

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

MOISES MORALES; MONTREAL THOMAS;	)	
JOAQUIN ROCHA; SHAVONISE BUCHANNAN;	)	
and KELVIN PERRY, on behalf of themselves	)	
and all similarly situated individuals	)	
	)	
	)	
Plaintiffs,	)	Case No. 13CV7572
	)	
v.	)	Judge Amy J. St. Eve
	)	
ADAM MONREAL, in his official capacity as	)	
Chairman of the Illinois Prisoner Review Board; and	)	
S.A. GODINEZ in his official capacity as Director	)	
of the Illinois Department of Corrections;	)	
	)	
Defendants.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs MOISES MORALES, MONTREAL THOMAS, JOAQUIN ROCHA, MOISES MORALES; MONTREAL THOMAS; JOAQUIN ROCHA, SHAVONISE BUCHANNAN, and KELVIN PERRY, individually and on behalf of all similarly situated individuals, file this complaint against ADAM MONREAL, Chairman of the Illinois Prisoner Review Board, and S.A. GODINEZ, Director of the Department of Corrections, and allege as follows:

INTRODUCTION

1. This is a civil rights class action complaint filed on behalf of the men and women who are in the custody of or under the supervision of the Illinois Department of Corrections (hereinafter, the DOC) and who are at risk of imprisonment without adequate due process as a result of the unconstitutional practices and procedures of both the DOC and the Illinois Prisoner Review Board (hereinafter, the PRB) with respect to parole revocation proceedings. The

Defendants have developed a fundamentally unfair and procedurally flawed parole revocation process that violates the Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, as set forth in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), *Morrissey v. Brewer*, 408 U.S. 471 (1972) and related cases. This court should declare those procedures unlawful and it should enjoin them.

2. In direct violation of the U.S. Constitution, the Defendants unilaterally refuse to provide attorneys to parolees at any point in the parole revocation process. This is true even if a parolee is indigent and (1) has a colorable claim that he did not commit an alleged violation, (2) has mitigating evidence explaining why revocation is inappropriate and/or (3) cannot speak for him or herself.

3. The Defendants commit other due process violations against the parolees in violation of the Fourteenth Amendment. Parolees from most counties are routinely incarcerated without a timely 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. At each stage thereafter, revocation proceedings fail to provide requisite due process protections. The PRB hearing officer (who adjudicates the preliminary parole hearing) and PRB members (who adjudicate the final revocation hearing) preside over faux proceedings that have few of the trappings of due process required before an individual can be imprisoned or otherwise deprived of his or her liberty.

4. In most instances, the hearing officer and the PRB members merely rubber stamp parole violation reports submitted by parole agents or the police reports of arresting officers, without inquiring into their reliability. The Defendants fail to provide an opportunity for parolees

to present evidence or cross-examine witnesses, including parole agents or police officers whose reports serve as the basis for the alleged parole violation. Hearing Officers and PRB members fail to apply any consistent legal standard to the revocation proceedings and often elicit admissions in violation of the parolee's rights to remain silent. The hearings are rote, informal affairs that are more akin to a conversational inquiry than an administrative proceeding. Consequently, parole revocation hearings in Illinois are a sham.

5. The systematic and on-going violations described in this complaint result in the arbitrary imprisonment of hundreds of adults in Illinois facilities. The Defendants conduct over 10,000 of these unlawful hearings each year. The Defendants have, in effect, created a procedural vortex from which people on parole cannot escape. As a result of the Defendants' policies and procedures, the Plaintiffs are continually rotated in and out of the prison system, often as a result of non-criminal technical parole violations, and often based merely on an unsubstantiated accusation that the parolee committed a new criminal offense.

JURISDICTION AND VENUE

6. 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.

7. 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

8. Moises Morales is a parolee who was, at the time of the filing of the initial complaint, in the custody of the DOC and facing parole revocation because he was arrested on

suspicion of domestic violence. Even though all criminal charges against him were dismissed, the PRB hearing officer found probable cause at his preliminary parole hearing. At the time of the initial complaint, Mr. Morales was awaiting his final revocation hearing. He had a colorable claim that he did not commit the alleged violation, mitigating evidence to justify why he should not be imprisoned, and needed assistance presenting this evidence. Even so, the Defendants failed to ensure that Mr. Morales was represented by counsel during his parole revocation proceedings.

9. Montreal Thomas is a parolee who was, at the time of the initial complaint, in the custody of the DOC and facing parole revocation because he was arrested on suspicion of possession of marijuana. Even though all criminal charges against him were dismissed, the PRB hearing officer found probable cause at his preliminary parole hearing. At the time of the initial complaint, Mr. Thomas was awaiting his final revocation hearing. He had a colorable claim that he did not commit the alleged violation, mitigating evidence to justify why he should not be imprisoned, and needed assistance presenting this evidence. Even so, the Defendants failed to ensure that Mr. Morales is represented by counsel during his parole revocation proceedings.

10. Joaquin Rocha was, at the time of his initial complaint, in the custody of the DOC. The PRB violated his parole based on allegations that Mr. Rocha committed the violation of Battery and Criminal Trespass. He had a colorable claim that he did not commit the alleged violation, mitigating evidence to justify why he should not be imprisoned, and needed assistance presenting this evidence. Even so, the Defendants failed to ensure that Mr. Rocha was represented by counsel during his parole revocation proceedings.

11. Shavonise Buchannan is currently in the custody of the DOC and is detained at the Cook County Jail. He is facing parole revocation based on allegations that he committed a number of non-criminal, technical violations and a drug-related criminal offense. He has a

colorable claim that he did not commit the alleged violations, mitigating evidence to justify why he should not be imprisoned, and needs assistance presenting this evidence. Even so, the Defendants failed and will continue to fail to ensure that Mr. Buchannan is represented by counsel during his parole revocation proceedings. Additionally, the Defendants have failed and will continue to fail to provide Mr. Buchannan with the procedural protections to which he is entitled during his parole revocation proceedings—including the right to access, develop and present evidence, the right to confront the witnesses against him, and the right to have his case heard before a fair and impartial decision maker.

12. Kelvin Perry is currently in the custody of the DOC and is detained at the Cook County Jail. He is facing parole revocation based on allegations that he committed a drug-related criminal offense. He has a colorable claim that he did not commit the alleged violation, mitigating evidence to justify why he should not be imprisoned, and needs assistance presenting this evidence. Even so, the Defendants failed and will continue to fail to ensure that Mr. Perry is represented by counsel during his parole revocation proceedings. Additionally, the Defendants have failed and will continue to fail to provide Mr. Perry with the procedural protections to which he is entitled during his parole revocation proceedings—including the right to access, develop and present evidence, the right to confront the witnesses against him, and the right to have his case heard before a fair and impartial decision maker.

13. Defendant Adam Monreal is the Chairman of the Illinois Prisoner Review Board, the State agency that administers parole revocation proceedings. Mr. Monreal supervises the activities of the PRB, and is responsible for implementing the rules, regulations, procedures, and standards governing the parole revocation process in the State of Illinois.

14. Defendant S.A. Godinez is the Director of the Illinois Department of Corrections, the state agency that is responsible for providing supervision to parolees and for issuing parole violation reports and warrants based on such reports. Until a parolee is discharged from parole, he or she remains in the legal custody of the DOC. When an individual's parole is revoked, that individual is re-imprisoned in the DOC. Mr. Godinez is responsible for implementing the rules, regulations, procedures and standards governing DOC's role in the parole revocation process in the State of Illinois.

CLASS ALLEGATIONS

15. The Plaintiffs bring this suit on their own behalf and on behalf of all parolees in the custody of the Illinois Department of Corrections who currently or will in the future face parole revocation

16. The class is so numerous that joinder of all members is impractical. There are approximately 30,000 individuals currently on parole under the supervision of the DOC and the PRB conducted over 8,000 revocation hearings in 2014. The class also includes many future members whose names are not known, since new people are released from prison and placed on parole each day and the Defendants initiate the parole revocation process frequently in a given week. There are questions of law and fact common to all class members, including but not limited to whether the Defendants' policy and practice of systematically denying appointed counsel to parolees under the supervision of the DOC violates the U.S. Constitution and whether the Defendants' parole revocation procedures, under which parolees are denied the opportunity to speak on their own behalf, present evidence, cross-examine adverse witnesses, and have an actual parole hearing that is conducted by a fair and impartial decision makers fail to provide parolees with adequate due process. Because the practices and procedures challenged in this

Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general.

17. The named Plaintiffs will fairly and adequately represent the interests of the class. They each possess a strong personal interest in the subject matter of the lawsuit and are 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.

18. 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

19. Approximately one-third of the population admitted to Illinois prisons in 2012 was imprisoned for violating the conditions of their parole. That is, 33% of the prisoners in this State were put behind bars after being charged with violations of the terms and conditions of their parole and subjected to revocation proceedings in which their liberty was rescinded. These revocation proceedings are being held in violation of the Fourteenth Amendment to the United States, based on the Defendants' failure to provide parolees adequate due process protections in the hearings, including the appointment of counsel where so required. As a result, members of the Plaintiff class are being systematically and arbitrarily detained and imprisoned.

Failure to Appoint Counsel to Indigent Parolees

20. The Defendants fail to implement any system by which adult indigent parolees may request and obtain counsel at cost to the State. The State categorically denies any request for appointed counsel because no system or funds are in place to secure such an appointment. As a

result, parolees in the State of Illinois are and continue to be subjected to these proceedings without the assistance of counsel to which many are constitutionally entitled.

21. The Defendants' policies and practices in this regard directly violate the requirements of due process established in *Gagnon v. Scarpelli*, which held that counsel should be provided in parole revocation cases where, after being informed of his right to request counsel, the parolee makes such a request, "based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present." 411 U.S. 778, 790 (1973). The Court further held that, in "passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself." *Id.* at 790–91.

22. Thus, *Gagnon* affirmed that the right to counsel was "presumptive" in these three categories of cases—where there is a colorable claim the parolee did not commit the violation; where there is substantial evidence in mitigation of the violation, making revocation inappropriate; and where the parolee is incapable of speaking effectively for himself.

23. A significant percentage of indigent parolees fall within one or more of the *Gagnon* categories.

24. First, many parolees have, at the very least, a colorable claim that they did not commit the alleged parole violation. Parolees frequently are accused of violating parole merely because they have been arrested on suspicion of committing a new criminal offense. Sometimes

the arrests themselves are unlawful. More often, these criminal charges are dismissed in a court of law as unfounded. The Defendants' policies and procedures allow parolees to be violated and re-imprisoned based solely on the fact that the parolee was subject to arrest—regardless of the merits of the case against him.

25. Similarly, a high percentage of parolees are accused of violating parole on the basis of their parole agent's allegation that they committed a non-criminal technical violation, such as failing to check in with their parole officer. However, the evidence supporting these technical violations is often unreliable, for a variety of reasons.

26. Many of the supervisory functions of the parole system are outsourced to private companies, with insufficient oversight by the DOC or PRB. The private companies include but are not limited to electronic monitoring companies, private counseling services, and polygraph providers. Some of these private businesses are often more concerned with turning a profit than assisting parolees successfully transition into the community.¹ Polygraph examinations are notoriously unreliable, and given the Defendants deficient procedural protections, parolees are unable to meaningfully challenge the integrity of these examinations.²

27. The computer program (AMS) that parole agents use to track parolees' compliance with the terms of parole is rife with errors. In addition, parolees have no access to any of this computer-based information, and no way to challenge its reliability. The PRB routinely re-

¹ Christopher Hartney & Caroline Glesmann, *Prison Bed Profiteers: How Corporations Are Reshaping Criminal Justice in the U.S.*, NATIONAL COUNCIL ON CRIME & DELINQUENCY 18 (May 2012), available at http://nccdglobal.org/sites/default/files/publication_pdf/prison-bed-profiteers.pdf; see also James Kilgore, *Electronic Monitoring: Some Causes for Concern*, PRISON LEGAL NEWS (Mar. 15, 2012), available at <https://www.prisonlegalnews.org/news/2012/mar/15/electronic-monitoring-some-causes-for-concern/>.

² Eric Zorn, *Truth is, Faith in Polygraphs Led to False Jailing*, CHICAGO TRIBUNE (Sept. 24, 2010), available at http://articles.chicagotribune.com/2010-09-24/news/ct-oped-0924-zorn-20100924_1_polygraph-tests-parole-officer-ken-alder.

imprisons parolees based solely on parole agents' statements that parolees have not complied with the terms of parole.

28. *Second*, even in cases where the alleged violation is uncontested, many parolees have substantial reasons mitigating the violation, which, because of the complexity of developing such evidence, they are incapable of presenting on their own. Parolees are unable to present witnesses who can testify to facts that either justify or mitigate against revocation, or present documentary evidence in their favor. Moreover, they have difficulty developing such evidence in the first place, while they are subject to the conditions of almost constant lock-down in the Northern Reception Center at Stateville Correctional Center, the maximum security prison where most parolee detainees are initially incarcerated.

29. Technical violations in particular can often be remediated by an adjustment of the parolee's conditions of parole, without full-scale revocation. Yet, without counsel to aid in the presentation of such mitigation evidence, the hearing officer and PRB systematically fail to take it into consideration.

29. *Third*, many parolees are unable to speak on their own behalf. Parolees who are under the supervision of the DOC have significantly higher levels of cognitive impairment, educational disabilities, illiteracy, mental health issues and other impairments than are found in the general public, and which make it difficult for such parolees to speak on their own behalf.³ The mostly recently available DOC data concludes that 38% percent of parolees in Illinois have

³ See Ill. Dept. of Corrections, Fiscal Year 2013 Annual Report 62; see also Tom Dart, *How We Shaft the Mentally Ill*, Chicago Tribune, Jul. 29, 2014, available at <http://www.chicagotribune.com/news/opinion/commentary/ct-cook-county-tom-dart-jail-mentally-ill-0729-20140729-story.html>; Ill. Dept. of Human Services, *Mental Health Five-Year Strategic Plan Task Force Adult Committee Report 7*, available at <https://www.dhs.state.il.us/onenetlibrary/27897/documents/mental%20health/marysmith/strategicplan/mentalhealthservicesfiveyearstrategicplan2013.pdf>.

a sixth grade reading level and that nearly 48% of parolees have not graduated from high school. National data suggests that 36% percent of people held behind bars live with mental illness. As a consequence, these class members are unable to prepare for or effectively defend themselves at their parole hearings without the assistance of counsel.

30. The Defendants have admitted that the State of Illinois has no process by which it appoints lawyers to parolees for whom the appointment of counsel is constitutionally required. In an October 2012 response to an Illinois Freedom of Information Act Request (“FOIA”), Defendant PRB’s FOIA officer wrote “The Prisoner Review Board does not appoint attorney’s (sic) to represent adult inmates or juveniles who are being violated on parole.” See Oct. 12, 2012 email from K. Tupy to S. Bedi (attached as Exhibit A). Representatives of the PRB and DOC testified under oath at recent depositions that neither agency appoints counsel to parolees in their revocation proceedings.⁴ See Excerpt from Shunique Joiner Dep. (attached as Exhibit B); Excerpt from Sharon Shipinski Dep. (attached as Exhibit C).

Failure to Provide Other Due Process Protections

31. The Defendants also fail to provide parolees with a variety of procedural protections to which they are legally entitled under controlling Supreme Court precedent, including *Morrissey v. Brewer*, 408 U.S. 471 (1972). These protections include but are not limited to:

- The right and opportunity to receive adequate written notice of the allegations and evidence against them prior to the preliminary revocation hearing;

⁴ These depositions were taken in *King v. Walker*, No. 06 C 204 (N.D. Ill), litigation concerning the due process rights of Cook County parolees during preliminary parole revocation hearings.

- The right and opportunity to speak on their own behalf at both the preliminary and final hearing;
- The right to develop evidence in advance of their preliminary and final hearings;
- The right to access legal materials required in order for the parolee to participate meaningfully in the parole revocation proceedings;
- The right and opportunity to present written evidence and witnesses at both the preliminary and final hearing;
- The right to have an actual hearing before a fair and impartial decision maker;
- The right to remain silent during parole revocation proceedings;
- The right and opportunity to confront and cross-examine adverse witnesses at both the preliminary and final hearing.

32. For class members violated outside of Cook County,⁵ PRB officials fail to ensure parolees receive preliminary hearings 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 often for longer—while awaiting their final revocation hearing.

33. The Defendants’ policies and practices make it difficult, if not impossible, for parolees to prepare to defend themselves at their hearings. The Defendants prohibit parolees who are being held in DOC facilities—and in particular the Northern Reception Center—prior to their revocation proceedings from using the telephone; the Defendants also severely restrict non-legal

⁵ The Consent Decree entered in *King v. Walker*, Case No. 06 C 204 (N.D. Ill.) provides specific procedural protections for Cook County parolees in preliminary hearings, including by requiring that these hearings take place within 10 days of imprisonment. These protections do not apply to final revocation hearings or to parolees violated outside of Cook County.

visitation. As a result, parolees are virtually unable to communicate with witnesses or secure the documentation necessary to defend themselves against the allegations of a parole violation, including mitigating evidence. Additionally, parolees are denied access to legal resources required in order to participate meaningfully in the parole revocation process. Those held in reception centers are not provided access to law libraries. All parolees are not provided sufficient information about the parole revocation process, including, but not limited to the relevant evidentiary standards, the right to present mitigating evidence, and the right to remain silent.

34. During the preliminary and final revocation hearings, the hearing officer and PRB members elicit admissions from parolees and then use these admissions to either find probable cause that the revocation occurred or revoke parole. Because of the informal nature of the proceedings—and because the parolees are not informed of their right to remain silent in a meaningful manner—parolees who make admissions are not knowingly waiving their rights to be silent.

35. 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 DOC's scheduling practices and procedures. PRB members only schedule hearings in specific prisons on certain days of the month. Depending on the PRB's caseload (meaning the number of revocation hearings scheduled per prison each month), a parolee might have to wait several months for a final revocation hearing.

36. 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 parole officer and/or arresting law enforcement official, which constitutes unreliable

hearsay evidence. Parolees do not have the opportunity to confront parole officers or the arresting police officers at these hearings. Consequently, parolees do not have the opportunity to cross-examine the primary (if not the only) witness who presents evidence against them.

37. The Defendants also deny parolees the opportunity to contest their alleged parole violation by presenting documentary and physical evidence or live witnesses who can provide mitigating or exculpatory evidence on the parolee's behalf. As a matter of course, the revocation hearings are held in secret, often far from the location of the alleged violation, and neither DOC employees nor PRB members assist class members in subpoenaing witnesses or locating documentary or other physical evidence in their favor. Consequently, Parolees lack the capacity to effectively defend themselves from allegations that they violated their conditions of parole.

38. PRB officers consistently fail to inform parolees 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 parolee'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. Parolees thus lack any meaningful representation in procedurally complex proceedings in which the class members' liberty is at stake.

39. The preliminary and final revocation hearings themselves are cursory and very brief—far more akin to a casual conversation than a deliberative proceeding. The PRB members and hearing officers demonstrate bias by frequently rubberstamping the recommendations of the supervising parole agent. Their decisions are not based on any applicable evidentiary standards and the rules governing evidence in parole proceedings are regularly flouted. For example, PRB members and hearing officers routinely conflate the evidentiary burden—requesting that parolees

prove their innocence—and assuming that parolees are guilty until proven otherwise. PRB members and hearing officers also make decisions that rely entirely on police reports and documents submitted by parole agents—even in the complete absence of extrinsic evidence supporting the reliability of those documents.

40. The written decisions issued by the PRB and hearing officers are often indecipherable and do not contain information about the basis for the decision. There is no appeal mechanism or grievance procedure by which parolees can seek a review of PRB decisions. The lack of an appellate process ensures the continuing insulation of the PRB's parole revocation process and prevents parolees from challenging the procedures and the outcome of the revocation hearing.

41. Throughout this revocation process, the class members are severely hampered by low rates of educational achievement and literacy levels, and high rates of mental health disorders and educational and cognitive disabilities.

42. The systematic and on-going violations described in the preceding paragraphs result in the arbitrary imprisonment of thousands of people in Illinois prisons. People are consistently subjected to months of unreviewable incarceration without process or remedy. As a result of the Defendants' 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.

INDIVIDUAL PLAINTIFF ALLEGATIONS

Moises Morales

43. An employee of Defendant DOC served Moises Morales with his parole violation report on October 25, 2013. He was alleged to have committed the offense of domestic battery,

which was the only parole violation of which he was accused. Upon receiving his Parole Violation Report from the DOC Server, Mr. Morales expressed a great deal of confusion. When he was informed by the DOC server that he needed to decide whether to waive, postpone or proceed with his preliminary hearing, he told her that he could not make a decision because he did not understand the process. The DOC server informed Mr. Morales that he had to make a decision and that she could not help him decide or provide him with any additional information. Mr. Morales repeatedly expressed his confusion and his desire for help to the DOC server. She denied his requests. Eventually, and based on advice from other detainees, Mr. Morales decided to postpone his preliminary hearing until after he went to court for his first appearance on his new charge. Mr. Morales was hopeful that the charge would be dismissed because, while it was based on an argument he had with his girlfriend, he and his girlfriend had reconciled and she told him that she did not want to press charges against him.

44. Mr. Morales had a colorable claim that he did not commit the alleged parole violation. Prior to Mr. Morales' October 10, 2013 preliminary parole hearing, he appeared in court on his domestic battery charge and the charge was dismissed. His girlfriend, who was the only complaining witness, requested that the charge be dismissed because she felt that she was to blame for the argument that lead to the Mr. Morales' arrest. During Mr. Morales' preliminary hearing, a King investigator testified based on a conversation she had with the arresting officer, who took a complaint from Mr. Morales' girlfriend moments after the argument. But the Hearing Officer did not review the girlfriend's more recent testimony, which had changed significantly. The Hearing Officer was aware that the charges against Mr. Morales were dismissed, yet she still found probable caused based solely on the fact that Mr. Morales had been arrested.

45. Mr. Morales lacked the ability to present any evidence of his innocence at his preliminary hearing because he did not have the capacity to call and question his own witness, to cross-examine the arresting officer or DOC employees, or to present his own testimony. Because the hearing officer found probable cause, Mr. Morales remained imprisoned while awaiting his final parole revocation hearing, which at the time of the filing of the initial complaint had yet to be scheduled.

46. Mr. Morales also had significant evidence mitigating against revocation. He had made substantial efforts to adhere to the conditions of his parole and become a productive member of society. The incident underlying the alleged parole violation was the only time he had been accused of violating the terms of his parole. Indeed, at the time of the alleged violation, Mr. Morales was working two part-time jobs: one at Power Stop, where he was employed as a Quality Control Auditor, and one at Primary Staffing, where he assembled food displays for grocery stores. He received a certificate in advancing youth development from the Chicago Area Project and was in the process of becoming a mentor to at-risk children. He had obtained his GED. This information would demonstrate to PRB members why revocation would be inappropriate in his case. However, without an attorney, Mr. Morales was incapable of presenting this information in a manner that would be fairly considered by the Defendants.

47. At the time of the filing of the initial complaint, Mr. Morales was at imminent risk of having his due process rights violated at his final revocation hearing. Even though he had both a colorable claim that he had not committed the alleged violation and mitigating evidence suggesting that revocation was inappropriate, the Defendants would not appoint him counsel as required by law.

Montreal Thomas

48. Montreal Thomas was arrested on September 7, 2013, after agents of Defendant DOC performed a routine parole compliance check and visited Mr. Thomas at his approved residence, which was his cousin's home. While searching the residence, the officers found marijuana and, as a result, immediately placed Mr. Thomas in custody.

49. Mr. Thomas had a colorable claim that he did not commit the alleged parole violation. Mr. Thomas had a preliminary parole hearing on September 25, 2013. At that time, Mr. Thomas attempted to explain to the Hearing Officer that he did not know that the drugs were in the house, that the Parole Violation Report included a number of errors, and that he believed his criminal charges would be dismissed because he did not have personal possession of the drugs. Mr. Thomas' hearing took place at the Cook County Jail and he struggled to speak above the chaos and din of the jail. He was constantly interrupted by the King investigator and was unable to present a comprehensible narrative describing his innocence. The PRB Hearing Officer found probable cause at the preliminary hearing based on the King Investigator's testimony, which pertained only to her interview with the arresting agent and the inaccurate parole violation report.

50. Mr. Thomas also had significant evidence mitigating against revocation. He had made substantial efforts to become a productive member of society. At the time of the initial filing, he had been on parole for two years and complied with all terms of his parole. He had worked consistently in construction and paid child support for his two children. His continued imprisonment imposed a substantial hardship on his children and their mother. Since his preliminary parole hearing, all criminal charges against Mr. Thomas were dismissed. Yet, at the time of the filing of the initial complaint, he was still imprisoned while awaiting his final parole revocation hearing, which was yet to be scheduled.

51. At the time of the filing of the initial complaint, Mr. Thomas was at imminent risk of having his due process rights violated at his final revocation hearing. Even though he had both a colorable claim that he had not committed the alleged violation and mitigating evidence suggesting that revocation is inappropriate, the Defendants would not appoint him counsel as required by law.

Joaquin Rocha

52. Joaquin Rocha was arrested on July 21, 2013, as a result of an argument with his neighbors. Shortly after the argument ended, the neighbor flagged down the police and told them that Mr. Rocha threatened his child. Based solely on this unsubstantiated third-party allegation, Mr. Rocha was arrested and charged with Battery and Criminal Trespass. Towards the end of July 2013, as a result of this arrest, a DOC server provided Mr. Rocha with a parole violation report. At that time, Mr. Rocha chose to postpone his preliminary parole hearing so he could await the outcome of his first court appearance. Mr. Rocha anticipated that the criminal charges against him would be dismissed.

53. Mr. Rocha had a colorable claim that he did not commit the alleged parole violation. Mr. Rocha's preliminary hearing was scheduled for August 7, 2013, at the Cook County Jail. The Hearing Report or record prepared by the PRB Hearing Officer lists a number of documents that were presented at the hearing and states that probable cause was found in court on his criminal charge. All of this information was entirely false. Contrary to what was written on the Hearing Report, Mr. Rocha's criminal charges had actually been dismissed. Mr. Rocha was prevented from defending himself against the false allegations and contesting the evidence presented since his preliminary hearing, scheduled for August 7th, did not actually occur. The hearing report from that day stated that there was "no pass for the offender." Thus, Mr. Rocha's

scheduled preliminary hearing was postponed without his consent, apparently because the Defendants could not locate Mr. Rocha, who was imprisoned in the Cook County Jail.

54. Mr. Rocha finally had his preliminary hearing on August 15, 2013. He tried to explain to the PRB Hearing Officer that his charges had been dismissed. The King investigator called him a liar and informed the hearing officer that Mr. Rocha had additional pending charges related to a traffic violation that were not listed in the parole violation report. The PRB Hearing Officer would not let Mr. Rocha explain his case and he was unable to access the computerized databases (AMS) the Hearing Officer and the King investigator were using to gather information about his alleged violations. Despite the fact that Mr. Rocha's underlying criminal charges were dismissed, the hearing officer found probable cause.

55. On Friday, September 20, 2013, Mr. Rocha appeared before the PRB for his final revocation hearing. The PRB member told Mr. Rocha that if he consented to be violated, Mr. Rocha would only have to serve another week and then he would be released from prison and from parole. Mr. Rocha was reluctant to agree to the Board member's suggestion. Mr. Rocha knew he had a defense to the alleged violation and he did not want to be violated for an offense he did not commit, but he also knew that he was unable to effectively present a defense or speak on his own behalf before the PRB member. After the PRB member repeatedly urged that he request to be violated, Mr. Rocha did so, on the understanding that he would soon be released from both prison and parole supervision.

56. The day before Mr. Rocha was set to be released from prison, the DOC served him with paperwork informing him that he would not, in fact, be released, either from prison or parole. Instead, he was to serve an additional 18 months in DOC custody for violating the conditions of his parole. Mr. Rocha remains imprisoned and has never received an explanation

for this outcome. Even though Mr. Rocha's case was procedurally complicated and even though he had a colorable claim that he did not commit the alleged violation, the Defendants denied him access to appointed counsel. As a result, Mr. Rocha has suffered and will continue to suffer irreparable harm.

Kelvin Perry

57. Kelvin Perry is a parolee who is currently in the custody of the DOC and is detained in the Cook County Jail. He takes medication to treat his anxiety and depression. In mid-February 2015, Mr. Perry was arrested for a drug related offence. On March 4, 2015, his preliminary parole hearing was continued to await the result of his criminal hearing.

58. Mr. Perry has a colorable claim that he did not commit his alleged criminal violation. The police report—which was presented as the sole piece of evidence against him during his preliminary hearing—is missing key information, including the location of the alleged offense. Because of the Defendants practices and policies regarding parole revocations hearings described in this complaint, Mr. Perry will be prevented from accessing, developing and presenting potentially exculpatory evidence, including video from a surveillance camera, and will be prevented from cross-examining the arresting officer. Additionally, the Defendants will deny Mr. Perry the opportunity to develop and present mitigating evidence.

59. As a result of the Defendants' practices and procedures, Mr. Perry is at imminent risk of having his due process rights violated throughout his parole revocation proceedings. Even though he has both a colorable claim that he has not committed the alleged violation and mitigating evidence suggesting that revocation is inappropriate, the Defendants will not appoint him counsel as required by law. Nor will the Defendants provide him a hearing before a fair, unbiased decision maker, or allow him to present evidence on his own behalf. To the contrary,

the Defendants policies and procedures will affirmatively prevent Mr. Perry from developing evidence on his own behalf and from accessing sufficient legal resources in order to participate meaningfully in his parole revocation proceedings. As a result, Mr. Perry as suffered and will continue to suffer irreparable harm.

Shavonise Buchannan

60. Shavonise Buchannan was arrested on February 16, 2015, when he turned himself in for outstanding warrants. His Parole Violation Report was issued on February 21, 2015. Mr. Buchannan had his preliminary parole hearing on March 4, 2015, during which the hearing officer found no probable cause for the violation of any criminal statute. The hearing officer did find probable cause for five non-criminal, technical violations: failure to report to his agent, failure to permit the agent to visit his host site, failure to get permission to change residences, failure to check into AMS weekly, and failure to complete an education program.

61. During his preliminary meeting, Mr. Buchannan was very confused. He did not understand who was in the room, he did not know that he was allowed to ask questions, and he did not understand anything the hearing officer told him. He does not remember being asked any questions or given a chance to explain himself.

62. Mr. Buchannan has a colorable claim of innocence for the allegation that he did not complete the required educational program—and he has paper work that supports this claim. He also has evidence that could mitigate his culpability for the allegations related to the alleged host site and failure to report violations. Due to no fault of his own, he was forced leave the host site—and he immediately informed his parole officer about this change and set out identify a new host site. During this time the Defendants assigned to Mr. Buchannan a new parole officer and the requirements for communicating with this new officer were never communicated to Mr.

Buchanan. The Defendants' policies and practices will deny Mr. Buchanan the opportunity to access, develop and present evidence on his own behalf at his final revocation hearing.

63. As a result of the Defendants' practices and procedures Mr. Buchanan is at imminent risk of having his due process rights violated throughout his parole revocation proceedings. Even though he has both a colorable claim that he has not committed the alleged violation and mitigating evidence suggesting that revocation is inappropriate, the Defendants will not appoint him counsel as required by law. Nor will the Defendants provide him a hearing before a fair, unbiased decision maker, or allow him to present evidence on his own behalf. To the contrary, the Defendants policies and procedures will affirmatively prevent Mr. Buchanan from developing evidence on his own behalf and from accessing sufficient legal resources in order to participate meaningfully in his parole revocation proceedings. As a result, Mr. Buchanan has suffered and will continue to suffer irreparable harm.

Allegations of a Putative Class Member

64. G.V. is a parolee who was, at the time of the initial complaint, in the custody of the DOC. He takes Risperdal and Trazadone for serious mental illness and he has a difficult time reading documents and comprehending what he has read. He is also unable to communicate in a coherent, intelligible fashion. On June 23, 2013, G.V. was arrested for allegedly pointing a BB gun at an acquaintance in his neighborhood. The police arrested G.V. based solely on the unsubstantiated accusations of this acquaintance.

65. On July 28, 2013, a DOC sever provided G.V. with a copy of his parole violation report, which alleged that G.V. had violated parole by committing an aggravated assault with a deadly weapon (as a result of the incident with the BB gun) and because he had not made himself

available to his parole agent for supervision. G.V. could not understand this paperwork. He tried to read it but it made no sense to him.

66. G.V. had a colorable claim that he did not commit his alleged criminal violation, which is bolstered by the fact that his criminal charges against him were dismissed on July 5, 2013. Additionally, G.V. spent much of this parole term in and out of mental health treatment centers. He has hospital records that illustrate that his repeated hospitalizations have made it difficult to maintain contact with his parole agent since he could not access the phone while hospitalized. Regardless, at his July 11, 2013 preliminary parole hearing, the PRB Hearing Officer found probable cause that G.V. committed the alleged violation.

67. At his preliminary parole hearing, G.V. did not understand what was happening and, as a result of his mental health issues, he was unable to speak for himself or describe the evidence he had to prove that he did not commit the alleged violations. During his hearing, the King investigator recited the facts from his parole violation report. G.V. did not have the capacity to subject her to cross-examination. Nor did G.V. have the ability to gather the documents related to his hospitalizations to submit to the PRB hearing officer.

68. During his final revocation hearing, a PRB member told G.V. that he was revoked and that he would have to remain imprisoned for the remainder of his parole term. G.V. did not understand that he was attending a final revocation hearing or that he had the right to present evidence on his own behalf during this hearing. Even if he had understood these rights, it would not have affected the outcome of his parolee proceedings. As a result of his mental illness, G.V. lacked the capacity to speak for himself.

69. Even though G.V. clearly lacked the capacity to effectively speak for and defend himself on the alleged parole violations, the Defendants denied him access to appointed counsel.

Consequently, G.V. was unable to testify and present witnesses on his own behalf or cross-examine adverse witnesses. As a result of the Defendants' violations, G.V. suffers and will continue to suffer irreparable harm.

70. For as long as each named Plaintiff and the putative class members remain on parole in Illinois, they will face an ongoing imminent risk of being subjected to the Defendants' unconstitutional parole revocation procedures.

COUNT I

42 U.S.C. § 1983 Right to Due Process Under the Fourteenth Amendment

71. The Plaintiffs repeat and re-allege the preceding paragraphs as if fully set forth in this Count.

72. Plaintiffs seek injunctive and declaratory relief against all Defendants to prevent the continued violation of the rights of Plaintiffs and the class they represent.

73. As a matter of policy and practice, the Defendants systematically fail to screen parolees to determine whether they are eligible for counsel, at cost to the State, as required under *Gagnon v. Scarpelli*. Defendants fail to appoint counsel to those parolees who do qualify.

74. The Defendants also fail to provide parolees with revocation proceedings that protect their rights to procedural due process. As a result of the Defendants' policies and practices, parolees are affirmatively barred from developing and/or accessing evidence that they are entitled to present during their revocation proceedings. Parolees are unable to speak on their own behalf, present evidence, and cross-examine adverse witnesses. Compounding these procedural deficiencies, the Defendants fail to provide parolees with a substantive hearing before a fair and unbiased decision maker. Instead Defendants supply the parolees with procedures that function as a little more than a meet and greet during which PRB members and hearing officers rubber stamp the recommendations of parole agents.

75. Consequently, the Defendants are in continuous violation of Plaintiffs' rights and the rights of the members of the class under the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class they represent respectfully pray that this Court enter judgment in their favor and against the Defendants in the following manner:

1. Enter an Order certifying a class of all adult 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 to be in violation of the rights of Plaintiffs and the class they represent under the Fourteenth Amendment of the United States Constitution.
3. Preliminary and permanently enjoin the Defendants, their agents, employees, and all persons under their control from subjecting Plaintiffs and the class they represent 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 Plaintiffs reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988.
6. Award Plaintiffs and the class they represent such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Sheila A. Bedi
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document via the Court's CM/ECF system on March 13, 2015.

/s/ Sheila A. Bedi