IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS FLORES, LAWRENCE BARTLEY, DEMETRIUS BENNETT, L'MANI DELIMA, EDGARDO LEBRON, ANTONIO ROMAN, DONTAE QUINONES and SHAROD LOGAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

TINA M. STANFORD, as Chairwoman of the New York State Board of Parole; WALTER W. SMITH, as Commissioner of the New York State Board of Parole; SALLY THOMPSON, as Commissioner of the New York State Board of Parole; JOSEPH P. CRANGLE, as Commissioner of the New York State Board of Parole; ELLEN E. ALEXANDER, as Commissioner of the New York State Board of Parole; MARC COPPOLA, as Commissioner of the New York State Board of Parole; EDWARD SHARKEY, as Commissioner of the New York State Board of Parole; TANA AGOSTINI, as Commissioner of the New York State Board of Parole; CHARLES DAVIS, as Commissioner of the New York State Board of Parole; CAROL SHAPIRO, as Commissioner of the New York State Board of Parole; ERIK BERLINER, as Commissioner of the New York State Board of Parole; OTIS CRUSE, as Commissioner of the New York State Board of Parole; TYCEE DRAKE, as Commissioner of the New York State Board of Parole; and CARYNE DEMOSTHENES, as Commissioner of the New York State Board of Parole.

Defendants.

No. 18-CV-02468 (VB)

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Carlos Flores, Lawrence Bartley, Demetrius Bennett, L'Mani Delima, Edgardo Lebron, Antonio Roman, Dontae Quinones and Sharod Logan (referred to hereinafter as "Named Plaintiffs" or "Plaintiffs"), on behalf of themselves and those similarly situated, by and through their attorneys, as and for their Second Amended Complaint, allege the following:

INTRODUCTION

1. This is an action for declaratory and injunctive relief. Plaintiffs are individuals who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole. Plaintiffs have been, continue to be, or will be subject to disproportionate punishment and deprived of due process of law by being denied a realistic and meaningful opportunity for release based upon demonstrated maturity and rehabilitation.

2. Plaintiffs bring this action on behalf of a class consisting of all persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of the New York State Department of Corrections and Community Supervision ("DOCCS") (hereinafter referred to as "juvenile lifers" or "Class Members").

3. Juvenile lifers, including Plaintiffs, have been, continue to be, or will be denied a meaningful opportunity for release based upon demonstrated maturity and rehabilitation, in violation of the cruel and unusual punishments clause of the Eighth Amendment to the U.S. Constitution. Juvenile lifers, including Plaintiffs, have also been, continue to be, or will be denied due process of law in the manner in which their parole hearings have been conducted, in violation of the due process clause of the Fourteenth Amendment to the U.S. Constitution.

Juvenile lifers, including Plaintiffs, have also been, continue to be, or will be denied their right to a trial by jury and their right to due process because their sentences have been extended by findings of fact made by the Board of Parole's Commissioners, in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution.

4. Recognizing that fundamental differences between children and adults are relevant to assessing proportionality in punishment, the U.S. Supreme Court has, in a series of cases, forbidden as unconstitutional life without parole for all juveniles, even those who commit heinous crimes, except for the "rare juvenile offender whose crime reflects irreparable corruption", and has held that this substantive constitutional rule is retroactive. Montgomery v. Louisiana, 136 S. Ct. 718, 734 (2016) (quoting Miller v. Alabama, 567 U.S. 460, 479-80 (2012)); Graham v. Florida, 560 U.S. 48, 82 (2010).

5. Taken together, these decisions establish that the Eighth Amendment to the U.S. Constitution prohibits statutory schemes that fail to provide juvenile lifers with a meaningful and realistic opportunity for release based upon demonstrated maturity and rehabilitation. See Miller, 567 U.S. at 470-80; Graham, 560 U.S. at 50.

6. These decisions have both a substantive component, which applies retroactively to all juvenile lifers in prison today, and a procedural component, which applies at parole hearings where juvenile lifers face possible life imprisonment if parole is denied. See Montgomery, 136 S. Ct. at 734-35.

7. In New York State, the authority to release any person sentenced to a maximum term of life prior to the end of his or her natural life lies with the New York State Board of Parole (hereinafter "Board of Parole" or "Board"). Defendants are each Commissioners of the

Board of Parole and are sued in their official capacity (hereinafter "Commissioners" or "Defendants").

8. Despite clear precedent to the contrary, Defendants have interpreted the New York Executive Law to allow Defendants to deny parole to juvenile lifers without regard to an individual's subsequent demonstrated maturity and rehabilitation, if Defendants determine that release would be "not compatible with the welfare of society" or would "so deprecate the seriousness of his crime as to undermine respect for law". See N.Y. Exec. Law § 259-i(2)(c)(A).

9. Accordingly, Defendants regularly deny parole to juvenile lifers who demonstrate unmistakable rehabilitation and reform, and low risk to public safety. Defendants have consistently denied such individuals parole with short conclusory opinions citing only factors present at the time of conviction, such as juvenile criminal history and the nature of the crime of conviction.

10. The procedures and practices of the Board of Parole, as executed by Defendants, thereby deprive juvenile lifers, including Plaintiffs, of a meaningful opportunity for release based on demonstrated maturity and rehabilitation in violation of the constitutional prohibition against excessive punishment. The formal regulations and regular practices of the Board of Parole, as executed by Defendants, also violate juvenile lifers', including Plaintiffs', Due Process rights, which arise from the liberty interest in parole conferred by the U.S. Supreme Court's Eighth Amendment jurisprudence and by New York State Executive Law and the Board's regulations.

11. Plaintiffs do not challenge their judgments of conviction and do not seek to invalidate their sentences. Plaintiffs do not seek an order of release from this Court. Rather, Plaintiffs seek an order that Defendants must afford them, and those similarly situated, as persons sentenced to life imprisonment for offenses committed before they were 18 years old, a

meaningful opportunity to obtain release based on non-arbitrary criteria that measure their degree of maturity and rehabilitation.

12. Plaintiffs do not maintain that all Class Members are necessarily entitled to immediate release under the constitutionally mandated standard for release. Through this action, Plaintiffs seek to ensure that Defendants apply the constitutionally mandated standard at parole release hearings for Plaintiffs and all Class Members.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). The controversy arises under the Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution.

14. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because a majority of Plaintiffs are or were incarcerated within the Southern District of New York, and Defendants have conducted parole hearings and taken other actions leading to the denial of Plaintiffs' rights, as alleged further herein, within the Southern District of New York.

PARTIES

A. Plaintiffs

i. Plaintiff Carlos Flores

15. Plaintiff Carlos Flores is 54 years old and until his recent release, had been incarcerated since he was 17. He was convicted of felony murder after participating in a robbery in January 1981 that resulted in an accomplice shooting an off-duty police officer who was a patron in the bar and drew a gun.

16. Mr. Flores was convicted of murder in the second degree and was sentenced to 21 years to life. At sentencing, the judge considered, and rejected, a lengthier minimum sentence of

25 years because Mr. Flores had no prior criminal record and was not the shooter. Mr. Flores was denied parole ten times. By the time he ultimately was granted parole on his eleventh try, after the original complaint in this lawsuit was filed, he had already been incarcerated for 37 years, *16 years in excess* of the 21-year minimum set by the judge.

17. Mr. Flores had a difficult upbringing. He was a victim of frequent abuse and dropped out of school to support his family financially by working at a pizzeria. He was manipulated into participating in a robbery by a much older man who had significant influence over him—a man who had shown him friendship and who he had thought was a mentor. During the robbery, in an unplanned act, one of the robbers shot and killed a patron of the bar, Robert Walsh, an off-duty police officer. At that time, Mr. Flores was in a separate room at the back of the bar.

18. Nothing in Mr. Flores's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

19. Before Mr. Flores was released on June 25, 2018, he was incarcerated at Otisville Correctional Facility in Otisville, New York. Mr. Flores had an exceptional institutional record while in custody. His last disciplinary offense was more than 25 years ago for disobeying an order to keep the mess hall line moving.

20. He had low (favorable) scores across the board in his Correctional Offender Management Profiling for Alternative Sanctions ("COMPAS"). In addition, his COMPAS report found that if released he would require the lowest level of supervision. He had earned outside clearance to work in the community, a permit DOCCS grants only to the most trustworthy inmates who can safely work outside the prison with minimal supervision.

21. Defendants last denied Mr. Flores release on October 24, 2017, on the unsubstantiated basis that his "discretionary release at this time, would not be compatible with the welfare of society and would tend to deprecate the seriousness of the Instant Offense and undermine respect for the law".

22. Plaintiff Carlos Flores brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

23. Mr. Flores was denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Flores's parole submission; (2) neither Mr. Flores nor his attorneys were permitted access to letters opposing his release; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) his denial was based on a crime he committed decades ago that he could not change; (5) Commissioners did not base their decision on Mr. Flores's demonstrated maturity and rehabilitation; and (6) he was denied any explanation for what additional steps he must take to be recommended for parole.

ii. Plaintiff Lawrence Bartley

24. Plaintiff Lawrence Bartley is 45 years old and until his recent release, had been incarcerated since he was 17. In December 1990, Mr. Bartley was involved in a gunfight that erupted at a local movie theater. Twenty shots were exchanged in total, with only one shot fired by Mr. Bartley. In the midst of the shooting, a bystander, Tremain Hall, was accidentally shot and killed.

25. Mr. Bartley received an aggregate sentence of 27 and one-third years to life for second degree murder and associated offenses. By the time he ultimately was granted parole in April 2018, after the original complaint in this lawsuit was filed, he had already been imprisoned for 27 years and was incarcerated at Sing Sing Correctional Facility in Ossining, New York.

26. Mr. Bartley grew up in a rough neighborhood surrounded by drug dealers and gang members. At only age 16, he was shot four times in a drive-by shooting. He began carrying a gun thereafter out of fear for his life.

27. Nothing in Mr. Bartley's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

28. Mr. Bartley had an exceptional institutional disciplinary record while in custody. His last disciplinary infraction was in 2008, roughly ten years ago.

29. Mr. Bartley's COMPAS report found him to be at a low risk of reoffending. Mr. Bartley had received numerous letters of support from corrections officers, including from the superintendent of Sing Sing, noting that Mr. Bartley's behavior "exemplifies DOCCS'[s] mission of rehabilitating its residents to positively re-enter society".

30. While incarcerated, Mr. Bartley earned a six-month limited credit time allowance ("LCTA") for "significant programmatic accomplishment" and lack of serious disciplinary infractions. The LCTA award made him eligible for parole release six months before the expiration of his minimum term.

31. Defendants last denied Mr. Bartley release on September 6, 2017. He was denied release despite ample evidence of his maturation and rehabilitation, including having earned a

Master's degree, raised $8,000 for a gun buy-back program, publicly engaged in anti-violence and anti-gun violence programming and secured employment upon release.

32. In their September 6, 2017 decision, Defendants acknowledged these achievements, writing: "The Panel applauds your exceptional packet, institutional accomplishments, your overall low COMPAS score and satisfactory case plan. Your release planning, community outreach, use of media, networking and your life as an example exemplifies an extraordinary effort to give back, demonstrates restoration and evidenced change". The panel then concluded, without any basis, that "there is a reasonable probability that you would not live and remain at liberty without again violating the law and that your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law".

33. Mr. Bartley represents himself and a class of similarly situated people eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

34. Mr. Bartley was denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that:
(1) Commissioners did not meaningfully consider, read or attend to Mr. Bartley's full parole submission; (2) the denial of release to parole supervision was based on a crime he committed decades ago that he could not change; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (5) Commissioners failed to base their decision on Mr. Bartley's demonstrated maturity and rehabilitation since the

age of 17; and (6) he was denied any explanation for what additional steps he must take to be recommended for parole.

iii. Demetrius Bennett

35. Plaintiff Demetrius Bennett is 39 years old and has been incarcerated since he was 15. He was convicted of felony murder when, at 15 years old and under the direction of a man in his thirties, Mr. Bennett participated in robbing a bicycle shop. During the robbery, the older man shot and killed a police officer.

36. Prior to the bicycle shop robbery, Mr. Bennett had no criminal record. He did not plan the robbery, was not carrying a weapon, was not the shooter and was not in the room when the shooting occurred. After a trial, Mr. Bennett was convicted of murder in the second degree and robbery and was sentenced to nine years to life. By the time he was ultimately granted parole in September 2018, after the amended complaint in this lawsuit was filed, he had already been denied parole eight times and had been incarcerated for over 23 years—*14 years in excess* of the nine-year minimum sentence set by the judge.

37. Prior to the crime, Mr. Bennett, a 15-year-old child, had no family support. Mr. Bennett's mother passed away when he was 13 years old and his father was only intermittently present during his childhood and was not performing a parenting role. After his mother's death, Mr. Bennett lived on the streets and stayed on friends' couches. His oldest sister and younger brother went to live with his aunt, and his other sister went to foster care. Mr. Bennett earned a meager living on the streets, pumping gas and helping people to their cars with their groceries to earn money. He stopped attending school out of frustration because he did not know how to read or do math.

38. Prior to the crime, Karen Young, the mother of one of Mr. Bennett's friends, took Mr. Bennett in off the streets even though they were not related, and Mr. Bennett returned to school.

39. At the time of the crime, Mr. Bennett was high on marijuana. He and his co-defendants, Lavonne Smith and Vernon Smith, ages 16 and 17 years old respectively, were persuaded to rob a bicycle shop by his co-defendants' uncle, Richard Larrier, who was in his thirties. Mr. Bennett was directed to tie up the owners of the store in the back room. During the robbery, the police entered the store and Mr. Larrier shot and killed a police officer, Raymond Cannon. Mr. Larrier was subsequently shot and killed.

40. Nothing in Mr. Bennett's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility".

41. Mr. Bennett is presently incarcerated at Woodbourne Correctional Facility in Woodbourne, New York, while he awaits his release to parole supervision. He earned his General Equivalency Diploma ("GED") after multiple attempts, demonstrating perseverance and a commitment to his future. During his incarceration, he has completed numerous programs and has an extensive work history. He has been described as an "asset" in an Inmate Progress Report for his work on the maintenance and paint crew. He was also described in that report as a humble leader and respectful to all staff and his peers.

42. For the most part, Mr. Bennett has low (favorable) scores on his COMPAS, except for "Prison Misconduct", "ReEntry Substance Abuse" and "ReEntry Financial", which are "high", "probable" and "probable", respectively. As alleged below, Mr. Bennett lacks

knowledge and has been denied information about how his COMPAS scores—favorable or unfavorable—are calculated.

43. His disciplinary record demonstrates his growth over the years, and in his September 2017 decision Defendants noted that his "disciplinary record reflects some violent conduct over the years but none in nearly five years".

44. Defendants last denied Mr. Bennett release at his September 13, 2017 hearing. Aside from recounting the tragic loss of life caused by his crime, the Commissioners' decision contains all positive factors demonstrating rehabilitation and reform, noting that while in custody, Mr. Bennett has "performed well in [his] programs, satisfying all requirements". Nonetheless, without citing to any support in the record, the Board concluded that the "panel is not convinced that if released you would live at liberty without once again violating the law or that your release would not so deprecate the offense as to undermine respect for the law".

45. Plaintiff Demetrius Bennett brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

46. Mr. Bennett was denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that:
(1) Commissioners did not fully consider, read or attend to Mr. Bennett's parole submission; (2) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (3) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (4) Mr. Bennett was not permitted access to letters opposing his release; (5) his denial is based on a crime he committed decades ago that he cannot

change; (6) Commissioners did not base their decision on Mr. Bennett's demonstrated maturity and rehabilitation; and (7) he was denied any explanation for what additional steps he must take to be recommended for parole.

iv. L'Mani Delima

47. Plaintiff L'Mani Delima is 26 years old and has been incarcerated since he was a 13-year-old weighing approximately 100 pounds.

48. Mr. Delima's attorney advised him to take a plea for his crime in exchange for a sentence of eight years to life. After Mr. Delima was sentenced, his attorney was arrested and indicted for several racketeering and other serious offenses. The court eventually vacated Mr. Delima's plea and sentence. Mr. Delima then went to trial, represented by a new attorney, and was convicted and sentenced to nine years to life. To date, he has been incarcerated for almost 13 years. He has now been denied parole three times.

49. In 2005, Mr. Delima was a five-foot-tall, 100-pound, 13-year-old middle school student, living with his single mother and three older siblings. Mr. Delima's mother was loving and hardworking, but she was a single mother working multiple jobs to support her children. At the time of the crime, Mr. Delima was being supervised by a man in his thirties whom Mr. Delima knew well growing up and referred to as his "godfather". In June 2005, Mr. Delima was shopping with his godfather and several other older men when a fight broke out between members of the group and Phoenix Garrett on the street. During the struggle, Mr. Garrett slashed Mr. Delima's godfather's face. In response, an older man handed Mr. Delima a gun and Mr. Delima shot Mr. Garrett five times.

50. Nothing in Mr. Delima's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

51. Mr. Delima is presently incarcerated at Fishkill Correctional Facility in Beacon, New York. Even though Mr. Delima has struggled with academic challenges, he has dedicated his time in prison toward his academic development and continues to work toward obtaining his GED. While incarcerated, he has completed a variety of vocational training and programs. He currently works in the Residential Mental Health Unit and serves as the representative of his housing unit on the Inmate Liaison Committee.

52. Mr. Delima has a high "Risk of Felony Violence" score on his COMPAS. On information and belief, this score is due to Mr. Delima's young age. As alleged below, Mr. Delima lacks knowledge and has been denied information about how his COMPAS scores—favorable or unfavorable—are calculated.

53. Defendants last denied Mr. Delima parole in a decision dated August 24, 2017. The decision merely states the fact of his chronological age of 13 at the time of the crime without any discussion of relevance to his culpability. The decision states that the "Board of Parole commends your personal growth, maturity and productive use of time, however, discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined". However, the panel "concluded that [his] release at this time in light of [his] offense and disciplinary record would so deprecate the offense as to undermine respect for the law".

54. Plaintiff L'Mani Delima brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes

committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

55. Mr. Delima has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Delima's parole submission; (2) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (3) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (4) his denial is based on a crime he committed over a decade ago that he cannot change; and (5) Commissioners did not base their decision on Mr. Delima's demonstrated maturity and rehabilitation.

v. Edgardo Lebron

56. Plaintiff Edgardo Lebron is 43 years old and has been incarcerated since he was 15 years old.

57. Mr. Lebron is serving an aggregate sentence of eight and one-half years to life. By the time he ultimately was granted parole in August 2018, after the amended complaint in this lawsuit was filed, he had already been denied parole ten times and had been imprisoned for 28 years—20 years in excess of the minimum sentence he was given as a child. Mr. Lebron is incarcerated at Attica Correctional Facility in Attica, New York, while he awaits his release to parole supervision.

58. Mr. Lebron did not have a stable family life as a child. He was bounced between the homes of his mother, father and grandparents in Puerto Rico and then was sent alone to live with his aunt in the Bronx, New York, with the promise that his father would join him in the mainland United States a few months later.

59. Mr. Lebron had difficulty adjusting to his new life in New York. He missed his family and his Puerto Rican culture. In addition, he did not speak English, and therefore struggled in school and did not have any friends.

60. When Mr. Lebron found out that his father in fact was not joining him in the Bronx, Mr. Lebron's eagerness to return to Puerto Rico intensified.

61. Two neighborhood acquaintances who spoke Spanish (two men in their late twenties or early thirties) promised to give Mr. Lebron money to buy a return flight to Puerto Rico if he helped them rob people on the street. The two older men taught Mr. Lebron to ask for money in English and gave him a knife to commit the robberies. Soon thereafter, at 15 years old, Mr. Lebron committed the crime for which he is currently incarcerated, pleading guilty to second degree murder after stabbing once and killing Hugie Harley in September 1990.

62. Nothing in Mr. Lebron's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

63. Mr. Lebron received a substantial number of disciplinary tickets while in prison. In recent years, he changed this course by obtaining his GED and completing a variety of vocational training and programs, such as custodial maintenance, mobility assistance and legal research. He also wishes to obtain college credits, but has been unable to afford such courses.

64. Mr. Lebron's January 12, 2018 COMPAS has low (favorable) scores across the board, except for "Prison Misconduct" and "ReEntry Substance Abuse", which are "High" and "Probable", respectively. As alleged below, Mr. Lebron lacks knowledge and has been denied information about how his COMPAS scores—favorable or unfavorable—are calculated.

65. Defendants last denied Mr. Lebron release on November 9, 2016, concluding that his "release is incompatible with the [w]elfare and safety of the community".

66. Plaintiff Edgardo Lebron brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

67. Mr. Lebron was denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Lebron's parole submission; (2) neither Mr. Lebron nor his attorneys were permitted access to letters opposing his release; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (5) his denial is based on a crime he committed decades ago that he cannot change; (6) Commissioners did not base their decision on Mr. Lebron's demonstrated maturity and rehabilitation; and (7) he was denied any explanation for what additional steps he must take to be recommended for parole.

vi. Antonio Roman

68. Plaintiff Antonio Roman is 41 years old and has been incarcerated for almost 24 years for a crime committed when he was 17 years old.

69. Mr. Roman was abandoned in infancy by both of his parents. His mother left after he was born and his father was absent. He was raised by his grandmother, but she also abandoned him and moved to Puerto Rico when he was 16 years old, leaving Mr. Roman struggling to support himself on his own. Mr. Roman became a teen parent and did not have a

way to support himself or provide for his daughter. Mr. Roman was desperate. He met an older man, co-defendant Ralph "Tony" Ambert, at a party. Mr. Ambert offered Mr. Roman money and a car to help him shoot his father, stepmother and anyone else in the house, because Mr. Ambert believed that his father was going to remove him from his will. Under the direction of his older co-defendant, Mr. Roman shot and killed Mr. Ambert's stepmother, Patricia Ambert. Mr. Roman did not know the victim prior to the crime. He took a plea and was convicted of murder in the second degree for a crime that occurred in January 1995 when he was 17 years old.

70. Nothing in Mr. Roman's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility".

71. Mr. Roman received a sentence of 20 years to life. By the time he was ultimately granted parole in September 2018, after the amended complaint in this lawsuit was filed, he had served almost 24 years in prison and had been denied parole three times despite significant evidence of rehabilitation and an exceptional disciplinary record. Mr. Roman is presently incarcerated in Fishkill Correctional Facility in Beacon, New York while he awaits release to parole supervision.

72. Mr. Roman has an exceptional disciplinary record while in custody. His last disciplinary infraction was in 2003, roughly 15 years ago. Furthermore, his COMPAS scores are low (favorable) across the board.

73. While incarcerated, Mr. Roman received his GED and has earned multiple college credits. He has participated in several programs for HIV awareness and treatment. He also completed a 16-week training program for food handling and sanitation practices.

74. He has received numerous commendable behavior reports from corrections officers recommending him for parole.

75. Defendants last denied Mr. Roman parole release on September 20, 2016 despite significant evidence of his maturity and rehabilitation. Defendants "commend[ed] [his] personal growth and productive use of time". However, Defendants denied release on the unsubstantiated basis that "if released at this time, [his] release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime . . . as to undermine respect for the law". Defendants merely noted that they had "considered [his] age at the time of the crime and diminished culpability at the time". Defendants concluded, however, that "discretionary release [was] not presently warranted as [his] release would trivialize the tragic loss of life that [he] caused".

76. Plaintiff Antonio Roman brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

77. Mr. Roman was denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Roman's parole submission; (2) Mr. Roman was not permitted access to letters opposing his release; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) his denial is based on a crime he committed decades ago that he cannot change; (5) Commissioners did not base their decision on Mr. Roman's demonstrated maturity and

rehabilitation; and (6) he was denied any explanation for what additional steps he must take to be recommended for parole.

vii. Dontae Quinones

78. Plaintiff Dontae Quinones is 43 years old and has been incarcerated since he was 17 years old.

79. Mr. Quinones grew up without consistent parental care or permanent home. His father has "never been in his life", was incarcerated before he was born and remained incarcerated throughout Mr. Quinones's teenage years. His mother, who gave birth to him at a young age, was unprepared to care for him. As a result, Mr. Quinones was shuffled between the homes of his grandparents, his mother and a cousin in a rough neighborhood in Brooklyn, New York. Mr. Quinones was largely left to the streets.

80. In January 1993, when Mr. Quinones was only 16 years old, he got into a verbal and physical altercation when Tyron Bess, an older man with whom Mr. Quinones had been gambling, lost and refused to pay his $12 gambling debt. In the midst of the altercation, Mr. Quinones, who carried a gun because he felt he needed one for protection in his neighborhood, shot the victim, killing him.

81. Mr. Quinones was arrested carrying an illegal weapon and subsequently pled guilty to second-degree murder and illegal possession of a weapon in the third degree. He was sentenced to 15 years to life for the former and received a concurrent sentence of one-and-a-half to four-and-a-half years for the latter.

82. During his early years of incarceration, Mr. Quinones struggled with anger and rule abiding. Between 1994 and 1995, while still a teenager, Mr. Quinones was convicted of promoting prison contraband and attempted assault in the first degree. As a result of these two

additional convictions, Mr. Quinones is currently serving an aggregate sentence of 21 years to life. With respect to the attempted assault charge, Mr. Quinones maintains that in 1995, when he was first transferred to an adult prison, he was placed in a "cage" with another violent inmate when a fight ensued. Knowing that rapes were fairly common in the facility he was housed in, Mr. Quinones used a razor blade during the fight because he "felt he had something to prove . . . not to be with the stigmas of being raped and so on and so forth".

83. Mr. Quinones has now been denied parole three times.

84. Nothing in Mr. Quinones's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

85. Mr. Quinones is presently incarcerated at Sing Sing Correctional Facility in Ossining, New York. Despite having a lengthy disciplinary record when he first entered the prison system, Mr. Quinones has sought to reform himself. He has not had a disciplinary ticket in the past five years. While incarcerated, he obtained his GED and has completed a variety of vocational training and programs, such as masonry, carpentry and the Youth Assistance Program. As a result of this progress, Mr. Quinones now has low (favorable) scores across the board in his COMPAS, which also indicate that he would require the lowest level of supervision if released.

86. During his time in prison, Mr. Quinones has also reflected on the crime for which he is currently incarcerated, demonstrating insight into the impact of his actions. Mr. Quinones is "certain and forever remorseful of [his] actions on that day, and how they forever must have terrorized the memories of those who reside in that community of downtown Brooklyn".

87. Mr. Quinones had a parole hearing on October 4, 2017. During the hearing he explained to Commissioners that the fact that he took someone's life "is like a nightmare that I live day-to-day with. It's nothing that I am proud of now as a man. And the remorse not only goes out to the Bess family, but to society as a whole because a life was took and I can never take that back". He also reflected during his hearing that "[O]nce I learned the reason for my behavior, I was like that is senseless. You start reflecting on things and it changes your views, your behavior".

88. Defendants denied Mr. Quinones release after that October 4, 2017 hearing, after the new regulations were in effect. The Commissioners' decision cites all positive factors demonstrating maturity and rehabilitation, including Mr. Quinones's COMPAS scores indicating him to be low risk to the community, stating: "The Board of Parole commends your personal growth, programmatic achievements and productive use of time" and recognizing "your risk COMPAS, your programming and case plan to your credit. The panel also acknowledges . . . your recent improvement in institutional behavior following a problematic disciplinary record early in your incarceration". Nonetheless, Defendants then proceeded to deny Mr. Quinones release to parole supervision based on "[t]he seriousness of the crime" and, without basis, cited to Mr. Quinones's "limited insight into the impacts of [his] actions".

89. Consistent with the text of the new regulations and Defendants' mistaken belief that the Eighth Amendment merely obliges them to document their knowledge of the applicant's age at the time of the crime, the denial decision was careful to include the phrase "[t]he panel also acknowledges your young age at the time of offense".

90. Plaintiff Dontae Quinones brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes

committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

91. Mr. Quinones has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Quinones's parole submission; (2) neither Mr. Quinones nor his attorneys were permitted access to letters opposing his release; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (5) his denial is based on crimes he committed as a juvenile decades ago that he cannot change; (6) Commissioners did not base their decision on Mr. Quinones's demonstrated maturity and rehabilitation; and (7) he was denied any explanation for what additional steps he must take to be recommended for parole.

viii. Sharod Logan

92. Plaintiff Sharod Logan is now 33 years old and has been incarcerated since he was 16 years old.

93. Prior to the crime, Mr. Logan had no family support. When Mr. Logan was seven years old, his father died while he was in prison for a crime unknown to Mr. Logan. Three years later, when Mr. Logan was only 10 years old, his mother also passed away. Thereafter, he and his two younger siblings were placed in the care of their 18-year-old sister who was already caring for her own young daughter. For the next six years, Mr. Logan did not have a permanent home and bounced between his sister's home in the Marcy Projects in Bedford-Stuyvesant, Brooklyn, and the home of his maternal grandmother. Mr. Logan was largely left to the streets surrounded by other troubled teens in the neighborhood.

94. In 2001, when Mr. Logan was 16 years old, one of Mr. Logan's teenaged friends suggested that they rob a random stranger, Mr. Torres. Mr. Logan did not know Mr. Torres, and he did not have any plans before that day to rob him. Nevertheless, Mr. Logan agreed to commit the crime because his friend said that Mr. Torres had drugs on his person that they could steal and sell for money. Mr. Logan approached the victim and demanded that he " run [his] pockets". In response, the victim, Mr. Torres, took out a knife and stabbed Mr. Logan three times in the back, once in his side and once in his arm. Mr. Logan tried to retreat but was wounded and was unable to do so. When Mr. Torres continued to pursue Mr. Logan, Mr. Logan turned around to face Mr. Torres, took out a gun that he had been carrying on him for protection and shot Mr. Torres once, killing him. Mr. Logan's friend called an ambulance and Mr. Logan was admitted to a hospital to be treated for his stab wounds.

95. Mr. Logan subsequently was arrested and pled guilty to two counts of second-degree murder. He was sentenced to 16 years to life and has now served more than 17 years.

96. Nothing in Mr. Logan's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest of juvenile[s] . . . whose crimes reflects permanent incorrigibility".

97. Mr. Logan is presently incarcerated at Fishkill Correctional Facility in Beacon, New York. He has low (favorable) COMPAS scores across the board. And, as Defendants have acknowledged, Mr. Logan "is a young man who came to prison and took advantage of the opportunities that were afforded to him to improve his situation and prepare himself to get out."

98. Defendants denied Mr. Logan release after his interview on December 19, 2017, after the new regulations were in effect. Defendants noted Mr. Logan's "case plan, parole packet, and excellent programming achievements while incarcerated, indicat[ing] [his] personal

growth and maturation." Nevertheless, Defendants denied parole to Mr. Logan in part because they found two Tier-II disciplinary tickets "[o]f concern".

99. On information and belief, the two Tier II tickets arose from an incident in which a civilian cook in Food Services at Fishkill Correctional Facility refused to provide Mr. Logan enough food to make 10 food trays. Mr. Logan informed a correctional officer. The civilian cook became angry and yelled at Mr. Logan, who walked out of the room to avoid further confrontation. A fellow inmate ultimately convinced the civilian cook to provide enough food to make 10 food trays. The day after his encounter with the civilian cook, Mr. Logan received the first of the two tickets. He contested this ticket and three of the five charges regarding the ticket—harassment, interference with employee and making a threat—were dropped. The final two charges, for disobeying a direct order and for causing a disturbance, were not dropped. The day after Mr. Logan received this ticket, he approached a different civilian cook in Food Services requesting a change in work assignment. The civilian cook reported Mr. Logan for refusing to work. Based on these two (non-violent) tickets, other tickets received years ago and alleged official opposition to Mr. Logan's release—the authors and content of which they refused to disclose—Defendants concluded that Mr. Logan's "release would be incompatible with the welfare of society and would so deprecate the seriousness of the offense as to undermine respect for the law".

100. Consistent with the text of the new regulations and Defendants' mistaken belief that the Eighth Amendment merely obliges them to document their knowledge of the applicant's age at the time of the crime, the record reflects that Commissioners dutifully "note[d] [his] young age at the time of offense and the challenges [he] had faced in [his] life as a child and young adult."

101. Plaintiff Sharod Logan brings this suit on behalf of himself and a class of similarly situated persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

102. Mr. Logan has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, and the right to due process, in that: (1) Commissioners did not fully consider, read or attend to Mr. Logan's parole submission; (2) neither Mr. Logan nor his attorneys were permitted access to letters opposing his release; (3) he was denied the right to have an attorney present at his interview and the right to see and confront any evidence against him; (4) his denial is based on a crime he committed decades ago that he cannot change; (5) his denial is based on "official opposition" that Mr. Logan did not have an opportunity to inspect and controvert; (6) he was denied the right to inspect and challenge the method of calculating his COMPAS scores; (7) Commissioners did not base their decision on Mr. Logan's demonstrated maturity and rehabilitation; and (8) he was denied any explanation for what additional steps he must take to be recommended for parole.

B. Defendants

103. Defendant Tina Stanford is the Chairwoman of the Board of Parole. Defendant Stanford has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. As Chairwoman, Defendant Stanford is responsible for the administrative functions and daily operations of the Board of Parole and its staff, and exercises ultimate authority—in consultation with the other Commissioners—with respect to the Board's policies, practices and procedures. Defendant Stanford is sued in her official capacity.

104. Defendant Walter William Smith is a member of the Board of Parole. Defendant Smith has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Smith is sued in his official capacity.

105. Defendant Sally Thompson was a member of the Board of Parole at the commencement of this action. Defendant Thompson had authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Thompson is sued in her official capacity. While Defendant Thompson died during the pendency of this action (see ECF No. 85 n.1), she is maintained as a defendant in her official capacity so that her successor, once named, will automatically be substituted as a party in her stead pursuant to Fed. R. Civ. P. 25(d).

106. Defendant Joseph P. Crangle is a member of the Board of Parole. Defendant Crangle has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Crangle is sued in his official capacity.

107. Defendant Ellen Evans Alexander is a member of the Board of Parole. Defendant Alexander has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Alexander is sued in her official capacity.

108. Defendant Marc Coppola is a member of the Board of Parole. Defendant Coppola has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S

and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Coppola is sued in his official capacity.

109. Defendant Edward Sharkey was a member of the Board of Parole at the commencement of this action. Defendant Sharkey had authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Sharkey is sued in his official capacity. While Defendant Sharkey retired during the pendency of this action (see ECF No. 85 n.1), he is maintained as a defendant in his official capacity so that his successor, once named, will automatically be substituted as a party in his stead pursuant to Fed. R. Civ. P. 25(d).

110. Defendant Tana Agostini is a member of the Board of Parole. Defendant Agostini has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Agostini is sued in her official capacity.

111. Defendant Charles Davis is a member of the Board of Parole. Defendant Davis has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Davis is sued in his official capacity.

112. Defendant Carol Shapiro is a member of the Board of Parole. Defendant Shapiro has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Shapiro is sued in her official capacity.

113. Defendant Erik Berliner is a member of the Board of Parole. Defendant Berliner has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Berliner is sued in his official capacity.

114. Defendant Otis Cruse is a member of the Board of Parole. Defendant Cruse has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Cruse is sued in his official capacity.

115. Defendant Tycee Drake is a member of the Board of Parole. Defendant Drake has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Drake is sued in her official capacity.

116. Defendant Caryne Demosthenes is a member of the Board of Parole. Defendant Demosthenes has authority over the Board of Parole pursuant to New York Executive Law Sections 259-259S and 9 NYCRR, Subtitle CC, Parts 8000-8011, which determines which prisoners are eligible for parole. Defendant Demosthenes is sued in her official capacity.

FACTUAL ALLEGATIONS

I. JUVENILES HAVE DIMINISHED CULPABILITY AND GREATER PROSPECTS FOR REFORM THAN ADULTS, AND THE STATE CANNOT, EXCEPT IN THE

RAREST OF CASES, CONDEMN JUVENILE OFFENDERS TO DIE IN PRISON WITHOUT A MEANINGFUL OPPORTUNITY FOR RELEASE.

A. The relevant scientific communities have recognized that children are categorically different from adults.

117. Scientific and psychological studies confirm that children are fundamentally different from adults, and as a result, their culpability is diminished.

118. The first reason that justifies the diminished culpability of juvenile offenders is their lack of maturity and an underdeveloped sense of responsibility. See Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1011-14 (2003).

119. Their lack of maturity often results in impetuous and ill-considered actions and decisions (i.e., impulsive conduct), which explains why "adolescents are overrepresented statistically in virtually every category of reckless behavior". Jeffrey Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339, 339 (1992); see also Laurence Steinberg & Robert G. Schwartz, Developmental Psychology Goes to Court in Youth on Trial: A Developmental Perspective on Juvenile Justice 9 (Thomas Grisso & Robert G. Schwartz eds. 2000).

120. Developmental research shows that juveniles engage in impulsive decision-making because they are unable to perceive risks. Melinda G. Schmidt et al., Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship, 21 Behav. Sci. & L. 175, 180 (2003). Another explanation for their impulsive behavior is that juveniles think more about immediate gains as opposed to long-term consequences, and thus consider the meaning of a potential act differently than adults. Id.; see also Kristin N. Henning, Loyalty, Paternalism, and

Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases, 81 Notre Dame L. Rev. 245, 271-72 (2005).

121. A second area of difference between adults and adolescents is that juveniles are more vulnerable to negative influences and outside pressures, including peer pressure. Steinberg & Scott, supra, at 1014.

122. Their susceptibility to outside pressure is explained, at least in part, by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. Id.

123. It is no surprise, therefore, that psychologists have concluded that juveniles "lack the freedom that adults have to extricate themselves from a criminogenic setting". Id.

124. A third area of difference between adults and adolescents is that the character of a juvenile is not as well formed as that of an adult. Specifically, psychologists and psychoanalysts have recognized that the personality traits of juveniles are more transitory, less fixed. See generally, Erik H. Erikson, Identity: Youth and Crisis (1968); see also Steinberg & Scott, supra, at 1014.

125. Although these three inherently transitory characteristics of juveniles often lead them to commit crimes, psychologists have recognized that, for most teenagers, their impulsive and risky behaviors "cease with maturity" as their identities become settled, they learn to consider long-term consequences of potential actions prior to making choices, and they gain the resources and capacities to extricate themselves from negative influences. Steinberg & Scott, supra, at 1014.

126. As adolescents mature into adults, they gain an improved perspective on long-term consequences, become more risk-averse and gain the self-regulatory capacities to conform

their actions to moral evaluation. Kristin Henning, supra, at 272. They "also come to regret decisions they made in earlier years". Id.

127. The behavior of adolescents evolves so much as they grow up that studies recognize that "[o]nly a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood". Steinberg & Scott, supra, at 1014 (citations omitted).

B. The law has traditionally viewed children differently.

128. Courts and legislatures have long recognized that children are not fully psychologically and socially developed, are susceptible to persuasion and abuse, and are marked by judgmental inexperience such that it is appropriate to limit their ability as a class to vote, marry, serve on juries, drink alcohol, gamble, leave school and otherwise exercise full autonomy under the law. See J.D.B. v. North Carolina, 564 U.S. 261, 272-77 (2011).

129. The inherent characteristics of children have been recognized in the area of punishment in a series of U.S. Supreme Court decisions. Specifically, the U.S. Supreme Court recognized that three distinctive attributes of juveniles mitigate their culpability: juveniles have transient immaturity; they are vulnerable to external forces; and their character traits are still being formed. Montgomery, 136 S. Ct. at 733; Miller, 567 U.S. at 470-71; Graham, 560 U.S. at 68; Roper v. Simmons, 543 U.S. 551, 569-70 (2005).

130. By recognizing the psychological and social characteristics of children, these decisions established constitutional limitations on the punishment that can be imposed on children, even for very serious crimes, reasoning that "children are constitutionally different from adults for purposes of sentencing" because they have "diminished culpability and greater

prospects for reform". Montgomery, 136 S. Ct. at 733 (quoting Miller, 567 U.S. at 471 (citing Roper, 543 U.S. at 569-70; Graham, 560 U.S. at 68)).

131. In Roper v. Simmons, 543 U.S. 551, 572 (2005), the U.S. Supreme Court categorically outlawed the death penalty for juvenile offenders, even those convicted of the most heinous murders, concluding that "neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders".

132. In Graham v. Florida, 560 U.S. 48 (2010), the U.S. Supreme Court held that sentencing a juvenile to life in prison without parole for crimes other than murder violates the Eighth Amendment's ban on cruel and usual punishment, specifically for non-homicide offenses.

133. In Miller v. Alabama, 567 U.S. 460 (2012), the U.S. Supreme Court held that the Eighth Amendment prohibits a sentencing scheme that requires life in prison without the possibility of parole for juvenile homicide offenders.

134. In Montgomery v. Louisiana, 136 S. Ct. 718 (2016), the U.S. Supreme Court held that Miller v. Alabama announced a substantive rule which, under the Constitution, is retroactive in cases on state collateral review.

135. In United States v. Reingold, 731 F.3d 204 (2d Cir. 2013), the Second Circuit reiterated the categorical prohibition of mandatory life sentences without parole for juveniles.

136. These cases hold that the Eighth Amendment forbids a statutory scheme that (i) imposes life sentences upon minors who are not the rarest of irredeemable juveniles whose crimes reflects permanent incorrigibility, and (ii) fails to provide those whose crimes reflect unfortunate yet transient immaturity with a meaningful and realistic opportunity for release. New York law fails this test on both accounts. This rule is based on substantive constitutional

principles of proportionality governing punishment for juvenile lifers based on their diminished culpability and enhanced capacity for reform.

C. Life sentences imposed on children are unconstitutional absent a parole scheme that provides a meaningful and realistic opportunity to obtain release based on demonstrated rehabilitation and reform.

137. "The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. That right . . . flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense". Miller, 567 U.S. at 469 (internal quotation marks and citations omitted).

138. Accordingly, the U.S. Supreme Court has held that "sentencing a child to life without parole is [unconstitutionally] excessive for all but the 'rare juvenile offender whose crime reflects irreparable corruption'". Montgomery, 136 S. Ct. at 734 (quoting Miller, 567 U.S. at 479-80). States "must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation". Graham, 560 U.S. at 50.

139. That holding has both "substantive" and "procedural component[s]". Montgomery, 136 S. Ct. at 734-35. Because of its substantive nature, the U.S. Supreme Court has held that this constitutional rule applies retroactively. Id.

140. As a matter of "substantive right", it is unconstitutional to imprison for life without parole a juvenile "whose crimes reflect unfortunate yet transient immaturity" rather than "irreparable corruption". Miller, 567 U.S. at 479-80. In furtherance of this substantive right, the U.S. Supreme Court has recognized that a juvenile's "demonstrated maturity and rehabilitation" is what entitles him to a "meaningful opportunity to obtain release". Id. at 479 (citing Graham, 560 U.S. at 75).

141. As a "procedural" matter, "a sentencer [must] consider a juvenile offender's youth and attendant characteristics before determining that life without parole" is "proportionate" to the offense. Montgomery, 136 S. Ct. at 734. The sentencer does not have unfettered discretion to treat youth as a mere "factor" and assign said factor the weight he or she chooses. Rather, youth is a constitutionally relevant status that makes certain forms of punishment unlawful. The status of youth triggers the substantive guarantee that a juvenile not be imprisoned for life for a crime that reflects transient characteristics of youth because to do so would be to impose a disproportionate punishment.

142. Accordingly, the sentencer must "d[o] more than [merely] *consider* a juvenile offender's youth before imposing life without parole", id. at 734 (emphasis added), and must instead analyze whether the crime reflects transient factors of youth or permanent incorrigibility. Id.

143. Proceedings bearing on life sentences for juvenile offenders must, in order to avoid being categorically unconstitutional, afford juvenile lifers who have evolved from a troubled, misguided youth to a model inmate, a meaningful opportunity to demonstrate that children who commit even heinous crimes are capable of change. Id. at 724.

144. Accordingly, sentencing regimes that subject juvenile offenders to life with the possibility of parole are only constitutional insofar as the state provides a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation". Miller, 567 U.S. at 479 (quoting Graham, 560 U.S. at 75).

145. Those substantive and procedural rights apply at parole hearings where a person who committed a crime as a child faces possible life imprisonment if parole is denied. After all, "[a] parole board is no more entitled to subject an offender to the penalty of life in prison in

contravention of this rule than is a legislature or a sentencing court". Hawkins v. New York State Dep't of Corr. & Cmty. Supervision, 140 A.D.3d 34, 38 (3d Dep't 2016); Putland v. New York State Dep't of Corr. & Cmty. Supervision, 158 A.D.3d 633 (2d Dep't 2018).

146. The U.S. Supreme Court allows life *with* parole sentences only because it understands parole to be "a regular part of the rehabilitative process. Assuming good behavior, [parole] is the normal expectation in the vast majority of cases". Solem v. Helm, 463 U.S. 277, 300-01 (1983) (citations omitted).

II. NEW YORK SUBJECTS JUVENILE LIFERS TO UNCONSTITUTIONALLY DISPROPORTIONATE PUNISHMENT BY DENYING THEM A MEANINGFUL AND REALISTIC OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION.

A. New York sentencing law mandates life with the possibility of parole for juvenile offenders as young as 13 years old.

147. Under New York sentencing law, children aged 16 and 17 are sentenced to an indeterminate sentence with a mandatory maximum term of life imprisonment if convicted of a class A felony, with the minimum term for a class A-I felony ranging from 15 to 25 years. N.Y. Penal Law §§ 70.00(2)(a), 70.00(3)(a)(i). Children as young as 13 years old who are convicted of murder receive an automatic maximum sentence of life in prison with opportunity for parole. N.Y. CPL §§ 1.20(42), 180; N.Y. Penal Law § 70.05(2)(a).

148. Under the New York Penal Law, a defendant's age and maturity, the transient characteristics attendant to youth, and a defendant's capacity for rehabilitation play no role whatsoever in setting the maximum sentence for those convicted of murder or other class A-I felonies for which the mandatory maximum sentence is *life*.

149. The only mechanism, under New York law, by which the substantive right of juvenile lifers to be provided with a meaningful opportunity for release can be secured is through the Board of Parole.

B. New York parole law fails to afford juvenile lifers a meaningful and realistic opportunity for release upon rehabilitation.

150. The New York parole practices and procedures fail to provide juvenile lifers a "meaningful" or "realistic" opportunity to obtain release based on demonstrated maturity and rehabilitation.

151. The Board of Parole has interpreted the New York Executive Law to allow it to deny parole to juvenile lifers if Defendants, in their subjective judgment, without regard to the individual's demonstrated maturity and rehabilitation subsequent to the crime, believe that release would be "not compatible with the welfare of society" or would "so deprecate the seriousness of his crime as to undermine respect for law". See N.Y. Exec. Law § 259-i(2)(c)(A).

152. Defendant Stanford told the Senate Crime Victims, Crime and Correction Committee on February 15, 2018, that she understands the statutory language "deprecate the seriousness of the offense as to undermine respect for the law" to permit Commissioners to deny parole if they, in their personal opinion, believe that release for particular offenders who committed serious crimes "would so undermine respect for the law in the mind of the community [the offenders] would be going back to". Defendant Stanford termed this consideration as "community opposition" although it is not statutorily authorized under New York's Executive Law.

153. As a result, Defendants have denied, and continue to deny, juvenile lifers release to parole supervision based only on the crime committed or juvenile criminal history, despite clear evidence of rehabilitation and maturity.

154. Defendants' failures are illustrated in their treatment of the Named Plaintiffs.

155. Defendants denied parole ten times to Plaintiff Carlos Flores, who had been incarcerated for 37 years, had a "low risk across the board" COMPAS risk assessment and had not had a disciplinary ticket in 25 years.

156. Despite Mr. Flores's impeccable record, on October 24, 2017, Defendants Smith, Crangle and Demosthenes denied Mr. Flores release to parole supervision stating, without substantiation, that "discretionary release is not warranted due to concern for the public safety and welfare" and that "release at this time would not be compatible with the welfare of society and would tend to deprecate the seriousness of the Instant Offense and undermine respect for the law". The *only* treatment in Defendants' decision given to Mr. Flores's juvenile status at the time of the offense was relegated to the following conclusory, passive voice statement: "[y]our age at the time of the offense, family situation and lack of maturity is noted".

157. On May 23, 2018—after Mr. Flores's fourth hearing in just over two-and-a-half years—he was granted parole release on the basis of the following factors: "In prison you have participated in all recommended programs, have earned a Bachelor's Degree, have put together a solid release plan, gained insight and exhibited remorse for the victim's family. Your record features a clean disciplinary record for over twenty-five years, and your overall low risk and need scores is noted". Tellingly, the "factors" cited to approve release were identical to the factors present at Mr. Flores's prior hearings but were dismissed as insufficient to warrant release out of concern for the welfare of society three times in the prior years. The panel also noted in its grant decision that Mr. Flores's release "should not be interpreted as mitigating or discounting [his] participation in the felony murder of an off-duty police officer". The only new factor was his status as a named representative in this lawsuit.

158. Defendants also denied parole release to Plaintiff Lawrence Bartley at his LCTA interview, which he earned for "significant programmatic accomplishment" and an excellent disciplinary record. Defendants Cruse and Drake acknowledged Mr. Bartley's "exceptional packet, institutional accomplishments . . . overall low COMPAS score and satisfactory case plan . . . release planning, community outreach, use of media, networking and your life as an example exemplifies an extraordinary effort to give back, [sic] demonstrates restoration and evidenced change". On September 6, 2017, they nevertheless concluded, without any basis, that "there is a reasonable probability that you would not live and remain at liberty without again violating the law and that your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law". Defendants Cruse and Drake also cited opposition to Mr. Bartley's release. Their decision, however, failed to even mention that Mr. Bartley was a juvenile at the time of the offense or consider the hallmark features of youth as they relate to culpability or the constitutional relevance of the exceptional evidence of maturity and rehabilitation.

159. On April 9, 2018, Mr. Bartley was granted parole. The factors cited in support of his release include "your age of 17 at the time of the offense including the diminished culpability of youth and the growth and maturity since the time of the offense; your low risk assessment scores; your efforts toward rehabilitation including your receipt of LCTA; your expression of remorse for the victim as well as his family and your efforts to apologize to your victims; your release plans, letters of support and reasonable assurance from your family members, official letters including your attorney's letter; letters from facility personnel, prospective employers and others; commendable behavior reports and letters of commendation received; your parole packet;

sentencing minutes; your programs completions throughout your sentence; good disciplinary and institutional record".

160. These factors were identical to the factors present seven months previously when Defendants concluded in September 2017 that parole should be denied because "there is reasonable probability that you would not live and remain at liberty without again violating the law and that your release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime as to undermine respect for the law". In April 2018, Defendants affirmed that Mr. Bartley's "release should in no way be interpreted as mitigating or discounting the seriousness of [his] actions and the terrible loss of life [he] caused". The only new factor in April 2018 was his status as a named representative in this lawsuit.

161. By the time he was granted release in September 2018, Defendants had denied parole release eight times to Demetrius Bennett, who has been incarcerated 14 years beyond his minimum sentence and has demonstrated growth over his 23 years of incarceration. On September 13, 2017, Defendants Thompson, Agostini and Davis denied Mr. Bennett release to parole supervision stating, without substantiation, that the "panel is not convinced that if released you would live at liberty without once again violating the law or that your release would not so deprecate the offense as to undermine respect for the law". The decision's consideration of youth was to note in passing that Mr. Bennett was "15 years old at the time and [was] following the lead of [his] friends and their uncle".

162. Defendants further denied parole release to Plaintiff Edgardo Lebron ten times. At Mr. Lebron's November 23, 2016 hearing, Defendants found the nature of the crime to be "more compelling" than Mr. Lebron's COMPAS scores, institutional programming, release plans and improved disciplinary record. Notably, however, when Mr. Lebron was granted parole in

August 2018, the only new positive factor in his record was his status as a named representative in this lawsuit.

163. In addition, by the time he was granted release in September 2018, Defendants had denied parole release to Plaintiff Antonio Roman three times despite significant evidence of rehabilitation and maturity. The decision from Mr. Roman's September 20, 2016 hearing focused substantially on the nature of the crime of conviction, rather than his youth at the time of the crime. The Commissioners noted that they had "considered [his] age at the time of the crime and diminished culpability at the time", but nonetheless ultimately denied release, stating that Mr. Roman's "release would be incompatible with the welfare of society and would so deprecate the serious nature of the crime . . . as to undermine respect for the law".

164. In addition, Defendants denied parole release to Plaintiff Dontae Quinones three times despite his demonstrated maturity and rehabilitation. While Defendants briefly referred to Mr. Quinones's age at the time of the offense, Defendants' denial decision from Mr. Quinones's October 4, 2017 hearing focused on the "seriousness of the crime" and concluded that Mr. Quinones's "release would be incompatible with the welfare of society and would so deprecate the seriousness of the instant offense as to undermine respect for the law".

165. Defendants also have denied parole release to Plaintiff Sharod Logan despite his demonstrated maturity and rehabilitation. While, at Mr. Logan's December 19, 2017 hearing, Defendants briefly referred to Mr. Logan's age at the time of the offense, the Commissioners found his disciplinary tickets—the vast majority of which he received when he was initially incarcerated over a decade ago—more compelling than his more recent evidence of maturity and rehabilitation. Ultimately, the Commissioners concluded that Mr. Logan's "release would be

incompatible with the welfare of society and would so deprecate the seriousness of the offense as to undermine respect for the law".

166. As evidenced by their denial of release to the Named Plaintiffs, Defendants continue to deny juvenile lifers release to parole supervision even after they have demonstrated maturity and rehabilitation.

167. Defendants' reliance on the nature of a juvenile crime, prior juvenile record, juvenile disciplinary history, and "official", "community" or victim opposition, to deny release deprives juvenile lifers of the opportunity to obtain release based on demonstrated maturity and rehabilitation. This opportunity is required to bring life with parole sentencing regimes into compliance with the Eighth Amendment's proscription against disproportionate punishment.

C. The Board of Parole willfully violates the rights of juvenile lifers.

168. In 2016, the Third Department of New York State Supreme Court, Appellate Division found the Board of Parole in violation of clearly established law under the Eighth Amendment because, "[t]he Board, as the entity charged with determining whether [Hawkins] will serve a life sentence, was required to consider the significance of [Hawkins's] youth and its attendant circumstances at the time of the commission of the crime before making a parole determination." Hawkins, 140 A.D.3d 34, 36 (3d Dep't 2016).

169. In response to the Hawkins decision and the U.S. Supreme Court decision in Montgomery, the Board eventually gave notice of proposed regulations that reflected Defendants' official position regarding their legal obligations under the Eighth Amendment and the Due Process Clause. Department of Corrections and Community Supervision, Proposed Rulemaking, I.D. No. CCS-39-16-00004-P (Sept. 28, 2016).

170. The proposed regulations provided that an inmate's juvenile status at the time of the crime for which he or she is currently serving an indeterminate life sentence is merely *one of many factors* that the Board must "consider", and continued to permit Defendants to deny parole based solely on their subjective assessment of the crime of conviction. Dep't of Corrections and Community Supervision, Proposed Rulemaking, I.D. No. CCS-39-16-00004-P (Sept. 28, 2016). Numerous comments pointed out to the Board that the proposed regulations were facially inadequate to ensure that the hundreds of juvenile lifers currently incarcerated in DOCCS custody receive a meaningful opportunity for release because the regulations did not require the Board to base its release determination on demonstrated maturity and rehabilitation.

171. Even after the Hawkins decision and the notice of the proposed regulations, but prior to the adoption of the proposed regulations, the Board continued to interpret its power in a manner inconsistent with the constitutional rule. In Mr. Roman's February 2017 administrative appeal decision, the Appeals Unit affirmed the Board's September 2016 denial decision and rejected Mr. Roman's argument that the Board ignored that he was only 17 years old at the time of the crime. The Appeals Unit held that "the Board interview and decision was very much aware of this mandated factor and discussed and reviewed it thoroughly". However, the only discussion of Mr. Roman's age at the time of the crime during the September 2016 interview was the following: "We recognize that 17-year-olds have somewhat of a diminished capacity compared to adults". The parole denial decision merely states that "the panel has considered your young age at the time of the crime and diminished culpability". Furthermore, in Mr. Roman's administrative appeal decision, the Appeals Unit stated the following: "Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. . . . There is no due

process requirement that the Parole Board disclose its release criteria". The Appeals Unit also stated that "[t]he Board may deny parole release without the existence of any aggravating factors, no matter how exemplary the institutional record is".

172. Despite the objections to the proposed regulations, the Board formally adopted these regulations, which became effective on September 27, 2017, without substantive changes and without curing the constitutional defects in them.

173. Subsequent to the adoption of the new regulations, and demonstrating their inadequacy, Plaintiff Carlos Flores was again denied parole based solely on the nature of his crime and without a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Defendants Smith, Crangle and Demosthenes failed to apply the constitutionally mandated standard to the ample evidence of Mr. Flores's rehabilitation and maturation. They ignored the Board's own COMPAS instrument finding Mr. Flores to be a low risk for reoffending; they ignored the fact that he had not had a disciplinary ticket in the past 25 years; and they ignored the fact that he was a 54-year-old man who had served 16 years beyond the minimum term of imprisonment imposed by the sentencing judge in full light of the facts of the crime. Instead, Defendants Smith, Crangle and Demosthenes denied Mr. Flores release on the unsubstantiated formulaic "conclusion" that his "discretionary release at this time, would not be compatible with the welfare of society and would tend to deprecate the seriousness of the instant offense and undermine respect for the law".

174. This decision was administratively appealed on December 15, 2017, with a lengthy submission by counsel for Mr. Flores explaining, yet again, the constitutional standard that the Board must follow when considering the applications for parole by juvenile lifers.

175. On March 6, 2018, the Board decided the administrative appeal. The Parole Board Appeals Unit, including Defendant Chairwoman Stanford, ordered a *de novo* interview on the basis that Commissioners did not explain what "course of conduct, before, during, and after" the crime 36 years ago it found concerning. Notably, it refused to instruct Commissioners that the Eighth Amendment requires Defendants to release Mr. Flores to parole supervision if he has demonstrated maturity and rehabilitation and instead affirmed the unlawful standard under which it had denied Mr. Flores's release stating, in part, that "the applicable principles and factors were discussed and considered by the Board in reaching its determination".

176. Defendants showed similar disregard for their obligations under applicable constitutional law in deciding the administrative appeal of Mr. Bartley's September 6, 2017 denial. On November 7, 2017, counsel submitted a lengthy brief perfecting the appeal identifying the numerous substantive and procedural defects in Defendants' consideration that denied Mr. Bartley a meaningful opportunity for release, including Defendants' failure to render their decision based on Mr. Bartley's demonstrated maturity and rehabilitation. In February 2018, the Appeals Unit, including Defendant Chairwoman Stanford, ordered a new hearing on the sole basis that Defendants failed to seek the recommendation of his trial attorney in advance of the interview in violation of N.Y. Exec. Law § 259-i(2)(c)(A)(vii). The Appeals Unit refused to issue any findings of fact or law that would prevent the same defects from infecting his future interview and the panel's deliberation process.

177. Defendants again demonstrated disregard for their obligations under applicable constitutional law in deciding the administrative appeal of Mr. Delima's August 22, 2017 denial. On March 26, 2018, Mr. Delima's counsel submitted a lengthy brief perfecting the appeal demonstrating that the Board's hearing and denial failed to provide Mr. Delima with a

meaningful opportunity for release and that the Commissioners treated his youthful age as an aggravating factor because COMPAS appears to use his age as the main predictive factor for his high scores. Mr. Delima's counsel demonstrated that Defendants denied parole even though Mr. Delima's crime reflected the transient characteristics of youth and Mr. Delima has subsequently demonstrated his rehabilitation and maturity. Consistent with the Commissioners' interpretation of their obligations under the Eighth Amendment as codified in the current regulations, the Appeals Unit affirmed the decision of the Board in June 2018, concluding that the Board was "aware of his youth and its [sic] transient immaturity". The Appeals Unit held that Commissioners are "entitled to give whatever weight it feels to each factor" and that "denial of parole release primarily because of the severity of the crime is appropriate."

178. Also subsequent to the adoption of the new regulations, and demonstrating the inadequacy of parole hearings, Plaintiff Sharod Logan was denied parole based on his youthful disciplinary record and without a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Defendants Alexander, Berliner and Drake denied parole release to Mr. Logan at his December 19, 2017 hearing despite his current maturity and rehabilitation. Defendants ignored the Board's own COMPAS instrument finding Mr. Logan to be at a low risk for reoffending and that he had demonstrated maturity and rehabilitation. Again, Defendants denied parole with their customary boilerplate language that "there is a reasonable probability thatif [*sic*] released at this time, [Mr. Logan] would not live and remain at liberty without again violating the law", and thus that his "release would be incompatible with the welfare of society" and would "undermine respect for the law".

179. Also subsequent to the adoption of the new regulations, and demonstrating the inadequacy of parole hearings, Plaintiff Dontae Quinones was again denied parole based solely

on the nature of his crime and without a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Defendants Crangle, Coppola and Cruse denied parole release to Mr. Quinones at his October 4, 2017 hearing based on the "seriousness of the crime", rather than his current maturity and rehabilitation. Defendants ignored the Board's own COMPAS instrument finding Mr. Quinones to be at a low risk for reoffending; they ignored the fact that he has not had a disciplinary ticket in several years; and they ignored the fact that he is now a 43-year-old man who has served several years beyond the minimum term of imprisonment imposed by the sentencing judge in full light of the facts of the crime. Instead, Defendants denied parole to Mr. Quinones based on Defendants' customary boilerplate language that release was "incompatible with the welfare of society" and would "undermine respect for the law".

180. Commissioners appear to believe that their obligations under the Eighth Amendment and Hawkins—as codified in the regulations proposed in 2016 and adopted in September 2017 without any substantive changes—are satisfied by merely acknowledging petitioners' age at the time of the crime. In Mr. Quinones's administrative appeal decision, dated February 6, 2018, Defendants held that "[i]t is not improper for the Board to base its decision to deny parole release on the seriousness of the offense(s), nor is the Board required to expressly discuss in its determination each of the factors it considered or to give equal weight to each factor it considered". Moreover, Defendants mistakenly held that "denial of release to community supervision primarily because of the gravity of the inmate's crime is appropriate" and that Eighth Amendment jurisprudence requires Defendants to only "consider" Mr. Quinones's youth at the time of the crime (i.e., Defendants are simply required to acknowledge the chronological fact of age at the time of the crime). Consistent with the Commissioners' interpretation of their obligations under the Eighth Amendment as codified in

the current regulations, the Appeals Unit affirmed the Defendants' hearing and denial decision because Commissioners "discussed and considered" Mr. Quinones's age at the time of the crime.

181. Since Hawkins, a number of New York State courts have found Defendants in violation of their legal obligation to provide persons serving indeterminate life sentences with a meaningful opportunity for release. See, e.g., Martin v. Stanford, 58 Misc. 3d 345 (N.Y. Sup. Ct., Cayuga County 2017); Darshan v. New York State Dep't of Corrs. & Cmty. Supervision, No. 652/2017 (N.Y. Sup. Ct., Dutchess County July 18, 2017); Putland v. New York State Dep't of Corr. & Cmty. Supervision, 158 A.D.3d 633 (2d Dep't 2018); Ruiz v. New York State Div. of Parole, No. 2310-2017 (N.Y. Sup. Ct., Dutchess County Apr. 5, 2018). The plaintiffs in these cases were all released after the court decisions, one after serving decades beyond his minimum sentence.

182. Defendants continue to conduct unlawful hearings and refuse to extend requisite procedural protections necessary to secure Plaintiffs' and Class Members' substantive rights.

D. The Board of Parole's procedures violate the law.

183. The sheer volume of work before Defendants precludes the opportunity for Class Members to be meaningfully heard and to receive decisions rendered based on demonstrated maturity and rehabilitation.

184. Although the State is authorized to staff the Board of Parole with 19 members, it is currently staffed by 14 Commissioners. These 14 Commissioners must conduct approximately 12,000 parole interviews annually, in addition to sitting on appeals panels, staffing subcommittees, conducting victim impact interviews, traveling for interviews and engaging in administrative upkeep.

185. Interview panels consist of two to three Commissioners. Each week, each panel is assigned approximately 40 to 70 interviews, which are usually conducted over only two days—Tuesday and Wednesday—as Mondays are reserved for travel and Fridays are reserved for victim interviews. The majority of interviews are conducted by video conference. This means each panel interviews between 20 and 35 applicants a day.

186. Each of these applicants typically submits supporting materials (a "parole packet"), which include a personal statement, programmatic achievements and letters of support. The parole packet may contain hundreds of pages of material.

187. Defendant Stanford has testified that these parole files and packets are sometimes delivered by prison staff and Offender Rehabilitation Counselors ("ORCs") to the field office where the video conferences take place on Monday, the day before the interviews. She has also testified that Defendants often do not receive the parole files and packets prior to the morning of the interviews.

188. Defendant Stanford has testified that Commissioners typically arrive in the city or town where the video conferencing of the interviews will take place on Monday the day or evening before the interviews, which begin at 8 a.m. the following morning.

189. Once Commissioners arrive in a city on Monday, they check into assigned hotels and, according to Defendant Chairwoman Stanford, they may then review parole files if the files have been delivered, in their hotel rooms, "at their leisure".

190. No regulation or policy *requires* Defendants to read parole materials before conducting an interview and making release decisions, and, according to Defendant Stanford, "not everyone does it".

191. On information and belief, Defendants often see the files for the first time at 8 a.m. on the day of the interviews.

192. The Board divides the weekly interview caseload by the total seated Commissioners to assign a "lead" Commissioner to each case. During the interviews, only the lead Commissioner has a copy of the entire parole file. The full file may contain hundreds of pages of material documenting rehabilitation and reform, including:

- personal statements composed by the parole applicant;
- detailed release plans;
- vocational accomplishments;
- programming completion;
- educational achievements;
- educational transcripts;
- letters from family members showing support;
- letters from those who have had personal contact with the applicant supporting release and describing the reasons why they feel the applicant is safe to release;
- job offers;
- drug and alcohol treatment completion certificates;
- commendable behavior reports;
- prison work assignment assessments; and
- statements of remorse or essays written by the applicant discussing insight into his or her crime.

193. Defendant Stanford has testified that the one or two Commissioners other than the lead Commissioner have only what is called a "book copy", which includes only four things: a condensed version of the Parole Board Report (a one-page sheet consisting primarily of checkboxes with basic information such as the applicant's birth date, crimes of commitment,

whether there are sentencing minutes or not, etc.), the COMPAS report, a modified rap sheet and the applicant's disciplinary record.

194. Defendant Stanford has testified that the "book copy" contains all of the information necessary to the decision and that all other information is "less pertinent".

195. Notably, the "book copy" does not include letters of support, personal statements, commendable behavior reports or any of the most relevant and detailed materials that would demonstrate rehabilitation, remorse, reform and suitability for community reentry.

196. The lead Commissioner typically asks all of the questions in the interview.

197. Although Defendant Stanford testified that interviews typically last 20 minutes, on information and belief, inmates often have less than 10 minutes to make their case for release because the bulk of the "interview" consists of the lead Commissioner recounting the details of the crime; longer interviews are usually provided only where the applicant is represented by counsel or if the prior determination was overturned by a reviewing court.

198. On information and belief, during the interview the other Commissioners are often not listening to the questions and answers during the pending interview, but instead are preparing for subsequent hearings on which they must take the "lead".

199. Despite this lack of materials and information or direct engagement from the non-lead Commissioners in a given interview, each Commissioner on the panel has an equal vote to grant or deny release.

200. On information and belief, outcomes are often predetermined prior to the interview and sometimes decision language is pre-written on a typed form denial. This is a clear violation of the "guarantee against arbitrary and irrational government action", which includes the "right to a hearing before a fact-finder that has not predetermined the outcome of the

hearing". Duffy v. Evans, No. 11 Civ. 7605 JMF, 2012 WL 4327605, at *10 (S.D.N.Y. Sept. 19, 2012).

201. To the extent the decision was not predetermined, the "deliberations" typically last between two to five minutes immediately following the interview and prior to commencing the next interview. The final decision is then read into the record and transcribed by the stenographer.

202. On any given hearing day, a Board of Parole panel will potentially conduct 20 to 35 interviews in less than eight hours. Defendants, therefore, lack the time or inclination to read and evaluate the materials presented to them in the information packets, and routinely show up unprepared for the parole interviews (as occurred in many of the most recent interviews of the Named Plaintiffs).

203. These procedural inadequacies are exacerbated because the Board does not permit counsel to appear or give statements at parole interviews.

i. Commissioners have no training on which to base their decisions and do not solicit expert evaluations of the maturation and rehabilitation of juvenile lifers.

204. On information and belief, 12 of the 14 Defendants have no substantial training in any discipline—such as child psychology, criminology or social work—that would enable them to competently evaluate whether an underlying crime reflected the transient immaturity or youth or instead permanent incorrigibility.

205. Commissioners do not seek input from experts competent to attest to the extent of maturation and rehabilitation of juvenile lifers eligible for parole release.

206. The Board does not make available funds for inmates to retain their own experts—such as psychiatrists, psychologists, social workers or criminologists—who could

opine on whether the underlying crime reflected transient immaturity or permanent incorrigibility and whether the inmate has demonstrated maturity and rehabilitation.

207. The prevalence of mental impairments among juvenile offenders is substantially higher than among adolescents who are not involved with the justice system. See generally, Lee Underwood & Aryssa Washington, Mental Illness and Juvenile Offenders, 13 Int. J. Environ. Res. & Pub. Health 228 (2016). Lack of access to psychological experts significantly raises the risk that a person serving a life sentence for crimes committed as a juvenile is denied parole based on undiagnosed psychiatric or cognitive impairments, which are often untreated in prison. See id.

ii. Commissioners improperly use risk assessment tools.

208. Due process requires, at a minimum, that parole release decisions be made based on accurate information. See, e.g., United States v. Romano, 825 F.2d 725, 728 (2d Cir. 1987) (citing Townsend v. Burke, 334 U.S. 736, 741 (1948)).

209. The Board relies upon a risk and needs tool, called COMPAS, that does not specifically consider the diminished culpability of juveniles and the hallmark features of youth.

210. On information and belief, COMPAS fails to incorporate juvenile rehabilitative capacities into its algorithm.

211. On information and belief, COMPAS sometimes treats youth as an aggravating factor. For example, it counts as negative not having a job prior to incarceration, not being married and the age of first offense, includes juvenile justice encounters at very young ages in the criminal involvement score and uses Plaintiffs' current age to predict risk of felony violence. Defendants' use of COMPAS thereby disadvantages Plaintiffs and Class Members who were sentenced as juveniles to serve longer sentences than their adult counterparts.

212. For example, Mr. Delima was only 13 years old at the time of his crime and has a high "risk of felony violence" score on his COMPAS by virtue of his youth. On information and belief, Mr. Delima's high "risk of felony violence" score relies on criminological actuarial tables that classify individuals within a group and assess risk based on certain shared characteristics with others in that group. On information and belief, one of the most important determinants of this particular score is the inmate's current age. Therefore, very young juvenile offenders, such as Mr. Delima, who have served their minimum sentences and are parole-eligible in their twenties, are statistically predicted to have high risk for felony violence and will be denied parole irrespective of their rehabilitation and reform.

213. COMPAS is a commercial product sold by Northpointe Inc. On information and belief, Defendants either have not asked Northpointe to disclose its secret algorithms or have acquiesced in the refusal by Northpointe to do so. As a result, COMPAS is a black box. Defendants' reliance upon COMPAS, without knowing how or whether COMPAS considers the diminished culpability of juveniles and the hallmark features of youth, fails to comply with Defendants' legal obligations.

214. Plaintiffs and Class Members lack knowledge and are denied information about how their COMPAS scores are calculated, what variables enter into the scores, how variables are weighted in the algorithmic prediction, how the scores can be improved through rehabilitative efforts and whether there is any way to challenge the inclusion of erroneous information. Plaintiffs and Class Members also have no way of knowing or contesting if impermissible factors—such as age, race, family, poverty, or sex—function as aggregating variables in the predictive instrument. On information and belief, Plaintiffs and Class Members are denied a meaningful opportunity for release based on individualized information and personal

rehabilitation and reform because the scores are based on statistical facts about membership in a supposed statistical group.

215. On information and belief, Commissioners do not know or understand how the scores are generated because Northpointe considers COMPAS a proprietary instrument and a trade secret.

216. Defendants have also refused to verify whether the COMPAS tool has been validated for youth or for developmental or mental disabilities, which are both overrepresented in the population of serious juvenile offenders.

iii. Commissioners use prior youthful criminal involvement or disciplinary tickets received as a juvenile as reasons for denying parole to juvenile lifers.

217. On information and belief, Defendants have access to and cite to previous involvement in the juvenile justice system and inmates' disciplinary records from their time in Office of Children and Family Services ("OCSF") facilities as evidence that applicants are unsuitable for release.

218. For example, in the middle of Mr. Bartley's September 6, 2017 parole hearing, Defendant Cruse indicated that he would consider Mr. Bartley's disciplinary tickets in reaching a release decision, and the subsequent denial decision cited to Mr. Bartley's prior youthful criminal conviction as one of the reasons for denying his release. In addition, in upholding Mr. Delima's August 2017 parole denial, the Appeals Unit held that the "Board could cite the appellant's juvenile record in denying parole release" and could "properly rely on appellant's Youthful Offender ('YO') adjudication as one of the reasons for denying him release to parole supervision".

219. Defendants fail to account for youth when considering the institutional disciplinary records of juvenile lifers imprisoned when they were still adolescents and not as able as adults to control impulses, plan alternative courses of action, and otherwise moderate their behavior.

220. On information and belief, Defendants have access to and cite to disciplinary tickets issued to juvenile lifers when they were still juveniles being held at OCSF as the basis to deny parole, without considering the hallmark features of youth or undiagnosed or untreated intellectual disabilities, learning disabilities, attention deficit/hyperactivity disorder, autism spectrum disorder and mental disorders such as post-traumatic-stress disorder, emotional disturbances or childhood depression, all of which are exacerbated in incarcerated youth.

221. All policies, customs and practices associated with denying juvenile lifers a meaningful and realistic opportunity for parole release reflect the official policy of the Board made or acquiesced to by each Defendant. Defendants' actions involve reckless or callous indifference to the rights of Plaintiffs and similarly situated persons serving life sentences for crimes committed as minors.

CLASS ACTION ALLEGATIONS

222. Named Plaintiffs bring this action on behalf of a class consisting of all persons eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to indeterminate life sentences with the possibility of parole in the custody of DOCCS.

223. This action meets the requirements of Fed. R. Civ. P. 23(a) as follows:

i. The proposed class is so numerous that joinder of all of its members is impracticable. In New York, there are approximately 630 persons currently

serving life sentences for offenses they committed between the ages of 13 and 17. (DOCCS Statistics on Under Custody Population as of Jan. 16, 2016, at 1.) Those people are now, or will be in the future, eligible for release to parole supervision. While the exact size of the proposed class may not be known at this time, there can be no doubt that a class action is appropriate to address the systemic issues presented in this case. In addition, joinder of all members of the proposed class is impracticable because membership of the proposed class constantly changes, as additional juveniles receive life sentences with the possibility of parole, some later become parole-eligible, and others are released under parole supervision.

ii. The questions of law and fact presented by the Named Plaintiffs are common to other members of the class. Such questions include, generally, whether, under federal law, Defendants provide a meaningful opportunity for release upon demonstrated rehabilitation and maturity. More specifically:

a. Whether Plaintiffs have been subject to disproportionate punishment and deprived of due process of law by being denied a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation;

b. Whether New York State Executive Law governing parole release violates the Eighth Amendment rights of Class Members to be free of disproportionate punishment;

c. Whether Defendants' policies and practices in conducting parole release interviews and making parole release decisions violate the

Eighth Amendment rights of Class Members to be free of disproportionate punishment;

d. Whether Defendants' policies and practices in conducting parole release interviews and making parole release decisions infringe on the Due Process rights of Class Members;

e. Whether Defendants' parole decisions are rendered based on demonstrated maturity and rehabilitation or are based solely on the nature of a Class Member's crime committed as a juvenile or a Class Member's juvenile history;

f. Whether the volume of work before the Board precludes the opportunity for Class Members to be meaningfully heard;

g. Whether Defendants adequately review the supporting materials in order to enable Class Members to demonstrate maturity and rehabilitation;

h. Whether the limited length of parole interviews conducted by Defendants deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation;

i. Whether denying Class Members the appointment of counsel and opportunity of counsel to be present at interviews deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation and due process of law;

j. Whether denying Class Members the right to see and confront evidence against them deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation and due process of law;

k. Whether Defendants' failure to give Class Members any explanation as to what additional steps they must take to be granted parole deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation;

l. Whether Defendants' reliance on the nature of a juvenile crime, prior juvenile record, juvenile disciplinary history, and "official", "community" or victim opposition, to deny release deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation;

m. Whether Defendants' reliance on a "book copy", rather than an entire parole packet, deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation;

n. Whether Defendants' reliance on COMPAS, which does not specifically consider the diminished culpability of juveniles and the hallmark features of youth, and indeed sometimes treats youth as an aggravating factor, to deny release deprives Class Members of a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation; and

o. Whether Defendants deny parole based on an aggravating factor relating to the crime of conviction that was not an element of the jury verdict, judicial finding or guilty plea convicting Class Members at their original criminal trials.

iii. The violations alleged by Named Plaintiffs are typical of those suffered by the class. The entire class will benefit from the relief sought.

iv. Named Plaintiffs will fairly and adequately protect the interests of the class. Named Plaintiffs have no interests adverse to or in conflict with those of the other Class Members. Plaintiffs' counsel have experience in constitutional litigation. Attorneys Issa Kohler-Hausmann and Avery Gilbert have extensive knowledge about New York's parole practice and procedure. Cravath, Swaine & Moore LLP, co-counsel for Plaintiffs, is a private law firm experienced in major class-action litigation.

v. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class. Fed. R. Civ. P. 23(b)(l)(A).

vi. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate declaratory or injunctive relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(For Violation of the Prohibition Against Cruel and Unusual Punishment in the Eighth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983.)

224. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

225. Defendants, in their official capacity as Commissioners of the Board of Parole, have acted and are acting under color of state law.

226. The Eighth Amendment to the U.S. Constitution forbids a statutory scheme that mandates life imprisonment for juvenile offenders or permits life sentences without providing them with a realistic and meaningful opportunity for release upon demonstrated maturity and rehabilitation.

227. Defendants have denied and continue to deny Plaintiffs, and members of the class, a meaningful opportunity for release by, among other things: (1) failing to base their parole determinations on the demonstrated maturity and rehabilitation of juvenile lifers who are eligible for parole; (2) failing to give juvenile lifers any explanation as to what additional steps they must take to be recommended for parole; (3) denying release to parole supervision based upon crimes juvenile lifers committed decades ago that they cannot change; (4) failing to fully consider, read or attend to an inmate's parole submission; (5) denying juvenile lifers the right to have an attorney present at their interviews and the right to see and confront any evidence against them; and (6) using risk assessment tools that discriminate against youth. With these actions, Defendants have denied Plaintiffs and other members of the class a meaningful and realistic opportunity for release upon their showing of maturity and rehabilitation, in violation of the Eighth Amendment.

228. Plaintiffs Carlos Flores, Lawrence Bartley, Demetrius Bennett, L'Mani Delima, Edgardo Lebron, Antonio Roman, Dontae Quinones and Sharod Logan, and members of the class, have been injured and will likely suffer future injury by Defendants' policies and practices

by being denied their rights to meaningful opportunity for release from imprisonment notwithstanding their youth at the time of their offense and despite their demonstration of maturity and rehabilitation, in violation of the prohibition against cruel and unusual punishments in the Eighth Amendment to the U.S. Constitution, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION
(For Violation of the Due Process Clause in the Fourteenth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983.)

229. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

230. Defendants, in their official capacity as Commissioners of the Board of Parole, have acted and are acting under color of state law.

231. Under established U.S. Supreme Court case law, the Eighth Amendment to the U.S. Constitution confers upon juvenile lifers a legitimate expectancy of parole upon a showing of maturation and rehabilitation. This is a liberty interest protected by the Due Process Clause.

232. In 2011, the New York Legislature amended the Executive Law to mandate that the Board of Parole "establish written procedures" that "shall incorporate risk and needs principles to measure" the rehabilitation of inmates. N.Y. Exec. Law § 259-c(4). The Executive Law, as amended in 2011, provides prisoners with a legitimate expectancy that if they demonstrate rehabilitation and a strong likelihood of future compliance with the law, they will be granted parole. This is a liberty interest protected by the Due Process Clause.

233. In 2017, the Board of Parole amended its regulations to require that its decision-making "shall be guided by risk and needs principles". 9 NYCRR § 8002.2(a). The regulations acknowledge a presumption of release upon rehabilitation (notwithstanding nonbinding

disclaimers in the commentary) by requiring Commissioners to provide nonconclusory individualized reasons based in the record for any departure from the conclusions of a validated risk assessment instrument, but only when that departure is denying release. Id. The regulations also require Commissioners to address all statutory factors in each hearing. Id. § 8002.2(c). The Board of Parole regulations, as amended in 2017, provide prisoners with a legitimate expectation that if they demonstrate rehabilitation and a strong likelihood of future compliance with the law, they will be granted parole. This is a liberty interest protected by the Due Process Clause.

234. Defendants' conduct and actions—including, *inter alia*, regularly failing to read, review and consider extensive evidence submitted to the Board demonstrating low risk to community, rehabilitation and maturity—deny Plaintiffs, and members of the class, due process of law to secure their liberty interest in parole release, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

235. Plaintiffs Carlos Flores, Lawrence Bartley, Demetrius Bennett, L'Mani Delima, Edgardo Lebron, Antonio Roman, Dontae Quinones and Sharod Logan, and members of the class, have been injured and will likely suffer future injury, as a result of Defendants' official policies and regular practices, which fail to adequately distinguish between persons serving life sentences for crimes committed as children and those committed as adults, and Defendants' failure to provide sufficient procedural protections necessary to secure the substantive right to release upon a showing of maturity and reform in violation of the Due Process Clause of the Fourteenth Amendment, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

(For Violation of the Right to a Jury Trial in the Sixth Amendment and the Right to Due Process in the Fourteenth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983.)

236. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

237. Defendants, in their official capacity as Commissioners of the Board of Parole, have acted and are acting under color of state law.

238. Each Plaintiff was, and Class Members were, convicted of, or pleaded guilty to, a crime committed while he or she was a juvenile.

239. Any fact that enhances the penalty to which a criminal defendant may lawfully be sentenced must be found beyond a reasonable doubt or admitted by the criminal defendant. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); Ring v. Arizona, 536 U.S. 584, 604-05 (2002); Blakely v. Washington, 542 U.S. 296, 303-05 (2004); Alleyne v. United States, 570 U.S. 99, 114-15 (2013).

240. A state may impose a life sentence upon a juvenile offender only upon a finding that the defendant is among the "very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility". Montgomery, 136 S. Ct. at 734.

241. Each Plaintiff was, and Class Members were, either convicted without a finding that, or pleaded guilty without pleading to a fact that, Plaintiff's and Class Members' crimes reflected that they were among the rarest juveniles whose crimes reflect permanent incorrigibility.

242. Nor can Defendants deny parole release to juvenile lifers who have demonstrated unmistakable rehabilitation and have completed the statutory minimum term of imprisonment selected by the sentencing judge—a judge with full knowledge of the facts of the offense

imposing a sentence within the range set by the legislature—on the basis of a fact about the crime of commission that was not found beyond a reasonable doubt or admitted by the criminal defendant.

243. Defendants' conduct and actions—including, *inter alia*, taking into account facts that impose greater punishment on the parole applicant than was authorized by a jury verdict, judicial finding or guilty plea—deny Plaintiffs, and members of the class, their right to have only facts found beyond a reasonable doubt or admitted by the criminal defendants expose them to punishment, in violation of the jury trial right of the Sixth Amendment and their right to due process of the Fourteenth Amendment to the U.S. Constitution.

244. Plaintiffs Carlos Flores, Lawrence Bartley, Demetrius Bennett, L'Mani Delima, Edgardo Lebron, Antonio Roman, Dontae Quinones and Sharod Logan, and members of the class, have been injured and will likely suffer future injury, as a result of Defendants' denial of parole release based on an aggravating factor relating to the crime of conviction that was not an element proved beyond a reasonable doubt or admitted by the criminal defendants at their original criminal trial, in violation of their right to a jury trial under the Sixth Amendment and their right to due process under the Fourteenth Amendment to the U.S. Constitution, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

(a) Certify a plaintiff class pursuant to Fed. R. Civ. P. 23(b)(1)(A) and (b)(2).

(b) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants are operating a parole scheme that denies Plaintiffs, and members of the class, a meaningful and realistic

opportunity for release, in violation of the prohibition against cruel and unusual punishment in the Eighth Amendment to the U.S. Constitution;

(c) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants are operating a parole scheme that denies Plaintiffs, and members of the class, a meaningful and realistic opportunity for release, in violation of the Due Process Clause in the Fourteenth Amendment to the U.S. Constitution;

(d) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants are operating a parole scheme that denies Plaintiffs, and members of the class, a meaningful and realistic opportunity for release, in violation of the right to a jury trial in the Sixth Amendment and the right to due process in the Fourteenth Amendment to the U.S. Constitution;

(e) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants must give Plaintiffs, and members of the class, a meaningful and realistic opportunity for release, because otherwise Plaintiffs and members of the class would be serving *de facto* life without parole sentences pursuant to which they have been afforded no meaningful or realistic opportunity for release, in violation of the prohibition against cruel and unusual punishment in the Eighth Amendment to the U.S. Constitution;

(f) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants' reliance upon risk assessment tools that discriminate against those who were juveniles at the time of offense has denied Plaintiffs, and members of the class, a meaningful and realistic opportunity for release upon their showing of rehabilitation and the due process of law to secure their liberty interest in parole release, in violation of the Eighth Amendment to the U.S. Constitution and in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

(g) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants must alter the Board of Parole's operating procedures to enable Defendants to meaningfully analyze the question of whether maturity and rehabilitation have been demonstrated, including by requiring that:

i. The Board provide Class Members with an opportunity to see and confront any evidence used against them;

ii. The Board provide adequate funds for Class Members to obtain counsel in preparation for all parole interviews, including the first parole interview for which juvenile lifers are eligible;

iii. The Board permit counsel to be present and make statements at parole interviews;

iv. The Board provide funds for inmates to present testimony from relevant experts, such as psychologists, psychiatrists, criminologists and/or social workers;

v. The Board provide explanation as to what additional steps Class Members must take to be recommended for parole; and

vi. Defendants be given a caseload that permits them sufficient time to read and evaluate the materials presented by Class Members.

(h) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants' consideration of facts that impose greater punishment on the parole applicant than was authorized by the factfinder at trial or guilty plea constitutes impermissible fact-finding leading to aggravated sentences, in violation of the right to a jury trial in the Sixth Amendment and the right to due process in the Fourteenth Amendment to the U.S. Constitution;

(i) Enter appropriate injunctive relief to effectuate the declaratory relief sought above, including enjoining Defendants immediately to discontinue these practices and to take remedial steps to address their past illegal conduct, by granting Plaintiffs, and members of the class, a meaningful and realistic opportunity to demonstrate their readiness for release;

(j) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants must provide new hearings to all class members using a lawful standard and lawful procedures;

(k) Award Plaintiffs their attorneys' fees and costs incurred in pursuing this action, as provided in 42 U.S.C. § 1988; and

(l) Grant such other and further relief as the Court may deem just and proper.

Dated: September 25, 2018
New York, NY

Respectfully Submitted,

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