



*Unlock the Truth*

# INNOCENCE PROJECT OF FLORIDA

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July 20, 2020

ATTN: Michelle Whitworth  
The Office of Executive Clemency  
Florida Commission on Offender Review  
4070 Esplanade Way  
Tallahassee, FL 32399-2450

## **Re: Innocence Project of Florida – Clemency Applications**

Dear Clemency Board:

At the Innocence Project of Florida, we have been representing Florida's innocent for seventeen years, and have secured the release or exoneration of 22 individuals who collectively served more than 485 years for crimes they did not commit. Currently, we represent thirty clients, and we submit this packet in the hopes that you will consider commuting the sentences of five of them.

While all of our clients have claims of innocence, these five individuals are furthest along in the post-conviction process, and have some of the strongest, most credible claims of innocence. While most of these individuals have legal mechanisms still available to them, given the current global health crisis, we feel strongly that these innocent individuals should not have to continue to serve their sentences while they await their opportunity to have their day in court—particularly in light of court closures and the fact that postconviction proceedings are considered “non-essential.”

A commutation of sentence strikes a thoughtful balance—it acknowledges the need to take action for those with strong claims of innocence during a pandemic so they can stay safe and healthy, while simultaneously leaving the conviction in place for the resolution by the courts at such time when proceedings can take place again.

As you are well aware, the coronavirus has rapidly spread throughout Florida and is impacting our prison system. On March 11, 2020, the World Health Organization (WHO) designated COVID-19 a global pandemic.<sup>1</sup> As of July 20, 2020, there were 350,047 cases of COVID-19 in Florida, with 4,982 deaths.<sup>2</sup> Florida has the 3rd most cases of any state.<sup>3</sup>

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<sup>1</sup> World Health Organization, *Rolling updates on coronavirus disease (COVID-19)* (March 11, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

<sup>2</sup> Florida Department of Health COVID-19 Data and Surveillance Dashboard (July 20, 2020), *available at* <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

<sup>3</sup> John Hopkins University, COVID-19 Interactive Dashboard (July 18, 2020), <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

This rapid spread is why one case quickly turns into thousands if not properly managed, particularly in a prison setting that is ripe for contagion.<sup>4</sup> As a result, the Centers for Disease Control issued a guide on dealing with the coronavirus in detention facilities.<sup>5</sup> Prisons are ideal environments for the transmission of contagious diseases. People eat, sleep, and spend their days close to one another and share sinks, showers, and phones. Social distancing is impossible. Hand washing is not prevalent, and hand sanitizer is often banned. If available, there is typically an associated cost that indigent inmates are unable to bear. An article in *The Economist* noted that prisons are difficult to protect because they are overcrowded, people come and go frequently. And because of that, “the disaster that seems likely to unfold in prisons in much of the world—if it is not already under way—should not be inevitable.”<sup>6</sup>

Several facilities throughout the country have already seen the deleterious impact of COVID-19 in a prison and/or jail. Marion Correctional Institution in Ohio quickly became a hotspot for the outbreak, with the prison system accounting for more than 20% of the state’s cases in April 2020.<sup>7</sup> Similarly, in New York as of June 18, 2020, an average of the rate of infection in the New York Department of Corrections among incarcerated individuals was more than 6 times higher than the rate of infection in general population of the state with the most cases of COVID-19.<sup>8</sup> Indeed, a federal court recently noted that while jails may do their best to take precautions, “there is no question that any close-quartered environment, particularly prisons, poses a significantly heightened risk for the spread of infectious diseases.”<sup>9</sup>

Here in Florida, the Broward County Jail has been called, “A COVID-19 time bomb.”<sup>10</sup> On April 8, 2020, the South Florida Sun Sentinel reported that the first prisoner at the Broward County Jail, a 64-year-old man, had died of the coronavirus.<sup>11</sup> As of July 20, 2020, the Florida Department of Corrections reported 3,647 confirmed COVID-19 cases among incarcerated individuals across 34

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<sup>4</sup> See The Justice Collaborative, *Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks* (explaining that incarcerated people “represent the most vulnerable demographic” to COVID-19), available at <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf> (last visited June 29, 2020).

<sup>5</sup> Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (March 23, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Lim\\_Onsite](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Lim_Onsite).

<sup>6</sup> *Prisons worldwide risk becoming incubators of covid-19*, *The Economist*, April 20, 2020, available at <https://www.economist.com/international/2020/04/20/prisons-worldwide-risk-becoming-incubators-of-covid-19>.

<sup>7</sup> Bill Chapel, *73% Of Inmates At An Ohio Prison Test Positive for Coronavirus*, NPR NEWS, April 20, 2020, available at <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838943211/73-of-inmates-at-an-ohio-prison-test-positive-for-coronavirus>

<sup>8</sup> COVID Infection Tracking, The Legal Aid Society available at <https://legaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>.

<sup>9</sup> See *Smith v. Warden*, Decision and Entry Adopting the Report and Recommendation of the United States Magistrate Judge as Modified Herein, Case No. 1:12-cv-425, DE 115 (citing Prisons And Jails Change Policies To Address Coronavirus Threat Behind Bars, NPR, available at <https://www.npr.org/2020/03/23/818581064/prisons-and-jails-change-policies-to-address-coronavirus-threat-behind-bars> (March 23, 2020) (stating that “jails and prisons are considered perfect incubators for the coronavirus to potentially take hold.”).

<sup>10</sup> Howard Finkelstein, Gordon Weekes, Jr., and Eric Balaban, *Broward County Jail: A COVID-19 time bomb*, South Florida Sun Sentinel, April 3, 2020, available at <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-finkelstein-broward-county-jail-threat-coronavirus-covid-20200403-kb7g5zwoinf2pfluw4dsxlda7y-story.html>

<sup>11</sup> Lisa J. Huriash and Rafael Olmeda, *Broward jail inmate with coronavirus dies at hospital*, South Florida Sun Sentinel, April 8, 2020, available at <https://www.sun-sentinel.com/coronavirus/fl-ne-broward-inmate-jail-death-20200408-4gq7gjrzmjd2nk5xk6k37ikqvy-story.html>

facilities; an additional 1,065 staff members have contracted the virus across 57 facilities and four community corrections regions.<sup>12</sup> Across all facilities, an overwhelming 13,760 incarcerated individuals remain in either medical quarantine or isolation due to showing symptoms of the virus or having had contact with a positive infection. Of our five applicants, all are at facilities with confirmed cases of COVID-19. Further, as of July 20, 2020, 32 incarcerated individuals have died as a result of COVID-19.

With the particular dangers to the prison population, we believe that the commutation of sentences for these five Innocence Project of Florida clients not only shows grace, but is now a moral imperative. In Pennsylvania, an individual with claims of innocence represented by the Pennsylvania Innocence Project died of COVID-19 just days before the Philadelphia District Attorney agreed to review the case collaboratively with the Pennsylvania Innocence Project.<sup>13</sup>

Amanda Brumfield was convicted of manslaughter for the death of a child in her care, where the medical and scientific evidence demonstrates that while the death of this child was tragic, a crime did not occur at all.

Similarly, Randy Seal was convicted of the murder of his girlfriend Tscharna Hampton when she died in a fire that state investigators say was intentionally set. There is no evidence that the fire was intentionally set, and in fact, the State's experts now agree with that assessment.

Thomas Gilbert was convicted for the 1973 murder of William Willits, and, despite a 1977 reinvestigation by the Miami-Dade Police Department that confirmed another individual's confession to the crime, he remains incarcerated.

Similarly, Leo Schofield was convicted for the murder of his wife, despite the detailed confession of another individual, himself a convicted murderer, who said that he committed the murder, and where the confession is corroborated by this actual perpetrator's fingerprints being present in the victim's abandoned vehicle.

Finally, Dustin Duty was sentenced to 20 years for the armed robbery of a woman who was unduly persuaded to identify him as the perpetrator, even though Mr. Duty's boss provided an alibi that he was at work during the time of the robbery and this woman now believes she misidentified Mr. Duty as her assailant.

All of these individuals are faced with increased susceptibility to contracting COVID-19 due to their present carceral situation. For Leo Schofield, who is 54-years-old, and particularly for Thomas Gilbert, who is 67-years-old, contracting the virus could make them particularly vulnerable to great sickness or death.

Governors in other states have used the power of clemency since the outbreak. In Kentucky,

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<sup>12</sup> Florida Department of Corrections COVID-19 Information, <http://dc.state.fl.us/comm/covid-19.html#confirmed> (last visited July 18, 2020)

<sup>13</sup> Jeremy Roebuck, *He died in prison from the coronavirus—three days before a breakthrough in his 30-year fight to clear his name*, THE PHILADELPHIA INQUIRER, April 15, 2020, available at <https://www.inquirer.com/news/sci-phoenix-coronavirus-death-rudolph-sutton-pennsylvania-innocence-project-20200415.html>.

Governor Andy Beshear announced plans to release nearly 1,000 prisoners, while in New York, Governor Andres Cuomo released 1,100 people held for parole violations.<sup>14</sup> In Ohio, where the prison outbreak has been most notable, Governor Mike DeWine recommended early release for 300 prisoners.<sup>15</sup> Federally, the Department of Justice (DOJ) has eased the rules for pardon and executive clemency.<sup>16</sup>

A death resulting from COVID-19 in any facility is a tragedy, but is particularly so when that individual is wrongfully incarcerated at the outset. As such, we hope that you will give strong consideration to each of the individuals whose applications are contained within this packet, and exercise your executive grace to commute their sentences.

Respectfully submitted,



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<sup>14</sup> Melissa Segura, *This Man Says Inmates at His Prison are Getting No Medical Care for COVID-19*, BUZZ FEED NEWS, April 10, 2020, available at <https://www.buzzfeednews.com/article/melissasegura/prison-inmates-covid-19-coronavirus>

<sup>15</sup> See *Chapel* at FN 7.

<sup>16</sup> Kristine Joy Patag, *DOJ eases rules for pardon, executive clemency in time of COVID-19 pandemic*, PHILSTAR GLOBAL, April 22, 2020, available at <https://www.philstar.com/headlines/2020/04/22/2009061/doj-eases-rules-pardon-executive-clemency-time-covid-19-pandemic>