

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

State of Iowa, ex. rel. Gary R. Allison)	
as County Attorney for Muscatine)	
County, Iowa,)	
)	No. EQCV016165
Plaintiff,)	
)	
vs.)	MOTION FOR SUMMARY
)	JUDGMENT
Thomas J. Vilsack, Governor of)	
the State of Iowa, 99AG10350)	
)	
Defendant.)	

COMES NOW Thomas J. Vilsack, Governor of Iowa, Defendant and moves this court for entry of summary judgment.

As set forth more fully in the accompanying Memorandum of Authorities, there is no genuine dispute as to any material fact. Plaintiff is asking this court to establish rights rather than enforce rights that already exists. Accordingly, a writ of mandamus is not the appropriate cause of action under these circumstances. In addition, the Governor's issuance of Executive Order No. 42 was a proper exercise of the clemency authority provided in the Constitution of Iowa and in accord with the statutory provisions in Chapters 914 and 915 of the Code of Iowa. For these reasons, Defendant is entitled to a judgment as a matter of law.

WHEREFORE, the Defendant respectfully requests the court grant summary judgment and dismiss the Petition for Order of Mandamus.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JULIE F. POTTORFF
Deputy Attorney General

Hoover State Office Building
1305 East Walnut
Des Moines, Iowa 50319
Telephone: (515) 281-3349
Fax: (515) 281-4209
Email: Julie.Pottorff@ag.state.ia.us

GARY D. DICKEY, JR.
State Capitol Building
Des Moines, Iowa 50319
Telephone: (515) 281-0208
Fax: (515) 281-6611
Email: Gary.Dickey@iowa.gov

Copy to:

Gary. R. Allison
Alan R. Ostregren
Muscatine County Attorney's Office
Muscatine County Courthouse
401 East Third Street, Suite 4
Muscatine, Iowa 52761