

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Tanya Mae Wagner and Dale Allen  
Jones, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

Minnesota Department of Corrections,

Defendant.

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**VERIFIED COMPLAINT**

Court file #

Tanya Mae Wagner and Dale Allen Jones, Plaintiffs above-named, bring this action for declaratory and equitable relief on behalf of themselves and all others similarly situated against Defendant above-named, Minnesota Department of Corrections (“MNDOC”) and for their Verified Complaint<sup>1</sup> complain and allege as follows:

1. This case involves Defendant’s grant of Conditional Medical Release (“CMR”) during the COVID-19 pandemic to Plaintiffs and other similarly situated inmates, and Defendant’s recent arbitrary, capricious, unjust, and

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<sup>1</sup> Plaintiff Tanya Mae Walker has executed a verification. Counsel are in the process of communicating with Plaintiff Dale Allen Jones, concerning his verification and anticipate obtaining a verification from him in the near future. Once they have obtained his verification, they will file it with the Court.

unlawful attempt to revoke CMR and to order re-imprisonment without an individualized determination or process in violation their due process rights under Article I, § 7 of the Minnesota Constitution.

2. Plaintiffs have been committed to the custody of Defendant and are currently under supervision, having received CMR from Defendant during the COVID-19 pandemic. Defendant granted Plaintiff Wagner CMR on August 26, 2021, because of pregnancy and placed her in supervision with Washington County Community Corrections, which placed her with her family, where she currently resides. Defendant granted Plaintiff Jones CMR on June 15, 2020, because of health issues and placed him on supervision with Dakota Community Corrections, which placed him in the home of his elderly mother and father, where he currently resides.

3. In order to obtain CMR, Defendant required all applicants to go through a stringent multi-step review process. The process required completing and submitting a detailed application form; review by the MNDOC Medical Director to determine whether the inmate's medical condition was serious enough to warrant release if the inmate contracted COVID-19; a public safety review by multiple MNDOC staff; review by MNDOC deputy directors or a designee of the Commissioner; and a final sign-off by the Commissioner. Of 2,292 applications,

only 165 received final approval, and only 158 inmates, or 7%, were actually released.

4. Once granted release, all CMR recipients were required to observe stringent conditions to remain on CMR. These requirements included home confinement, absolute sobriety, completing all assigned programming, and regular reporting to supervisory personnel.

5. Since being placed under supervision pursuant to CMR, both Plaintiffs have fully complied with all conditions of their CMR.

6. On December 17, 2021, Plaintiff Wagner gave birth to a daughter, for whom she has been caring, while also caring for her ailing mother, who suffers from brain damage. In his CMR residence, Plaintiff Jones has been caring for his elderly and ailing parents.

7. On or about July 26-27, 2022, Defendant notified Plaintiffs and all others still on CMR that Defendant was terminating their CMR and that they must surrender to Defendant on or before August 15, 2022, to complete their custodial sentences. Defendant warned them that if they failed to do so, "a warrant for your arrest will be issued. This will result in you being a fugitive, and any time you are on fugitive status will be added to your obligation."

8. The only alleged justification for the notices of CMR revocation is that Defendant now claims to have access to effective COVID-19 vaccines, which are

available to inmates in Defendant's correctional facilities. COVID-19, however, continues to be dangerously present in MNDOC prisons. As of August 3, 2022, only 35% of MNDOC inmates were fully vaccinated and boosted; there are no currently available vaccines approved for use against the latest COVID-19 variants; and new COVID-19 cases are expected to surge during the coming Fall and Winter seasons. Dr. Anthony S. Fauci, America's top infectious disease expert, is warning that people not fully vaccinated and boosted are in serious danger from BA.5, the latest COVID-19 variant.<sup>2</sup> There is also still COVID-19 in MNDOC prisons. In the 10 days ending August 3, there were 27 positive tests for inmates and 36 positives for MNDOC staff, of which 22 staff positives occurred during work in the prisons. MNDOC also reports more than 100 inmates with active COVID-19 cases.

9. Defendant implemented its CMR revocations entirely without: (1) consideration of individual inmate circumstances; (2) a right to hearings for individual inmates, at which they could present their particular circumstances; (3) availability of procedural due process safeguards for inmates facing

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<sup>2</sup> [https://www.washingtonpost.com/health/2022/08/05/fauci-vaccine-covid-trouble/?utm\\_campaign=wp\\_evening\\_edition&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_evening&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F3791ee7%2F62ed850acfe8a216011c731c%2F5e43ff809bbc0f632674232c%2F42%2F53%2F62ed850acfe8a216011c731c&wp\\_cu=5568b0119098cbac08e9594066da9cc5%7CC0DBC1ADCA2E2BBCE0430100007FBDD8](https://www.washingtonpost.com/health/2022/08/05/fauci-vaccine-covid-trouble/?utm_campaign=wp_evening_edition&utm_medium=email&utm_source=newsletter&wpisrc=nl_evening&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F3791ee7%2F62ed850acfe8a216011c731c%2F5e43ff809bbc0f632674232c%2F42%2F53%2F62ed850acfe8a216011c731c&wp_cu=5568b0119098cbac08e9594066da9cc5%7CC0DBC1ADCA2E2BBCE0430100007FBDD8).

deprivation of life or liberty; and (4) means and measures to mitigate the hardship and irrevocable injury that will result to inmates returning to prison from CMR. Among these hardships are prison lockdowns, inmate isolation and segregation, and cancellation of visitation, which Defendant regularly imposes when COVID-19 enters prisons

10. Defendant's revocation of CMR is also in violation of Minn. Stat. § 244.05, subd. 8, which authorizes revocation of CMR "without hearing by the commissioner if the offender's medical condition improves to the extent that the continuation of the conditional medical release presents a more serious risk to the public." Here, there has been no determination by Defendant either that the medical conditions of Plaintiffs have improved, or that Plaintiffs present any kind of risk to the public, let alone a serious or more serious risk. As shown below, any such finding would be wholly unwarranted and unsupported in the case of either Plaintiff.

11. Defendant's arbitrary, capricious, unjust, and unlawful revocation of CMR will create extreme, undue, and unnecessary hardship and injury for Plaintiffs and others similarly situated.

12. In particular, Defendant's revocation of Plaintiff Wagner's CMR will interrupt her bonding with her daughter and deprive her daughter of her primary and most important caregiver, with the probability of lifelong

irreparable damage to both mother and child. There will also be hardship for Plaintiff Wagner's mother, who will be deprived of a caregiver, and the many people in the addiction recovery community Plaintiff Wagner has been counseling and assisting during her CMR.

13. Defendant itself has recognized the adverse consequences of its revocation of Plaintiff Wagner's CMR. In its statutorily required April, 2022, report to the Legislature, "Implementation Update: Healthy Start Act" (Minn. Stat. § 244.065), Defendant made the following admissions:

The negative impact of incarceration on mothers, their babies, and their families is profound.

The first year of life is a critical time for mothers and babies to bond. Research shows higher levels of postpartum depression for women who are incarcerated when they give birth. The separation is stressful for both the child and the mother. *Even short periods of parental incarceration cause profound disruption to a child's life, particularly in infancy, and can have long-term ramifications.* [Emphasis added.]

In 2021, the DOC placed eligible pregnant individuals on COVID-19 Conditional Medical Release for health and safety of the mothers *and their babies.* [Emphasis added.]

14. Defendant's revocation of Plaintiff Wagner's CMR thus threatens to bring about consequences Defendant knows to be injurious, profound, and potentially permanent for both Plaintiff Wagner and her infant daughter.

15. Plaintiff Jones received CMR because of serious preexisting lung issues requiring the use of an inhaler. These have not abated. While on CMR, he suffered heart issues that will require open heart surgery, which is scheduled for August 24, 2022, at the Abbott Northwestern Heart Institute in Minneapolis. In anticipation of the surgery, he recently had all his teeth pulled. He has been the caretaker for his 88-year old father, who had his third heart attack last year, and his 79-year old mother. Both Plaintiff Jones and his parents will accordingly suffer extreme hardship from Defendant's revocation of his CMR.

16. Obviously, toothless and scheduled for open heart surgery on August 22, Plaintiff Jones cannot be found to have improved medical conditions or to constitute a danger to public safety, as required by Minn. Stat. § 244.05 Subd. 8.

17. Defendant has ordered Plaintiffs to surrender for return to prison by August 15, 2022. Plaintiffs therefore seek for themselves and all others similarly situated a temporary restraining order preserving the status quo and prohibiting Defendant from revoking the CMR of Plaintiffs and all others similarly situated pending a hearing on a motion for a preliminary injunction at a date and time set by the Court.

#### **CLAIM FOR RELIEF: VIOLATION OF DUE PROCESS**

18. Plaintiffs hereby incorporate by reference as if set forth in full herein the allegations of Paragraphs 1 through 17 hereinabove.

19. The actions and conduct set forth in Paragraphs 1 through 19 establish that Defendant, in revoking the CMR of Plaintiffs and others similarly situated, and depriving them of their liberty, has violated the due process rights of Plaintiffs and others similarly situated under the Due Process Clause of the Minnesota Constitution, Article I, § 7. Specifically, Defendant has revoked CMR arbitrarily, capriciously, and in abuse of permissible discretion (1) without considering individual circumstances and physical conditions; (2) in violation of its authority under Minn. Stat. § 244.05, subd. 8; (3) on an improper pretextual basis, the alleged availability of effective COVID-19 vaccines; (4) contrary to the public interests in healthy childhood development, rehabilitation of offenders, and reducing overcrowding and the effects of COVID-19 in prisons; (5) without providing Plaintiffs and others similarly situated individual hearings; and (6) without providing Plaintiffs and others similarly situated due process protections, including, but limited to, a revocation hearing conducted by a neutral and detached decisionmaker, written notice of the alleged violation, disclosure of the evidence against the individual, and an opportunity to appear, present evidence, and question any adverse witnesses.

20. By reason of Defendant's violations of Due Process, Plaintiffs are entitled to a temporary restraining order and preliminary and permanent

injunctive relief prohibiting Defendant from enforcing the cancellation of their CMR.

21. Unless Plaintiffs are able to obtain a Temporary Restraining Order pending hearing and decision on a motion for a preliminary injunction, Plaintiffs and others similarly situated will suffer immediate and irreparable injury, loss, or damage before Defendant or its counsel can be heard, as will those dependent on Plaintiffs for their care and comfort.

#### **PRAYER FOR RELIEF**

WHEREFORE. Plaintiffs demand and pray for relief as follows:

A. Entry of a Temporary Restraining Order staying Defendant's enforcement of the notices of revocation of CMR sent to Plaintiffs and all other persons still on CMR pending briefing, hearing, and disposition of a motion for preliminary injunction on a schedule to be set by the Court;

B. Entry of an Order granting Plaintiffs' Motion for a Preliminary Injunction staying Defendant's enforcement of the notices of revocation of CMR sent to Plaintiffs and all other persons still on CMR during the pendency of this action until its final disposition;

C. Final Judgment finding and declaring that Defendant has violated the Due Process Clause of the Minnesota Constitution, Article I, § 7, and Minn. Stat.

§244.05, subd. 8, by its revocation of the CMR of Plaintiffs and all other inmates still on CMR;

D. A Permanent Injunction prohibiting Defendant from attempting to revoke CMR without fully complying with Minn. Stat. §244.05, subd. 8, and the Due Process Clause of the Minnesota Constitution, Article I, § 7;

E. An Order awarding Plaintiffs their costs and disbursements herein as provided by law; and

F. Such other and further relief as this Honorable Court shall find just, reasonable, and available under law.

**DATED:** August 9, 2022.

/s/ Daniel R. Shulman  
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**VERIFICATION**

I, Tanya Mae Wagner, subject to the penalties of perjury, do hereby verify and affirm that the allegations of the Verified Complaint concerning me are true and correct to the best of my knowledge and belief.

Dated: August 9, 2022

/s/ Tanya Mae Wagner

**ACKNOWLEDGEMENT**

Plaintiffs by the undersigned hereby acknowledge that pursuant to Minn. Stat. Sec. 549.211 sanctions may be imposed under this section.

/s/ Daniel R. Shulman