT placed little burden on the jail).

In *Foster*, the court found the harm an incarcerated person would face in not being treated for his deteriorating vision outweighed any burden on the prison, including the burden of referral to an outside specialist. 4 F. Supp. 3d at 984. In so ruling, the court noted that the prison referred other individuals with other medical needs to specialists. *Id.* The same is true here. The harm Ms. Finnigan will experience if she does not have access to her medication greatly outweighs any burden on the jail, particularly considering that the Jail already provides transport for other off-site medical services [redacted]; *see* Joab Decl. ¶¶ 10, 11 and Exhibits 2 and 4 thereto.

III. THE RELIEF REQUESTED MEETS THE PLRA'S NEEDS-NARROWNESS-INTRUSIVENESS REQUIREMENTS.

The Prison Litigation Reform Act ("PLRA") requires that preliminary injunctive relief "be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). The relief requested in this case extends no farther than necessary, because Ms. Finnigan needs MAT to avoid the harm of withdrawal and potential relapse, overdose, and death. *See* Facts and Section II.C *supra*. The relief requested is as narrow as it can be, in that no lesser remedy than continuing Ms. Finnigan's MAT will suffice to prevent the harm. *Id.* The relief requested is the least intrusive means for providing the relief, as Defendants have latitude to determine how to provide this medically necessary, constitutionally required treatment.

CONCLUSION

For the foregoing reasons, this Court should issue a Preliminary Injunction requiring Defendants to provide methadone to Ms. Finnigan throughout her incarceration in the DuPage County Jail.

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Respectfully submitted,

CHRISTINE FINNIGAN

By her attorneys,

/s/ Sally Friedman

Sally Friedman*
Rebekah Joab*
LEGAL ACTION CENTER
225 Varick St., 4th Fl.
New York, NY 10014
(212) 243-1313
sfriedman@lac.org
rjoab@lac.org
*Pro hac vice

/s/ Nusrat J. Choudhury

Nusrat J. Choudhury
Camille Bennett
ROGER BALDWIN FOUNDATION OF ACLU, INC.
150 N. Michigan Avenue, Suite 600
Chicago, IL 60601
(312) 207-9740
nchoudhury@aclu-il.org
cbennett@aclu-il.org

/s/ Maggie E. Filler

Maggie E. Filler*
RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER NORTHWESTERN LAW SCHOOL BLUHM LEGAL CLINIC
160 E. Grand Avenue, 6th Floor
Chicago, Illinois 60611
(312) 503-0899
Maggie.filler@macarthurjustice.org
*Pro hac vice

/s/ Joseph Longley

Maria Morris*
Joseph Longley**
AMERICAN CIVIL LIBERTIES UNION NATIONAL PRISON PROJECT
915 15th Street NW Seventh Floor
Washington, DC 20005
(202) 548-6602
mmorris@aclu.org
jlongley@aclu.org
*Pro hac vice
**Pro hac vice; Not admitted in DC; practice limited to federal courts