IN THE FLORIDA SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

AMERICAN CIVIL LIBERTIES
UNION OF FLORIDA, INC.,

Petitioner,

Case No.:

v.

FLORIDA DEPARTMENT OF
CORRECTIONS;

Respondent.

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**PETITION FOR WRIT OF MANDAMUS**

Petitioner American Civil Liberties Union of Florida, Inc., ("ACLU" or "Petitioner") seeks a writ of mandamus commanding the Respondent Florida Department of Corrections ("FDOC" or "Respondent") to provide requested access to public records at the ACLU's reasonable expense and alleges as follows:

## I. INTRODUCTION

The ACLU is concerned about the over-incarceration in our state as well as the racial disparity of those incarcerated. It hopes to propose an amendment to § 944.275(4)(f), Fla. Stat., to decrease the term a person with gain time must serve below the current "minimum of 85 percent" of the

sentence. It wants to reduce the prison population and the percentage of incarcerated persons of color—not to mention reduce the over $2 billion Floridians pay to incarcerate them. However, to propose meaningful legislation, the ACLU needs to better understand the current prison population, FDOC's calculations of tentative release dates, and how amending legislation may affect them. To that end, it sought access to public records.

## II. JURISDICTION & VENUE

This is a petition for a writ of mandamus to enforce the terms of Article I, Section 24(a) of the Florida Constitution, and Florida Statutes, Chapter 119 ("Public Records Law"). This Court has jurisdiction over this petition pursuant to the Florida Constitution, art. V, § 5(b); Fla.R.Civ.P. 1.630; and Florida Statutes, § 119.11.

Venue lies in Leon County because FDOC resides there, the relevant events occurred there, and the home-venue privilege.

## III. FACTS

1. On Oct. 24, 2019, the ACLU requested an extract of FDOC's database(s) containing information (database "fields") related to the tentative release date, gain time, and demographic information for each person in FDOC's current custody. *See* Records Request, filed concurrently and incorporated as Attachment 1.

2. FDOC may comply with this request by providing (a) the requested extract, (b) an extract of each database that contains the requested information, *see* Records Request, at 3, or (c) each database in its entirety that contains the requested information. Entire database(s) would, necessarily, contain the requested information along with additional information.

3. The ACLU agreed to reimburse FDOC for reasonable costs associated with fulfilling this request. Records Request, at 3.

4. Initially, FDOC failed to acknowledge receipt of the ACLU's request for public records. *Contra* § 119.07(1)(c), Fla. Stat. ("A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith"). On

Oct. 30, 2019, the ACLU requested FDOC acknowledge the ACLU's request for access to public records and provide an estimated timeframe in which FDOC believes that it will be able to provide public access.

5. On Nov. 10, 2019, pursuant to § 119.12(1)(b), Fla. Stat., the ACLU "provided written notice identifying the public record request to [FDOC's] custodian of public records" and its intent to file a civil action to enforce the provisions of Ch. 119, Fla. Stat.

6. On Nov. 12, 2019, FDOC finally acknowledged receipt of the ACLU's request for access to public records. FDOC noted the request was logged as Public Records Request No. 19-0583.

7. The Department of Corrections is an "agency" as that term is defined in § 119.011(2), Florida Statutes. It is a "department" of the government of the State of Florida. FDOC is therefore required to comply with the provisions of the Public Records Law.

8. FDOC maintains the requested information in one or more electronic databases. *See* Records Request, at 6. Indeed, FDOC previously objected to providing some of this information, not because the information

does not exist, but only because it would have to extract it from the database. *Id*., at 5.

9. The database(s) that contain the requested information are "public records." The database(s) and the information in those database(s) were "made or received" "in connection with the transaction of [FDOC's] official business," § 119.011(12), Fla. Stat., and are intended to "perpetuate, communicate, or formalize knowledge," *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980). Furthermore, "information stored on a computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet." *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982); *see also Rhea v. Dist. Bd. of Trustees of Santa Fe Coll.*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) ("The physical format of the record is irrelevant; electronic communications, such as e-mail, are covered just like communications on paper."); *Nat'l Collegiate Athletic Ass'n v. Associated Press,* 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009) (observing that "public records law is not limited to paper documents but that it applies, as well, to documents that exist only in digital form").

10. Previously, on Sept. 30, 2019, the Campaign for Criminal Justice Reform ("Campaign") made a public records request for access to substantially similar information. FDOC initially took the position that because the requested information is "not available in any existing report," FDOC was relieved of any duty to provide the information. The Campaign again asked for gain time information. In mid-October, FDOC stated the Campaign could make request for each individual's Overall Inmate Records, which would include gain time information. *See* Records Request, at 4-5. These 97,000 individual records—one for each current inmate—are each themselves an extract of FDOC's database. FDOC's response to the Campaign defeated public access.

11. The ACLU requested FDOC explain "in writing and with particularity the reasons," *see* § 119.07(1)(f), if it denied full access. Records Request, at 4.

12. FDOC has asserted no exemption applies to the requested access to public records. *See* § 119.07(1)(e), Fla. Stat.

13. The Petitioner has no adequate remedy at law that would substitute for the provision of the requested records. *Stewart v. Manget*, 181

So. 370, 374 (Fla. 1938) (holding the "true test [for whether a plaintiff has an adequate remedy at law] is, could a judgment be obtained in a proceeding at law"). Here, Florida law provides for a right of access, which can only be redressed through equitable relief. *See* § 119.11, Fla. Stat.

14. To date, FDOC has failed to timely furnish the requested access to public records. It has unlawfully denied public access.

## IV. ARGUMENT

FDOC has failed to provide requested access to public records in its possession. Based on the foregoing facts, the ACLU has asserted a claim for mandamus relief to compel FDOC to furnish the requested access to public records.

### A. Basis for Writ of Mandamus Relief and Court's Obligations

Generally, a mandamus is the appropriate remedy to enforce compliance with the Public Records Law. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992). "In order to be entitled to a writ of mandamus, [1] the petitioner must have a clear legal right to the requested relief, [2] the respondent must have an indisputable legal duty to perform the requested action, and [3] the petitioner must have no other adequate remedy available."

*Florida Agency for Health Care Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260, 1263 (Fla. 1st DCA 2017). In the public records context, this means the petitioner must "prove they made a specific request for public records, the [agency] received it, the requested public records exist, and the [agency] improperly refused to produce them in a timely manner." *Grapski v. City of Alachua*, 31 So. 3d 193, 196 (Fla. 1st DCA 2010).

"If the complaint shows a prima facie case for relief, the court *shall* issue ... an alternative writ in mandamus." Fla.R.Civ.P. 1.630(d)(2). An alternative writ in mandamus is "essentially an order to show cause why the requested relief should not be granted." *Gilliam v. State*, 996 So. 2d 956, 958 (Fla. 2d DCA 2008) (quotations omitted); *see also Minasian v. State*, 967 So. 2d 454, 455 (Fla. 4th DCA 2007) ("If a mandamus petition is facially sufficient, the court must issue an alternative writ of mandamus requiring the respondent to show cause why the writ should not be issued.") (citing *Radford v. Brock*, 914 So.2d 1066, 1068 (Fla. 2d DCA 2005)).

Furthermore, "the court shall set an immediate hearing, giving the case priority over other pending cases." §119.11(1), Fla. Stat.; *see also Salvador v. Fennelly*, 593 So. 2d 1091 (Fla. 4th DCA 1992).

The ACLU is entitled to a writ of mandamus. The Court should immediately issue an alternative writ and schedule a prompt hearing after briefing.

### B. ACLU has a clear legal right to the requested public access.

The ACLU has "clear legal right" to access, inspect, and copy public records. The Florida Constitution dictates that "[e]very person has the right to inspect or copy any public record." Art. I, § 24(a), Fla. Const. This constitutional right is "self-executing." *Id.* at § 24(c) ("This section shall be self-executing."). Florida law reinforces this constitutional right by declaring "all state, county, and municipal records are open for personal inspection and copying by any person." § 119.01(1), Fla. Stat.; *see also* § 119.07(3)(a), Fla. Stat. (providing a right to access and photograph public records).

### C. FDOC has a clear legal duty to provide the requested public access.

FDOC has a "legal duty" to provide access to the requested information in the databases and either produce each database with the requested information or extracts of each database with the requested information. § 119.01(1), Fla. Stat. ("Providing access to public records is a

duty of each agency."); § 119.07(1)(a), Fla. Stat. ("Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records"); *see also Ingram v. State*, 164 So. 3d 676, 679 (Fla. 5th DCA 2014) ("It is the "duty" of each public agency to fulfill this legislative policy."), *opinion vacated and dismissed because records no longer existed,* 170 So. 3d 727 (Fla. 2015). The FDOC has no room for the exercise of discretion: production of public records is directed by law. *Smith v. State*, 696 So. 2d 814, 816 (Fla. 2d DCA 1997) ("disclosure of public records is a 'mandatory act.'") (quoting *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981)). Thus, FDOC's continuing refusal to produce the public records as provided by law is a refusal to perform an official ministerial duty in violation of § 119.07, Fla. Stat. "For purposes of mandamus relief under the public records act, disclosure of public records is a 'mandatory act.'" *See Smith*, 696 So. 2d at 815-16 (quoting *Mills*, 407 So. 2d at 350); *see also Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) ("The production of public records requests is ministerial, as it is a duty imposed

by Chapter 119."), *cited with approval in Poole v. City of Port Orange*, 33 So. 3d 739, 741 (Fla. 5th DCA 2010).

**D. FDOC refused to provide timely public access.**

FDOC's duty is not altered because the requested information is stored in a database, as opposed to being printed on reams of paper. Florida law requires FDOC to produce extracts of its database(s) as requested or the entire database. *See* § 119.01(2)(a), Fla. Stat. ("each agency must provide reasonable public access to records electronically maintained"). "Automation of public records must not erode the right of access to those records." § 119.01(2)(a), Fla. Stat. "[E]ach agency must provide reasonable public access to records electronically maintained." *Id*.

Furthermore, FDOC is not relieved of this duty to provide access because the FDOC has not previously created an extract or electronic report to generate the current, requested information.[1] Database architecture stands

[1] In cases involving access to information in a database, Florida courts have assumed the public's right to an extract of the database in a meaningful form. *Rasier-DC, LLC v. B & L Serv., Inc.*, 237 So. 3d 374, 376 (Fla. 4th DCA 2018) (resolving whether a trade-secret defense applied to aggregated "data" of the amount Uber paid the county and the number of pickups without questioning right to database extract); *Morris Pub. Group, LLC v. Florida Dept. of Educ.*, 133 So. 3d 957, 959 (Fla. 1st DCA 2013) (resolving whether an exemption defense applied to agency's "data" about teachers' "value added" measurements—difference between students' actual and predicted FCAT

in contrast to traditional public-record media. Unlike, for example, a book, the information in a database has no innate organization. Instead, information is only organized and presented once dictated by the user. Thus, FDOC *chooses* the extracts and reports it wants to create—what information to present from its database and how to organize it. The law does not permit FDOC to limit what and how information from its database(s) is accessible by only creating a handful of reports it wants to share. FDOC may not deny meaningful access to public information by throwing up its hands and saying the requested information is "not available in any existing report." Otherwise, public access to information in a database would be restricted to the information FDOC previously *chose* to include in an existing extract. FDOC cannot conceal public information by simply choosing not to create a list that presents it. *See Seigle*, 422 So. 2d 66-67 ("the circuit court may permit access … where available [reports] do not access *all* of the public records stored in the computer's data banks").

Indeed, FDOC database(s) that contain the requested information likely also contain information confidential and exempt from public

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scores—without questioning right to database extract); *Florida Dept. of Educ. v. NYT Mgmt. Services, Inc.*, 895 So. 2d 1151, 1152, 1154-55 (Fla. 1st DCA 2005) (affirming the trial court's order to produce data from a staff "database").

disclosure, like inmates' social security numbers, *see* § 119.071(5)(a)(5), Fla. Stat. However, the inclusion of confidential information in a database does not exempt the entire database from public access. *See Seigle*, 422 So. 2d 66-67. Instead, Florida law requires FDOC to redact exempt information and produce the remainder. § 119.07(1)(d), Fla. Stat.; *Ingram*, 164 So. 3d at 682 ("When only part of a record is protected, the custodian is obligated to redact the protected portion and furnish the remainder."). Thus, with respect to a database, the law requires FDOC to produce an extract of the database scrubbed of any exempt information. Similarly, FDOC must provide access to information in its databases by creating an extract or providing the entire database.

FDOC can provide the requested information in a meaningful form. Unquestionably, FDOC could provide an extract of the database that lists for each inmate the "Overall Term of Incarceration" field it displays in the Overall Inmate Record (DC-14). *See* Records Request, at 8, 13 *et seq*. It does not need to actually print nearly 97,000 reports or extracts generated from its database. Similarly, it could provide an extract of the fields that are used to calculate tentative release date, without providing tens of thousands of printouts of select information on gain time for each individual.

Equally, it cannot undermine a reasonable request for information by providing nearly 97,000 individual Overall Inmate Records, which would require countless hours to extract the information into a useable form. When FDOC can easily produce the same information in a meaningful format, it cannot obstruct public access with a dismissal that the information exists in a haystack of paper. For example, the custodian of a white-pages database cannot merely produce a book in response to a request for a list of subscribers who live on Main Street and leave it to the public to flip pages and hunt for the answer. When a database-owner could easily present a list of subscribers whose street address includes "Main"—or a list of subscribers organized by street address instead of last name—it must do so. Thus, FDOC defeats meaningful access when it expects the public to expend substantial time searching and correlating information that FDOC could provide in a meaningful form in a matter of hours.

The ACLU's request does not require the creation of a new record. FDOC's databases already exist. The ACLU's request does not require the reorganization of a record. FDOC's databases have no inherent organization; a user must decide what and how its information is presented. The ACLU simply requests meaningful access to public information.

### E. The ACLU lacks an adequate legal remedy.

Petitioner has no adequate remedy at law. A money judgment cannot remedy a denial to public records. *See Stewart*, 181 So. at 374.

### F. Conclusion.

The Florida Constitution provides the public the right to access to public records. Fla. Const., art. I, § 24. "The purpose of the Public Records Act is to promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people." *Forsberg v. Hous. Auth. of the City of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984). Public access is a "cornerstone of our political culture." *Bd. of Trs., Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016). The ACLU seeks access to public information to propose meaningful amendments to Florida's laws governing gain time and participate in our representative government. Only with this information can Floridians begin a constructive discussion about how to create a smart justice system for Florida and a more perfect union.

## V. RELIEF REQUESTED

Based on the foregoing facts, arguments, and authorities, Petitioner respectfully requests the following relief:

A. Issuance of an Alternative Writ of Mandamus commanding FDOC to do one of the following:

(1) Immediately tender the ACLU an estimation of the reasonable costs associated with fulfilling the records request and within 5 days of receiving payment of these reasonable costs produce (a) the requested extract, (b) an extract of each database that contains the requested information, or (c) each database that contains the requested information; or

(2) Show cause by (a) filling a response to this petition within 7 days of the order in which FDOC either admits or denies the factual allegations and then (b) appearing at a prompt hearing after the filing of the response and the ACLU's reply as to why the Court should not issue a Writ of Mandamus.

B. Issuance of a Writ of Mandamus commanding FDOC to promptly provide the requested access to the public records.

C. An award to the Petitioners of its reasonable attorneys' fees and costs incurred in connection with this action from the Respondent pursuant to § 119.12, Fla. Stat.

D. A Court Order providing further or different relief as just and proper or that is necessary.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished on the E-filed date of this document via-mail *and* U.S. Mail (*see* Fla.R.App.P. 9.420(c)) to the following person(s):

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**Respectfully Submitted**,

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