

not deprived of their liberty without appropriate procedural protections. Unfortunately, the entry of the decree has not produced the intended effects. The Defendants and coordinating state agencies are violating the Court's Consent Decree and continuing to act in violation of Illinois state law and the U.S. Constitution in their administration of the parole revocation process. As a result, individuals accused of violating their parole languish behind bars for weeks or sometimes even months at a time without any hearing or inquiry into the legality of their detention. This motion asks the Court to issue a rule to show cause against the named defendants directing them to appear at an evidentiary hearing and show cause why they are not in violation of the Consent Decree.

FACTUAL BACKGROUND

3. The Court's January 26, 2007 Final Consent Decree, attached as Exhibit A, governs the rights of all "Parole Violators," meaning any person "who is on parole and who is taken into or being held in custody for an alleged parole violation in Cook County, pursuant to a parole violation warrant issued by the Illinois Department of Corrections[.]" Ex. A at Section II, part A, subpart 1. The Decree was signed by the Plaintiffs—four named class representatives acting on behalf of the class of Cook County parolees—as well as Defendant Roger Walker, the Director of the Illinois Department of Corrections (hereinafter, IDOC), and Defendant Jesse Montgomery, the Deputy Director for Parole of the IDOC.

4. The Plaintiffs initiated the action on January 13, 2006. Shortly thereafter, on January 24, the Plaintiffs moved for a preliminary injunction. In an order dated May 8, 2006, this Court certified a class of "Cook County Parolees who have been or will be arrested for parole violations in Cook County, Illinois and who will be a) taken into custody at Cook County Jail; b) transferred from Cook County Jail within 10 days without a preliminary parole revocation

hearing; c) transferred from the Cook County Jail to the IDOC; and d) held without a preliminary parole revocation hearing for more than 10 days.”

5. On May 8, 2006, the Court also granted the Plaintiffs’ motion for a preliminary injunction, finding that the class members have a constitutional right to a prompt, preliminary revocation hearing, which includes a right to confront and cross-examine persons who have provided testimony or evidence that could be used to revoke parole. The Court concluded that the Defendants were violating these rights.

6. The Consent Decree attempted to remedy the systematic violations of parolees’ rights during preliminary parole revocation hearings—the purpose of which is to determine whether there is probable cause to hold the parolee in custody on the IDOC warrant—by imposing a variety of continuing obligations concerning the procedural rights of parolees in these hearings, both at Cook County and IDOC facilities.¹ These obligations fall into two overarching categories.

7. First, the Defendants are required to distribute a “Notice of Rights” to all parole violators “within a reasonable time following their apprehension, to provide them with the ability to either waive their preliminary hearing or have it held within 10 business days.” Ex. A at Section III, part 3. Second, the Defendants, acting in conjunction with “the Illinois Prisoner Review Board and other appropriate state agencies,” are to ensure “that Parole Violators receive a preliminary parole revocation hearing which protects their due process rights under the

¹ As the Court is aware, parole revocation takes place in two stages: (1) the preliminary parole revocation hearing, which is in the nature of a probable cause hearing; and (2) the final hearing, at which the parole authorities must establish the existence of a parole violation by a preponderance of the evidence. *See generally Morrissey v. Brewer*, 408 U.S. 471 (1972); *see also People v. Crowell*, 53 Ill.2d 447, 451 (1973). For the most part, the Consent Decree only addressed the procedural requirements for the preliminary hearing.

Fourteenth Amendment of the United States Constitution,” as defined by *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Id.* at Section III, part 5.

8. Under the first category, the Notice of Rights, attached as Exhibit B, informs parolees that, among other things, they are entitled to the following in the parole process: the right to a timely preliminary hearing; the right to retain an attorney to represent them in the hearing; the right to appear at the hearing and testify on their own behalf; the right to present and cross-examine witnesses at the hearing; and the right to a written decision on whether probable cause exists within 72 hours of the hearing. The Notice also informs parolees that the IDOC retains the burden of establishing probable cause, and that the IDOC is to assign a so-called “King investigator” to conduct an investigation into the circumstances surrounding the arrest or alleged parole violation. The Decree requires all parolees’ to sign the Notice acknowledging they received the document prior to the preliminary hearing.

9. Under the second category (and in accordance with the Notice of Rights), Section III, part 5 of the Decree also establishes specific due process requirements for the protection of parolees facing preliminary hearings. These requirements include the following:

- Assigning a hearing officer, under 730 ILCS 5/3-3-9, who is not an IDOC employee or agent;
- Providing any parolee who does not waive the preliminary hearing with written instructions for presenting witness testimony at the hearing;
- For every parolee who does not waive a preliminary hearing, assigning an IDOC employee to conduct a “King investigation” that includes, at the very least, a review of the police report and supporting documentation and, where applicable, an interview of the arresting officer;

- Requiring the IDOC employee who conducts the King investigation to testify under oath and in person at the preliminary hearing, and to provide a description of the investigation;
- Granting the parolee the right to cross-examine the IDOC employee who conducts the King investigation;
- Entering a finding of “no probable cause” at any parole revocation hearing that occurs before the King investigation is completed;
- Allowing the parolee to present written evidence under 20 Ill. Admin. Code 1610.140(b)(1);
- Allowing parolees to retain counsel for the preliminary and final revocation hearings under 20 Ill. Admin. Code 1610.140(c)²;
- Making a record of the hearing pursuant to 730 ILCS 3/3-3-9(e); and
- Ensuring that the hearing officer makes written findings within 48 hours of the hearing and that the written findings are given to the alleged violator within 24 hours of the Defendants’ receipt of them from the hearing officer.

10. The Court appointed the John Howard Association as the Monitor of the Consent Decree for a period of one year upon its entry. On January 26, 2007, the Court signed an order adopting the Consent Decree and dismissed the case with prejudice, but retained jurisdiction “to enforce the terms of this Proposed Consent Decree.” Ex. A at Section III, part 10. The last Monitor’s report was filed with the Court on January 23, 2008. While the Monitor found that the Defendants were at the time in substantial compliance with the Consent Decree, the Monitor

² The Consent Decree mistakenly lists this obligation as falling under 20 Ill. Admin. Code 1620(c), rather than 20 Ill. Admin. Code 1610.140(c), which governs the right to retained counsel in parole revocation proceedings.

concluded the report by noting that “work remains to be done and some of the progress achieved to date is based, in many respects, on temporary arrangements that do not inspire confidence that they can be sustained over any significant period of time.” Monitor’s Report (attached as Exhibit C) at 23. On October 12, 2011, a member of the *King* Class filed a *pro se* “Motion to Enforce Injunctive Relief” (Doc. No. 122) (hereinafter, “Briggs Motion”). The motion alleges that the class member was denied an opportunity to have a preliminary parole revocation hearing in violation of the Consent Decree. The Defendants failed to respond to the *pro se* motion and there has been no further action in this matter since its filing.

SYSTEMATIC AND ONGOING VIOLATIONS OF THE CONSENT DECREE

11. The Plaintiffs now seek an order for a rule to show cause, granting a hearing into what the Plaintiffs contend are systematic and on-going violations of the Consent Decree by the Defendants. In a motion for a rule to show cause, “the moving party is asking *only* for a preliminary order directing the alleged contemnor to show cause why the court should not find him in contempt.” *U.S. S.E.C. v. Hyatt*, 621 F.3d 687, 696 (7th Cir. 2010) (emphasis in original). “The purpose of such a motion is to persuade the court that there should be a hearing at which the factfinder will ultimately evaluate whether a finding of contempt is appropriate on the evidence presented.” *Sommerfield v. City of Chicago*, 252 F.R.D. 407, 413 (N.D. Ill. 2008), Thus, the burden of the moving party is not to show that the non-moving party is in contempt, but rather, to offer “a preliminary assessment that the facts presented implicate that the alleged contemnors are in violation of court orders.” *U.S. v. Capital Tax Corp.*, No. 04 CV 4138, 2012 WL 1965982, at *3 (N.D. Ill, May 31, 2012) (internal quotation and marks omitted). A district court conducts a hearing into the alleged violation of the court order “when the allegations and moving papers are sufficiently definite, specific, non-conjectural and detailed enough to

conclude that a substantial claim is presented and that there are disputed issues of material fact which will affect the outcome of the motion.” *Sommerfield*, 252 F.R.D. at 414 (The moving party retains the “threshold burden of tendering evidence suggesting the need for a hearing.”) (quoting *Costle v. Pacific Legal Foundation*, 445 U.S. 198, 214 (1980) (emphasis omitted)).

12. There is a need for an evidentiary hearing as to whether the Defendants are engaging in systematic violations of the Court’s order governing parolees’ rights in the parole revocation process in the following ways:

- a. **Parolees do not make fully informed or voluntary waivers of their preliminary hearing, as required under Section III, parts 3 and 5(b) of the consent decree.** The Defendants consistently require that class members sign a form indicating that they waive their preliminary hearing. These waivers are neither fully informed nor voluntary. *See* Declaration of Julie Biehl (attached as Exhibit D) ¶¶ 7, 11; *M.H. v. Monreal*, No. 12cv8523 (N.D. Ill.) Complaint (attached at Exhibit E) ¶ 23 (hereinafter, “*M.H. Complaint*”).³ Before they sign the waiver form, class members are not informed as to the purpose of the preliminary hearing, nor are they given guidance from either an IDOC official or an agent of the Illinois Prisoner Review Board (PRB) as to the consequences of waiving the hearing, including the fact that they will remain in prison without any consideration of the legality of their incarceration for another month or more, pending the final revocation hearing. *See* Declaration of Steven Lofton (attached as Exhibit F) ¶ 4; Declaration of

³ *M.H. v. Monreal*, No. 12cv8523 (N.D. Ill.), was filed on behalf of a putative class of children and teenagers who have been imprisoned or otherwise deprived of their liberty as a result of the unconstitutional practices and procedures of the PRB with respect to the handling of parole revocation proceedings. The case was filed on October 12, 2012, and is currently pending before The Hon. Samuel Der-Yeghiayan. Given that *M.H.* and *King v. Walker* involve similar issues of fact and law, overlapping class members, are at similar stages of litigation, and are susceptible to a shared disposition, counsel for *M.H.* has filed a motion seeking reassignment of the case to this Court, pursuant to Local Rule 40.4.

Julie Biehl ¶¶ 7, 11; Briggs Motion at 2-3; *M.H.* Complaint ¶ 36. As a result of the Defendants' actions and omissions, class members routinely execute involuntary and uninformed waivers of the preliminary hearing and are systematically denied their right to a determination of whether there is probable cause to hold them in custody.

b. As a practical matter, parolees are unable to call witnesses at their hearings, in violation of the guarantee under Section III, part 5(b) of the Consent Decree.

Parolees who do not waive their preliminary hearing and request witnesses to appear on their behalf are unable as a practical matter to obtain the attendance of these witnesses at their preliminary revocation hearing. *See* Declaration of Michael Fulgham (attached as Exhibit G) ¶¶ 3-4; Declaration of Rashid Evans (attached as Exhibit H) ¶¶ 3-4; Declaration of Steven Lofton ¶ 4. In some cases, the Defendants provide class members with a form on which to list the witnesses they would like to call. However, neither the Defendants nor agents of the PRB make any attempt to contact those witnesses whom parolees have identified as necessary to their defense. *See id.* The Defendants' failure to facilitate the attendance of defense witnesses at preliminary hearings to the parolees who request them is a violation of Section III, part 5(b) of the Consent Decree.

c. Preliminary hearings do not include testimony by appointed "King" investigators," as required under Section III, part 5(c) of the decree and U.S. Constitutional law.

The Defendants consistently fail to assign King investigators to review police reports, evaluate supporting documentation, and, where applicable, interview the arresting officer to determine whether there is probable cause to hold the class member on the alleged violation. *See* Declaration of Rashid Evans ¶ 4; Declaration of Michael Fulgham ¶ 4; Declaration of Samuel Miller (attached as Exhibit I) ¶ 5. Pursuant to the Consent Decree,

Section III, parts 5(c) through 5(e), and in accordance with *Morrissey v. Brewer*, 408 U.S. at 485, the Defendants are responsible for appointing a King investigator to review the available evidence and then testify under oath as to the alleged violation at the preliminary hearing. In practice, the only individuals present at class members' preliminary hearings are the PRB hearing officer, a parole agent, and the parolee himself. *See id.* The parole agent is typically neither the agent who supervised the parolee while he was on parole, nor the agent who issued the violation report. *See id.* As a result of the failure to appoint King investigators, parolees are effectively deprived of their right to cross-examine witnesses and confront evidence against them, as mandated by Section III, part 5(f) of the Consent Decree. Furthermore, under Section III, part 5(e), hearing officers must enter a "no probable cause" finding at any preliminary revocation hearing that occurs before the King investigation is completed. In contravention of this provision, hearing officers routinely enter a finding of probable cause at a preliminary hearing without the completion of a King investigation, based solely on the admission of the non-testifying parole agent's violation report, *see id.*, which is in and of itself insufficient to establish probable cause. *See Downie v. Klinecar*, 759 F. Supp. 425, 428 (N.D. Ill. 1991) (granting summary judgment to plaintiff class challenging parole revocation proceedings and holding that eyewitness police reports cannot constitute conclusive evidence of a substantive violation of parole) ("[E]yewitness police reports cannot be considered conventional substitutes for live testimony, and their reliability is therefore neither automatic nor presumed.").

- d. Parolees are not permitted to retain counsel for the preliminary and final revocation hearings, as required under Section III, part 5(h) of the consent decree and under 20**

III. Admin. Code 1610.140(c). In violation of the consent decree (as well as Illinois state law), class members who do have retained counsel are often as a practical matter unable to obtain the benefit of their attorney's representation at either the preliminary or final revocation hearing. Parolees are regularly denied sufficient notice of their hearings in order to request that their attorneys be present. *See* Declaration of Samuel Miller ¶¶ 5, 7; Declaration of Rashid Evans ¶ 6. Those lawyers who undertake to represent alleged parole violators in parole proceedings face severe obstacles in their representation, as a result of the Defendants' failure to disclose to these attorneys the notice of charges and documentary evidence supporting the alleged violation. *See* Declaration of Joshua Tepfer (attached as Exhibit J) ¶¶ 2, 5-8, 11.

e. Parolees are not permitted to present written evidence in their defense, as required

by Section III, part 5(g) of the consent decree and under 20 Ill. Admin. Code

1610.140(b)(1). Class members are regularly denied the opportunity to present evidence

in their defense at their preliminary revocation hearings. Because parolees do not receive

sufficient notice of when their hearings are to take place, they are unable to gather

evidence on their behalf. *See* Declaration of Samuel Miller ¶ 5. This problem is

compounded by the fact that class members by and large lack meaningful legal

representation (and, as a result, the practical ability to exercise the subpoena power), and

thus have no means by which to obtain evidence to present to the parole hearing officer.

See Declaration of Rashid Evans ¶ 4; Declaration of Michael Fulgham ¶ 4; Declaration of

Samuel Miller ¶ 5

f. The Defendants consistently fail to make any record of the preliminary hearing, as

required under Section III, parts 5(i) and 6 of the consent decree and under 730

ILCS 5/3-3-9(e). Parolees do not receive any kind of written record of the findings of the preliminary revocation hearing. *See* Declaration of Rashid Evans ¶ 4; Declaration of Michael Fulgham ¶ 4. As a result, class members regularly are left without any understanding as to what occurred in the hearing, *see* Declaration of Samuel Miller ¶ 4, and with no ability to shape their defense to the charges at the final revocation hearing.

13. These violations of the Consent decree and the guarantees of due process under federal and state law render the parole revocation process fundamentally unfair.

14. Class members are systematically being denied their right to defend themselves at their preliminary revocation hearings. They are unable to make effective use of their legal counsel. They are unable to confront the evidence against them or present witnesses and documentary evidence on their behalf. There is no oversight of the proceedings—including by King investigators or outside attorneys. In practice, a system of collusion has developed between the Defendants and the PRB whereby the authorities hold class members in custody on parole warrants and, ultimately, re-imprison them without a determination of probable cause or adequate evidence to support the violation.

**RAMIFICATIONS OF THE VIOLATIONS OF THE CONSENT DECREE
ON THE ENTIRE PAROLE REVOCATION SYSTEM**

15. The Defendants' on-going and systematic violations of the Consent Decree have resulted in violations of class members' constitutional and state law rights, not only in the preliminary hearings, but also throughout the parole revocation system, including in the final revocation hearings. In other words, the Defendants' misconduct in the preliminary stages of the parole revocation process has a snowball effect. Having first been denied the right to call witnesses, retain attorneys, obtain and present documentary evidence, and confront the evidence

against them at their preliminary hearings, parolees are deprived of these same rights in their final revocation hearings, as outlined below:

- a. The Defendants make no effort to facilitate the attendance of defense witnesses in the parole revocation process. Thus, class members who are unable to request witnesses to appear on their behalf at their preliminary hearings are also denied the opportunity to obtain the attendance of these witnesses at their final revocation hearings. *See* Declaration of Michael Fulgham ¶ 5; Declaration of Rashid Evans ¶ 5; Declaration of Steven Lofton ¶ 4. The denial of the right to present witnesses at the final revocation hearing constitutes a violation of both Illinois state law under 20 Ill. Admin. Code 1610.150(b) and U.S. Constitutional law under *Morrissey*, 408 U.S. at 489.
- b. The Defendants fail to appoint objective King investigators to conduct investigations into the circumstances surrounding the class members' alleged parole violations. The Defendants also fail to ensure the presence of testifying adverse witnesses, including parole agents, in the parole revocation process. As a result, class members are not only unable to confront the evidence used against them at their preliminary hearings, but they are similarly denied the opportunity to cross-examine the King investigator and confront adverse witnesses and other evidence in their final revocation hearings. *See* Declaration of Samuel Miller ¶ 9; Declaration of Rashid Evans ¶ 9; Declaration of Michael Fulgham ¶ 8. The Defendants' failure to guarantee parolees the right to present evidence on their own behalf is in contravention of Illinois state law under 20 Ill. Admin. Code 1610.40(d) and 20 Ill. Admin. Code 1610.150(b), and U.S. Constitutional law under *Morrissey*, 408 U.S. at 489.

- c. Class members are consistently deprived of the right to retain counsel, not only in preliminary hearings, as alleged above, but also in the final hearings, in violation of Illinois law, 20 Ill. Admin. Code 1610.40(c), and U.S. Constitutional law, as set forth in *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970). Just as in the preliminary hearings, parolees are regularly denied sufficient notice of their final revocation hearing—often receiving notice of the hearing the morning it is to be held—which prevents them from seeking the assistance of their attorneys. See Declaration of Samuel Miller ¶ 7; Declaration of Rashid Evans ¶ 6. As a result, the vast majority of parolees proceed through their parole hearings without any representation whatsoever. The lack of representation means that parolees are unable to gather documentary evidence to present on their behalf either in their preliminary or final revocation hearings, see Declaration of Julie Biehl ¶ 3, as required by law. See 20 Ill. Admin. Code 1610.50(b); *Morrissey*, 408 U.S. at 489. Moreover, the failure to allow retained counsel is highly problematic since statements made in parole proceedings can be used by the State against class members in their criminal proceedings—unrepresented parolees have no choice but to comment on the record before the parole board hearing officer regarding the subject matter of the proceeding. See Declaration of Steven Lofton at ¶ 6. The Defendants also fail to provide parolees with information about the consequences a parole revocation may have on their liberty and/or on current and future criminal proceedings. See Declaration of Michael Fulgham ¶¶ 6-10.
- d. Finally, just as the Defendants fail to provide parolees with a written record of the preliminary parole revocation hearing, neither do they provide parolees with any written record or transcript of the final revocation hearing. See Declaration of Rashid

Evans ¶ 8; Declaration of Michael Fulgham ¶ 9; Declaration of Samuel Miller ¶ 9.

The Defendants are required to provide parole violators with written findings from the final hearing that detail the evidence relied on and the reasons for revoking parole, in accordance with Illinois state law, *see* 730 ILCS 5/3-3-9(e); 20 Ill. Admin. Code 1610.140(e); 20 Ill. Admin Code 1610.150(i), and U.S. Constitutional law under *Morrissey*, 408 U.S. at 489. Instead, class members regularly are left without any understanding as to what occurred in the final revocation hearing, and they have no documentary evidence upon which to base an appeal of a hearing officer's decision. *See* Declaration of Michael Fulgham ¶ 11; Declaration of Rashid Evans ¶ 8. There are extreme cases in which class members are being violated who have viable claims for appeal—including, for example, that they were acquitted on the underlying criminal offense that served as the basis for the parole violation. Due to the lack of written findings, as well as any established appeal process, these class members remain without any remedy to challenge the validity of their confinement. *See* Declaration of Samuel Miller ¶ 10; Declaration of Julie Biehl ¶ 3.

16. Thus, the Defendants' violations of the Consent Decree have widespread and significant consequences for class members facing revocation and the deprivation of their liberty. The issuance of a rule to show cause is necessary to ensure that class members' rights to adequate due process are protected, not only in preliminary revocation hearings, but throughout the parole revocation system.

**THERE SHOULD BE AN EVIDENTIARY HEARING
INTO THE ALLEGED VIOLATIONS**

17. Class counsel's preliminary investigation has uncovered detailed facts sufficient to "implicate" the Defendants in systematic violations of the Consent Decree. *See Capital Tax Corp.*, 2012 WL 1965982, at *3; *Sommerfield*, 252 F.R.D. at 413-14.

18. Consequently, the Plaintiff class is entitled to an evidentiary hearing to present evidence as to the scope and breadth of the Defendants' violations. A hearing will also enable the parties to gather evidence to be used in crafting a just and adequate remedy for on-going and systematic violations of the Consent Decree, U.S. Constitutional law, and Illinois state law.

19. This Court should therefore grant Plaintiffs' motion for a rule to show cause and order an evidentiary hearing on the matter of the Defendants' violations of the Consent Decree, as well as such further relief as this Court deems necessary to protect the rights of the Plaintiff class.

WHEREFORE, the Plaintiffs respectfully request that this Court enter an order granting their motion for rule to show cause directing the Defendants to show cause why they are not in violation of the Consent Decree, and granting an evidentiary hearing on the matter of the Defendants' violations of the decree.

Respectfully submitted,

**Plaintiffs King, Hill, Muniz, and
McGregg, individually and on behalf of
the class of parolees they represent.**

By: /s/ Alexa Van Brunt
One of the class attorneys

Locke E. Bowman
Alexa A. Van Brunt
Sheila A. Bedi (*Pro hac vice* motion to be filed)
Roderick MacArthur Justice Center
Northwestern University School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844

Alan Mills
Uptown People's Law Center
4413 North Sheridan Road
Chicago, IL 60640
(773) 769-1410

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document via the Court's CM/ECF system on November 30, 2012.

/s/ Alexa Van Brunt

SERVICE LIST

King v. Walker et al., 06cv204

Alan Mills
Uptown People's Law Center
4413 North Sheridan Road
Chicago, IL 60640
(773) 769-1410
On behalf of the Plaintiff Class

Kevin R. Peters
Law Offices of Kevin Peters
53 W. Jackson Blvd.
Suite 1615
Chicago, IL 60604
(312) 697-0022
On behalf of the Plaintiff Class

Andrew W. Lambertson
U.S. District Court (NDIL-C)
219 South Dearborn Street
Chicago, IL 60604
(312) 353-5354
On behalf of the Defendants

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

CHARLES KING, ANDRE BROWN,
CHIOKE HILL, THOMAS GILBERT,
NELSON MUNIZ, ANTHONY SMITH,
and ANDRE MCGREGG,

Plaintiffs,

vs.

ROGER E. WALKER and
JESSE MONTGOMERY,

Defendants.

No. 06 C 204

The Honorable Robert W. Gettleman

FINAL CONSENT DECREE

1. Plaintiffs Charles King, Andre Brown, Chioke Hill, Thomas Gilbert, Nelson Muniz, Anthony Smith, and Andre McGregg, on their own behalf, and Charles King, Chioke Hill, Nelson Muniz, and Andre McGregg on behalf of a class of others similarly situated, and Defendants Roger E. Walker, Jr., in his official capacity as Director of the Illinois Department of Corrections, and Jesse Montgomery, in his official capacity as Deputy Director for Parole, hereby enter into this Final Consent Decree to resolve Plaintiffs' Amended Complaint alleging violations of their Fourteenth Amendment Due Process rights as provided for by *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972).

I. BACKGROUND

2. Plaintiffs are individuals who are on parole and who were taken into or were held in custody for an alleged parole violation, pursuant to a parole violation warrant issued by the Illinois Department of Corrections. See 730 ILCS 5/3-14-2(c). They were taken into custody in Cook County. They were then transferred into the custody of the Illinois Department of Corrections without having waived their preliminary parole revocation hearing and without receiving any such hearing within ten business days, as required by the consent decree entered in *Pinzon v. Lane*, 675 F.Supp. 429 (N.D. Ill. 1987).

3. Defendants are the Director and the Deputy Director for Parole of the Illinois Department of Corrections, which is the agency responsible for retaining custody of all persons placed on parole or mandatory supervised release or released pursuant to 730 ILCS 5/3-3-10, and supervising such persons during their parole or release period in accord with the conditions set by the Prisoner Review Board of the State of Illinois.

4. The Plaintiffs initiated this action on January 13, 2006, and filed an amended complaint on February 13, 2006, alleging, inter alia, that Defendants had denied or failed to provide preliminary parole revocation hearings for the Plaintiffs and those similarly situated, pursuant to *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972). Plaintiffs filed a motion for class certification with their initial complaint and a motion for preliminary injunction on January 24, 2006.

5. By Order dated May 8, 2006, this Court certified this case to proceed as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of "Cook County Parolees who have been or will be arrested for parole violations in Cook

County, Illinois and who will be: a) taken into custody at Cook County Jail; b) transferred from Cook County Jail within 10 days without a preliminary parole revocation hearing; c) transferred from the Cook County Jail to the Illinois Department of Corrections; and d) held without a preliminary parole revocation hearing for more than 10 days." The Court deemed only four of the class representatives proposed by the Plaintiffs as acceptable under the requirements of Rule 23: Charles King, Chioke Hill, Nelson Muniz, and Andre McGregg.

6. On May 8, 2006, the Court also granted Plaintiffs' motion for a preliminary injunction. The Court found that parolees have a constitutional right to a prompt, preliminary parole revocation hearing and that parolees have a limited constitutional right to confront and cross examine persons who have provided testimony or evidence which could be used to revoke parole. The Court then concluded that Defendants were violating these constitutional rights with respect to the certified parolee class.

7. Defendants deny the allegations of the Plaintiffs' Amended Complaint and further deny any violations of statutes or regulations. Defendants make no admission of liability, and nothing herein shall be deemed an admission of fault of any kind by Defendants.

8. The parties have stated their desire to resolve this matter amicably and without going to trial.

9. The parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1343.

10. As indicated by their signature, the parties agree to the entry of this Final Consent Decree.

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

II. DEFINITIONS

A. For purposes of this Final Consent Decree, unless otherwise specified:

1. "Parole Violator" shall be defined as a person who is on parole and who is taken into or being held in custody for an alleged parole violation in Cook County, pursuant to a parole violation warrant issued by the Illinois Department of Corrections under 730 ILCS 5/3-14-2(c).
2. "Notice of Class Action Settlement" shall be the document providing notice to the potential members of the class and shall contain the terms of the agreement reached by the parties, with a copy of the Notice of Rights (see section 3, below) attached. The Notice of Class Action Settlement shall be attached hereto and incorporated herein as Exhibit A.
3. "Notice of Rights" shall be the amended Notice of Parole Violation form that shall include the language attached hereto as Exhibit B, which describes the Parole Violator's right to a preliminary parole revocation hearing pursuant to *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972).
4. "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 parole violation. 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).

5. "Hearing Officer" shall be defined as an employee of the Illinois Prisoner Review Board who is assigned to conduct the preliminary parole revocation hearing for each Parole Violator.

6. "Technical Violator" shall be defined as a parolee who is picked up for a violation of the terms of his mandatory supervised release agreement, but who is not charged with a new criminal offense. Examples of technical violations include, but are not limited to: failing to contact parole officer, failure to reside in an approved location, or testing positive for illegal drugs on a random drug test.

III. TERMS

1. Defendants shall take the following measures, intended to provide each Parole Violator with an opportunity to have a preliminary parole revocation hearing which protects their due process rights under the Fourteenth Amendment of the United States Constitution, as defined by *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972).

2. The Defendants shall publish the Notice of Class Action Settlement (Exhibit A) in each IDOC facility housing adults. The Notice shall explain to each prospective class member the settlement reached by the parties, generally, and shall refer the prospective class members to Plaintiffs' counsel for further explanation. With the

permission of the Cook County Department of Corrections, the Notice of Class Action Settlement shall be posted on each gallery within the Cook County Jail. The Notice of Class Action Settlement shall be delivered to each parolee presently on parole or on Mandatory Supervised Release by his or her parole agent at a face to face meeting within sixty days of entry of the Proposed Consent Decree by the court.

3. The Defendants shall publish the Notice of Rights (Exhibit B) in each IDOC facility housing adults upon entry of the Proposed Consent Decree. With the permission of the Cook County Department of Corrections, the Notice of Rights shall also be posted on each gallery within the Cook County Jail. Within 60 days of entry of this Proposed Consent Decree, Defendants shall implement use of the Notice of Rights form, agreed to by the parties, attached hereto as Exhibit "B" and incorporated herein by reference, at Cook County Jail as well as within the Northern Reception and Classification Center, located at Stateville Correctional Center in Joliet, Illinois. The Notice of Rights form shall be distributed to all Parole Violators within a reasonable time following their apprehension, to provide them with the ability to either waive their preliminary parole revocation hearing or to have it held within 10 business days. It shall further be distributed to all inmates being released on parole or mandatory supervised release with the other documents including their mandatory supervised release agreement. Each inmate receiving the Notice of Rights form shall sign a receipt for the form prior to release.

4. Defendants shall enter into discussions with the Cook County Sheriff and appropriate state agencies, and attempt to enter into a written agreement providing for

one of the two following scenarios to occur for each Parole Violator who is reincarcerated in Cook County or at the Northern Reception and Classification Center:

- a. The transfer of any Parole Violator shall be completed so that the Parole Violator is sent to, and custody is accepted by, the Illinois Department of Corrections at the Northern Reception and Classification Center at Stateville Correctional Center within five calendar days of service of a parole violation warrant. This schedule shall provide that the Parole Violator receives adequate notice of his right to a preliminary parole revocation, which shall be held by the Illinois Prisoner Review Board within 10 business days of imprisonment pursuant to the execution of a parole violation warrant.
- b. Should a transfer within five calendar days of arrest prove impossible for any Parole Violator, whether due to impending court dates in Cook County, or for issues of safety and security or severe administrative hardship on behalf of either Cook County or the Illinois Department of Corrections, the Cook County Sheriff shall defer transfer of any Parole Violator back to IDOC. In such cases, a preliminary parole revocation hearing shall be held in an appropriate Cook County facility, unless another suitable facility in Cook County is available, within 10 business days of imprisonment pursuant to the execution of a parole violation warrant. The availability and suitability of any facility shall be

determined by mutual agreement of the Cook County Sheriff and the Illinois Department of Corrections.

- c. Regardless of which option is invoked, either a., or b., described above, the Parole Violator shall be entitled to a preliminary parole revocation hearing in the manner described below in Section 5, within 20 business days of the service of a parole violation warrant. This provision, allowing for 20 business days following service of the parole violation, shall be in effect for the first 60 days following the entry of this Final Consent Decree. After 60 days from the entry of this Final Consent decree, the Parole Violator shall be entitled to a preliminary parole revocation hearing within 10 business days following the execution of a parole violation warrant.

5. Defendants, in conjunction with the Illinois Prisoner Review Board and other appropriate state agencies, shall provide that Parole Violators receive a preliminary parole revocation hearing which protects their due process rights under the Fourteenth Amendment of the United States Constitution, as defined by *Morrissey*, as follows:

- a. The Illinois Prisoner Review Board shall assign a Hearing Officer to conduct the preliminary parole revocation hearings pursuant to its statutory obligation under 730 ILCS 5/3-3-9. The Illinois Department of Corrections, its agents or employees, shall not serve as the designee of the IPRB for purposes of deciding the issue of

probable cause at a preliminary parole revocation hearing for a Parole Violator;

- b. Any Parole Violator who does not waive the preliminary parole revocation hearing shall be provided written instructions in conjunction with the notice of charges (See Exhibit B), describing the process by which witnesses may appear and give testimony before the Illinois Prisoner Review Board hearing officer. If the hearing is being held in Joliet, at the Northern Reception and Classification Center, pursuant to section 4(a) of this proposed consent decree, the witness testimony may be taken by video conferencing;
- c. If a Parole Violator does not waive his preliminary parole revocation hearing, the Illinois Department of Corrections shall assign an IDOC employee to conduct a King Investigation;
- d. The King Investigation shall include, at a minimum, a review of the police report and any supporting documentation, and an interview with the arresting officer(s);
- e. The IDOC employee assigned to complete the King Investigation shall testify, under oath and in person, at the preliminary parole revocation hearing held by the Hearing Officer within 10 business days of imprisonment pursuant to the execution of a parole violation warrant, unless the hearing is continued at the request of the Parole Violator, or by agreement. The hearing shall also be

continued if the Parole Violator is otherwise unavailable for a reason not within the control of the IDOC, such as the Parole Violator being confined for medical care or being held elsewhere for another court appearance. The testimony, given on the record at the preliminary parole revocation hearing, shall include a description of the King Investigation. In the event that the King investigation is not completed at the time the preliminary parole revocation hearing is held, there shall be a finding of no probable cause, unless the Parole Violator requests a continuance or the Parole Violator otherwise unavailable for a reason not within the control of the IDOC, such as the Parole Violator being confined for medical care or being held elsewhere for another court appearance;

- f. The Parole Violator shall have the right to cross examine the IDOC employee regarding the King Investigation during the preliminary parole revocation hearing;
- g. Parole Violators may also present written evidence to the Hearing Officer pursuant to 20 Ill. Admin. Code 1610.140(b)(1);
- h. Parole Violators shall have the right to retain counsel at both the preliminary and the final parole revocation hearings, pursuant to 20 Ill. Admin. Code 1620(c); and
- i. Pursuant to 730 ILCS 5/3-3-9(e), a record of the hearing shall be made.

6. Defendants shall provide Parole Violators with a copy of the written determination from the Hearing Officer within 24 hours of receiving the written findings from the Hearing Officer. The Defendants shall notify the Illinois Prisoner Review Board that the findings should be prepared within 48 hours of the conclusion of the hearing and must include a statement of whether probable cause of a parole violation was found, and if it was, that the Parole Violator shall be held over for a final revocation hearing by the Prisoner Review Board. The Defendants shall notify the Illinois Prisoner Review Board that the findings shall include a written statement of the basis for the Hearing Officer's determination. A copy of the written determination shall be provided to the Parole Violator and any counsel retained pursuant to Section 5(h) of this consent decree, to the Parole Violator's parent institution within IDOC for inclusion in the Parole Violator's inmate master file, to the Chairman of the Illinois Prisoner Review Board, and to the Illinois Department of Corrections Deputy Director for Parole.

7. Once a finding of probable cause has been made and the written determination has been served on the Parole Violator, he or she may be transferred to any appropriate facility within the Illinois Department of Corrections, unless otherwise ordered by the IPRB.

8. If the Hearing Officer makes a finding of no probable cause at the preliminary parole revocation hearing, and the preliminary parole revocation hearing is held at the Northern Reception and Classification Center at Stateville Correctional Center, pursuant to Section 4(a) above, the parolee shall, for those parolees who are the subject of pending criminal charges, be turned over to the custody of the Cook County Sheriff in Cook County as promptly as possible by IDOC. Alleged technical violators

shall be released under appropriate terms of Mandatory Supervised Release ("MSR") as determined by the Illinois Prisoner Review Board. The return to Cook County Sheriff in Cook County or release subject to appropriate terms of MSR shall be accomplished as promptly as is administratively possible.

9. The Court shall appoint, by agreement of the parties, the John Howard Association as the monitor of this Final Consent Decree for a period of one year after its entry. The Monitor shall be paid for its services, according to the following schedule of rates: a) Malcolm C. Young, Executive Director, one hundred fifty dollars (\$150.00) per hour, Charles A. Fasano, Director, Prisons and Jails Program, one hundred twenty five dollars (\$125.00) per hour, and other staff, if necessary, one hundred dollars (\$100.00) per hour to be paid by the Illinois Department of Corrections. The John Howard Association shall provide an accounting of all time and work provided while monitoring to the Illinois Department of Corrections for its review, prior to payment of any fees. The Defendants shall provide the Monitor with reasonable access to the preliminary parole revocation hearings that are held at the Northern Reception and Classification Center at Stateville Correctional Center, pursuant to Section 4(a), above. Defendants shall work with the Illinois Prisoner Review Board and the Cook County Sheriff to provide that the Monitor is granted reasonable access to the preliminary parole revocation hearings held pursuant to Section 4(b), above. The Defendants shall also provide the Monitor reasonable access to the Parole Violators' parole files for inspection of documents. All information reviewed, considered or collected by the Monitor shall be kept in confidence. Such information may be disclosed only to the Court, the Parties and Counsel for the Parties. If the Monitor determines that the Defendants are not in

Case: 1:06-cv-00204 Document #: 77 Filed: 01/26/07 Page 13 of 15 PageID #:737

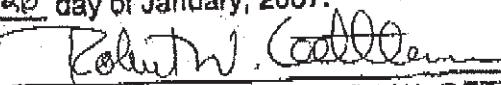
compliance with the terms of the proposed consent decree, the monitor shall provide written notice of the deficiencies to the Counsel for the Plaintiffs and the Defendants, and the Defendants shall have 21 days to submit a plan of correction. The Monitor may discuss any matter concerning the proposed consent decree with the court. Until the Defendants have had an opportunity to correct any alleged deficiencies, Plaintiffs shall not involve the Court. If there are, during the life of the proposed consent decree, any disagreements between the parties, both sides shall endeavor to address them in good faith to come to resolution without further involvement of the court. The Monitor's responsibilities relative to this Final Consent Decree shall terminate one (1) year after the date of entry.

10. The Court shall retain jurisdiction to enforce the terms of this Final Consent Decree. The Consent Decree shall be the final judgment in the case and upon its entry, the case shall be dismissed with prejudice, subject to the court's retained jurisdiction to enforce the terms of the agreement.

11. The Illinois Department of Corrections shall pay to Plaintiff's counsel reasonable attorneys' fees, according to information provided to Defendant, by Plaintiffs' counsel, indicating that he has spent one hundred ninety two and one half (192.5) hours of work on the case to date. The fees shall be calculated at the rate of one hundred thirty five dollars per hour. Such fees shall be paid by IDOC within a reasonable time of the entry of this proposed consent decree, and entry of an order fixing the specific dollar amount of the fees. As Plaintiffs' counsel will be required to spend time and effort moving forward, the parties agree that those final fees in excess of the 192.5 hours paid upon entry of the proposed consent decree shall be paid at the termination of monitoring.

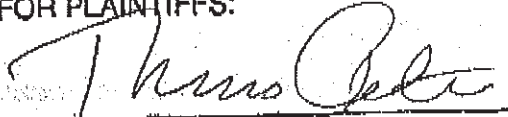
Plaintiffs' counsel shall submit his fees to the Defendants, and the Defendants shall be entitled to bring a motion before the court reasonably objecting to any excessive fees. If there is no objection, IDOC shall pay the additional fees within a reasonable time pursuant to an order fixing the specific dollar amount of the additional fees.

So ordered this 26 day of January, 2007.


THE HONORABLE ROBERT W. GETTLEMAN
UNITED STATES DISTRICT JUDGE

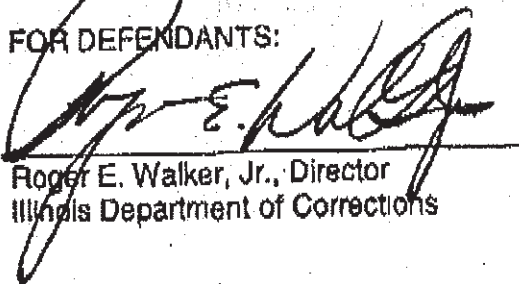
Agreed to by the parties as indicated by their signatures below.

FOR PLAINTIFFS:

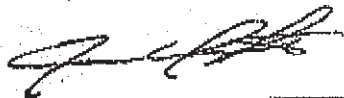


Tom Peters
The Law Office of Thomas Peters
407 S. Dearborn Street
Chicago, Illinois 60605
Attorney for the Plaintiffs

FOR DEFENDANTS:



Roger E. Walker, Jr., Director
Illinois Department of Corrections



Jesse Montgomery, Deputy Director for
Parole, Illinois Department
of Corrections

IDOC# _____

NOTICE OF RIGHTS PRELIMINARY PAROLE REVOCATION HEARING

Pursuant to settlement of the class action law suit entitled *King v. Walker, et al.*, 06 C 204, in the United States District Court for the Northern District of Illinois:

- You have a right to a Preliminary Parole/Mandatory Supervised Release Revocation Hearing within 10 business days of imprisonment pursuant to the execution of a parole violation warrant to determine whether or not probable cause exists that you did commit one or more violations of your conditions of parole or mandatory supervised release.
- You have the right to waive the Preliminary Parole Revocation Hearing. A waiver of the preliminary parole revocation hearing does not indicate an admission of guilt to the alleged violations. If you waive the preliminary parole revocation hearing, you will receive a full revocation hearing before the Illinois Prisoner Review Board.
- You have the right to hire an attorney to represent you in connection with the Preliminary Parole Revocation Hearing.
- You have the right to appear at the hearing and speak on your behalf.
- You have the right to provide the hearing officer with documents and letters relevant to the alleged parole violation(s).
- You have the right to present witnesses at the hearing.
- You have the right to cross examine witnesses at the hearing.
- The burden of establishing probable cause is on the Illinois Department of Corrections which shall assign an investigator to conduct an investigation into the circumstances surrounding the arrest or violation.
- You have the right to receive a written decision of whether probable cause exists within 72 hours of the hearing.
- You DO NOT have the right to a preliminary hearing if probable cause on any new criminal charge is determined by the court prior to the hearing date.
- 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 it to the PRB at the address provided on the order.



John Howard Association of Illinois

300 West Adams Street, Suite 423 Chicago, IL 60606
Tel. 312-782-1901 Fax. 312-782-1902 www.john-howard.org

**FILED
RECEIVED**

JAN 23 2008

JUDGE ROBERT W. GETTLEMAN
UNITED STATES DISTRICT COURT

FILED

JAN 23 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

King v. Walker et al.
No. 06 C 204

United States District Court
for the Northern District of Illinois
Eastern Division

The Honorable Robert W. Gettleman

January 18, 2008

COURT MONITOR'S REPORT

John Howard Association
300 West Adams Street, Suite 423
Chicago, IL 60606
312-782-1901

This report reflects monitoring activities relating to an assessment of compliance with the Consent Decree in this case since November 1, 2007. As described in our previous reports of November 20, 2007 and August 16, 2007, these activities have included observations of preliminary parole revocation hearings and analysis of data, including **King** hearing schedules, individual hearing reports, and other documents introduced during hearings and generated by staff of the Illinois Prisoner Review Board (PRB), the Illinois Department of Corrections (IDOC), various law enforcement agencies, and other data; and meetings with PRB, IDOC, and Cook County Department of Corrections (CCDOC) administrators and staff, and counsel for the parties and for the Sheriff of Cook County). During this period, most of the monitoring activities have been conducted by Charles A. Fasano, Director of the Prisons and Jails Program of the John Howard Association (JHA). The Association's Executive Director, Malcolm C. Young, also participated in activities pertaining to this case.

The scope of this report covers the major provisions of the Consent Decree during a period of two months, from November 1, 2007 through December 31, 2007. Collectively, the three monitoring reports cover a period of nearly one year, dating from the approval of the Consent Decree on January 26, 2007. This report also includes recommendations for improvements that could enhance the quality and consistency of the hearing process and related activities and help to ensure that the substantial compliance achieved to date persists beyond the termination of monitoring in this case.

HEARINGS AT CCDOC AND IDOC

During the two months covered in this report, a number of PRB staff have conducted **King** hearings. This cadre has included Jeanetta Cardine, who had previously conducted the great majority of these hearings. The recent broadening of this responsibility to a larger cadre of staff has allowed Ms. Cardine to spend more time on her other duties, including arranging for program placements for parolees, itself an important activity for **King** class members who may qualify for reinstatement on parole if suitable placements are achieved.

The schedule of **King** hearings has remained as described in our previous reports. **King** hearings have occurred once weekly at CCDOC since June 2006¹ and twice weekly at NRC since January 2007. The hearings at CCDOC occur every Wednesday beginning at 9:00 a.m. and normally extend over a period of 2 – 4 hours. Hearings at NRC occur every Monday and Thursday, and these hearings also begin at 9:00 a.m. The NRC hearing schedule docket continues to contain more hearings on Thursdays than on Mondays, which is largely attributable to the schedule of inmate shipments from CCDOC to IDOC, which occur three days each week. During the month of December 2007, the regular seasonal phenomenon of decreased admissions to CCDOC has contributed to a decrease in the number of **King** hearings at both locations.

Based on data analyzed by the Monitor, the majority of **King** hearings since entry of the Consent Decree in this case continue to be held at IDOC's Northern Reception Center following

¹ Some of the parole revocation hearings held at CCDOC before December 31, 2006 were Morrissey hearings.

the transfer of inmates from CCDOC. During the period November 1, 2007 – December 31, 2007, a total of 181 hearings were conducted with inmates at CCDOC. As described below, 59 of these hearings resulted in continuances based on requests from inmates. A total of 122 hearings resulting in dispositions (probable cause or no probable cause) occurred at CCDOC during this period. During this same period, a total of 362 hearings were conducted with inmates at NRC. 70 continuances were granted, and dispositions were reached in the remaining 292 cases.

These data indicate that 29.5% of dispositions were reached while inmates were at CCDOC, in comparison to 70.5% of dispositions that were reached after inmates had arrived at NRC. This distribution of hearings between the two locations is virtually unchanged from that described in the report of November 20, 2007 and consistent with the distribution described in the August 16, 2007 report: at that time, 30.9% of hearings with dispositions were occurring at CCDOC, in comparison to 69.1% of hearings with dispositions that were reached at NRC.

The number of dispositions achieved at these preliminary hearings on a monthly basis has also remained relatively constant over time. Based on the data presented in the August 16, 2007 report, an average of 247 dispositions were reached in **King** hearings monthly, including an average of 45 dispositions monthly at CCDOC and 202 dispositions monthly at NRC. Between August 1, 2007 and October 31, 2007, an average of 241 dispositions were reached in these hearings monthly, with an average of 71 dispositions monthly at CCDOC and 170 dispositions at NRC. Between November 1, 2007 and December 31, 2007, a monthly average of 207

dispositions were reached, with an average of 61 dispositions monthly at CCDOC and 146 dispositions at NRC.

A more accurate comparison of the relative frequency of hearings at the two locations can be gained by analyzing data for calendar year 2007. Since January 10, 2007, a total of 705 hearings resulting in dispositions occurred at CCDOC. In comparison to the 2,217 dispositions reached during hearings at NRC, hearings at CCDOC represent 24.1% of King hearings with dispositions, as contrasted to 75.9% of **King** hearings that achieved dispositions during hearings at NRC during 2007. The distribution of hearings remains virtually unchanged from that described in our report of November 20, 2007. The main reason for this chronic disproportionate breakdown appear to be that most newly arrested inmates at CCDOC have not experienced preliminary hearings by the time they are afforded their first **King** hearing, with many requesting continuances from the **King** Hearing Officer. In conjunction with CCDOC's practice of rapidly shipping parolees to NRC², these facts result in the presence of hundreds of parolees at that site, where they receive a finding of probable cause or no probable cause at a **King** hearing.

Inmates at both CCDOC and NRC have continued to request continuances with considerable frequency, a phenomenon that we first described in the August 16, 2007 report. During the two month period covered in the current report, 59 continuances were requested

² Based on Cook County's interpretation of Judge George M. Marovich's October 30, 2003 order in **Duran**.²

during a total of 181 **King** hearings conducted at CCDOC, representing approximately 33% of all hearings at that location. This is significantly lower than the continuance rate of 43% described in the November 20, 2007 report but higher than the continuance rate of 26% for hearings at CCDOC described in the August 16, 2007 report. For **King** hearings at NRC during the preceding two months, 70 continuances out a total of 362 hearings were granted, representing a total of 19.3%, noticeably lower than the 25.9% continuance rate described in the November 22, 2007 rate and slightly lower than the 21.7% continuance rate described in the August 16, 2007 report. Our observations support the conclusion that the great majority of continuances are still requested in order to await the outcome of preliminary hearings or other proceedings in the Circuit Court of Cook County. Many inmates believe that pending criminal charges may be dropped during their next court appearance, which they believe would enhance their chances of receiving a finding of no probable cause at the **King** hearing.

While all of the hearings at NRC and the vast majority of hearings at CCDOC involve male inmates, a few female inmates at CCDOC are included in the plaintiff class in this litigation and received **King** hearings in accordance with the provisions of the Consent Decree. Between November 1, 2007 and December 31, 2007, a total of eight (8) females received preliminary parole revocation hearings while incarcerated at CCDOC, in contrast with 16 females who received these hearings between August 1, 2007 and October 31, 2007. During the past two months, dispositions were reached in 7 of these cases, all of which were findings of probable cause, and the remaining case involved an inmate who was transferred to Dwight Correctional Center before a disposition was achieved.

As noted in our previous reports, a special segment of the plaintiff class in this litigation involves young inmates who were still under juvenile parole supervision despite the fact that they had passed their seventeenth birthdays and been subsequently arrested and charged as adults. Insofar as the hearings for these individuals are represented in the statistics for hearings conducted at CCDOC, the handling of their hearings is indistinguishable from those provided to their older colleagues. At the same time, however, these individuals have become a progressively more serious problem for the Illinois Department of Juvenile Justice³, which retains the responsibility for housing these individuals. The special problems associated with many of these individuals are restated below.

TIMELINESS OF HEARINGS

Our ongoing assessment of the timeliness of **King** hearings remains based largely on analysis of data contained in daily hearing schedules and records, which provide summary information on hearing decisions and some of the dates pertinent to the time provisions of the Consent Decree.⁴ As noted in both of our previous reports, schedules for hearings at CCDOC still do not include dates parole warrants were served⁵, although individual hearing records do contain these data. The absence of these data continues to make it difficult to empirically evaluate the timeliness of hearings and to ensure that parole warrants were served in all cases.

We have, however, reviewed records pertaining to all hearings between November 1, 2007 and

³ The Illinois Department of Juvenile Justice was formerly the Juvenile Division of the Illinois Department of Corrections (until July 1, 2006) and retains statutory responsibility for housing juveniles adjudicated as delinquents, offenders younger than 17 who have been convicted as adults, and individuals under juvenile parole supervision.

⁴ All data in the current and previous monitoring reports relating to the number of days between service of parole warrants and preliminary hearings refer to business days, as specified in the Consent Decree.

⁵ The forms currently used do contain a column for date served (for parole warrant/notice) that is not used but do not contain a column for jail admission date.

December 31, 2007, and we feel confident restating our previous conclusion that virtually all initial **King** hearings conducted at CCDOC are taking place within the 10-day time limit specified in the Consent Decree. Only one case in this two-month period was identified in which more than 10 business days elapsed before a **King** hearing was conducted, and this case involved a period of 12 business days.

At NRC, the schedules for hearings do contain admission and warrant service dates, but frequent requests for continuances make accurate calculation of timeliness of **King** hearings somewhat difficult in these cases. This limitation has not, however, precluded an analysis of compliance with the provision requiring a **King** hearing within 10 days of imprisonment.

Data provided by the PRB indicate that a total of approximately 362 **King** hearings occurred at NRC between November 1, 2007 and December 31, 2007. During this period, the average (mean) length of time between incarceration and initial **King** hearings in the 292 cases in which continuances were *not* requested was 3.9 business days, and virtually all cases in this category were heard within the 10-day limit. This compares favorably with an average length of time between incarceration and initial hearings of 8.6 days described in the report of November 20, 2007. Although shorter hearing dockets may have contributed somewhat to the improvement in timeliness, this achievement is nonetheless commendable.

At the other end of the spectrum, cases in which continuances were requested took considerably longer to achieve dispositions than in previous periods. An analysis of a sample of

cases involving continuances reveals that these cases took an average of more than 22 days to achieve disposition, despite the fact that most continued cases were nonetheless disposed of within the 10-day limit. The lengthy average appears to be attributable largely to a few cases which involved extended periods to reach disposition. Even in these cases, however, the initial **King** hearing was usually conducted within the 10-day limit.

CONDUCT OF HEARINGS

As noted above, a number of PRB staff have served as the designated **King** hearing officer for hearings conducted during November and December 2007. The distribution of this responsibility has enabled Jeanetta Cardine to spend more time on her other PRB duties, including arranging program placements for parolees.

As described in our previous reports, two or more IDOC Parole Agents are present at all **King** hearings in their capacities as **King** investigators. These agents are routinely sworn in by the Hearing Officer at the beginning of each day's hearings. They provide testimony at each hearing based on information in police reports or communications from other law enforcement agents. At each hearing, the inmate is sworn immediately by the Hearing Officer, who also verifies that s/he has received notice of charges. The Hearing Officer also reads the specific violations alleged and, in appropriate cases, explains these allegations.

Based on hearings observed by the Monitor and a review of hearing reports, **King** investigators almost invariably obtained and recorded the names and badge numbers of law-

enforcement personnel with whom they spoke. In all hearings either observed by or with reports reviewed by the Monitor, the **King** investigators attempted and usually succeeded in contacting the arresting officer or law-enforcement investigator for confirmation of and/or elaboration on information contained in arrest reports. In many cases, the investigators are able to obtain additional information about the alleged offense from police; however, a significant number of cases remain in which investigators are only able to obtain statements that police “stand by the information” in their reports. Virtually all **King** hearing reports reviewed by the Monitor have included notations regarding the information obtained by the **King** investigators.

King investigators also frequently contacted other IDOC parole agents who had information pertinent to the situation of the inmates. These contacts often reveal other relevant information, such as participation in mandatory activities including substance abuse treatment programs or compliance with electronic detention conditions. Some of this information has constituted grounds for a technical parole violation, separate and distinct from the criminal charges that led to the incarceration of the individual. When such information has been provided, it has been taken into consideration by the **King** Hearing Officer. Hearing reports also reflect frequent efforts by IDOC parole agents to modify conditions of supervision, including arranging for placement into treatment programs and other facilities and adjusting levels of supervision in accordance with a detailed “sanction matrix”, which lists a wide variety of sanctions to be implemented in response to various types of parole violations.

During (as well as prior to) **King** hearings, the **King** investigators continue to routinely utilize data contained in computerized databases, including IDOC's AMS system and the Offender Tracking System (OTS); in addition, a GPS tracking system utilized by Parole Agents is also accessible and utilized regularly. CCDOC's Correctional Inmate Management Information System (CIMIS) is also utilized routinely for hearings at the jail. The database maintained by the Clerk of the Circuit Court of Cook County continues to be utilized frequently, when information regarding current and former criminal charges is needed.

Based on our observations of hearings and review of records, John Howard Association staff can report that the various **King** Hearing Officers have continued to consider a full range of pertinent information from **King** investigators, inmates, and other sources in their handling of cases. We have continued to observe numerous cases in which a finding of no probable cause was entered because time limits had been exceeded and/or criminal charges had been dismissed. We have also observed hearings and reviewed records in which inmates were not served in timely fashion, and in these cases the Hearing Officer entered a finding of no probable cause. We have also observed numerous cases in which arresting officers have been unable or unwilling to provide factual information that goes beyond the rote statement that they stand by their (arrest) reports. In some of these cases, the **King** Hearing Officers have identified substantive deficiencies in arrest or parole violation reports and have entered findings of no probable cause. After months of observing hearings and reviewing hearing reports, JHA staff remain impressed by the exercise of independent judgment which these findings reflect.

Since the beginning of November 2007, we have continued to observe cases in which **King** Hearing Officers took steps to modify conditions of supervision to more appropriately meet the needs of parolees. We have also observed ongoing collaboration between the various Hearing Officers and PRB Chairman Jorge Montes, who continues to exercise his authority to modify parole conditions pending approval by the full PRB.

Participation by Witnesses and Attorneys

During the period covered in this report, witnesses have continued to appear for **King** hearings at both CCDOC and NRC, although they remain few in number. Most of the witnesses who have participated have testified on behalf of inmates. To date, all witnesses have appeared in person. A videoconferencing site already established has not been utilized to date.⁶ In those cases in which witnesses have chosen to come to the facilities, the **King** Hearing Officer has interviewed them in the lobby of the facility (Division V of CCDOC) or immediately outside the main entrance (at NRC), both of which are outside the presence of the inmate (or his representative). The decision to interview witnesses in these locations is attributed to security concerns regarding public access to internal portions of the facilities. While the Monitor has not been made aware of any complaints about the inability of inmates to questions witnesses directly, we remain concerned about this makeshift arrangement and urge both CCDOC and IDOC to make good-faith efforts to devise more suitable accommodations. We restate our

⁶ IDOC has made videoconferencing facilities for witnesses and attorneys available at an IDOC facility at 100 North Western Avenue in Chicago. Videoconferencing with the NRC (and other IDOC facilities) is possible when this system is working. In a few of these situations, witnesses whose identity has been positively established by IDOC staff at the facility have been permitted to participate telephonically when videoconferencing has been unavailable. At NRC, the videoconferencing equipment is not available in the room used for King hearings but is accessible to the King hearing officer.

previous recommendation that the parties explore the availability of space in the Criminal Courts Building at 2600 South California Avenue, where civilian witnesses and police officers could be afforded easy access in an environment that provides appropriate security for all concerned.

A few attorneys have also participated in these hearings, but these remain relatively rare occurrences. We observed one case in which an attorney was permitted access to the Receiving Room for a hearing at CCDOC, although he was unable to remain for the hearing because of a significant delay in transporting the inmate from Division XI, across the street from the main jail complex.⁷ As noted in our last report, no requests for attorney participation by phone have been received in recent months.

Hearing Accommodations

Hearings conducted at CCDOC take place in the Receiving Room, located in the basement of Division V. This location has a number of drawbacks and can only be described as minimally adequate. It is, however, one of the only areas within the vast jail complex that is readily available to inmates from all 10 divisions. The **King** Hearing Officer uses a booth normally used for intake screening. The booth provides a modicum of auditory privacy but little more. Inmates scheduled for **King** hearings are held in a nearby bullpen. IDOC Parole Agents participating in these hearings occupy adjacent booths and respond to questions from the Hearing Officer. Only the individuals participating in the hearings are normally within earshot of the hearing, although Correctional Officers are stationed in the general area.

⁷ Delays in transporting inmates from Division XI to the Receiving Room appear to occur with some regularity, affecting a number of **King** hearings.

At NRC, the **King** hearings continue to occur in an area designed as a classroom but being converted into a law library in one of the cellblocks in the facility. The area includes ample desk space and seating for the Hearing Officer, Parole Agents, and the inmate/parolee. Inmates awaiting hearings are lined up outside the hearing room and, although the door to the room is left open, the inmates are at sufficient distance from the door that there is reasonable privacy for discussions of potentially sensitive matters. Other than those persons participating in the hearings, only a Correctional Officer is present in the room during hearings, for security reasons.

CROWDING AT CCDOC AND INMATE TRANSFERS

As the court monitor in **Duran v. Sheahan et al.**, John Howard Association staff are thoroughly familiar with the status of inmate population and crowding at CCDOC. In addition to court monitoring reports, JHA issues monthly updates on inmate population, crowding, and the utilization of release mechanisms to reduce the level of crowding. As documented in our most recent update, dated January 11, 2008 (attached as Appendix A), the size of the overflow population at the jail began to increase in May 2007 and remained at fairly high levels (averaging more than 550 inmates sleeping on floors nightly) from August 2007 through October 2007. The jail's overflow population decreased in November 2007 and December 2007, following a predictable seasonal pattern observed for many years, but this pattern already appears to be ending by mid-January 2008. Despite the changes noted, the level of crowding at CCDOC would be higher still but for the fact that a number of inmates from Cook County, ranging from approximately 50 to 180, remain in custody in Kankakee and Jefferson Counties under a contractual arrangement that has existed for some time. In addition to this population,

several hundred inmates facing criminal charges in Cook County courts are incarcerated at NRC on any given day, many awaiting reinstatement of parole by the PRB at which time they are returned to full-time custody at CCDOC.

As we noted in our previous reports, crowding at CCDOC has been affected by fiscal constraints as well as policy decisions made by Sheriff Thomas Dart. As previously described, the Office of the Sheriff of Cook County, like other Cook County agencies, experienced significant cuts in the FY 2007 (December 1, 2006 – November 30, 2007) budget. The Cook County Department of Community Supervision and Intervention, which operates most of the release mechanisms developed to reduce crowding in the jail, was affected by significant budget cuts. In addition to these reductions, Sheriff Dart restricted eligibility criteria for release of pretrial detainees and began efforts to transfer responsibility for deciding which inmates should be released to the Circuit Court of Cook County. The rationale for this proposal is that Sheriff's personnel do not have access to a full range of information on inmates, including complete criminal histories, whereas this information is readily available to the courts, where prosecutors and defense counsel can debate the merits of this information and a judge can make a decision based on a more comprehensive set of facts than is available to the Sheriff. While this debate between the Sheriff and the Circuit Court of Cook County is as yet unresolved, the Sheriff continues to operate a range of release mechanisms whose caseloads or populations have decreased steadily and drastically since January 2006. The size of these programs is described in the table entitled Cook County Release Mechanisms: Average Daily Caseloads/ Population, contained in the attached appendix.

As noted above, CCDOC administrators have continued to expedite the transfer of inmates with unexpired sentences of confinement since the beginning of 2007. The transfer of inmates with pre-existing sentences back to IDOC was authorized in an order by Judge George M. Marovich in **Duran v. Sheahan et al.** issued October 30, 2003, permitting the Sheriff to transfer persons housed at CCDOC who had been previously sentenced to IDOC for an unexpired sentence of confinement. This order was precipitated by recurring episodes of increased crowding at CCDOC aggravated by the presence of hundreds of IDOC inmates still serving prison sentences who had been housed at CCDOC on court writs and by the presence of as many as 1,600 pretrial detainees with parole holds or warrants. In years past, it was common practice for parole "holds" or warrants to be issued whenever parolees were arrested on new charges, making them ineligible for release by the Sheriff of Cook County. As mentioned in previous status hearings in this case, Judge Marovich's order was clearly intended to apply to inmates still serving prison sentences who were only residing at CCDOC by virtue of writs issued by Judges of the Circuit Court of Cook County and not parolees. Following the entry of Judge Marovich's order, former Sheriff Michael F. Sheahan returned hundreds of inmates to IDOC custody, who were still serving prison sentences. Long after this task was accomplished, Sheriffs Sheahan and Dart began the process of transporting inmates still under parole supervision at the time of their arrest on new charges back to IDOC.

The IDOC currently transports scores of inmates from NRC to the Criminal Courts Building on a daily basis, and the costs of transportation have remained extremely high. In addition to this substantial added expense, the inmates transferred to NRC are less readily

accessible to their attorneys, most of whom are Cook County Assistant Public Defenders, as well as their relatives and friends, for whom visiting becomes more difficult and costly; in addition, opportunities for exercise and programming are extremely limited during their confinement at the Northern Reception Center. The conditions of confinement at NRC for these inmates, many of whom served prison sentences for non-violent crimes and now face relatively minor criminal charges, are essentially more restrictive than those that exist at IDOC's maximum-security facilities. In addition to the restrictive confinement experienced by these inmates, the continuing presence of this population has contributed to a situation in which NRC is operating at approximately 95% of its capacity.

In addition to the added costs of housing and transporting these inmates borne by IDOC, CCDOC has incurred some additional costs involved with transporting some of these inmates back to the jail, which also occurs on a regular basis. While these transportation costs are considerably less than the costs of confinement, the added expense may prove to be a significant factor in the future as both state and county budgets continue to face extreme pressures.

Since the last Status Hearing in this case on November 29, 2007, IDOC and CCDOC administrators have met once in early December 2007 with Charles A. Fasano to discuss issues arising from **King and Duran**. In addition, Mr. Fasano met via teleconference with IDOC parole administrators and counsel later that month for an extended discussion of issues relating to this litigation. The first meeting resulted in no progress toward the objective of increasing the number of inmates released from IDOC and CCDOC custody under various forms of supervision

(such as electronic monitoring), which could have a significant effect on members of the plaintiff class in this litigation. In fact, CCDOC officials raised the possibility of increasing the number of inmates transferred back to IDOC custody by reducing the time until their next court appearance from 10 days to 3 days.

The process of identifying and tracking inmates at CCDOC who are potential members of the plaintiff class in this litigation has been facilitated by IDOC officials who have developed database records of individuals facing possible parole revocation. These weekly reports enumerating the number of parolees incarcerated at CCDOC, which list the number of inmates on whom warrants have been issued and those where no warrant has been issued. These reports, dating back to late August 2007, clearly indicate that only a small percentage of a rather significant number of parolees facing new criminal charges also face parole warrants. Since August 29, 2007, the total number of parolees held at CCDOC has ranged from 1,346 to 1,537, but the total number with parole warrants has only ranged from 53 (3.9%) to 99 (7.1%). These data provide significant corroboration for the contention that parole warrants are being issued very selectively, in contrast to the practice in years past.

Although IDOC officials did agree to provide these reports to CCDOC officials on a regular basis, this has not occurred. As of January 10, 2008, CCDOC officials reported that they had received only one such report since early December 2007. IDOC officials have informed the Monitor that their efforts to generate these voluminous reports (listing more than 1,400 individuals) have been impeded by their lack of access to CCDOC's computer system (CIMIS),

which CCDOC officials promised to provide at a meeting in November 2007. This failure to collaborate as previously agreed does not serve the legitimate interests of either IDOC or CCDOC and should be rectified without further delay. As we noted in our report of November 20, 2007, these systems interfaces and other forms of information sharing can enhance the process whereby the parties can identify candidates for appropriate and timely diversion. This process may include (1) expedited approval of placement on electronic monitoring, which requires PRB approval for inmates still on parole, (2) more timely placement of technical parole violators into community-based programs, and (3) efforts to expedite requests for restoration of good time, which must also be approved by the PRB. These initiatives, representing collaborative efforts by IDOC, CCDOC, and the PRB, offer a realistic hope of decreasing both the number of inmates in CCDOC and IDOC custody and the length of stay for many of these inmates.

The ability of the PRB to sustain the efforts achieved thus far appears to depend in significant part on their success in obtaining an immediate increase in funding from the State of Illinois. As we noted in our most recent report, the need for additional funding to provide **King** hearings and community placements consistently and in timely fashion had already been clearly established.

The monitor met with IDOC parole administrators and other officials via teleconference on December 18, 2007, at which time state officials articulated a wide variety of actions that may not have received recognition in previous monitoring reports. The Monitor does wish to bring to the attention of the Court and the parties the dedication of significant resources on the part of

dedicated parole agents, both those serving as **King** investigators and others supervising parolees, supervisors, administrators, and others who have contributed to the achievement of substantial compliance with the provisions of the Consent Decree in this litigation.

JUVENILE PAROLE VIOLATORS

As noted in our previous reports, a small number of **King** cases involved individuals charged with crimes who were still under juvenile parole supervision. These individuals had been housed at CCDOC, based on their age at the time of the most recent adult offense, prior to their transfer to the Illinois Department of Juvenile Justice. Most of the individuals in this category were transferred to IDJJ's maximum-security facility, the Illinois Youth Center – Joliet, shortly after completing the reception process at St. Charles. Our observations have concluded that the parole status of these persons relating to the provisions of this Consent Decree been handled in the same fashion as those of their older colleagues, and IDOC and PRB staff have managed to achieve substantial compliance with regard to these youthful offenders.

Their situation in IDJJ facilities, however, remains problematic. The Monitor recognize that these concerns are outside the parameters of this case, but we wish to inform the Court and the parties of our plans to continue meeting with IDJJ and PRB officials to discuss strategies to ameliorate the problems affecting these individuals and their more youthful colleagues in state juvenile facilities.

CONCLUSIONS

Despite a decrease from the levels achieved during previous months during November 2007 and December 2007, the number of **King** hearings conducted to date has remained substantial. As the data indicate, PRB and IDOC staff has managed to conduct timely hearings in the vast majority of these cases, regardless of the location of the hearings. The Monitor remains concerned, however, about the ability of both agencies to sustain this level of performance over time, which we believe will require additional resources.

The Monitor also wishes to restate our belief that the problem of continuances requested at **King** hearings remains linked to the pace of criminal case processing in the Circuit Court of Cook County. We continue to believe that, since the Criminal Division of the Circuit Court now utilizes a differential case processing system, cases involving defendants on parole, particularly juvenile parole, receive expedited handling, at least insofar as the timing of preliminary hearings is concerned. If hearings in these cases could be expedited without compromising the rights of the state or the defendant, it might reduce the number of **King** continuances, enabling more rapid dispositions of many of these cases.

King hearing officers continue to scrutinize the information presented by the **King** investigators. The Monitor has concerned to review hearing reports in which arrest reports and/or parole violation reports appear insufficient to establish probable cause, as well as those situations in which arresting officers provide no additional corroboration, and Hearing Officers have entered findings of no probable cause on this basis. These efforts are well documented in

the reports generated by the Hearing Officers. In the opinion of the Monitors, these activities signify ongoing efforts to maintain substantial compliance with the provisions of the Consent Decree in this case.

RECOMMENDATIONS

1. For hearings conducted in Cook County, more suitable space remains an unmet need. We urge Cook County officials to identify such space either within CCDOC or at the Criminal Courts Building. Meanwhile, CCDOC officials should take steps to ensure that inmates from Division XI are transported in timely fashion to the Receiving Room for these hearings.
2. Additional technical resources, including more laptop computers with wireless internet capability and portable printers, should be available at all hearings at both CCDOC and NRC.
3. IDOC administrators should consult with local law enforcement administrators to enlist their cooperation in notifying officers of the need to provide corroboration and/or additional information in response to requests from **King** investigators.
4. The Monitor urges the Court and parties to emphasize to state officials the importance of the PRB's request for funding for additional staff to conduct **King** hearings, establish timely placements into community-based programs for parolees, and other essential tasks, which may well increase in the near future. It is doubtful whether the PRB will be able to fulfill these expanding responsibilities without additional appropriations, but these will be far less costly than the enormous expenditures already occurring because of the housing and transportation of thousands of defendants.

5. The situation involving juvenile parolees might be susceptible to amelioration if decisions to terminate parole were made in appropriate cases (*e.g.* – those involving very serious charges with significant evidence of guilt). The Monitor urges IDJJ officials to review these cases to determine which, if any, warrant such a recommendation.

CONCLUSION

As the monitoring activities described in the three reports submitted in this case have documented, the Illinois Department of Corrections has achieved substantial compliance with the provisions of the Consent Decree in this litigation. This has been achieved with considerable effort on their part and, in no small measure, on the part of the Prisoner Review Board and the Cook County Department of Corrections. Work remains to be done, and some of the progress achieved to date is based, in many respects, on temporary arrangements that do not inspire confidence that they can be sustained over any significant period of time.

The efforts to achieve compliance have involved enormous expenditures on the part of IDOC, which has borne the expense of housing hundreds of inmates shipped back to state custody pursuant to Cook County's interpretation of the order issued by Judge Marovich in **Duran**; in addition, IDOC has dedicated the work of numerous staff to the task of conducting **King** hearings that, in the opinion of the Monitor, have achieved substantial compliance with the provisions of the Consent Decree in this case.

The transfer of inmates between state and county facilities and their extended stays in a restrictive reception center not designed for such lengthy confinement have been two of the most noteworthy unintended consequences of this litigation. The Monitor intends to continue working with Cook County and Illinois officials on these issues to ensure that inmates' legal rights are not violated as a result of the new arrangements resulting from these cases.

**POPULATION AND CAPACITY SUMMARY
COOK COUNTY DEPARTMENT OF CORRECTIONS
THROUGH DECEMBER 31, 2007**

January 11, 2008

Duran v. Sheahan et al.
74 C 2949
The Honorable Virginia M. Kendall
United States District Court
for the
Northern District of Illinois
Eastern Division

John Howard Association
300 West Adams, Suite 423
Chicago, Illinois 60606
312-782-1901
e-mail: info@john-howard.org

**Cook County Department of Corrections
2007 POPULATION AND CAPACITY SUMMARY**

	<u>Available Beds</u>	<u>Average Daily Population</u>	<u>Overflow Population (Daily Average)</u>	<u>ADP/C⁸ Aggregate Release Mechanisms</u>	<u>No. of Days of Overcrowding</u>
Jan	9803	9548.5	501.6	1901.1	31/31
Feb	9820	9314.3	364.8	1789.8	28/28
Mar	9754	9429.9	410.2	1688.4	31/31
Apr	9803	9520.2	458.9	1706.4	30/30
May	9790	9354.6	317.6	1594.3	31/31
Jun	9713	9478.3	363.5	1537.8	29/30
Jul	9792	9607.9	441.6	1516.9	31/31
Aug	9819	9878.5	574.9	1465.5	31/31
Sep	9930	10088.2	564.8	1468.0	30/30
Oct	9954	10048.8	586.3	1425.5	31/31
Nov	9775	9741.6	419.2	1418.4	30/30
Dec	9746	9185.6	145.1	1384.3	28/31
YEAR-TO- DATE TOTAL	na	na	na	na	na
DAILY AVERAGE	9824.8	9600.9	429.3	1573.4	362/365

JOHN HOWARD ASSOCIATION

⁸ ADP/C: average daily population or caseload.

**Cook County Department of Corrections
INSTITUTIONAL GROWTH: 1988 - 2007**

	<u>Average Daily Population</u>	<u>Year-to Year Growth</u>	<u>Available Beds</u>	<u>Year-to Year Growth</u>	<u>Occupancy Level</u>	<u>Overflow Population</u>	<u>Year-to Year Growth</u>
1988	5327	na	5571	na	95.6%	138.7	na
1989	6492	+ 21.9%	6150	+10.4%	105.6%	582.8	+320.2%
1990	6827	+ 5.2%	6217	- 1.1%	109.8%	806.0	+ 38.3%
1991	7590	+ 11.2%	6173	- 0.7%	123.0%	1499.4	+ 86.0%
1992	8789	+ 15.8%	6623	+ 6.6%	132.7%	2443.0	+ 62.9%
1993	8881	+ 1.0%	7953	+20.1%	111.7%	1543.4	- 36.8%
1994	8907	+ 0.3%	7927	- 0.3%	112.4%	1455.7	- 5.7%
1995	8751	- 1.8%	7683	- 3.1%	113.9%	1360.4	- 6.5%
1996	9035	+ 3.2%	8857	+15.3%	102.0%	624.7	- 54.1%
1997	9153	+ 1.3%	9262	+ 4.6%	98.8%	414.1	- 33.7%
1998	9475	+ 3.5%	9360	+ 1.1%	101.2%	531.9	+ 28.4%
1999	9492	+ 0.2%	9639	+ 3.0%	98.5%	304.3	- 42.8%
2000	9953	+ 4.9%	9721	+ 0.9%	102.4%	535.4	+ 75.9%
2001	10642	+ 6.9%	9720	- 0.0%	109.5%	1147.1	+114.3%
2002	11082	+ 4.1%	9827	+ 1.1%	112.8%	1419.6	+ 23.8%
2003	10664	- 3.8%	10100	+ 2.8%	105.6%	990.3	- 30.2%
2004	10536	- 1.2%	9932	- 1.6%	106.1%	950.4	- 4.0%
2005	9776	- 7.2%	9641	- 2.9%	101.4%	643.7	- 32.3%
2006	9360	- 4.3%	9838	+ 2.0%	95.1%	266.5	- 58.6%
2007	9601	+ 2.6%	9825	- 0.1%	97.7%	429.3	+ 61.1%
Cumulative Growth	+ 4274	+ 80.2%	+ 4254	+76.4%	+ 2.1%	+ 290.6	+209.5%

JOHN HOWARD ASSOCIATION

Cook County Release Mechanisms
AVERAGE DAILY CASELOADS/POPULATION
Jan 2006 – Dec 2007

	NON-CUSTODIAL				CUSTODIAL				
	EMP	DRP	SFFP/ CCDAW	AGGREGATE DLY CSLD	PRC	WJSRP	MOMS	AGGREGATE DAILY POP	AVG DLY POP ALL REL MECH
JAN 2006	1521	431	180.3	2132	437.7	114.5	15.6	567.8	2699.8
FEB	1481	418	169.4	2068	440.7	116.8	13.7	571.2	2639.2
MAR	1433	398	166.2	1997	441.2	109.8	12.6	563.6	2560.6
APR	1365	435	152.7	1953	440.5	108.6	14.2	563.3	2516.3
MAY	1129	461	160.4	1750	441.3	111.5	15.6	568.4	2318.4
JUN	792	447	156.1	1395	439.7	111.0	16.2	566.9	1961.9
JUL	605	381	148.8	1135	440.6	107.6	14.7	562.9	1697.9
AUG	809	287	154.4	1250	438.1	116.0	14.1	568.2	1818.2
SEP	967	253	158.7	1379	441.3	116.5	13.0	570.8	1949.8
OCT	1013	231	138.0	1382	440.2	115.7	12.5	568.4	1950.4
NOV	1034	296	159.0	1489	434.4	102.7	12.3	549.4	2038.4
DEC	926	330	147.5	1404	438.1	111.5	15.2	564.8	1968.8
$\bar{X}$ (2006)	1089.6	364.0	157.6	1611.2	439.5	111.5	14.1	565.1	2176.3
JAN 2007	917	281	133.9	1332	438.5	116.7	13.9	569.1	1901.1
FEB	855	250	122.4	1227	441.0	115.5	6.3	562.8	1789.8
MAR	908	184	143.4	1235	440.1	115.0	7.5	562.6	1798.0
APR	848	140	146.2	1141	439.3	117.1	9.0	565.4	1706.4
MAY	743	141	140.0	1027	440.7	116.7	9.9	567.3	1594.3
JUN	675	153	138.2	966	447.0	115.4	9.4	571.8	1537.8
JUL	649	159	141.4	949	442.2	117.5	8.2	567.9	1516.9
AUG	570	175	147.9	893	447.6	115.4	9.6	572.6	1465.5
SEP	552	197	151.3	900	442.9	117.1	7.6	567.6	1467.9
OCT	487	204	166.2	857	443.4	116.9	8.0	568.3	1425.5
NOV	478	205	163.6	847	442.9	116.9	12.6	572.4	1419.0
DEC	449	203	158.3	810	446.5	117.5	10.0	574.0	1384.0
$\bar{X}$ (2007)	677.6	191.0	146.1	1015.3	442.7	116.5	9.3	568.5	1583.9

2. Beginning in 2008, the CFJC launched a post dispositional advocacy project wherein attorneys, legal fellows and law students researched Illinois' juvenile post dispositional statutory and regulatory framework and represented select incarcerated and paroled children.

3. I have represented and worked with children involved in the juvenile justice and child welfare systems for 24 years and have studied the parole process in Illinois for over four years. I have never worked with a young person who could adequately represent him or herself in parole proceedings. This is because the parole proceedings are complex adversarial legal proceedings and because many young people involved in the juvenile justice system have mental health issues, learning disabilities, and/or low literacy levels. Even a child without a disability would not be able to cross examine witnesses or present arguments on his or her own behalf because of the inherent developmental limitations of youth. In my experience, I have not known state officials to provide youth with any assistance in presenting evidence on their own behalf during parole revocation proceedings. Once the Illinois Prisoner Review Board revokes a youth's parole and re-imprisons him or her (or otherwise imposes limitations on his or her liberty), the youth has no way of appealing the parole revocation.

4. Realizing that incarcerated and paroled children were not provided legal counsel, the CFJC's post dispositional advocacy project sought grant funding from the John D. and Catherine T. MacArthur Foundation and collaboration from Illinois' Department of Juvenile Justice ("DJJ") in the creation of a parole revocation representation pilot project. Consequently, since January 2010, children incarcerated at either the Illinois Youth Center at Warrenville or the Illinois Youth Center at St. Charles, with pending parole revocation hearings pursuant to an alleged technical violation of parole, were offered the opportunity to be represented by a CFJC attorney and student.

5. Under my supervision, since the parole revocation representation pilot's inception, CFJC attorneys and students have represented well over a hundred young girls and boys at their parole revocation hearings before the Prisoner Review Board.

6. Over 95% of these children waived their right to a preliminary hearing on their alleged violation of parole.

7. The children indicated that they waived their right to a preliminary hearing because the parole officer instructed them to sign the waiver without explanation or because the parole officer told them that their final revocation hearing would be expedited if they signed the waiver. I do not believe that the children CFJC represented made knowing or voluntary waivers of their right to a preliminary hearing.

8. In January 2010, I was appointed by Governor Patrick Quinn to serve as a commissioner on the Illinois Juvenile Justice Commission ("the Commission"). The Commission serves as the federally mandated State Advisory Group to the Governor, General Assembly and the Illinois Department of Human Services in developing, reviewing and approving the State's juvenile justice plan for the expenditure of funds granted to Illinois by the United States Office of Juvenile Justice and Delinquency Prevention. The Commission also is responsible for submitting an annual report to the Governor and General Assembly with recommendations regarding the State's compliance with the four core requirements of the Juvenile Justice and Delinquency Prevention Act.

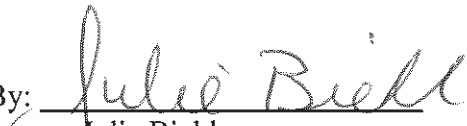
9. Pursuant to the Youth Reentry and Improvement Law of 2009 (20 ILCS 505/17a-5(5.1)), the Commission conducted an extensive study of Illinois' juvenile release, reentry, and revocation systems in order to develop recommendations to ensure the effective reintegration

of youth offenders into the community and ensure that the children's due process rights were protected during parole revocation proceedings. The findings of the study were published in the Illinois Juvenile Justice Commission Youth Reentry Improvement Report (an electronic copy of the Report can be accessed online at http://www.dhs.state.il.us/OneNetLibrary/27896/documents/By_Division/DCHP/RFP/IJJC_YouthReentryImprovement.pdf).

10. Among its many data collection endeavors, the Commission reviewed the files of all youth whose parole was revoked between December 1, 2009 and May 31, 2010. In total the Commission reviewed 386 youth's files—40 girls and 346 boys.

11. Over 85% of the youth whose files were reviewed waived their right to a preliminary hearing. Based on my experience and observations I believe that most all of these waivers are unknowing and involuntary. I do not believe that children understand the rights they forgo when they indicate that they would like to waive their preliminary hearings.

12. On this, the 30th day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: 
Julie Biehl
Director
Children and Family Justice Center
Northwestern University Law School

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

M.H., on behalf of himself and on behalf of the class	)	
of juvenile parolees who face revocation proceedings,	)	
	)	
Plaintiffs,	)	
	)	Case No. 12CV8523
v.	)	
	)	
ADAM MONREAL, Chairman of the Illinois Prisoner	)	
Review Board; and PAT QUINN, Governor of the	)	
State of Illinois,	)	
	)	
Defendants.	)	

CLASS ACTION COMPLAINT

Plaintiff M.H., individually and on behalf of the class of all juvenile parolees who face parole revocation proceedings, by his undersigned attorneys, for his complaint against ADAM MONREAL, Chairman of the Illinois Prisoner Review Board, and PAT QUINN, Governor of the State of Illinois, alleges as follows:

INTRODUCTION

1. This is a civil rights class action complaint on behalf of children and teenagers who have been imprisoned or otherwise deprived of their liberty as a result of the unconstitutional practices and procedures of the Illinois Prisoner Review Board (hereinafter, the PRB) with respect to the handling of parole revocation proceedings. The PRB's procedures disregard fairness and due process and thereby violate the rights of the members of the Plaintiff class under the Fourteenth Amendment to the United States Constitution and the Illinois Juvenile Court Act. This court should declare those procedures unlawful and it should enjoin them.

2. Members of the Plaintiff class are routinely incarcerated without a preliminary hearing to determine whether there is reason to believe that they have actually violated the

conditions of their parole. As a result, class members are detained, oftentimes for up to a month or more, without any kind of hearing into the legality of their imprisonment.

3. The full parole revocation hearings that the PRB does conduct are a sham. The PRB keeps secret the evidence it has gathered against the class members. The conditions under which the hearings occur render it impossible for the class members to present witnesses or other evidence on their own behalf, and they are denied the opportunity to confront the evidence used against them at their revocation proceedings. The PRB does not provide counsel to the Plaintiff class members—many of whom have learning disabilities, live with mental illness, and have limited educational attainment— and they are left to navigate the complex revocation proceedings without the support and guidance they obviously need in order to defend themselves.

4. These unlawful tribunals—akin to kangaroo courts— result in the arbitrary detention and imprisonment of over 1,000 young people throughout the state of Illinois each year.

JURISDICTION AND VENUE

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of the Plaintiffs rights as secured by the Fourteenth Amendment to the United States Constitution.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to the claims asserted in this complaint occurred in this judicial district.

PARTIES

7. M.H. is a seventeen-year-old male who is currently in the custody of the Illinois Department of Juvenile Justice (hereafter, the DJJ). He has been incarcerated since September 13, 2012, for allegedly violating the terms of his parole. He was never provided a preliminary hearing

to determine whether there were reasonable grounds to believe he actually violated the conditions of his parole. As of the filing of this complaint, he is still awaiting his final parole revocation hearing.

8. Defendant Adam Monreal is the Chairman of the Illinois Prisoner Review Board, the State agency that makes decisions about juvenile parole matters. Monreal directs and supervises the activities of the PRB members, including each of the members who review juvenile parole cases and make decisions about revocation. Monreal is responsible for implementing the rules, regulations, procedures, and standards governing the parole revocation process in the State of Illinois.

9. Defendant Pat Quinn is the Governor of the State of Illinois and Chief Executive of the state government. As such, Quinn is responsible for the enforcement of State policies by which the rights of the plaintiff class are being violated, as alleged herein. Quinn appointed Mr. Monreal Chairman of the Illinois Prisoner Review Board.

CLASS ACTION ALLEGATIONS

10. Plaintiff M.H. brings this suit on his own behalf and on behalf of all juvenile parolees in the State of Illinois who currently or will in the future face parole revocation proceedings.

11. The class is so numerous that joinder of all members is impractical. Approximately 1,520 children and teenagers are currently on parole and the PRB conducted over 1,132 revocation hearings last year. The class also includes many future members whose names are not known, since new youth are released from detention and placed on parole daily.

12. There are questions of law and fact common to all class members, including but not limited to whether Illinois parole revocation procedures violate the due process rights of

juvenile parolees, whether juvenile parolees are entitled to appointed counsel at parole revocation hearings, and whether the hearings, as they are currently being conducted, violate procedural requirements set forth in the applicable provisions of the Illinois Juvenile Court Act of 1987 (*see* 705 ILCS 405/1-5). Because the practices and procedures challenged in this Complaint apply with equal force to the named Plaintiff and the other members of the class, the claims of the named Plaintiff are typical of the class in general.

13. The named Plaintiff will fairly and adequately represent the interests of the class. He possesses a strong personal interest in the subject matter of the lawsuit and is represented by experienced counsel with expertise in civil rights litigation. Counsel have the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action.

14. The Defendants have acted or refused to act on grounds generally applicable to the class: their policies, procedures, practices, acts, and omissions have affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole.

ALLEGATIONS OF FACT

Characteristics of the Class

15. During their time on parole, many juvenile parolees will be charged with violations of the terms and conditions of their parole, re-imprisoned, and subjected to parole revocation proceedings in which their liberty will be at stake.

16. Children and teenagers are inherently more vulnerable and less able to effectively represent themselves in complex legal proceedings than their adult counterparts. As described more fully below, youth on parole also demonstrate significantly lower rates of educational achievement, and higher rates of mental health disorders and educational and cognitive

disabilities, than non-incarcerated youth. Consequently, juvenile parolees are particularly ill-equipped to assert their due process rights and represent themselves in revocation proceedings.

17. Young people generally enter DJJ custody struggling with low levels of educational achievement, substance abuse problems, and mental health issues. These conditions are likely to be exacerbated during their confinement given the grossly inadequate mental health and educational services provided at DJJ facilities. According to DJJ data, 45% of youth in DJJ custody have identified special education needs, 67% of youth have not graduated from grade school, and 80% need help learning independent learning skills. Seventy-seven percent of youth in DJJ custody had poor school attendance prior to imprisonment. In addition, two-thirds of Illinois youth in custody have diagnosed psychiatric and trauma disorders and 7 out of 10 have a clinical diagnosis of drug dependency. Time spent in DJJ custody can hinder the educational and emotional development of juvenile parolees, leaving them with lower levels of maturity and reasoning skills than the same-age general population.

18. Despite the special needs and inherent vulnerabilities of children and teenagers on parole, juvenile parole proceedings in Illinois are conducted identically to adult parole proceedings. On information and belief, a number of the PRB members responsible for determining whether to revoke the parole of juvenile parolees have little to no background or training in juvenile parole matters.

Overview of Juvenile Parole Proceedings in Illinois

19. Most juvenile parolees remain under the supervision of the PRB until they reach age 21. During this time, the PRB retains authority to deprive these youth of their liberty—the agency can initiate revocation proceedings and order the imprisonment of juvenile parolees and/or impose significant restrictions on juvenile parolees' freedom of movement. Parole revocation

proceedings are initiated either for technical parole violations of stated conditions of parole or because new delinquency charges have been filed against a parolee.

20. In theory, all youth on parole in Illinois are entitled to specific due process protections in these parole revocation proceedings, as set forth under controlling United States Supreme Court precedent and under the Illinois Juvenile Court Act. These protections include:

- a. **The right to a preliminary hearing.** All youth on parole are entitled to a timely hearing to determine whether probable cause exists to hold them on the alleged parole violation. Prior to the preliminary hearing, youth must be informed of the charges against them, as well as when and where the preliminary hearing will occur. If a youth waives his right to a preliminary hearing, that waiver must be knowing and voluntary—the youth must fully understand the right at stake and the consequences of waiving that right.
- b. **The right to confront witnesses and present evidence during the preliminary hearing.** During the preliminary hearing, juvenile parolees are entitled to present documentary evidence and witnesses who can give relevant information to the PRB official hearing the case. Individuals who present information adverse to the youth must be present for questioning. If a juvenile parolee waives his preliminary hearing, or if the PRB determines that there are reasonable grounds to believe a parole violation did occur, then the parolee is incarcerated in a DJJ facility while he awaits his final parole revocation hearing.
- c. **The right to a final revocation hearing.** Prior to the final revocation proceedings, a juvenile parolee has the right to examine the evidence against him. During the hearing, the parolee has the right to be present, in person, before the hearing officer, and to

present witnesses and evidence on his behalf. The parolee also has the right to confront and cross-examine adverse witnesses. PRB officials are not entitled to rely solely on third-party reports, including parole and police officer reports, in revoking parole.

- d. **The right to counsel.** Because of their immaturity, lack of educational attainment, and frequent problems with mental illness, youth on parole have a right to counsel appointed at cost to the State at both preliminary and final revocation hearings. Youth who can afford an attorney have the right to retain their own representation at these hearings.
- e. **The right to appeal a decision of the PRB.** If the PRB determines that the parolee has violated any of the terms and conditions of parole it must issue a written statement reciting the evidence upon which it relied and the reasons for this determination. The parolee is entitled to receive a copy of this statement. Additionally, youth on parole have a right to receive transcripts of the preliminary and final revocation proceedings, and may appeal the PRB's decision in a standard review or grievance process.

Denial of Due Process in Illinois Parole Revocation Proceedings

21. In practice, PRB officials consistently disregard the due process protections listed above. As a result, members of the Plaintiff class are arbitrarily detained and deprived of their right to liberty without adequate process in derogation of the Fourteenth Amendment of the United States Constitution and the Illinois Juvenile Court Act.

22. The PRB fails to ensure preliminary hearings for class members at the time they are alleged to have violated the conditions of their parole. As a result, class members are imprisoned without any inquiry into the legality of their detention—typically for as long as one month and sometimes for longer—while awaiting their final revocation hearing.

23. As a matter of course, state officials require that class members sign a form indicating that they have waived their preliminary hearing. However, these waivers are neither fully informed nor voluntary. Prior to signing the waiver form, class members are not instructed as to the purpose of the preliminary hearing, nor are they given guidance from either an attorney or any other advocate. Parole officers regularly misinform class members that signing the waiver form will expedite the revocation process and their release from custody. Class members sign the form believing that it will allow them to return home sooner. In reality, the signature allows the PRB to avoid conducting a preliminary hearing and ensures that the youth will remain incarcerated until the final revocation hearing, regardless of the validity of the alleged parole violation charge.

24. When the PRB does schedule final parole revocation hearings, it fails to do so in a timely manner. The final revocation hearing is consistently delayed due to the DJJ's policy and practice of transferring juveniles between correctional facilities while they await their final hearing. When they are transferred, the DJJ master files and PRB parole records for these youth frequently remain at the original point of incarceration. Final revocation hearings are further postponed while the master files and parole records are identified and transferred. Youth on parole lack any means by which to object to these transfers or request a more timely hearing, and state law prohibits juvenile offenders from requesting their own master files. The frequent transfer of juvenile parolees causes these youth to be indefinitely detained while awaiting a final revocation hearing.

25. The final revocation hearings conducted by PRB are rote affairs that contain none of the due process protections guaranteed by the U.S. Constitution and Illinois state law. PRB members make most revocation decisions based solely on the one- to three-page report prepared

by the youth's parole officer, which constitutes unreliable hearsay evidence. Hearing officers rarely, if ever, interview the parole officers. Consequently, youth on parole do not have the opportunity to cross-examine the primary (if not the only) witness who presents evidence against them.

26. The PRB also fails to provide adequate notice to class members as to their right to present evidence on their own behalf. As a result, class members are denied the opportunity to contest their parole officer's allegations by presenting documentary and physical evidence or live witnesses who can provide mitigating or exculpatory evidence on the parolee's behalf. To the extent some class members may be informed of their right to present such evidence, they are unable to do so in light of the PRB's practices and procedures. As a matter of course, the revocation hearings are held in secret, often far from the location of the alleged violation, and neither the PRB hearing officers nor DJJ employees help the class members subpoena witnesses or locate documentary or other physical evidence in their favor. Juvenile parolees lack the capacity to effectively defend themselves from allegations that they violated their conditions of parole.

27. PRB officers consistently fail to inform youth that they have a right to retain counsel to help them navigate these complex adversarial proceedings. Family members and advocates are regularly denied access to the hearings and prohibited from participating on the youth's behalf. Those attorneys or advocates who do attempt to represent the parolee are not given access to the documents used against the class member in the revocation hearings. Juvenile parolees thus lack any meaningful representation in procedurally complex proceedings in which the class members' liberty is at stake.

28. Youth on parole are denied a written explanation of the PRB's revocation decisions. In most—if not all—cases there is no written or electronic record or transcript of the revocation proceedings. Even if a transcript of the proceedings did exist, the PRB's revocation decisions are unreviewable. There is no appeal mechanism or grievance procedure by which juvenile parolees can seek a review of PRB decisions. The lack of an appellate process ensures the continuing insulation of the PRB's juvenile parole revocation process and prevents parolees from challenging the procedures and the outcome of the revocation hearing.

29. Throughout this revocation process, the juvenile class members are severely hampered by their lack of development, low rates of educational achievement and literacy levels, and high rates of mental health disorders and educational and cognitive disabilities. As a consequence, these class members are unable to effectively speak for themselves at parole hearings.

30. The hearings are complex. Fairly conducted, they should involve the presentation of documentary evidence and mitigating circumstances, the cross-examination of witnesses, and oral advocacy, as described above. The juvenile class members, who are almost uniformly indigent, cannot possibly present factual defenses and mitigating evidence without the assistance of competent, fully prepared legal counsel.

31. The PRB lacks any mechanism by which youth on parole can request an appointed attorney. The State would categorically deny any request for appointed counsel because there is no system or funds in place to secure such an appointment. In the circumstances faced by the class members in Illinois juvenile parole revocation proceedings, the failure to provide appointed counsel to the class members contravenes due process.

32. The systematic and on-going violations described in the preceding paragraphs result in the arbitrary imprisonment of hundreds of youth in Illinois facilities. Youth are consistently subjected to months of unreviewable detention in juvenile prisons without process or remedy. As a result of the PRB's practices and procedures, the members of the Plaintiff class have suffered and continue to suffer well-established violations of their right to due process under the Fourteenth Amendment of the U.S. Constitution, as well as under the Illinois Juvenile Court Act, 705 ILCS 405/1-5.

M.H.'s Parole Proceedings are in Violation of His Right to Adequate Due Process, His Right to Counsel Under the Fourteenth Amendment of the U.S. Constitution, and the Illinois Juvenile Court Act

33. Plaintiff M.H. is a seventeen-year-old male whom mental health professionals have deemed "moderately cognitively impaired" and who has been repeatedly institutionalized for substance abuse and mental health treatment.

34. From October to April 2012, M.H. was incarcerated in DJJ custody for possession of a controlled substance. The PRB granted M.H. parole on April 19, 2012. The terms of M.H.'s parole require him to enroll in an alternative high school miles from his home, attend substance abuse counseling, secure employment, meet with a caseworker once every week, meet with a mentor twice a week, and spend Friday and Saturdays engaged in "job-readiness" programs. He will remain on parole until he is 21 years old.

35. On September 7, 2012, M.H.'s parole officer made the determination that M.H. had violated the terms of parole by failing to stay in touch with his parole officer. After a warrant for M.H.'s arrest was issued, he was taken into state custody on September 13, 2012. He is currently imprisoned in the Illinois Youth Center (I.Y.C.)-Chicago while awaiting his parole revocation hearing.

36. The PRB caused M.H. to involuntarily waive his right to a preliminary hearing. After M.H. was detained, a parole officer presented him with a Parole Violation Report and instructed him to sign it to indicate that he waived his preliminary hearing. M.H. did not understand the form he signed. M.H. believed that his signature would ensure the expedited scheduling of his final parole revocation hearing. M.H. signed the form because he was told it would help him return home quickly. If M.H. fully understood his rights, he would have opted to have a preliminary hearing during which he would have sought to be represented by appointed counsel.

37. M.H. has also been repeatedly denied his right to a timely final revocation hearing. Initially, his final revocation hearing was scheduled on September 20, 2012, at I.Y.C.-Saint Charles. On September 19, state officials informed him that because of an administrative error, the PRB would be unable to hear his case on September 20, but that his case would be heard at the next available PRB hearing date in early October. However, days before the early October hearing date, he was transferred I.Y.C.-Chicago, even though M.H. had informed his counselor at I.Y.C.-St. Charles that he wished to remain at the facility and proceed with the scheduled parole hearing.

38. When he arrived at I.Y.C.-Chicago, M.H.'s parole hearing was delayed an additional three weeks. He is currently scheduled to have a parole revocation hearing on October 24, 2012. By this time he will have been imprisoned without a preliminary or final revocation hearing for over 6 weeks.

39. Given the PRB's policy of denying parolees appointed counsel, when his parole revocation hearing finally occurs, M.H. will be unrepresented. He will not have the opportunity to examine the evidence his parole officer has gathered against him, nor will be able to confront

witnesses or present mitigating and exculpatory evidence. The proceedings against him will follow the pattern alleged in paragraphs 21 through 32, above.

40. As a result of the PRB's unconstitutional parole revocation procedures, M.H.'s rights to adequate due process have been and are continuing to be violated. Due to frequent transfers and delays, he has endured weeks of unlawful imprisonment without a hearing. When he does finally receive a hearing on October 24, it will be without the guarantees of due process or right to counsel prescribed by the Fourteenth Amendment of the U.S. Constitution and Illinois state law.

41. For as long as M.H. remains on parole in Illinois he faces an ongoing imminent risk of being subjected to the PRB's unconstitutional parole procedures.

COUNT I **42 U.S.C. § 1983 Right to Due Process**

42. Plaintiff repeats and re-alleges the preceding paragraphs as if fully set forth in this Count.

43. Through this Count, Plaintiff seeks injunctive and declaratory relief against all Defendants to prevent the continued violation of the rights of Plaintiff and the class he represents.

44. By continuing to conduct parole revocation proceedings in the manner alleged in this Complaint, and specifically, by failing to provide Plaintiff and the class with adequate notice of their due process rights; by failing to conduct preliminary revocation hearings and timely final revocation hearings; by prohibiting Plaintiff and the class from presenting mitigating and exculpatory evidence; by preventing the participation of parents, guardians, and retained counsel in the revocation proceedings; by denying Plaintiff and the class the right to confront adverse witnesses at their final revocation proceedings; and by denying Plaintiff and the class appointed counsel during all stages of the parole revocation proceedings, Defendants are in continuous

violation of Plaintiff's rights and the rights of the members of the class under the Fourteenth Amendment to the United States Constitution.

COUNT II

State Law – Violation of Illinois Juvenile Court Act, 705 ILCS 405/1-1 *et seq.*

45. Plaintiff repeats and re-alleges the preceding paragraphs as if fully set forth in this Count.

46. Through this Count, Plaintiff seeks injunctive and declaratory relief against all Defendants to prevent the continued violation of the rights of Plaintiff and the class he represents.

47. By continuing to conduct parole proceedings in the manner alleged in this Complaint, and specifically, by denying Plaintiff and the class appointed counsel and adequate procedural due process during all stages of their parole revocation proceedings, Defendants are in continuous violation of Plaintiff's rights and the rights of the members of the class under the Illinois Juvenile Court Act of 1987, 705 ILCS 405/1-1 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class he represents respectfully prays that this Court enter judgment in its favor and against the Defendants in the following manner:

1. Enter an Order certifying a class of all juvenile parolees in the State of Illinois who currently or will in the future face parole revocation proceedings.

2. Adjudge and declare that the policies, practices, and conduct described in this Complaint are in violation of the rights of Plaintiff and the class he represents under the Fourteenth Amendment of the United States Constitution and the Illinois Juvenile Court Act.

3. Preliminary and permanently enjoin the Defendants, their agents, employees, and all persons under their control from subjecting Plaintiff and the class he represents from the unlawful policies, practices, and conduct described in this Complaint.

4. Retain jurisdiction of this case until such time as the Defendants have fully complied with all orders of the Court, and there is reasonable assurance that the Defendants will continue to comply in the future with these orders.

5. Award Plaintiff reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988.

6. Award Plaintiff and the class he represents such other and further relief as the Court deems just and proper.

Respectfully submitted,

**M.H., individually and on behalf of the
class of juvenile parolees who face parole
revocation proceedings**

By: /s/ Alexa Van Brunt
One of the class attorneys

Locke E. Bowman
Alexa A. Van Brunt
Sheila A. Bedi (*Pro hac vice* motion to be filed)
Roderick MacArthur Justice Center
Northwestern University School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844

)
)
)
)
)
)
)
)
)
)
)
)
)

The Hon. Robert W. Gettleman

3. After I was locked up in Cook County Jail, I went before a parole board officer. Before I saw the parole officer, I never read a notice of my rights in the parole process. I signed a paper waiving my right to a preliminary hearing because I believed that if I signed the paper I would be able to stay in Cook County Jail, but that if I didn't sign I would be transferred to

Stateville Correctional Center. I asked the parole officer if I could stay in Cook County if I signed the paper, and she said yes. I didn't want to go to Stateville. People charged with parole violations in Stateville are locked up in their cells for 24 hours a day. They only get yard and a shower once a week. They can't go to school or have anything to read in their cell. The prison regulations do not allow them to call their public defenders. They are also not allowed to have visitors unless they are in custody more than 60 days. I wanted to stay in Cook County Jail because it is much closer to my family and my family is allowed to visit a couple times a week. I signed the paper so I could see my mom more often and so that my public defender could visit me.

4. When I signed the paper, I told the parole officer that I wanted to call witnesses who could explain that I didn't violate my parole. No one told me that by waiving my hearing I wouldn't get to call witnesses and tell my side of the story. The parole officer didn't contact any of my witnesses. I wanted my public defender to represent me in the parole process but she didn't.

5. After signing the paper waiving my hearing, I was transferred to Stateville, even though the parole board officer told me that I would stay in Cook County Jail. I was locked up in Stateville for six months without a hearing. I went before the parole board for my final revocation hearing in April, May, and June. Every time they continued my final hearing because of my pending criminal case. In July 2012, I pled guilty to the parole violation so that I could get out of Stateville and go back to Cook County. If I had agreed to more continuances, I would have stayed in Stateville for a year, which is the rest of my parole term. I pled guilty just so I wouldn't have to be in Stateville anymore. I was transferred back to Cook County on August 21, 2012.

6. I didn't have a lawyer to represent me when I pled guilty to the parole violation. The public defender who is representing me in my criminal case did not visit or call me one time when I was in Stateville. When I pled guilty, I didn't realize that it could be used against me by the State in my criminal case.

7. I didn't understand my rights in the parole process. I wish I had had a preliminary hearing when I was in Cook County. I didn't understand that by signing the piece of paper I would not get to call witnesses and tell my side of the story. I didn't understand that I would be letting the State lock me up without any hearing for over 6 months. I didn't understand that by pleading guilty to the parole violation I could hurt my criminal case. I wish I had a lawyer to explain the process to me and help me represent myself. Now I am facing up to 30 years in prison on my pending criminal charge.

8. On this, the 15th day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: Steven Lofton
Steven Lofton

preliminary hearing. I signed a piece of paper listing the witnesses I wanted to appear on my behalf.

4. I appeared before a parole board member for my preliminary hearing in Division Five of the Cook County jail a few days later. The parole officer had not contacted any of my witnesses. The only people present at my hearing were a parole board officer and a parole officer who was not my agent and who was not the one who had violated me. My public defender who is representing me on my new case did not attend the preliminary hearing. There was no investigation done by an outside investigator to determine whether there was probable cause to hold me. The parole board officer found probable cause on the parole violation only because I had a pending criminal case. I never received a written record of what happened in the preliminary hearing.

5. After my preliminary hearing I remained locked up in the Cook County Jail. In September, I appeared before the parole board again for a final revocation hearing. This hearing took place in a courtroom at the Circuit Court of Cook County. None of my witnesses were at the hearing. The people who attended the hearing were a parole board officer, a Cook County Assistant State's Attorney, and a public defender. The State's Attorney was the same lawyer who prosecuted my criminal case. I had never seen the public defender before. He did not interview me before the hearing or talk to me about my case after the hearing. Since my criminal case was still pending, the parole board decided to continue my final revocation hearing until October.

6. In early October, I pled guilty to the misdemeanors of child neglect and endangerment. The State *nolle prosquei* the domestic battery charge. I decided to plead guilty to the two misdemeanors so that I could get out of Cook County Jail, return to my family, and go

back to work. I was sentenced to ^{mt} 300 days on the misdemeanors and given a release date of December 28, 2012.

7. When I pled guilty, I did not believe it would affect my parole, because other inmates and parole board officers told me that if I pled guilty and was sentenced to less than a year of incarceration, I could not be violated on parole. My public defender on my criminal case would not answer questions about my parole case or help me at my parole hearings. When I asked the public defender who oversaw the September preliminary parole hearing whether pleading guilty would affect my parole, he said he didn't know.

8. Later in October, I appeared again before the parole board. The same Assistant State's Attorney and public defender were present, as well as a parole board officer. None of my witnesses were present. My public defender who had defended me on my criminal case was also not at the hearing. Because I pled guilty to the misdemeanor charges, the parole board found me guilty of violating my parole

9. I did not receive a written record of the parole board's findings or a transcript of the proceedings. In my final revocation hearing, the parole board officer said that I was guilty of violating my parole. But I do not know if I will be serving the remainder of my parole term, which is due to end in January 2014, or whether I will be released on December 28, 2012. When I looked online at the Illinois Department of Corrections website, it said only that my projected discharge date is "to be determined."

10. I did not have a lawyer to actively represent me in my parole proceedings, and no one explained the consequences on my parole status of pleading guilty to the misdemeanor charges. When I pled guilty, I didn't think that it could be used against me by the parole board. The public defender who was at the final revocation hearing did nothing to represent me or

explain what would happen if I did plead guilty to the misdemeanors. I was not allowed to present witnesses at either my preliminary hearing or my final hearing, and my parole agent did not show up to testify.

11. I have a college education and I still did not understand what was going on in my parole proceedings. The parole board did not recognize any of my rights in the parole hearings. I didn't receive any witnesses or have the chance to cross-examine the parole agent who violated me. Since I didn't receive a record of the final revocation hearing, I have no idea what will happen to me after I'm done serving time on the misdemeanors. I'm supposed to go back to work after I am released from the Cook County Jail, but I can't tell my company what my release date is. I wish I had a lawyer to explain the process to me and to help me represent myself.

12. On this, the 29th day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: Michael Fulgham
Michael Fulgham

**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;

v.

ROGER E. WALKER and
JESSE MONTGOMERY,
Review Board; and PAT QUINN, Governor of the
State of Illinois;

Defendants.

)
)
)
)
)
) No. 06 C 204
)
) The Hon. Robert W. Gettleman
)
)
)
)
)
)
)
)

DECLARATION OF RASHID EVANS

I, RASHID EVANS, a member of the class certified in *King v. Walker*, declare the following is true to the best of my knowledge.

1. I am 23 years old and I live in Chicago, Illinois. I am currently locked up in Cook County Jail.

2. I have been in custody since September 2012, when I was arrested on a burglary charge. After I was arrested, I was taken to Cook County Jail and charged with violating my parole because I was accused of a new criminal offense.

3. A few days after I was locked up in Cook County Jail, I went before a parole board officer. I received a piece of paper that had the notice of charges against me. I signed another piece of paper listing the witness I wanted to come to the hearing.

4. I appeared before a parole board member for my preliminary hearing in Division Five of the Cook County jail some time later. The parole officer had not contacted my witness.

The only people at my hearing were a parole board hearing officer and a parole officer who was not my agent and who was not the one who had violated me. My public defender who is representing me on my new case did not come to the preliminary hearing. There was no investigation done by an outside investigator to determine whether there was probable cause to hold me. The parole board officer found probable cause on the parole violation only because I had a pending criminal case. I never got a written notice of what happened in that preliminary hearing.

5. After my preliminary hearing I stayed locked up in the Cook County Jail. On November 14th, I appeared before the parole board for a final revocation hearing. This hearing took place in a courtroom at the Circuit Court of Cook County. My witness wasn't there. The only people who were at the hearing were a parole board hearing officer, a Cook County Assistant State's Attorney, and a public defender. I had never seen the public defender before. He didn't talk to me about my case before or after the hearing.

6. I wanted my public defender at the hearing to represent me. But I couldn't ask my lawyer to represent me because I received notice of the final revocation hearing the same day as the hearing. They didn't give me enough time so that I could call my public defender and ask her to come to the courtroom.

7. When I went before the board, the State's Attorney read the charges against me. At first, she started reading someone else's file, until I told her that those charges weren't about me. The State's Attorney then told the parole hearing officer that she didn't have my file. The hearing officer had my parole violation report, so she heard my case anyway. The public defender at the hearing tried to get my parole case continued because my criminal case was still

pending, but the hearing officer wouldn't agree. She said she had already given someone else a continuance that day, and one continuance was enough.

8. The whole hearing happened really fast and I didn't understand what was going on. When it was over, I asked the public defender what happened and he said that I was violated and that I would get a piece of paper in the mail. I still haven't gotten anything. I sent my parole documents to my dad so he can try to explain them to me. My public defender on my criminal case hasn't helped me at all with my parole case.

9. The parole board didn't grant me any rights in the parole hearings. My lawyer couldn't represent me because the board didn't give me any notice of when the hearings were going to be. I didn't have the chance to cross-examine the parole agent who violated me or confront any of the evidence used against me. I also didn't get a record of the parole board's findings.

10. On this, the 29th day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: 
Rashid Evans

continued the hearing. I don't know why the parole hearing officer continued my case and he never explained it to me.

5. When I went back before the parole board hearing officer for my second preliminary hearing, the only people there were the hearing officer and a parole officer who was not my agent and who was not the one who had violated me. My private attorney who is representing me on my new criminal case did not show up at the preliminary hearing because I didn't get notice for when it would take place. There was no investigation done by an outside investigator to determine whether there was probable cause to hold me. The parole board officer found probable cause on the parole violation only because I had a new criminal case.

6. After my preliminary hearing I stayed locked up in the Cook County Jail. On November 14th, I appeared before the parole board for a final revocation hearing. This hearing took place in a courtroom at the Circuit Court of Cook County. The people who attended the hearing were a parole board hearing officer, a Cook County Assistant State's Attorney, and a public defender. The State's Attorney was the same lawyer who is prosecuting my criminal case. I had never seen the public defender before. He did not interview me before the hearing or talk to me about my case after the hearing.

7. I wanted my retained attorney at the hearing to represent me and explain to the board that I am not guilty of the parole violation. But I couldn't call my lawyer to represent me because I received notice of the final revocation hearing the same day as the hearing. They didn't give me enough notice so that I could call my lawyer and ask him to come to the courthouse.

8. When I went before the board, I tried to tell the parole board hearing officer that I had not committed the UUW. She told me that I couldn't explain myself but should wait to tell it to the judge. She didn't let me talk at all during the hearing and she didn't let the public defender

say anything on my behalf either. Even though my criminal case is still pending, she didn't continue my parole violation case. Instead she violated me based only on reading the parole violation report about my arrest. She told me that if I'm acquitted of the criminal case, I can try to appeal the board's finding.

9. The parole board didn't recognize any of my rights in the parole hearings. I didn't receive a record of the parole board's findings or a transcript of the hearing. Because the board didn't give me any notice of the preliminary or final revocation hearing, my lawyer couldn't represent me. I didn't have the chance to cross-examine the parole agent who violated me or confront any of the evidence used against me. I wasn't even allowed to speak on my own behalf at the final revocation hearing.

10. If I'm acquitted of the U UW charge, there is no way for me to appeal the parole board's finding that I am guilty of violating my parole. I'll have to stay in prison on the parole violation even if the criminal charges are dismissed.

11. Because I was violated, I'm ^{may S.M} going to be transferred to Stateville Correctional Center, even though I have a case pending in the Circuit Court of Cook County and my next hearing date is December 11, 2012. I'll have to travel back and forth to Cook County for the status hearings on my case. If the parole board hearing officer had agreed to a continuance, I could stay in Cook County and fight my criminal charges. There was no reason for her to deny the continuance.

12. On this, the 20 day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: Samuel D. Miller
Samuel D. Miller

**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;

v.

ROGER E. WALKER and
JESSE MONTGOMERY,
Review Board; and PAT QUINN, Governor of the
State of Illinois;

Defendants.

)
)
)
)
)
) No. 06 C 204
)
) The Hon. Robert W. Gettleman
)
)
)
)
)
)
)
)

DECLARATION OF JOSHUA TEPFER

I, JOSHUA TEPFER, an attorney for a former parolee in the State of Illinois, declare the following is true to the best of my knowledge.

1. I am an attorney at Northwestern University Law School's Bluhm Legal Clinic and Project Director of the Center for Wrongful Convictions of Youth. I represented Mr. Terrill Swift in his parole revocation proceedings, which occurred in 2010 and 2011 in Illinois.

2. Mr. Swift was released on parole in DuPage County in May 2010. On September 15, 2010, Mr. Swift was arrested on an alleged parole violation and transported to Stateville Correctional Center. I served as Mr. Swift's counsel on the alleged parole violation. In the course of my representation of Mr. Swift during this process, I was continually denied prior notice of the charges against him. Instead, I was told that while I could represent Mr. Swift at the preliminary hearing, I would only receive a copy of the parole violation report when I arrived for the hearing.

3. On September 23, 2010, eight days after his arrest and detention, and following my intervention as his counsel, the alleged violation was dismissed for lack of probable cause prior to a preliminary hearing. Mr. Swift was released from prison and Joseph Rose, a representative from the Legal Department of the Illinois Department of Corrections, called me to apologize for the unwarranted charge.

4. In April 2011, Mr. Swift was arrested at his place of employment for again allegedly violating the conditions of his parole and imprisoned at Lawrence Correctional Center, a several-hour drive downstate from Mr. Swift's home. The Prisoner Review Board (PRB) and the Department of Corrections knew that I was Mr. Swift's presumptive counsel, as I had represented Mr. Swift the previous fall. Despite their knowledge to this effect, I was never notified by the PRB or the Department of Corrections of his arrest.

5. When I found out about my client's arrest, I immediately notified the PRB that I would again be representing Mr. Swift. I was sent a copy of the notice of charges against my client, attached as Exhibit 1, which included allegations that he had violated his electronic monitoring agreement and failed to abide by certain conditions of treatment. However, after reviewing the charges, it became obvious that that the report was missing several key components, including: 1) the GPS maps documenting Mr. Swift's alleged electronic monitoring violations, which the parole agent promised to provide; 2) notes taken by Mr. Swift's parole agent relating to conversations in which the parole agent alleged Mr. Swift admitted to the alleged electronic monitoring violations; and 3) copies of documents the State alleged Mr. Swift signed indicating specific conditions for treatment that the State alleged Mr. Swift had violated.

6. These documents constituted evidence necessary for the PRB to uphold the allegations against my client, yet they were not provided to either Mr. Swift or to me as his

attorney. The PRB's failure to disclose the evidence to be used against Mr. Swift at his parole hearing clearly violated Mr. Swift's rights under *Morrissey v. Brewer*, 408 U.S. 471, 489 (1971) and 20 Ill. Adm. Code 1610.150.

7. On April 28, 2010, not long after I learned the date of the scheduled May 10th final revocation hearing, I sent a letter to the PRB demanding the above documentation so that I could prepare for the hearing. I also demanded that witnesses be presented against my client, as I had been told earlier by a representative of the PRB, Debbie White, that she did not expect that the State would present any witnesses at the hearing. Indeed, I recall that Ms. White suggested that it was rare, if ever, that the State presented witnesses at parole revocation hearings. I explained in my demand letter that Mr. Swift had a constitutional right to confront witnesses at this hearing under *Morrissey*. This letter is attached as Exhibit 2.

8. In order to accommodate my requests, the PRB was forced to continue the scheduled hearing for an additional month. During that time, Mr. Swift remained in custody in Lawrence. Over the course of that month, I did receive most of the documents I demanded; however, I never did receive the documents that Mr. Swift allegedly signed relating to the conditions for treatment, as described in Paragraph 5, above.

9. Ultimately, the PRB held a final revocation hearing at Lawrence, at which Mr. Swift's parole agent, Officer Junker, was the only witness. Officer Junker traveled several hours, as did I, the morning of the hearing in order to attend. It was my understanding that despite being an experienced parole agent and having purportedly arrested other parolees on violations, Agent Junker had rarely, if ever, testified at parole revocation hearings.

10. After Mr. Swift's hearing, he was released. An agreement was reached with the PRB in which two of the allegations were dropped in exchange for Mr. Swift's admission to a "technical violation" on one of the charges.

11. Had Mr. Swift been unrepresented, had I not sent a demand letter, and had I not otherwise been present to provide legal guidance and advocate on Mr. Swift's behalf, there is little question that Mr. Swift would not have received the evidence against him at either his 2010 preliminary hearing or his 2011 final hearing, nor would he have been able to confront witnesses at the 2011 hearing. Indeed, the PRB was forced to continue the May 2011 hearing to accommodate my requests to enforce my client's constitutional rights.

12. On this, the 20th day of November, 2012, I declare under penalty of perjury that the foregoing is true and correct.

By: 

Joshua Tepfer

Center on Wrongful Convictions of Youth
Northwestern University Law School