IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLES KING, ANDREW BROWN, CHIOKE HILL, THOMAS GILBERT, NELSON MUNIZ, ANTHONY SMITH and ANDRE McGREGG,	)	
Plaintiffs,	)	No. 06 C 204
v.	)	Hon. Robert W. Gettleman
ROGER E. WALKER and JESSE MONTGOMERY,	)	
Defendants.	)	

PLAINTIFFS' PRE-HEARING BRIEF IN SUPPORT
OF THEIR MOTION FOR A RULE TO SHOW CAUSE

INTRODUCTION

The Plaintiffs seek to enforce the Consent Decree in this matter, which was intended by the Parties to protect parolees from arbitrary imprisonment without due process. Specifically, the Decree requires a fair hearing to determine if probable cause exists to detain parolees on an alleged violation of their conditions of parole. *See* Consent Decree (Pls. Ex. A) at Section III, Part 1 ("Defendants shall take the following measures, intended to provide each Parole Violator with an opportunity to have a preliminary parole hearing which protects their due process rights under the Fourteenth Amendment of the United States Constitution . . . ."). An evidentiary hearing in this matter is scheduled for October 30–31, 2013.

The evidence developed in this case—which includes over 340 parole files, testimony from the key stakeholders in the preliminary hearing process, interviews with class members, and expert observation of over 90 hearings—supports only one conclusion: the Defendants are in violation of the *King* Decree and fail to provide parolees the most basic guarantees of due

process. During the preliminary parole process, Defendants do not provide parolees adequate notice of the charges against them. The notice that is provided to parolees is both incomprehensible and inaccurate on two fronts. First, the notice contains misleading information about hearing procedures. Second, the hearing does not contain a full description of the charges alleged against the parolees. What the Defendants refer to as a preliminary parole hearing contains none of the hallmarks of due process. Defendants' policies and practices bar parolees from speaking on their own behalf, calling witnesses, confronting their accusers, and examining the evidence used against them. During the hearing, parolees are forced to make admissions against their interests. King Investigators, whose positions were created by the Decree to protect the rights of parolees, have deteriorated into quasi-prosecutors—they perceive their mission to be ensuring that the hearing officer makes a finding of probable cause. And they are the only individuals who are effectively permitted to provide any evidence at the so-called hearings.

The Defendants' violations of the *King* Decree have inflicted a tremendous toll on the Plaintiff class. As a result of the Defendants' failure to adhere to its obligations, people are ripped away from their families, their communities and their jobs. They are imprisoned for months and sometimes years at a time—often based on a mere unsubstantiated allegation that they committed a new criminal charge or that they violated a non-criminal technical violation of their parole. The protections that were intended for the parolees through the *King* Decree have become a chimera and some provisions of the *King* Decree affirmatively harm class members.

The failures of this Decree to achieve its stated purpose—to protect parolee's due process rights under the Fourteenth Amendment of the United States Constitution during the preliminary parole process—have far reaching consequences beyond the constitutional rights of the Plaintiff class. A preliminary parole hearing is supposed to sift out the meritless alleged parole violations.

In a working system, this process would serve as a control to ensure that people are not needlessly imprisoned. Illinois has one of the most overcrowded prison systems in the country—and approximately 40% of those incarcerated in Illinois prisons are behind bars as a consequence of alleged parole violations. The broken preliminary parole system and the Defendants' violations of the *King* Decree have over-taxed the prison system and placed a tremendous burden on Illinois' taxpayers.

The Plaintiffs seek an order from this Court requiring that the Defendants comply with the Decree and that the Decree fulfills its stated purpose: to ensure that the preliminary parole hearing process comports with the U.S. Constitution. Changed circumstances may require some aspects of the Decree to be modified. "When parties state, as they did here, that a consent decree is designed to achieve a particular result and it fails to obtain that result, that unforeseen failure can be a significant changed circumstance[]." *Northeast Ohio Coalition for the Homeless v. Husted*, No. 2:06-cv-896, 2013 WL 4008758, at *9 (S.D. Ohio 2013); *see also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 393 (1992) ("Under the flexible standard we adopt today, a party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance."). But the Plaintiffs seek no more than what the *King* Decree promises on its face: a preliminary parole hearing process that comports with the U.S. Constitution.

VIOLATIONS OF THE CONSENT DECREE.

I. NOTICE OF CHARGES AND RIGHTS

A. Parolees Receive Inadequate Notice of the Charges Against Them.

The *King* Decree adopts the basic due process protection that parolees receive adequate notice of the charges against them, as required by the U.S. Constitution. *See* Consent Decree

(Pls. Ex. A) at Section III, Part 5(b). Adequate notice includes, at a minimum, "written notice of the claimed violations of parole" and "disclosure to the parolee of evidence against him." *Morrissey* 408 U.S. 471, 488–89 (1972). Thus, the form provided to the parolee notifying him or her of the preliminary hearing "should state what parole violations have been alleged." *Id*. at 487. The Defendants persistently violate these most basic due process rights and deny parolees adequate notice of all the charges and evidence that will leveled against them during the preliminary revocation hearing.

The Parole Violation Report ("PVR") constitutes the only "notice" that is provided to parolees concerning what charges and evidence will be brought against them at their preliminary hearing. *See* Young Report (Pls. Ex. F) at 19–25. Parolees proffer witnesses, obtain documents, and shape their defense based on the information provided them in the PVR. However, as a regular practice, King investigators insert charges and evidence at parolees' preliminary hearings that are not contained in the PVR. They interject "new or additional allegations" that are "outside the []scope of the allegations in the PVR" and "for which the parolee had no notice[.]" *Id*. at 37.

King investigator McCray testified that she brings information pertaining to a new arrest and other technical violations that are not listed in the parole violation report to the attention of the hearing officer during the preliminary hearing. McCray Dep. (Pls. Ex. H) at 53. Moscato stated that she will alert the Hearing Officer to information that is not contained in the PVR in a variety of circumstances: "If I find other arrests, I can bring those up that are in relation to or the same that he was just arrested for. If he hasn't been doing his check-ins or been seen for months." Moscato Dep. (Pls. Ex. L) at 37; s*ee also id*. at 38 (testifying that she will raise any prior arrests occurring in the parole period with the Board.); *see also* James Dep. (Pls. Ex. M-1) at CE 45 (acknowledging he has testified about arrests that were not the subject of the parole

violation). The Prisoner Review Board ("PRB") Hearing Officer, Shunique Joiner, confirmed that King investigators will allege additional parole violations that are not set forth in the PVR against the parolee at the preliminary hearing. *See* Joiner Dep. (Pls. Ex. I) at 71–72. In fact, she testified that the purpose of the King investigator is "[t]o provide any additional information that may not actually be in the [violation] report[.]" *Id*. at 39.

During their investigations, King investigators gather information from various electronic databases, which track parolees' court dates, criminal charges, arrests, and compliance with the terms of their parole. Moscato Dep. (Pls. Ex. L) at 12–15; James Dep. (Pls. Ex. M) at 26–27, 52; McCray Dep. (Pls. Ex. H) at 11–12, 45. They utilize these same databases to gather information pertaining to additional criminal charges and evidence that is not contained in the parolee's PVR, which they then bring to the attention of the Hearing Officer; parolees do not have access to these databases. *See* Moscato Dep. (Pls. Ex. L) at 51 (parolees do not have access to investigative databases, which includes information pertaining to prior arrests that could be introduced at the hearings); McCray Dep. (Pls. Ex. H) at 51; James Dep. (Pls. Ex. M) at 65. As a result, parolees are unable to prepare for or contest the additional violations lodged against them for the first time at the preliminary hearing, and which may be used to send them to the Board for a final revocation hearing. *See* Joiner Dep. (Pls. Ex. I) at 104–105.

A quintessential tenet of due process is the right to have notice of the charges and evidence against you. *See* Consent Decree (Pls. Ex. A) at Section III, Part 5(b). As a result of the King investigators' practice of introducing outside information into the hearings and the Hearing Officer's willingness to consider this information in her determinations of probable cause, parolees are regularly denied this most basic of protections.

B. The Notice of Rights and Parole Violation Report Are Incomprehensible.

Most commonly, parolees are personally served their parole papers by Illinois Department of Corrections ("IDOC") employees—all of whom are parole agents—in the basement of Division 5 of Cook County Jail within approximately one day of being arrested on a parole warrant. *See* Young Report (Pls. Ex. F) at 17. The service processers provide parolees with their Parole Violation Report, which includes a section titled "Notice of Charges of Alleged Parole or Mandatory Supervised Release," and lists a set of 16 potential violations that the parole agent checks off as applicable. The Notice of Charges does not contain any charge-specific detail. For instance, where the parolee is alleged to have committed a new crime, the Notice of Charges does not actually state which criminal statute the parolee is alleged to have violated—it states, only, that the parolee violated condition number one (pertaining to violation of a criminal statute). *See* Pls. Ex. C; Young Report (Pls. Ex. F) at 20–21. The notice certainly does not serve as "a bill of particulars." *See* Young Report (Pls. Ex. F) at 20. Furthermore, the Notice does not provide basic information concerning the substance of the violation, including the time of day that the violation occurred or the identity of the third-party complainant whose report led to the parolee's arrest and violation, a particularly common issue in domestic violence cases, which constitute a significant percentage of the Hearing Officer's docket. *See id.* at 19–20; Pls. Summary of Evidence (Ex. E).

The notice itself is also difficult to read and comprehend, particularly for the average parolee. The PVR contains dense paragraphs, and is riddled with abbreviations and less-than-perfect syntax, making it difficult to understand for a parolee who reads poorly, is cognitively impaired or is not English-literate. *See* Young Report (Pls. Ex. F) at 20. The PVR "has an average grade level equivalent of 12.5. This means that a reader would require having an educational equivalent to [a] student midway through his or her senior year in high school to be

able to read the form." Krezmien Dec. (Pls. Ex. V) at 5. In contrast, adult prisoners have, on average, middle school-level reading comprehension skills. Krezmien Dec. (Pls. Ex. V) at 8.

The Notice of Charges also contains a section that requires parolees to waive, postpone, or schedule their preliminary hearing. *See* Pls. Ex. C. The servers, as a matter of IDOC policy, do not explain the consequences of waiving or postponing the hearing or answer questions parolees may have about the preliminary revocation process. *See* Norton Dep. (Pls. Ex. J) at 43–44; Shipinski Dep. (Pls. Ex. K) at 68–69. Based on the complexity of the form and the reading comprehension of the average person in prison, as well as the circumstances in which the parolees must read these documents, most parolees cannot understand these options or comprehend the consequences of waiving or postponing their hearings. Krezmien Dec. (Pls. Ex. V) at 9-10; *see also* Brandy Bruce Dec. (Pls. Ex. R) at 1–2 ("I didn't understand the papers. I didn't understand the waive box or what the hearings were. I asked the lady who gave me my papers to explain what they meant. She said couldn't do that. She said I had to read it on my own. I didn't read the papers because they were too long and confusing."); *see also* Young Report (Pls. Ex. F) at 24 (describing interview with parolee who had no concept of what it meant to "waive" his preliminary hearing). If a parolee voices confusion about the process, the servers are trained merely to direct the parolees to "reread the document that's been provided . . . and make the best decision you can." Shipinski Dep. (Pls. Ex. K) at 69.

In addition to the PVR and Notice of Charges, parolees are also served with the Notice of Rights attached to the *King* Decree. This document informs parolees, among other things, that they have the following rights: (1) to appear at the hearing and speak on their own behalf; (2) to hire an attorney; (3) to present written evidence; (4) to call and cross-examine witnesses; (5) to receive a written decision of whether probable cause exists with 72 hours of the hearing; and (6)

to request that the hearing officer recommend to the PRB that the parole violation warrant be withdrawn pending a final parole revocation hearing. *See* Pls. Ex. B. The Notice of Rights also signals parolees to provide the contact information for the witnesses they want to appear on their behalf at the preliminary hearing. *Id*.

Like the PVR, the Notice of Rights is a dense document, requiring a college-level education for full comprehension. *See* Krezmien Dec. (Pls. Ex. V) at 4 (The Notice of Rights "has an average grade level equivalent of 15.0. This means that a reader would require having an education equivalent to an incoming senior in college to be able to read the form."). By way of comparison, the average grade level for the novel Tom Sawyer is 5.6 and the average grade level for the Chicago Tribune is 8.7. *Id*. at 7. As a result of the service procedures, which prevent processers from explaining complicated information to parolees, parolees often do not understand either the charges against them or their rights under the *King* Decree. *See* Young Report (Pls. Ex. F) at 22–26. This problem is particularly evident in the context of parolees' right to call witnesses; many parolees do not realize they are entitled to ask that witnesses appear on their behalf at the preliminary hearing. *See* Brandy Bruce Dec. (Pls. Ex. R) at 2; Ronnie Walker Dec. (Pls. Ex. Q) at 2. Moreover, even those parolees who do know they can call witnesses are unable to do so because they do not have their witness information memorized so as to be able to provide it to the service processer at the time of service. *See* Young Report (Pls. Ex. F) at 17-18, 21-22. Parolees cannot provide witness information after their brief interaction with the service processer. *See* Shipinski Dep. (Pls. Ex. K) at 71 ("I don't think that they can alter the [witness] form once it's been signed and turned over.").

Because many parolees cannot comprehend the complex notice provided to them, and because the IDOC servers are barred from explaining or interpreting these forms, parolees are

unable to navigate the parole process, effectively defend themselves on the charges, and take advantage of the rights guaranteed to them by the *King* Decree. The Plaintiffs recognize that the proposed notice form was originally agreed to by the parties. But this fact should not bar modification now that the form has proven unworkable and unable to fulfill its intended purpose. "Modification is [] appropriate when a decree proves to be unworkable because of unforeseen obstacles[.]" *Rufo*, 502 U.S. at 384.

II. INVESTIGATION INTO THE ALLEGED VIOLATION

A. King Investigators Do Not Investigate the "Facts and Circumstances" of the Alleged Parole Violation.

The King Investigators were "an innovation introduced" by the *King* Decree (*see* Young Report (Pls. Ex. F) at 8), which states that a King investigation "shall be defined as an investigation conducted by an employee or agent of the Illinois Department of Corrections into the facts and circumstances surrounding the Parole Violator's alleged violation." Consent Decree (Pls. Ex. A) at Section II-A, Part 4. It states that the investigation "shall include, at a minimum, a review of the police report and any supporting documentation and an interview of the arresting officer(s)." *Id.* King Investigators are assigned "to obtain information from which the Hearing Officer could independently determine the reliability and trustworthiness of police reports . . . ." Young Report (Pls. Ex. F) at 8. "In lieu of calling police officers to testify in person, the parties and court agreed that the King Investigators would verify information in police reports, inquire past the police reports and. . . amplify or confirm relevant information about the alleged violation or the parolees who appeared for preliminary parole revocation hearings." *Id.*

Currently, King investigators make no such inquiry "past the police reports" or otherwise investigate the "facts and circumstances" surrounding the alleged violation beyond what is minimally required by the Decree. The minimum requirements have become the maximum

investigation performed by these IDOC employees. However the minimum requirements are not sufficient to protect parolees' due process rights to a fair hearing.

Mr. Young concluded that the King investigators' testimony merely "repeat[ed] what the police offer told the King investigator over the telephone, quite possibly while the police officer was reading from his or her own arrest report." *Id.* at 47. The investigators never "spoke directly to witnesses or complainants to amplify or verify information provided . . . by the police. . . .[or] pursued incomplete information, such as the results of drug or forensic tests or the reason that a complaining witness failed to appear in court." *Id.* The King investigators did not "refer to a single supporting document, apart from information and reports from parole agents that are apparently available on computers in the hearing locations or in IDOC offices." *Id.*

Mr. Young's findings are bolstered by the testimony of the King investigators themselves, who acknowledge they do not interview witnesses listed in the arrest report, PVR or by the parolee in their Notice of Rights, or interview the parolee himself about the alleged violation. *See* Moscato Dep. (Pls. Ex. L) at 32–33 (stating that she did not conduct such interviews because "[i]t's not my job description."); James Dep. (Pls. Ex. M) at 33–34 ("That's not the training we have been through. That's not what I do as an investigator."); McCray Dep. (Pls. Ex. H) at 40–41 (same). The investigators do not conduct these interviews even when a third-party complaint, for instance, by a victim alleging domestic violence, serves as the entire basis of the alleged violation. *See* James Dep. (Pls. Ex. M) at 40–41 ("My training did not consist of doing interviews with those individuals."); Moscato Dep. (Pls. Ex. L) at 31 (testifying that she "never" interviews the alleged victim in domestic violence cases).

The King investigators perceive that their function is to confirm the accounts provided by the parole agents and police officers by collecting a limited set of documents relating to the

alleged violation (or prior violations), namely the PVR and arrest report, and speaking to the officers whose reports serve as the basis for the violation. *See* Moscato Dep. (Pls. Ex. L) at 12–13, 23–25, 33–35. The parole agents and police officers inevitably stand by their reports. *Id*. at 24, 28; *see also* James Dep. (Pls. Ex. M) at 19–20. King investigators do not assess the credibility of witnesses, including third party witnesses, the arresting officer, or violating parole agent. *See* Moscato Dep. (Pls. Ex. L) at 28–29 ("That's not my job"); James Dep. (Pls. Ex. M) at 45 ("Q. So your interviews [with police and parole agents] are to confirm that the paperwork is correct? A. Correct."). To the contrary, the King Investigators testified that they considered it their job to gather information enabling the Hearing Officer to find probable cause. Moscato Dep. (Pls. Ex. L) at 48; Young Report (Pls. Ex. F) at 48; *see also* Section I, Part A, *supra*.

B. The King Investigators Do Not Assist the Hearing Officer.

Because of the investigators' failure to conduct any semblance of an actual investigation into the facts and circumstances surrounding the alleged violation, they are not perceived by either the Hearing Officer, parolees, or IDOC staff as serving a useful purpose in the preliminary hearing process. *See* Joiner Dep. (Pls. Ex. I) at 39–40 (Q. And does the King investigator testimony help you make a probable cause determination? A. No); Ronnie Walker Dec. (Pls. Ex. Q) at 2 ("The investigator doesn't investigate anything. He went off what the police report said."); Shipinski Dep. (Pls. Ex. K) at 43-44 ("Q. "[H]ow can [the King investigators] verify the facts of the arrest the arrest report when the officer didn't witness the alleged violation? A. They can't. They can only speak to the person who is filling out the arrest report.").

The King investigators have clearly failed to provide any protection to the Plaintiff class. To the contrary, this provision of the Decree has functioned to affirmative harm parolees, as

described above. As a result, the provision of the Decree governing King investigators must be modified in order to prevent further harm to the Plaintiff class.

III. PRELIMINARY PAROLE REVOCATION HEARING

The underlying purpose of the Decree is to ensure that the Plaintiff class receives a fair and just preliminary parole hearing. *See* Consent Decree (Pls. Ex. A) at Section III, Part 1. Such proceedings are currently not taking place.

A. The Hearing Officer Is Not An Independent and Objective Fact-Finder.

The Hearing Officer does not use her power "to exercise independent judgment and a fair consideration of evidence." Young Report (Pls. Ex. F) at 2. On the contrary, in a significant percentage of cases, the Hearing Officer fails to conduct any kind of examination into the circumstances surrounding the alleged violation, effectively resulting in the systematic denial of a right to a preliminary hearing for scores of parolees. *Id*. at 9–10. The Hearing Officer has enters automatic findings of probable cause in set categories of cases, including where parolees are charged with domestic violence offenses or with being "AWOL" (out of contact with his parole officer). *See* Young Report (Pls. Ex. F) at 11–12. Such cases comprised at least 28% of those observed by Mr. Young. *See* Young Report (Pls. Ex. F) at 14. Automatic probable cause findings were entered even where the underlying domestic battery charge had been dismissed by the criminal court. *See* Pls. Summary of Evidence (Ex. E); Young Report (Pls. Ex. F) at 11–12; Eric Delgadillo Dec. (Pls. Ex. P); Frankie Rushing Dec. (Pls. Ex. N).

In this same vein, the Hearing Officer testified that she entered findings of probable cause—even in cases where she did not believe probable cause existed—if she determined that the parolee presented a public safety concern. *See* Joiner Dep. (Pls. Ex. I) at 103–104. ("Q. So does that mean that people can get sent to the Board because of a public safety concern even if

there's not probable cause to believe they committed the alleged parole violation? A. Yes."). In making this safety determination, the Hearing Officer stated that she reviews the violation report and considers the parolees' "other arrests" and history of parole compliance, even if this information does not serve as the basis of the alleged parole violation. *Id.* at 104–105; *see also* Section I, Part A, *supra.* Parolees are not notified that they could be subject to a final revocation hearing based on the Hearing Officer's determination that they constitute a public safety risk. Nor is any such standard sanctioned by the *King* Decree.

B. Parolees Do Not Have the Ability to Present or Cross-Examine Witnesses.

Contrary to what is contained in the Notice of Rights (Pls. Ex. B), parolees neither have the ability to present witnesses on their behalf nor confront adverse witnesses at their preliminary hearing. Mr. Young reports that "the Notice of Rights is misleading because, contrary to the assurances and directions it provides parolees, there is no mechanism in place by which witnesses are notified, instructed on how to attend, or extended an opportunity to participate by telephone or video in preliminary hearings." Young Report (Pls. Ex. F) at 40. He "saw no evidence of equipment or accommodations that would be necessary to support participation in person, by teleconference, or by video conference at the Cook County jail or at the NRC." *Id.* at 40–41. And during the period of time he observed the hearings at both the NRC and Cook County, Mr. Young did not see a single witness appear on behalf of the parolee or observe the Hearing Officer inquire whether the parolee had witnesses to present. *Id.* at 41. The absence of live witness testimony in preliminary hearings was undisputed by each of the witnesses who testified in this case, despite the fact that the Hearing Officer estimated that at least 30% of parolees list witnesses on their Notice of Rights, indicating they wanted witnesses to appear at the hearing. Joiner Dep. (Pls. Ex. I) at 33; Young Report (Pls. Ex. F) at 41; *see also* James Dep.

(Pls. Ex. M) at 60 (testifying that in the five years he has served as a King investigator, he has never seen a witness testify in person or over the phone).

The Hearing Officer acknowledged that she has the responsibility to call the witnesses the parolee indicates he would like to present at the hearing. *See* Joiner Dep. (Pls. Ex. I) at 21. However, she conducts these phone calls outside the presence of the parolee, prior to the hearing, and without giving the parolee the opportunity to ask questions of the witness. *See id*. at 22–23. The witnesses are not under oath during these informal conversations with the Hearing Officer, and these conversations are not transcribed. *See id*. at 25–26; *see also* Young Report (Pls. Ex. F) at Executive Summary iii-iv. The IDOC prohibits witnesses from testifying in the presence of the parolee during the preliminary hearings that take place at the NRC. *See* Joiner Dep. (Pls. Ex. I) at 26–27; Shipinski Dep. (Pls. Ex. K) at 79. The Hearing Officer also testified that, though she has the ability to have witnesses call in by telephone to the hearing, she never uses this procedure. Joiner Dep. (Pls. Ex. I) at 29–30 (stating that she has "never had that to happen.").

In sum, the Defendants fail to allow witness testimony on the record and in the presence of the parolee, despite the fact that the Notice of Rights explicitly provides parolees with the right "to present witnesses at the hearing" and though "some of the witnesses would almost certainly have had an impact favorable to the parolee had they been called to testify in a hearing held for the purpose of determining probable cause." Consent Decree (Pls. Ex. A) at Section III, Part 5(b); Young Report (Pls. Ex. F) at 41 (describing cases).

Parolees are also hindered in their ability to cross-examine adverse witnesses. *See Morrissey*, 408 U.S. at 489 (minimum due process requires "the right to confront and cross-examine adverse witnesses"). Many of the witnesses parolees list on the Notice of Rights are complaining or accusing witnesses, who the parolee wishes to confront at his or her hearing. *See*

Young Report (Pls. Ex. F) at 44. As a result of the practices of the Hearing Officer and the policies of the IDOC, the parolee never has the opportunity to confront his or her accuser. And because the evidence presented against the parolees is limited solely to the testimony of the King investigator, who has not conducted any real investigation into the violation, and the documents presented at the hearing (the PVR and arrest report), parolees are unable to cross-examine the witnesses against them, as provided by the Decree. *See* Section III, Part 5(f).

C. Written Evidence Tendered by Parolees Is Not Considered by the Hearing Officer.

The Decree provides that parolees may "present written evidence to the Hearing Officer[.]" Consent Decree (Pls. Ex. A) at Section III, Part 5(g). Parolees have the right to bring written documents into the hearings; however, the Hearing Officer does not read the documents, consider them in her determination of probable cause, or enter them into the record. *See* Young Report (Pls. Ex. F) at 40. When parolees do present such documents, the Hearing Officer generally returns them to the parolee at the conclusion of the hearing, so that they do not become part of the official record transmitted to the Board. *See id*. Consequently, parolees are essentially prevented from presenting evidence for consideration to the Hearing Officer.

D. Parolees Are Unable to Effectively Speak On Their Own Behalf.

As provided in the Notice of Rights, parolees have the right to appear and speak on their behalf at the preliminary parole hearing. *See Morrissey*, 408 U.S. at 487. However, parolees are incapable of effectively speaking on their own behalf at the preliminary hearings for two reasons. First, the hearing structure does not enable them to present a defense. During the hearings, the Hearing Officer does not cue the parolee as to when he can make a statement, question the King investigator, rebut the statement of the investigator, or present argument. *See* Young Report (Pls. Ex. F) at 36. King investigators frequently interject additional evidence against parolees

throughout the hearing, including while parolees are attempting to present their defense. *See id.* at 35–36. The Hearing Officer regularly interrupts parolees to ask questions unrelated to the substance of the King investigator's testimony or to the underlying violation. *See id.* The "Hearing Officer's and the King Officer's interruptions invariably had the effect of derailing whatever factual defense to the principle allegation the parolee was asserting." *Id.* at 37.

Second, parolees are forced to incriminate themselves during the proceedings. In the course of a given hearing, the Hearing Officer consistently asks parolees "what happened?" or "what do you have to say?"; yet she does not advise parolees of their right to remain silent. *Id.* at 36; *see also* Joiner Dep. (Pls. Ex. I) at 68 (testifying that she does not tell parolees that they do not have to answer her questions during the hearing). Parolees, who do not understand that what they say at their hearing may be used to find probable cause and eventually violate their parole, frequently make admissions against interest during the hearing. Young Report (Pls. Ex. F) at 37.

The lack of structure at these hearings, in conjunction with the fact that parolees are not warned that their admissions may be used against them, undermines their ability to present a defense and violates their right to speak on their own behalf.

E. The Preliminary Hearing Locations Are Not Fit for Quasi-Judicial Proceedings.

Each of the witnesses deposed in this matter testified that the location and physical conditions of the preliminary hearings, particularly those held at Cook County Jail—in a tunnel of the basement of Division Five—are not suitable for the conduct of quasi-judicial hearings, the purpose of which are to determine parolees' rights to liberty. *See* Young Report (Pls. Ex. F) at 27; Norton Dep. (Pls. Ex. J) at 57 (testifying that he would prefer to serve parolees where there were not so many interruptions); Moscato Dep. (Pls. Ex. L) at 63–64 (testifying that the hearing location at Cook County Jail was "very loud" and that it was hard to hear what was going on in

the hearings); James Dep. (Pls. Ex. M) at 77–78 (stating that the Cook County jail location is "not the optimum location to hold a hearing" because "[i]t's busy" and "noisy"); Joiner Dep. (Pls. Ex. I) at 58 (affirming that the noise in the tunnel is so loud that it disrupts the hearings). Both the jail and NRC lack the technological equipment necessary to fulfill the due process guarantees set forth in the Notice of Rights. Neither location has telephone or speakerphone capabilities suitable for outside witness participation, neither has more than one desktop computer or photocopy equipment, and neither has equipment that could be used to take witness testimony *via* videoconference. *See* Young Report (Pls. Ex. F) at 30. The physical location of the hearings wholly prevents the fair presentation and appraisal of evidence.

F. Parolees Housed at the NRC Are Prevented From Retaining Counsel.

The Decree states in plain language that parolees "shall have the right to retain counsel at both the preliminary and the final parole revocation hearings[.]" Section III, Part 5(h). Many of the parolees subject to the *King* Decree are in custody at the NRC, a maximum-security prison where the inmates are held on virtual lockdown 7 days a week. *See* Young Report (Pls. Ex. F) at 34–35. Because of these conditions, parolees are unable to contact their attorneys (if they have them), witnesses or family members to aid in their defense at the preliminary hearing: *Id*. (citation omitted); *see also* Keith Brown Dec. (Pls. Ex. T); Enos DiMarea Dec. (Pls. Ex. S).

G. Parolees Have No Opportunity to Request the Withdrawal of the Parole Hold.

Parolees have the right to ask that the Hearing Officer recommend to the Prisoner Review Board that their parole hold be lifted or withdrawn and that they be released on "bond" pending the final revocation hearing, based on evidence adduced at the preliminary hearing, as set forth in the Consent Decree entered in *Faheem-El v. Klincar*, Case No. 84 C 2561 (N.D. Ill.). *See* Young Report (Pls. Ex. F) at 49–50. The *King* Notice of Rights partially encapsulates this right:

> If probable cause is found at the Preliminary Parole Revocation Hearing, you may request that the hearing officer recommend to the Prisoner Review Board that the parole violation warrant be withdrawn pending a final parole revocation hearing. Withdrawal of the parole violation warrant would allow you to post bond if bond had been set by a criminal court judge in connection with the new criminal charges issued against you. You may request that the hearing officer recommend to the IPRB that the warrant be withdrawn pending a final revocation hearing by marking the appropriate box on the Parole Board order and return [sic] it to the PRB at the address provided on the order.

Pls. Ex. B.

Currently, there is no such box on the documents that parolees receive following the preliminary hearing that they can mark to request that their parole hold be lifted. In any event, the Hearing Officer "simply den[ies] or ignore[s] requests that [she] recommend the full Board withdraw the warrant issued in the parole revocation case." Young Report (Pls. Ex. F) at 49. When parolees request that the Hearing Officer recommend that their parole hold be lifted, the Hearing Officer "denie[s] any responsibility or authority [to make this recommendation], [does] not invoke a hearing, adduce[s] no evidence and [makes] no findings or recommendations." *Id*. The Hearing Officer does not instruct parolees to submit their own request to the PRB, as set forth in the Notice of Rights. *Id*.

Rather, if a parolee requests bond or a lifting of the parole hold, the Hearing Officer informs them that "if they have an attorney…to have the attorney [] contact the chairman of the Board." Joiner Dep. (Pls. Ex. I) at 74–75. Joiner testified that she herself does not have the power to make the recommendation to the Board and she has never held any kind of hearing, as prescribed by *Faheem-El*, to determine whether lifting the parole hold is appropriate in a particular case. *Id*. at 75. She stated that if parolees do not have private attorneys—the vast majority of the parolees in Cook County (*see* Young Report (Pls. Ex. F) at 34)—then they are not eligible for bond. Joiner Dep. (Pls. Ex. I) at 75–76. Joiner's testimony is supported by the declarations of parolees. *See* Enos DiMarea Dec. (Pls. Ex. S) (stating that the Hearing Officer

informed him that his bond could not be lifted unless he had a private attorney); *see also* Keith Brown Dec. (Pls. Ex. T); Christopher Lukes Dec. (Pls. Ex. U). As a result, parolees are categorically denied bond pending their final revocation hearing, in violation of *Faheem-El*, and in contravention to the procedure proscribed by the *King* Notice of Rights.

IV. POST-HEARING RECORD

A. The Hearing Officer Does Not Create an Adequate Record of "Written Findings."

Under the Decree, the Hearing Officer is tasked with creating a record of the hearing that includes "written findings." Consent Decree (Pls. Ex. A) at Section III, Parts 5(i) and 6; *see also Morrissey*, 408 U.S. at 487. These findings, referred to as a hearing report, are provided to both the parolee and the Prisoner Review Board at the conclusion of the preliminary hearing, and contain the following elements: "a list of witnesses and documents presented"; whether the Hearing Officer found probable cause, no probable cause, or continued the hearing; and "a summary of evidence presented and the basis for finding." *See* Pls. Ex. D.

The current reports drafted by the Hearing Officer "provide[] nothing that explain[s] the basis for the Hearing Officer's finding of probable cause other than an abbreviated mention of police reports and a note that the King investigator testified to speaking by telephone with a police officer on a certain date." Young Report (Pls. Ex. F) at Executive Summary iv. Mr. Young noted that he had not "seen a Report of Finding that alludes in any way to the response of the parolee or the evidence given in support of the parolee's position." *Id*. at 48. Instead, the majority of the reports cite the abbreviations PVR (Parole Violation Report), NOC (Notice of Charges) and/or CDISPO (Court Disposition) as the sole evidence supporting probable cause. *See* Pls. Ex. D; *see also* Young Report (Pls. Ex. F) at 48. Thus, in many cases, the notice of the alleged violation is listed by the Hearing Officer as the primary evidence of that violation.

The "record, as it is now constituted, is inadequate to the task of gathering and preserving live testimony for ultimate use by the parole board at the full hearing." Young Report (Pls. Ex. F) at 49. The parolee is also inadequately notified as to the basis for the finding of probable cause, so as to be able to shape his defense at the final hearing. *Id.* Due to the lack of information and reliance on abbreviations and shorthand in these hearing reports, the written record does not serve its intended purpose, as conceived of by *Morrissey* and the *King* Decree.

CONCLUSION

The Consent Decree entered in *King v. Walker* guarantees explicit rights in the preliminary hearing process to Cook County parolees facing revocation. The evidence developed in this case provide compelling evidence that the Defendants are failing to ensure these rights and thus are violating key components of the King Decree.

WHEREFORE, Plaintiffs seek a systematic remedy from the Court, requiring that the Defendants be mandated to comply with the provisions of the Consent Decree and the attendant Notice of Rights entered in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document upon all persons who have filed appearances in this case via the Court's CM/ECF system on October 22, 2013.

/s/ Alexa Van Brunt

SERVICE LIST

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