**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF ALABAMA**

CAYCE MOORE and JIMMY CLICK,

Plaintiffs,

vs.

LEIGH GWATHNEY, Board Chair, Alabama Board of Pardons and Paroles, in her Official Capacity; DWAYNE SPURLOCK, Associate Member, Alabama Board of Pardons and Paroles, in his Official Capacity; DARRYL LITTLETON, Associate Member, Alabama Board of Pardons and Paroles, in his Official Capacity; and CAM WARD, Director, Alabama Bureau of Pardons and Paroles, in his Official Capacity,

Defendants.

Case No.

**DECLARATORY AND INJUNCTIVE RELIEF SOUGHT**

# COMPLAINT

Plaintiffs Cayce Moore and Jimmy Click ("Plaintiffs"), by and through their attorneys, allege the following:

## INTRODUCTION

1. This is an action for declaratory and injunctive relief brought by the Plaintiffs who, after initially being sentenced to life in prison without parole ("LWOP") for crimes they committed when they were under the age of 18, were later resentenced to life in prison *with* the possibility of parole. However, as demonstrated herein, due to the unconstitutional policies and practices of Defendants, Plaintiffs do not have a meaningful opportunity for release, as mandated by the Eighth Amendment, and instead are doomed to die in prison absent Court intervention.

2. Despite being re-sentenced to Life *With* Parole ("LWP"), and despite each having served over three decades in prison, the Plaintiffs remain in prison today, with dim prospects for

release under an Alabama system that routinely flouts the requirements of recent United States Supreme Court rulings that held unconstitutional the sentence of life without parole for juvenile offenders except for those rare offenders who have been found to be permanently incorrigible and incapable of rehabilitation.

3. In a series of landmark cases applying the cruel and unusual punishments clause of the Eighth Amendment, the U.S. Supreme Court has held that the developmental differences between children and adults are not only relevant in determining the constitutionality of certain criminal sentencing practices as applied to children, but that because of those differences, juvenile offenders – even those convicted of murder–may not be condemned to spend their entire lives in prison except in the rare instance where the sentencer determines that a particular child "exhibits such irretrievable depravity that rehabilitation is impossible." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733(2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012)); *Graham v. Florida*, 560 U.S. 48, 72 (2010). The Supreme Court has also held that this new substantive constitutional rule is retroactive. *Montgomery*, 136 S. Ct.at 734. *See also Jones v Mississippi*, 141 S. Ct. 1307 (2021).

4. Taken together, these decisions establish that the Eighth Amendment to the U.S. Constitution requires that states affirmatively provide juvenile lifers with a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

5. In 2016, the Alabama legislature amended its murder statute to comply with *Miller* and *Montgomery*. The amendment provides that people who commit capital murder as juveniles may be sentenced to life with parole and, if so sentenced, are eligible for parole after serving thirty years in prison. *See* Ala. Code § 13A-6-2(c).

6. While these landmark U.S. Supreme Court cases involved juveniles sentenced to life *without* parole, many courts have held that the underlying principles apply equally to those juvenile lifers sentenced to life *with* parole where it is shown that parole policies, procedures, and practices fail to afford these individuals a realistic opportunity for release or a meaningful opportunity to demonstrate their maturity and rehabilitation. *See, e.g., Howard v. Coonrod*, 2021 U.S. Dist. LEXIS 118763 (M.D. Fla. June 25, 2021); *Flores v. Stanford*, 2019 WL 4572703, at* 9 (S.D.N.Y. Sept. 20, 2019); *Swatzell v. Tenn. Bd. of Parole*, 2019 WL 1533445 (M.D. Tenn. April 9, 2019); *Maryland Restorative Justice Initiative v. Hogan*, 207 WL 467731 (D. Md. Feb, 3, 2017); *Hayden v. Keller*, 134 F.Supp. 3d 1000 (N.D.N.C. 2015); *Greiman v. Hodges*, 79 F. Supp. 3d 933 (S.D. Iowa 2015).

7. In violation of the Supreme Court's requirements, the policies, procedures, and practices of the Alabama Parole Board do not give juveniles serving life with parole sentences a meaningful opportunity to prove their maturity and rehabilitation. The Board uses the same criteria to make parole determinations for juvenile offenders that it uses for adults, with no specific age-related considerations such as those required by *Miller* and *Montgomery*. Because the release of juveniles must be based on "demonstrated maturity and rehabilitation," a system that allows juvenile offenders to be left in prison based solely on the fact that the "severity of the offense is high," which is true for all juvenile capital murder cases, does not constitute a constitutionally adequate system for making these decisions. Accordingly, Plaintiffs do not have a meaningful opportunity for release, in violation of the explicit requirements of the Supreme Court's decisions in *Miller* and *Montgomery*.

8. Plaintiffs were considered for parole in May 2021 and June 2021, respectively, during the period when parole hearings were completely closed to the public. Although both

men had counsel and numerous witnesses available to testify on their behalf, including former ADOC commissioners and other current and former prison officials and employees, their counsel and witnesses were not permitted to appear before the Board. The brief minutes of their parole hearings establish that each man's application for parole was considered by the Parole Board for no more than a few minutes. The minutes of their hearings provide no substantive information about what the Board considered; instead, they simply list the time frame of the Board's meeting, the prisoners being considered for various actions (pardons, paroles, revocations, and delinquencies), and their ultimate decisions. The Parole Board's written decisions are wholly deficient in providing the rationale for their decisions.

9. The Parole Board denied the Plaintiffs' parole and set their next parole eligibility date for five years later, the maximum "set-off" permitted by Alabama law.

10. By leaving the fate of Plaintiffs and dozens of other individuals sentenced to life with parole in the hands of a parole process operating entirely outside the bounds of constitutional requirements, Defendants have violated, and continue to violate, Plaintiffs' rights to be free from cruel and unusual punishments under the Eighth Amendment and to due process of law under the Fourteenth Amendment.

11. Accordingly, Plaintiffs seek declaratory and injunctive relief: (1) finding that Alabama's sentencing and parole review statutes, and Defendants' procedures, policies, customs, and practices are unconstitutional as drafted and as applied to juveniles sentenced to life with the possibility of parole; and (2) requiring Alabama to provide Plaintiffs a meaningful opportunity to obtain release based on non-arbitrary, youth-specific criteria and with essential procedural protections that measure their degree of maturity and rehabilitation in accordance with U.S. Supreme Court mandates.

## JURISDICTION AND VENUE

12. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments to the Constitution of the United States; and the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

14. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims occurred in this district.

## PARTIES

15. Plaintiff Cayce Moore is incarcerated by the State of Alabama for the crime of murder and is currently serving a sentence of life with parole. He has served over thirty-six years for a crime he committed when he was seventeen years old. Mr. Moore has turned his life around and has demonstrated maturity and rehabilitation and that he is ready to be paroled back into society.

16. Plaintiff Jimmy Shane Click is incarcerated by the State of Alabama for the crime of murder and is currently serving a sentence of life with parole. He has served over thirty-two years for a crime he committed when he was seventeen years old. Mr. Click has turned his life around and has demonstrated maturity and rehabilitation and that he is ready to be paroled back into society.

17. Plaintiffs have no adequate remedy at law. Unless enjoined by this Court, Defendants will continue to violate Plaintiffs' constitutional rights.

18. Defendant Leigh Gwathney was appointed to serve as the Chair of the Board of Pardons and Paroles by Governor Kay Ivey in October of 2019. She is sued in her official capacity for the purpose of obtaining declaratory and injunctive relief.

19. Defendant Dwayne Spurlock was appointed Associate Member of the Alabama Board of Pardons and Paroles by Governor Kay Ivey on May 29, 2018. He is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

20. Defendant Darryl Littleton was appointed Associate Member of the Alabama Board of Pardons and Paroles by Governor Kay Ivey on July 9, 2021. He is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

21. Defendant Cam Ward serves as Director of the Alabama Bureau of Pardons and Paroles. He was sworn in on December 7, 2020. In this role, he is responsible for all agency operations in support of the Alabama Board of Pardons and Paroles. Governor Kay Ivey appointed Ward to be the new Director of the Alabama Bureau of Pardons and Paroles in December 2020. He is sued in his official capacity for the purpose of obtaining declaratory and injunctive relief.

## FACTUAL ALLEGATIONS

### U.S. Supreme Court Holds that Youth Matters for Purposes of Punishment

22. Courts and legislatures have long recognized that children are psychologically and socially immature, are susceptible to persuasion and negative influences, and are marked by judgmental inexperience such that it is appropriate to categorically limit their ability to vote, marry, serve on juries, drink alcohol, gamble, leave school and otherwise exercise full autonomy under the law. *J.D.B. v. North Carolina*, 564 U.S. 261, 272-77 (2011).

23. Over the last 15 years, the U.S. Supreme Court has issued a series of decisions holding that juvenile offenders are categorically and constitutionally different from adults for purposes of criminal sentencing and punishment.

24. In the first of these decisions, *Roper v. Simmons*, decided in 2005, the Court held that the Eighth and Fourteenth Amendments to the U.S. Constitution categorically forbid the imposition of the death penalty on people who were under 18 years old at the time of their offenses. 543 U.S. 551 (2005).

25. In *Roper*, the Supreme Court relied on social science research, common sense, and international consensus to conclude that juveniles are "categorically less culpable than the average criminal." *Id.* at 552 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)). The Court identified three characteristics that make juveniles less culpable and more capable of rehabilitation than adults: (1) immaturity and an underdeveloped sense of responsibility; (2) vulnerability to negative influences such as peer pressure; and (3) a character that is not well formed, with personality traits that are more likely to be transitory than fixed. *Id.* at 569-70.

26. Five years later, the Supreme Court ruled in *Graham v. Florida* that the Eighth Amendment categorically prohibits the imposition of a life sentence without parole ("LWOP") on juveniles who commit a non-homicide offense. 560 U.S. 48, 82 (2010).

27. The *Graham* Court reiterated the differences between juveniles and adults identified in *Roper*, pointing out that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "the parts of the brain involved in behavior control" and juveniles' greater "capacity for change." *Id.* at 68, 74. These differences, the Court found, make children "less deserving of the most severe punishments." *Id.* at 68.

28. The *Graham* Court recognized that "life without parole is 'the second most severe penalty permitted by law,'" rendering a "forfeiture that is irrevocable" and "deprives the convict of the most basic liberties without giving hope of restoration." *Id.* at 69-70 (quoting *Harmelin v. Michigan,* 501 U.S. 957, 960 (1991)). The Court explained that the irrevocable forfeiture of liberty occasioned by an LWOP sentence is an "especially harsh punishment for a juvenile," who "will on average serve more years and a greater percentage of his life in prison than an adult offender," meaning that a "16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Id.* at 70.

29. Thus, the Court concluded that states must give juvenile non-homicide offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," an opportunity that an LWOP sentence categorically forecloses. *Id.* at 75 (emphasis added).

30. In 2012, the Supreme Court built on the rationales set forth in *Roper* and *Graham*, holding in *Miller v. Alabama* that a *mandatory* LWOP sentence for persons under 18 at the time of their crimes—regardless of the nature of the crime (homicide or non- homicide)—constitutes cruel and unusual punishment under the Eighth Amendment. 567 U.S. 460, 489 (2012). The Court concluded that statutorily-mandated LWOP sentences, such as the one in Florida at the time, for juveniles who commit murder "pose[] too great a risk of disproportionate punishment" because of "the great difficulty" in distinguishing "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80 (emphasis added) (quoting *Roper*, 543 U.S. at 573).

31. Accordingly, the Court held that before imposing an LWOP sentence on a juvenile offender, a court must "take into account how children are different, and how those

differences counsel against irrevocably sentencing them to a life in prison." *Id.* at 480. The Court added that, after considering how children are different, LWOP sentences for juveniles should be "uncommon" because of "children's diminished culpability and heightened capacity for change." *Id.* at 479.

32. In 2016, in *Montgomery v. Louisiana*, the Supreme Court held that *Miller*'s prohibition on mandatory LWOP for juveniles should be applied retroactively because it established a new substantive constitutional rule. 136 S. Ct. 718, 736-37 (2016). The Montgomery Court explained that *Miller* created a substantive rule because it "determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crimes reflect irreparable corruption,'" making "life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Id.* 734 (first quoting *Miller*, 567 U.S. at 479-80, then quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)).

33. *Montgomery* acknowledged that *Miller* has a "procedural component," requiring a "hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id.* at 735 (quoting *Miller*, 567 U.S. at 465). The Court reasoned that this procedure "gives effect to Miller's substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.* at 735.

34. The Court concluded by reiterating *Miller's* requirement that juveniles "must be given the opportunity to show that their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." *Id.* at 736-37.

35. In *Jones v. Mississippi*, the Court expressly and repeatedly affirmed that its decision, which found that *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility, was fully consistent with, and in no way abrogated or overturned *Miller* and *Montgomery*. 141 S. Ct. 1307, 1321 (2021) ("The Court's decision today carefully follows both *Miller* and *Montgomery*. ... Today's decision does not overrule *Miller* or *Montgomery*.").

36. Together, *Roper, Graham, Miller*, *Montgomery* and *Jones* reflect the U.S. Supreme Court's unwavering view that juveniles' diminished culpability and greater capacity for rehabilitation are inconsistent with the law's most severe punishments. In particular, sentencing courts must consider how children are different before imposing a sentence that forecloses a meaningful opportunity for release from prison during their lifetime. It ineluctably follows from this constitutional premise that a parole system must also treat juvenile offenders differently than adult offenders and provide them with a meaningful opportunity for release from prison.

37. Alabama's parole system, for the reasons set forth in this Complaint, is not operating in a constitutional manner as to the Plaintiffs. It does not treat juvenile offenders differently from adult offenders. It does not offer Plaintiffs as juvenile offenders the "meaningful opportunity" to demonstrate rehabilitation and maturity as required by the U. S. Supreme Court. It does not offer Plaintiffs as juvenile offenders any realistic opportunity for release and a chance to live some of their lives outside prison walls.

**History And Functioning Of Alabama Parole System**

38. In 1935, Gov. David Bibb Graves created the Alabama Parole Bureau, which consisted of a chairman, associate member, secretary, and parole officer. The bureau's task was to study the progress of prisoners being held and recommend to the governor prisoners who were good candidates to undergo test parole. During a test parole, inmates were freed earlier than their

scheduled release dates and then evaluated for their ability to remain law abiding. In 1939, the constitution was amended, eliminating the governor's ability to grant any prisoner a pardon or parole and giving that authority to the legislature. Lawmakers then formed the three-member State Board of Pardons and Paroles. This board was given complete control and authority over prisoner (including those in jails) pardons and paroles and the collection of fines and forfeitures related to crimes. In addition, the board appointed 13 probation and parole officers. This legislation also authorized adult probation in the state and allowed judges to offer probation as an alternative to sending a person to prison.

39. The Alabama Board of Pardons and Paroles consists of a chairman and two associate members appointed by the governor and an executive staff consisting of the executive director and two assistant executive directors. The board has several primary duties:

- It determines which offenders in jail or prison are eligible for parole.
- It sets the conditions of parole and monitors offenders in the community to determine whether they are in compliance with those conditions.
- It determines if any conditions have been violated and whether the individual should return to jail or prison or have their parole revoked.

40. The executive staff organizes and arranges cases to be brought before the Board. Additionally, the staff develops and revises procedural manuals and forms documenting the official activities of the department, inmates, parolees, and the public related to parole and pardon requests and procedures. The Bureau has one central office in downtown Montgomery and at least one probation and parole field office in 61 of Alabama's 67 counties.

41. Alabama Code §15-22-26 contains the following factors that are to be considered when determining whether to grant or deny parole:

1) The prisoner's risk to reoffend, based upon a validated risk and needs assessment as defined in § 12-25-32;

(2) Progress by the prisoner and the Department of Corrections to plan for reentry;

(3) Input from the victim or victims, the family of the victim or victims, prosecutors, and law enforcement entities;

(4) Participation in risk-reduction programs while incarcerated;

(5) Institutional behavior of the prisoner while incarcerated; and

(6) Severity of the underlying offense for which the prisoner was sentenced to incarceration.

42. In addition to parole decisions, the Board also grants pardons. This is the act of restoring civil and political rights, such as voting rights, to offenders who are considered rehabilitated and have provided good evidence that they will become productive and law-abiding citizens.

43. The Board sets the conditions of parole, whereas county judges set the conditions of probation. Probation and parole officers then supervise offenders in the community and report violations to the board and the court system. Officers also assist their charges in accessing community-based organizations for substance abuse treatment, anger management, mental health services, job-readiness programs, life-skills programming, and other community services.

44. Another duty of the Board of Pardons and Paroles is to notify victims of violent crimes and of abuse if an inmate is being granted a pardon or being paroled. Under Alabama law, victims have the right to be present at parole hearings and to express written objections to parole. Probation and parole officers must also include a victim impact statement as part of investigative reports for the board in consideration of granting parole for an offender.

45. In July 2018, Jimmy Spencer, a man who had recently been released on parole in Alabama after serving twenty-eight years for burglary and second-degree assault, murdered a family of three. Alabama man sentenced to death for 2018 triple homicide, AP News, November

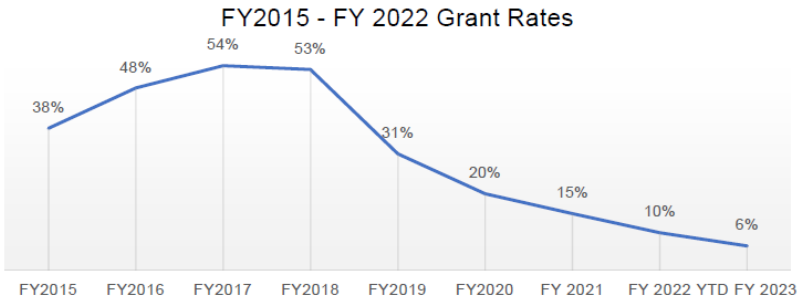
14, 2022, https://apnews.com/article/alabama-homicide. Following the murders, many Alabama politicians, including the Governor and Attorney General, were quick to blame the Parole Board, although there is no evidence that the Board members who had voted to grant Spencer's parole had violated any statutes, regulations, or policies in releasing Spencer on parole.

46. In response to the murders, the Legislature hastily enacted a new parole statute, HB 380, that curtailed early parole consideration, restructured the parole agency, and gave more power to the Governor to select Parole Board members and to appoint the agency's leadership. Shortly thereafter, on October 1, 2019, the Chair of the Parole Board resigned and was replaced with the current Chair, Defendant Leigh Gwathney. Mike Cason, Alabama Pardons and Paroles Chair Lyn Head resigns, Al.com, Sept. 17, 2019, https://al.com/news/2019/09/alabama-pardons-and-paroles-chair-lyn-hear-resigns.html. The Director of the Bureau of Pardons and Paroles also left the agency and was replaced first by former Attorney General Charles Graddick and then by the current director, Defendant Cam Ward.

47. These changes in 2019 resulted in a sudden and precipitous drop in the number of paroles granted by the Parole Board over the past three years and to a *de facto* moratorium on the granting of paroles to anyone with a murder conviction.

48. Indeed, publicly available data shows that the grant rate for the Alabama Bureau of Pardons and Paroles has dramatically decreased every year since FY2018: in FY2018, the parole grant rate was 53%; in FY2019, it decreased to 31%; in FY2020, it decreased again to 20%; in FY2021, it decreased again to 15%; and in FY2022, it decreased again to 10%. As of January 2023, the year-to-date parole grant rate for FY2023 is the lowest in the history of the Parole Board - just 6%. *See* *Alabama Board of Pardons and Paroles Monthly Statistical Report*, January 2023, p. 9, https://paroles.alabama.gov/monthly.statistical.reports/:

**Board Action Yearly Trends-Parole**




| Fiscal Year | Grants | Denials | Total Decisions | Grant Rate |
|---|---|---|---|---|
| FY2015 | 2270 | 3782 | 6052 | 38% |
| FY2016 | 3107 | 3350 | 6457 | 48% |
| FY2017 | 3847 | 3151 | 6998 | 54% |
| FY2018 | 3730 | 3263 | 6993 | 53% |
| FY2019 | 1368 | 3078 | 4446 | 31% |
| FY2020 | 548 | 2160 | 2708 | 20% |
| FY 2021 | 648 | 3584 | 4232 | 15% |
| FY 2022 | 409 | 3593 | 4002 | 10% |
| YTD FY 2023 | 93 | 1343 | 1436 | 6% |

49. Although the Parole Board does not publish parole grant data by offense, on information and belief no more than three people with murder convictions have been granted parole since the passage of HB 380 in 2019 and the appointment of the new parole executives and Parole Board members.

50. The Parole Board's docket includes a separate docket designated as the "Class A Docket." Class A felonies are the most serious felonies and include murder, rape, kidnapping, robbery, and arson. Upon information and belief, this "Class A Docket" includes some but not all of persons with Class A felonies who are being considered for parole. During the three years since the new Parole Board enacted its new policies and practices, it has only granted seven paroles from the "Class A Docket" out of 2255 hearings held through February 23, 2023 – a grant rate of 0.3%. Defendant Gwathney voted against granting parole in six of the seven cases in which parole was granted. Both Plaintiffs Mr. Moore and Mr. Click were on the Class A docket.

51. The Parole Board ignores its own Guidelines in the vast majority of cases, voting against parole even when its own Guidelines recommend it. In FY 2022, for example, the Guidelines, which are based on a statutorily-required validated risk assessment tool and other evidence-based factors, recommended parole in 81% of cases, while the Board's actual grant rate was just 10%. Accordingly, the Board only conformed with its own Guidelines 30% of the time in FY 2022. See *Alabama Board of Pardons and Paroles Monthly Statistical Report*, September 2022, p.10, https://paroles.alabama.gov/wp-content/uploads/Sept-2022-MSR-10-21-2022.pdf (including all data for FY 2022). In January 2023, the most recent month for which data is available, the Board's own Guidelines recommended parole in 82% of the cases, yet the Board's grant rate was only 6% -- a conformance rate of only 20%. *See Alabama Board of Pardons and Paroles Monthly Statistical Report*, January 2023, p. 10, https://paroles.alabama.gov/monthly.statistical.reports/.

52. Changes ostensibly instituted because of the Covid-19 pandemic have made a process that was already heavily skewed against the Plaintiffs even worse. In April 2020, the Governor issued a proclamation that allowed the Parole Board to suspend all public hearings from April 2020 through July 13, 2021, due to the pandemic. Both Plaintiffs' paroles were considered during this time period. Although so-called parole hearings continued to be scheduled, they were entirely closed to all parties, their counsel, and the public. Accordingly, no testimony on behalf of prisoners was permitted – even by phone or video. Instead, submissions were allowed only in writing. Given that there are no recordings or transcripts of parole hearings and that parole files are not public, it is impossible for prisoners to ascertain what information has been provided to the parole board or whether any of it is erroneous. There was no

opportunity to respond to or counter any erroneous information that may have been presented to the Parole Board.

53. The Board restricts the number of witnesses allowed to testify in support of parole to three people (including the parole applicant's attorney, if they have one) and limits the supporting testimony to two minutes per witness/attorney. The same restrictions are not imposed on witnesses opposed to parole. Rather, there can be up to six opponents per victim who are permitted to testify against parole – two family members, a victims' rights organization, a representative of the Attorney General's Office, a representative of the District Attorney's office, and law enforcement personnel. Candidates for parole are not permitted to testify on their own behalf, either in person, by video, or by telephone, and are not even allowed to watch their own parole hearing remotely.

## Individual Plaintiffs

*Cayce Moore*

54. In 1987, Plaintiff Cayce Moore was convicted of capital murder and sentenced to Life Without Parole. Mr. Moore had turned seventeen years old less than two months before the crime.

55. At the time of Mr. Moore's sentencing in 1987, there were only two sentencing options – death and life without parole (LWOP). The jury sentenced Mr. Moore to LWOP, and the judge adopted the jury's recommendation.

56. On February 27, 2017, following the Supreme Court's decisions in *Miller* and *Montgomery*, Mr. Moore was resentenced to life with parole (LWP).

57. As part of the resentencing, an agreement was reached between Mr. Moore, the State of Alabama, and the victim's family, whereby all parties agreed that Mr. Moore should receive a life with parole sentence; Mr. Moore agreed not to accept parole before January 1, 2020; and the St. Clair County District Attorney's Office and the victim's immediate family agreed not to protest or oppose Mr. Moore's parole at any time after January 1, 2020. Mr. Moore's sentencing judge entered a copy of the agreement into Mr. Moore's trial record.

58. In June 2017, Mr. Moore had his first parole hearing. In accordance with his re-sentencing agreement, Mr. Moore's counsel appeared before the Parole Board and informed them that he was not seeking parole. The Parole Board ordered that Mr. Moore's next parole hearing be held in June 2020. But Mr. Moore's hearing was never held. Instead, Mr. Moore was not even considered for parole until May 25, 2021, one year after the Board had specified that his hearing should be held.

59. Leading up to and in support of his parole consideration date in May 2021, Mr. Moore's attorney submitted a substantial parole packet.

60. The submission detailed Mr. Moore's exemplary prison record. In 35 years of incarceration, he has not received a single disciplinary infraction. He earned his GED certificate. He attended trade school, where he was on the President's list and maintained a 4.0 average and earned an electrician certificate.

61. Mr. Moore submitted certificates establishing completion of the Institutional Pre-Release and Re-Entry Program, as well as over fifty rehabilitation classes and educational programs. He attended religious services regularly. Mr. Moore helped to start Alabama's first faith-based honor dorm at Donaldson Correctional Facility in 1998, which then led to the establishment of honor dorms in most of the Alabama prisons.

62. Throughout his incarceration, Mr. Moore has sought to help others in the prison community. He helped start a literacy program for inmates whose reading was too poor for admission into the GED program. He has given speeches to prison tour groups of young people and at-risk teens. He has been facilitating and teaching weekly rehabilitative classes for other prisoners for over twenty years. He served in various leadership positions in the Honor Dorms at two prisons for many years.

63. Mr. Moore works as an aide to the electrical instructor in the prison trade school, helping to teach other prisoners the electrical trade.

64. Mr. Moore also submitted a detailed Re-Entry and Release Plan, demonstrating that he had a job and a home waiting for him, as well as spiritual and life-skills support at the ready.

65. Mr. Moore submitted many letters of support from high-profile individuals who were well acquainted with the facts of his case, including the long-time District Attorney who had prosecuted him and a former Commissioner of the Alabama Department of Corrections (ADOC). Former St. Clair County District Attorney W. Van Davis (the prosecutor in his 1987 case) wrote a letter of support, stating: "[A]fter carefully reviewing all aspects of the case, I was impressed with Mr. Moore's outstanding track record over the 30 years since he committed the crime. In light of his youth at the time of the offense, his evident remorse, and his record of good behavior, I came to believe that Mr. Moore deserved a second chance." Former ADOC Commissioner Mike Haley also wrote a letter of support: "[Cayce's] record can only be described as exceptional and extraordinary. Through his many years of incarceration, Cayce has rebuilt his life to focus on service to others, even in the midst of the prison environment. He was described to me in a telephone conversation with retired Department of Corrections Chaplain

Bill Lindsey (deceased) as sincere, motivated, creative, committed to a lifelong quest to better himself in all aspects, and dedicated to journey far from the young Cayce Moore who first entered prison so many years ago." Haley noted in his letter that in his 50 years in law enforcement and corrections, *he had never previously supported a parole request*. All told, over fifteen letters of support were submitted, most of them from present and former ADOC officials, officers, and employees.

66. At Mr. Moore's parole consideration on May 25, 2021, he was not permitted to testify, nor was his attorney allowed to make an oral presentation. None of his supporters were permitted to speak. In fact, there was no hearing at all. The minutes of the meeting reflect that the Board met from 8:05 am until 12:10 pm. During that time, they considered 11 pardon applications, 32 parole applications, 14 revocations, and 23 delinquencies – a total of 80 cases. Accordingly, the Parole Board spent an average of three minutes per case – wholly insufficient time to consider the factors required by *Miller* and *Montgomery* and the substantial evidence that was submitted to the Parole Board in support of his parole.

67. The minutes fail to reveal what, if any, evidence or information was considered by the Board in reaching its decision to deny parole. The Board set Mr. Moore's next parole consideration for five years later, the maximum amount of time allowed by statute. The minutes merely state: "The Board considered all evidence contained within the inmate's file in making its determination. Subsequently, the Board voted to deny parole with a reset date of 5/2026."

68. The Board sent to Mr. Moore a "Board Action Sheet" signed by each Board member. (At the time, the three Board members were Leigh Gwathney, Dwayne Spurlock, and former Board member Cliff Walker.) The Board Action Sheet contains twelve reasons that each Parole Board member can choose for denying parole. In Mr. Moore's case, each Board member

checked off the same two reasons (and only those two), which were: "Severity of Present Offense is High" and "Negative Input from Stakeholders (Victim, Family of Victim, Law Enforcement").

69. But the Board did not, in fact, receive negative input from stakeholders, because the prosecutor and victim's family had already agreed in a court document not to oppose Mr. Moore's parole. Therefore, it is unknown why the Board members checked off this reason. Further, "Severity of Present Offense is High" is a generic reason that is true in every murder case. This is a static factor that will never change, regardless of Mr. Moore's demonstrated maturity or rehabilitation.

70. None of the twelve reasons contained on the Board Action Sheet applies specifically to juvenile offenders. There is no evidence that the Board members deliberated on the unique characteristics of youth, as they are required to do under binding United States Supreme Court precedent. Indeed, neither Alabama law nor the Parole Board's regulations or guidelines contain any provisions unique to juvenile offenders. Instead, Alabama law states in general that: "On parole cases, the Board shall determine fitness for parole in accordance with Alabama Code Section 15-22-26, using actuarially based guidelines."

71. Even the six statutory factors strongly weighed in favor of granting Mr. Moore parole: (1) upon information and belief, the risk assessment instrument used by the Parole Board yielded a very low risk to reoffend; (2) he submitted a solid reentry plan; (3) there was no negative input from the victim, prosecutors, or law enforcement; to the contrary, he had prosecutors and prison officials supporting his parole; (4) he participated in over 50 rehabilitation classes and educational programs; (5) he has not received a single behavior infraction in the entire 35 years of his incarceration. Only the last factor – "severity of the

underlying offense for which the prisoner was sentenced to incarceration" – weighs against him, but that is a factor that he can never change.

72. Upon information and belief, the "Parole Guidelines" (Form ABPP-2), which are used by the Parole Board to aid in determining whether parole should be granted and are based on the statutory factors, yielded a score of 3, which, according to the Guidelines, "Suggests Parole Grant."

73. On information and belief, the sole reason that Mr. Moore was denied parole is because the Board has a *de facto* moratorium in granting paroles in murder cases. By refusing to give Mr. Moore individual consideration, and by refusing to consider the age, maturity, and rehabilitation factors required by U.S. Supreme Court precedent, the Parole Board members violated Mr. Moore's constitutional rights.

*Jimmy Shane Click*

74. In 1994, Plaintiff Jimmy Shane Click was convicted of capital murder and sentenced to Life Without Parole. Mr. Click had turned 17 years old less than two months before the crime.

75. At the time of Mr. Click's sentencing in 1994, the judge had only two sentencing options – death and Life Without Parole (LWOP). The jury sentenced Mr. Click to LWOP, and the judge adopted the jury's recommendation.

76. Like Mr. Moore, Mr. Click was resentenced to life with parole in 2019, following the *Miller* and *Montgomery* decisions. As part of the resentencing process, Mr. Click requested and was granted a meeting with the victim's family. He met with the victim's brother at the courthouse (as detailed in an affidavit from his attorney that was submitted as part of his parole

packet), where he expressed his profound remorse and talked about the significant role of Christian faith in his life since entering prison.

77. Having served over 30 years as required by statute, Mr. Click was considered for parole on June 29, 2021. Like Mr. Moore, however, Mr. Click was denied a hearing; his parole was considered behind closed doors.

78. Leading up to his parole consideration, Mr. Click submitted through his attorney a comprehensive parole packet to the Board. The submission detailed Mr. Click's remarkable progress toward rehabilitation through his impeccable behavior and accomplishments. In more than three decades of incarceration, he has not received a single disciplinary write-up. While in the juvenile detention facility he received a high school diploma. Later, in the county jail, he assisted other inmates preparing for the GED. He took college level classes offered through Samford University, completed multiple courses, and received over sixty certificates for classes and educational programs, including the Institution Pre-Release and Re-Entry Program.

79. Mr. Click began working as the Chaplain's assistant and clerk in 1997. He has continued to serve in that position of responsibility without interruption since that time. Every Chaplain that worked with Mr. Click over the past twenty-four years held him in high regard as described in their letters of support. He was chosen as one of only eight inmates in the history of the prison who became an ordained elder, with responsibilities for mentoring and guiding the inmate church. As a part of his work with the Chaplain's office, he was instrumental in the formation of the Honor (Faith/Character) Dorm at St. Clair in 1999, even though at the time of its creation, due to his sentence, he was not eligible to live there. He attended trade school and had completed two semesters in the electrical program offered by Gadsden State Community

College at the time of his hearing, where he was on the President's list and maintained a straight-A 4.0 average.

80. Mr. Click submitted extensive letters of support and recommendation for parole. Many well-informed individuals supported his parole application, including retired Circuit Judge Loyd "Buddy" Little and former ADOC Commissioner, Kim Thomas, who first met Mr. Click while serving as an officer at St. Clair. Mr. Thomas wrote: "Without reservation, I support Jimmy Shane Click's petition for parole. Based on my years of experience, professional judgment, and personal knowledge of him, it is my professional judgment that he presents a low likelihood to recidivate and is a low risk to the public, and that he will succeed on parole. I unequivocally support his reintegration in society by the granting of parole and his compliance with those conditions set by this Parole Board." Longtime St. Clair Chaplain Jimmy R. Smith submitted a letter of support stating, "If Mr. Click, the perfect example of the success of what ADOC can accomplish, does not deserve parole now, we must ask ourselves who that person would be and what more could he do?"

81. His submission also included letters of support from many Corrections Officers and Chaplains that worked with him daily for years. Chaplain Jeremy Miller wrote: "Mr. Click is an actively contributing member of the community. He is well spoken and respected among other inmates and staff…Mr. Click has a long record of stability, sound judgement, and good behavior. He is known to constructively deal with problems and shows good leadership qualities in the chapel and throughout the prison. I believe he would make an outstanding addition to our society and would live responsibly, giving back to his community."

82. His submission detailed a thorough home and job plan with extensive support in either Colorado where he would live with family if an interstate transfer were to be approved or alternatively in Alabama if needed.

83. As with Mr. Moore, when Mr. Click's parole was considered on June 29, 2021, he was not permitted to testify, nor was his attorney allowed to make an oral presentation. None of his supporters were permitted to speak. The minutes of the meeting reflect that the Board met from 8:50 am until 3:30 pm and that they adjourned for one hour for lunch. During that time (and excluding lunch), they considered seven pardon applications, 35 parole applications, 32 revocations, and 20 delinquencies – a total of 94 cases. Accordingly, the Parole Board spent an average of 3.6 minutes per case – wholly insufficient time to consider the factors required by *Miller* and *Montgomery* and the substantial evidence that was submitted to the Parole Board in support of Mr. Click's parole.

84. As with Mr. Moore, the minutes of Mr. Click's "hearing" fail to reveal what, if any, evidence or information was considered by the Board in reaching its decision to deny parole. The Board set Mr. Click's next parole consideration for five years later, the maximum amount of time allowed by statute. The minutes merely state: "The Board considered all evidence contained within the inmate's file in making its determination. Subsequently, the Board voted to deny parole with a reset date of 6/2026."

85. The Board also sent to Mr. Click a "Board Action Sheet" signed by each Board member. (Only two Board members voted on his application --Leigh Gwathney and Dwayne Spurlock.) As with Mr. Moore, each Parole Board member checked off the same two reasons (and only those two) for denying parole, which were: "Severity of Present Offense is High" and "Negative Input from Stakeholders (Victim, Family of Victim, Law Enforcement").

86. It is unknown what actual input the Board received from the victim's family. As explained above, Mr. Click had met with the victim's family and expressed his profound remorse. Further, "Severity of Present Offense is High" is a generic reason that is true in every murder case. This is a static factor that will never change, regardless of Mr. Click's demonstrated maturity or rehabilitation.

87. None of the twelve reasons contained on the "Board Action Sheet" applies specifically to juvenile offenders. There is no evidence that the Board members deliberated on the unique characteristics of youth, as they are required to do under binding United States Supreme Court precedent.

88. The Alabama Code §15-22-26 factors, when properly considered, strongly weighed in favor of granting Mr. Click parole: (1) upon information and belief, the risk assessment instrument used by the Parole Board yielded a very low risk to reoffend; (2) he submitted a solid reentry plan; (3) it is unknown whether there was negative input from the victim, prosecutors, or law enforcement; to the contrary, however, he had judges and prison officials supporting his parole; (4) he participated in over sixty rehabilitation classes and educational programs; (5) he has not received a single behavior infraction in the entire thirty-two years of his incarceration. Only the last factor – "severity of the underlying offense for which the prisoner was sentenced to incarceration" – weighs against him, but that is a factor that he can never change.

89. Upon information and belief, the "Parole Guidelines" (Form ABPP-2), which are used by the Parole Board to aid in determining whether parole should be granted and is based on the statutory factors, yielded a score of 4, which, according to the Guidelines, "Suggests Parole Grant."

90. On information and belief, the sole reason that Mr. Click was denied parole is because the Board has a *de facto* moratorium in granting paroles in murder cases. By refusing to give Mr. Click individual consideration, and by refusing to consider his age, maturity, and rehabilitation as required by U.S. Supreme Court precedent, the Parole Board members violated Mr. Click's constitutional rights.

## CAUSES OF ACTION

### COUNT I

### VIOLATION OF THE EIGHTH AMENDMENT'S PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT UNDER 42 U.S.C. § 1983

91. Plaintiffs repeat and reallege the previous paragraphs as if fully set forth herein.

92. Defendants, in their official capacities, have acted and are acting under color of state law.

93. The Eighth Amendment to the U.S. Constitution forbids a statutory scheme that mandates life imprisonment for juvenile offenders or permits the imposition of life sentences on juveniles whose crimes reflect transient immaturity without providing them a meaningful opportunity for release based upon demonstrated maturity and rehabilitation.

94. As set forth herein, Ala. Code § 13A-6-2, as well as Defendants' current regulations, guidelines, policies, procedures, and customs with respect to the parole review process, fail to provide any realistic and meaningful opportunity for Plaintiffs' release based upon demonstrated maturity and rehabilitation. Instead, Defendants base their parole decisions entirely on the Plaintiffs' original offense and negative stakeholder input, have failed to adopt procedures which distinguish between juvenile and adult offenders, and fail to consider the factors required by U.S. Supreme Court case law.

95. This statutory framework, as well as Defendants' regulations, guidelines, policies, procedures, and customs, lack legitimate penological justification, are arbitrary and capricious, and constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

96. Plaintiffs have been injured and will continue to be injured as a consequence of Defendants' parole policies and practices denying them their rights to a meaningful opportunity for release from imprisonment based on a demonstration of maturity and rehabilitation, in violation of the Eighth Amendment to the U.S. Constitution.

## COUNT II

## VIOLATION OF THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS UNDER 42 U.S.C. § 1983

97. Plaintiffs repeat and reallege the previous paragraphs in this Complaint as if fully set forth herein.

98. Defendants, in their official capacities, have acted and are acting under color of state law.

99. Under established U.S. Supreme Court case law, juvenile lifers have a liberty interest in "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," that is protected by the Due Process clause. *Graham*, 560 U.S. at 75; *Miller*, 567 U.S. at 489.

100. Ala. Code § 13A-6-2(c) and Defendants' regulations, guidelines, policies, procedures, and customs with respect to the parole review process violate Plaintiffs' rights to due process by (1) failing to provide Plaintiffs with a meaningful opportunity for release based upon demonstrating their maturation and rehabilitation; (2) basing their parole decisions entirely on the basis of their original offense and negative stakeholder input; (3) failing to adopt procedures

which distinguish between juvenile and adult offenders in accordance with U.S. Supreme Court case law; (4) depriving Plaintiffs of the right to the effective representation of counsel by failing to allow their counsel to appear at their parole hearing and thereby eliminating the Plaintiffs' ability to challenge erroneous or detrimental information that was presented to the Parole Board; (5) failing to allow Plaintiffs to present any witnesses or testimony at their parole hearing; (6) failing to provide an adequate explanation by the Board of the basis of its determinations; (7) failing to allow sufficient time to review the record and conduct a parole hearing; (8) depriving Plaintiffs of the right to present experts or investigators or psychological testing to show the individual has demonstrated sufficient maturation and rehabilitation; and (9) failing to provide an opportunity for judicial or appellate review of the Board decisions, including whether Plaintiffs have demonstrated maturity and rehabilitation.

101. Plaintiffs have been injured and will continue to suffer injury as a result of the Defendants' unconstitutional failure to provide sufficient procedural protections necessary to secure the substantive right to release upon a showing of maturity and rehabilitation in violation of the Due Process Clause of the Fourteenth Amendment.

## COUNT III

## DECLARATORY JUDGMENT

102. For the reasons stated above, Plaintiffs seek a declaratory judgment from this Court that Ala. Code §§ 13A-6-2 and 15-22-26 are unconstitutional on their face and as applied to Plaintiffs.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Provide Plaintiffs an evidentiary hearing to further prove that the parole system does not provide Plaintiffs a meaningful opportunity for them to demonstrate maturity and rehabilitation or a realistic opportunity for release as required by the U.S. Supreme Court;

B. Declare that the actions and inactions of the Defendants are unlawful and unconstitutional for the reasons specified above;

C. Enjoin Defendants from continuing to violate the constitutional and statutory rights of the Plaintiffs;

D. Require that Defendants afford Plaintiffs a meaningful opportunity to obtain release with requisite procedural protections and based upon relevant, appropriate criteria that assess their degree of maturity and rehabilitation in accordance with U.S. Supreme Court mandates;

E. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and

F. Award all other necessary and appropriate relief that this Court may deem appropriate.

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