IN THE CIRCUIT COURT
FOR THE _____ JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. _____
	)	
_____,	)	
	)	
Defendant,	)	

DEFENDANT'S MOTION TO DISMISS FOR SPEEDY TRIAL VIOLATIONS

I. Introduction

It seems that within seconds of the last of the original 13 colonies to ratify the Constitution, Government entities began gnawing away at the freedoms the Constitution was to have protected.

Hindsight allows later generations the benefit of knowing when Government entities have overstepped their bounds. In the moment though most of these Government actions appear to be sound, just, and well thought out.

Starting in 1831 and culminating in 1871 in what is now referred to as the "Trail of Tears," tens of thousands of Native Americans were forced to relocate---generally by foot at the end of a bayonet---from their ancestral homelands in the Southeastern United States, to areas to the west of the Mississippi designated as "Indian Territory." The Native Americans sued the State of Georgia in 1832 and in in *Worcester v. Georgia*, 31 U.S. 515 (1832), the U.S. Supreme Court ruled that the Cherokee Nation was sovereign. According to the decision rendered by Chief Justice John Marshall, this meant that Georgia had no rights to enforce state laws in its territory. President Andrew Jackson decided not to uphold the ruling of this case, and directed the expulsion of the Cherokee nation. U.S. Army forces were used in some cases to round them up.

Just as President Jackson ignored Chief Justice Marshall, Abraham Lincoln ignored Supreme Court Chief Judge Taney's directive in *Ex Parte Merryman*. *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861) (No. 9487), is a well-known and controversial U.S. federal court case that arose out of the American Civil War. It was a test of the authority of the President to suspend "the privilege of the writ of habeas corpus" under the Constitution's Suspension Clause, when Congress was in recess and therefore unavailable to do so itself.

When a person is detained by police or some other authority, a court can issue a writ of habeas corpus, compelling the detaining authority either to show proper cause for the detention (e.g., by filing criminal charges) or to release the detainee. The court can remand the prisoner to custody, release him on bail, or release him outright. Article I, Section 9 of the United States Constitution, which mostly consists of limitations upon the power of Congress, says:

> "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

President Lincoln suspended the right of habeas corpus essentially giving military leaders carte blanche to arrest whomever they thought were "enemies/rebels" and hold them without access to the courts. John Merryman was arrested by General George Cadwalader. Merryman filed a Petition For Writ of Habeas Corpus which was granted by Judge Giles, whose prior order in a Maryland habeas matter had been ignored, so Merryman's lawyers went to Washington, D.C., and asked Chief Justice Taney to issue a writ of habeas corpus. Taney promptly issued the writ on Merryman's behalf on May 26, 1861 ordering General Cadwalader, the commander of the military district including Fort McHenry, where Merryman was being held, to bring Merryman before Taney the next day. Taney's order directed Cadwalader only to produce Merryman at court, not to release him. This order was ignored by both Cadwalader and President Lincoln.

Like the Trail of Tears and the suspension of habeas corpus, hindsight in *Dred Scott* and *Korematsu* makes obvious how easy it is for the Government to strip basic rights from citizens

Very few cases are as famous as *The Dred Scott Decision.* Suffice to say, the Supreme Court looked foolish, petty and racist in deciding that a human being was nothing more than chattel.

Fear is the great equalizer and the Government is able to use the media to whip up hysteria so that basic fundamental rights are easily given away to the cheering of the populace. It is inconceivable in 2020 that the Government could round up thousands of citizens and put them in glorified concentration camps. In 1941 they were called "internment camps," and thousands of American citizens of Japanese ancestry were "voluntarily" relocated.

In the aftermath of Imperial Japan's attack on Pearl Harbor, President Franklin D. Roosevelt had issued Executive Order 9066 on February 19, 1942, authorizing the War Department to create military areas from which any or all Americans might be excluded. Subsequently, the Western Defense Command, a United States Army military command charged with coordinating the defense of the West Coast of the United States, ordered "all persons of Japanese ancestry, including aliens and non-aliens" to relocate to internment camps. However, a 23-year-old Japanese-American man, Fred Korematsu, refused to leave the exclusion zone and instead challenged the order on the grounds that it violated the Fifth Amendment. The Supreme Court concluded in *Korematsu v. United States*, 323 U.S. 214 (1944), the exclusion of Japanese Americans from the West Coast Military Area during World War II did not violate the internees Constitutional rights.

In the Spring of 2020 the world changed. The coronavirus created fear, consternation and panic. The coronavirus and COVID-19 seemed like what happened in the 2011 movie *Contagion*.

Governors in most states, including Illinois issued executive orders limiting the rights of their citizens. On March 9, 2020 Illinois Governor J.B. Pritzker declared a state of emergency and issued his first disaster proclamation regarding the coronavirus/COVID-19 outbreak. Illinois continues to operate under certain aspects of this order.

On March 17, 2020, the Illinois Supreme Court issued M.R. 30370 continuing cases generally. This order was extended several times until ultimately on April 7, 2020 the Illinois Supreme Court entered an Order stating:

> "In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); in view of the state of emergency that has been declared by the Governor of the State of Illinois in order to prevent the spread of the novel coronavirus; and in the interests of the health and safety of all court users, staff, and judicial officers during these extraordinary circumstances, and to clarify this Court's orders of March 20, 2020 and April 3, 2020, IT IS HEREBY ORDERED that the Court's orders of March 20, 2020 and April 3, 2020 are amended as follows:
>
> The Chief Judges of each circuit may continue trials until further order of this Court. The continuances occasioned by this Order serve the ends of justice and outweigh the best interests of the public and defendants in a speedy trial. Therefore, such continuances shall be excluded from speedy trial computations contained in section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2018)) and section 5-601 of the Illinois Juvenile Court Act (705 ILCS 405/5-601 (West 2018)). Statutory time restrictions in section 103-5 of the Code of Criminal Procedure of 1963 and section 5-601 of the Juvenile Court Act shall be tolled until further order of this Court."

Just like that, Defendants' Constitutional and statutory rights to a speedy trial in Illinois vanished.

ARGUMENT

I. THE RIGHT TO A SPEEDY TRIAL IS A FUNDAMENTALLY IMPORTANT CONSTITUTIONAL GUARANTEE OF BOTH THE UNITED STATES AND THE ILLINOIS CONSTITUTION AND SHOULD NOT BE DENIED TO THE DEFENDANT.

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . U.S. Const. amend. VI. The Sixth Amendment has been interpreted by the Supreme Court of the United States as a guarantee that "in all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial. *Vermont v. Brillon*, 129 S. Ct. 1283,

1290. The Supreme Court has held, "the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967). Moreover, the Court in *Klopfer* provided that this fundamental right has its roots at the very foundation of our English law heritage. *Id*. at 225-26. That its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written,

> "We will sell to no man, we will not deny or defer to any man either justice or right," which the court understood through teachings of Sir Edward Coke had the following effect: And therefore, every subject of this realm[e], for injury done to him . . . may take his remedy by the course of law, and have justice, and right for their injury done to him, freely without sale, fully without denial, and speedily without delay. *See id*."

A. <u>The importance of the right to a speedy trial is displayed throughout modern jurisprudence at both the state and federal level.</u>

The importance of the speedy trial Constitutional guarantee is reiterated time and time again. This important guarantee is an essential safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself. *United States v. Ewell*, 383 U.S. 116, 120 (1966). The importance of this guarantee is further shown by its remedy for failure to provide it. In *Barker v. Wingo*, the Court stated that the amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal when the right has been deprived. *Barker v. Wingo*, 407 U.S. 514, 522 (1972). Further, it held that such a remedy is more serious than an exclusionary rule or a reversal for a new trial but is the only possible remedy. *Id.* The Illinois Supreme Court echoed this in *People v. Bowman*, where it held that an accused not tried within the mandate of the Illinois Speedy Trial act must be discharged from custody, and the charges must be dismissed. (*People v. Bowman*, 138 Ill. 2d. 131, 149) The right to a speedy trial may not be dispensed with so lightly either. *Smith v. Hooey*, 393 U.S. 374, 383 (year). The state has a duty to bring a defendant to trial within the statutory period. *People v. Reimolds*, 440 N.E.2d 872, 875.

The guarantees provided under the Sixth Amendment are echoed in most state constitutions. The Fourteenth Amendment to the United States Constitution provides that, "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . U.S. Const. amend. XIV. By Virtue of the Fourteenth Amendment, the Sixth Amendment right to a speedy trial is enforceable against the states as "one of the most basic rights preserved by our Constitution." *Klopfer*, 386 U.S. at 226.

The United States Constitution guarantees defendants the right to a speedy trial; however the specifics are left to the states. In *Barker*, the Court stated that it finds no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months, holding that the States, of course, are free to prescribe a reasonable period consistent with constitutional standards. . . *See Barker*, 407 U.S. at 523. In Illinois, the Legislature has decided that the right to a speedy trial means a case must be brought to trial within one hundred and twenty days for someone taken into custody and one hundred and sixty days for individuals released on bail or recognizance. *See* 725 ILCS 5/103-5 (West 2018).

The statute further provides that "every person not tried in accordance with subsections (a), (b), and (c) of this section shall be discharged from custody or released from the obligations of his bail or recognizance." *Id*. The Illinois Supreme Court has held that Section 103-5(a) of the Code of Criminal Procedure of 1963 implements a right guaranteed by the Federal and Illinois Constitutions. *Bowman*, 131 Ill. 2d at 136.

II. THE ILLINOIS SUPREME COURT ORDER SHOULD BE CONSIDERED INVALID BECAUSE IT OVERSTEPS THE COURT'S AUTHORITY

The Supreme Court of Illinois issued the April 7, 2020 order as its exercise of the general administrative and supervisory authority of the courts of Illinois conferred on it pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 and in view of the state of emergency that had been declared by Governor Pritzker. The initial orders provided that Chief Judges of each circuit could continue trials until further order of the

Court. *Id.* In the April 7, 2020 order, the Court reasoned that the continuances occasioned by the order served the ends of justice and outweighed the best interests of the public and defendants in a speedy trial. *Id.* Ultimately, the Illinois Supreme Court excluded such continuances from speedy trial computations contained in section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2018)). *Id.*

A. This Court should hold that the order imposed by the Supreme Court of Illinois under M.R. 30370 is without authority because it oversteps the authority of other governmental branches.

The exceptions to the Illinois Speedy Trial statute are clearly laid out within the statute. Exceptions exist for delays occasioned by the defendant, or if the Court determines that the State has exercised without success due diligence to obtain evidence material to the case and there are reasonable grounds to believe that such evidence may be obtained at a later date. *Id.* The State exception only permits the Court to continue the cause for not more than an additional sixty days. *Id.* Neither this statute, nor the Illinois Constitution provide language in the form of a catchall exception that permits a judge, appellate justice, or a Supreme Court Justice, to delay a trial for an emergency or in the interest of justice. The Court appears to be making a blanket, wide-sweeping order against a legislative right of which exceptions are already built in. This power does not belong to the court; statutory exceptions are part of the legislative power. This legislative power in vested elsewhere. *See* Ill. Const. 1970, art. IV, sec. 1.

"The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. 1970, art. V, sec. 8. The judicial power is vested in a Supreme Court, and Appellate Court, and Circuit Courts. *Id.* at art. VI. sec. 1. General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. *Id.* at sec. 16. The Speedy trial right, as governed by statute is legislative, and falls outside the scope of the Supreme Court's supervisory and administrative authority as well as their judicial authority. Although the Court's actions in promoting the safety of the public are admirable, the Court overstepped what it was permitted to do. The public health power is interlaced

with state and federal governments policing power, and this power belongs to a branch separate from the Judicial. It is up to the Legislative branch to attach this kind of exception to the existing legislature, and for the judicial branch to review the constitutionality of it.

B. <u>This Court should reverse the order because it has the potential for a slippery slope of consequences in the long run and provides no guidelines moving forward.</u>

The Court cites the Governor's order of social distancing and limiting the number of individuals permitted to gather as partial justification for this order. The Court overlooks that the defendant is also permitted a statutory right to waive their jury trial. If the concern is "social distancing," the defendant has the right to have this Honorable Court hear her case. She and the undersigned could be at one table, the prosecutor could be at least six feet away at another table, and court personnel including this Honorable Court, clerk and court reporter could be at least six feet away. Witnesses could sit six feet away from everyone. Yet, the Supreme Court's order is a blanket prohibition against all trials.

Statutory law in Illinois provides that "[e]very person accused on an offense shall have the right to a trial by jury unless (i) understandingly waived by the defendant in open court . . . 725 ILCS 5/103-6 (West 2018). This means that a defendant looking to administer their speedy trial right has the ability to waive their jury trial, drastically lowering the required number of individuals within the courtroom. However, due to the Court's order, a defendant is not only losing their Constitutional right to a speedy trial, they are also losing their ability to waive a jury trial, which could give them the option to exercise their speedy trial constitutional right in accordance with the Governors guidelines.

Additionally, [n]ot only are there the general concerns that accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interest of the accused. *Barker*, 407 U.S. at 520. The inability of courts to provide a prompt trial contributes to a large backlog of cases, overcrowding of institutions, and lengthy pretrial detention costs. *Id*. at 520-21. Moreover, society loses wages which might have been earned, and it must often support families of incarcerated bread winners. *See id*. The

disadvantages for the accused who cannot obtain his release are even more serious. *Id.* The time spent in jail awaiting trial has a detrimental impact on the individual. *Id.* Often meaning a loss of a job, disruption of family life, and enforces idleness. See id. If a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. *Id*. The Supreme Court provides that imposing those consequences on anyone who has not yet been convicted is serious. *Id*

This order offers little guidance as to where and how to draw lines regarding the importance of legal actions and emergencies. At what point is an emergency justified, and by what standards is something considered an emergency? More importantly, for how long will individuals be denied their guarantees not only foundational in the Illinois Constitution but also in the United States Constitution?

CONCLUSION

WHEREFORE, the Defendant, _____, respectfully requests that this Court grants her Motion to Dismiss for violation of his Speedy Trial right and award such other relief that this Court deems just and proper under the circumstances.