IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND RESTORATIVE JUSTICE INITIATIVE,
1111 Park Avenue, Suite 151
Baltimore, MD 21201
County of Residence: Baltimore City

CALVIN MCNEILL # 163182
Jessup Correctional Institution
7800 House of Correction Road
Jessup, MD 20794
County of Residence: Anne Arundel

NATHANIEL FOSTER # 174-966
Maryland Correctional Institution Hagerstown
18601 Roxbury Road
Hagerstown, MD 21746
County of Residence: Washington

KENNETH TUCKER # 130-850
Jessup Correctional Institution
7800 House of Correction Road
Jessup, MD 20794
County of Residence: Anne Arundel

Plaintiffs,

v.

GOVERNOR LARRY HOGAN,
In his official capacity
100 State Circle
Annapolis, Maryland 21401
County of Residence: Anne Arundel

COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND ATTORNEY'S FEES

Civil Action No. _____

DAVID BLUMBERG,
In his official capacity
Hampton Plaza, 300 East Joppa Road
Suite 1000
Towson, Maryland 21286
County of Residence: Baltimore

STEPHEN MOYER,
In his official capacity
Hampton Plaza, 300 East Joppa Road
Suite 1000
Towson, Maryland 21286
County of Residence: Baltimore

WAYNE WEBB,
In his official capacity
Hampton Plaza, 300 East Joppa Road
Suite 1000
Towson, Maryland 21286
County of Residence: Baltimore

Defendants.

COMPLAINT

NATURE OF THE CASE

1. This challenge is brought by and on behalf of Maryland "juvenile lifers" -- individuals who were sentenced to life in prison in state courts for acts committed when they were minors, without appropriate consideration of their youth. Plaintiffs have been and continue to be denied a meaningful opportunity for release, in violation of the Eighth Amendment to the U.S. Constitution and Article 25 of the Maryland Declaration of Rights.

2. The United States Supreme Court, in a series of decisions, has forbidden as unconstitutional life without parole ("LWOP") for all juveniles but the "rare juvenile whose crime reflects irreparable corruption" and declared this substantive constitutional rule retroactive. *Montgomery v. Louisiana*, 577 U.S. __, 136 S.Ct. 718, 734 (2016) (quoting *Miller v. Alabama,* 567 U.S. __, 132 S.Ct. 2455, 2469 (2012)); *Graham v. Florida*, 560 U.S. 48, 82 (2010).

3. The Court has found that young people are constitutionally different from adults for the purpose of sentencing due to three distinctive attributes of youth that mitigate their culpability: transient immaturity; vulnerability to external forces; and character traits that are still being formed. *Montgomery*, 136 S.Ct. at 73; *Miller*, 132 S.Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005).

4. The "penological justifications for life without parole collapse in light of 'the distinctive attributes of youth,'" rendering life without parole an unconstitutionally "disproportionate" punishment as to "all but the rarest of juvenile offenders, whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S.Ct. at 734-735.

5. Accordingly, the Court has forbidden as unconstitutional LWOP sentences for youth who have committed non-homicide offenses (*Graham*), and LWOP sentences for any youth whose homicide crime

reflects "unfortunate yet transient immaturity." *Montgomery*, 136 S.Ct. at 734 (*quoting Miller*, 132 S.Ct. at 2465). The cases establish that only in the "rarest" cases of "irreparable corruption" will such a penalty be appropriate. Thus, by definition, criminal sentencing schemes that *mandate* life in prison fail to allow adequate consideration of youth to make this assessment. *Id.* at 733; *Miller*, 132 S.Ct. at 2469.

6. The Court defines "life without parole" as a sentence of life imprisonment that denies an individual a "meaningful" and "realistic" opportunity for release upon demonstrated maturity and rehabilitation. *Graham*, 560 U.S. at 75, 82; *Miller*, 132 S.Ct. at 2469. The Court has expressly rejected executive clemency as affording such opportunity. *Graham*, 560 U.S. at 70 (*citing Solem v. Helm*, 463 U.S. 277, 300-301 (1983)).

7. Together, these decisions establish that the Eighth Amendment forbids a statutory scheme that (i) imposes life sentences upon minors without appropriate consideration of their distinctive attributes as youth, and then (ii) fails to provide them a meaningful and realistic opportunity for release. Maryland law fails this test on both accounts.

8. In Maryland, more than 200 individuals, including Plaintiffs Calvin McNeill, Nathaniel Foster, and Kenneth Tucker, are serving life sentences for offenses committed as juveniles. The majority of these individuals were sentenced under Maryland's mandatory sentencing

scheme, which requires judges to impose life imprisonment in cases of murder without adequate consideration of youth to determine whether an individual is among the rare minors whose offense reflects "irreparable corruption." Others were sentenced under Maryland's sentencing scheme that permits life sentences for non-homicide offenses, again without adequate consideration of youth status. All of these individuals are serving life sentences that are, theoretically, parole-eligible.

9. Many of these individuals have now served 30 or 40 years or more and have made admirable progress to demonstrate their maturity and rehabilitation. Yet, no juvenile lifer has been paroled in Maryland in the last two decades.

10. As a matter of Maryland law, the authority to parole any lifer lies exclusively in the hands of the Governor. Thus, rather than affording youth a meaningful and realistic opportunity for release, Maryland's parole scheme functions as a system of *ad hoc* executive clemency in which grants of release are exceptionally rare, are governed by no substantive, enforceable standards, and are masked from view by blanket assertions of executive privilege. Furthermore, Defendants lack policies that protect the constitutional rights of juvenile lifers to a meaningful opportunity for release; rely upon risk assessment tools to make recommendations about release that discriminate against those

who were minors at the time of offense; and prohibit youth from progressing through the DOC system to demonstrate their rehabilitation.

11. As a result of these practices, juvenile lifers in Maryland who have matured, who have done everything within their power to reform and to demonstrate their rehabilitation, and who the Supreme Court says deserve an opportunity for a second chance to live outside prison walls, are far more likely to die in Maryland's prisons than ever to receive this second chance. Their sentences have been converted into *de facto* LWOP sentences by virtue of the denial of a meaningful and realistic opportunity for release.

12. In these respects, the Maryland parole system violates the state and federal constitutions as applied to individuals serving life sentences for offenses committed as youth, and subjects them to unconstitutionally disproportionate punishment.

13. Plaintiffs are 1) the Maryland Restorative Justice Initiative, a non-profit membership organization dedicated to prisoners' rights, which sues on behalf of its members; and 2) three individuals who were sentenced to life in prison for offenses they committed as juveniles without adequate consideration of youth, who have been incarcerated for decades, who have matured and demonstrated their rehabilitation during their incarceration through their impeccable behavior and

institutional accomplishments, but who have nonetheless been denied any fair opportunity for release by the defendants.

14. Defendants are state officials responsible for Maryland policies and practices that deny juvenile lifers, including the Plaintiffs, the requisite meaningful and realistic opportunity for release, thus converting their life-with-parole sentences to *de facto* life-without-parole sentences without regard for their youth.

15. This lawsuit seeks declaratory and injunctive relief (i) to declare unconstitutional Maryland's statutory scheme to the extent that it mandates judges to impose life sentences without adequate consideration of youth status, (ii) to remedy Maryland's unconstitutional failure to provide a meaningful and realistic opportunity for release to MRJI's juvenile lifer members, and (iii) to provide relief for individual plaintiffs Calvin McNeill, Nathaniel Foster, and Kenneth Tucker, who received neither adequate consideration of their youth at sentencing nor any meaningful and realistic opportunity for release over the decades since, resulting in grossly disproportionate punishment in violation of the Eighth Amendment and Article 25 of the Maryland Declaration of Rights.

PARTIES

I. Plaintiffs

16. The Maryland Restorative Justice Initiative ("MRJI") is a grassroots membership organization dedicated to advocating for individuals serving long-term prison sentences, to ensure they are treated fairly within the system and receive meaningful opportunities for rehabilitation and release. MRJI was founded by Walter Lomax while he was incarcerated in the Division of Correction (DOC) with a life sentence for a crime he did not commit and for which he has since been exonerated. The organization's membership consists of individuals impacted by the criminal justice system, including, among others, individuals serving life sentences who were juveniles at the time of their offenses, parents and other family members of these individuals, "lifers groups" made up of individuals serving life sentences at various Maryland prisons, and individuals serving life sentences who obtained release through court proceedings correcting legal errors in their cases. For the last decade, MRJI has advocated on behalf of its membership with a singular focus on changing the policies and practices that deny its lifer members a meaningful opportunity for release, and educating the public about the ways in which the state's practices harms its members. MRJI sues for declaratory and injunctive relief on behalf of its members, who are subjected to the unconstitutional policies and

practices described herein. MRJI members have been injured by the acts and policies of the defendants in the manner set forth below.

17. Plaintiff Calvin McNeill is an MRJI member serving a mandatory life sentence, imposed without appropriate consideration of his youth status, for an offense that occurred on his 17th birthday in 1981. During the 35 years he has been incarcerated, Mr. McNeill has matured into a responsible leader who has had only one minor infraction in the last 25 years, served as a volunteer for numerous prison programs, and earned commendations from prison officials for his accomplishments. He is currently incarcerated at Jessup Correctional Institution. Mr. McNeil has been injured by the acts and policies of the defendants in the manner set forth below.

18. Plaintiff Nathaniel Foster is an MRJI member who was sentenced to life in prison, despite having no prior criminal record, for an offense that occurred when he was 17 in 1983. He received a mandatory life sentence that was imposed without adequate consideration of his youth status. Mr. Foster is now 50 years old. He has never had a violent infraction during his entire, three-plus decades of incarceration, has consistently maintained employment positions of great trust, and served as a mentor and volunteer in several capacities. He is incarcerated at Maryland Correctional Institution in Hagerstown. Mr.

Foster has been injured by the acts and policies of the defendants in the manner set forth below.

19. Plaintiff Kenneth Tucker is an MRJI member who received a mandatory life sentence in 1976, imposed without adequate consideration of youth status, for an offense that occurred when he was 17. Mr. Tucker is now 59 years old, and has been incarcerated for more than four decades. While incarcerated, Mr. Tucker earned his GED, an associate's degree and a bachelor's degree in psychology. He has not had a single infraction in ten years and currently works as an aide to terminally ill patients in the hospital at Jessup Correctional Institution, where he is incarcerated. Mr. Tucker has been injured by the acts and policies of the defendants in the manner set forth below.

II. Defendants

20. Defendant Larry Hogan is Governor of the State of Maryland. In his capacity as Governor, Hogan appoints the members of the Maryland Parole Commission (MPC), and decides whether individuals serving parole-eligible life sentences will be paroled, as well as whether any individual will receive a grant of executive clemency. Also in his capacity as Governor, Hogan sets the policies and practices for Maryland Parole Commission, and oversees the Maryland Division of Corrections ("DOC"). Governor Hogan is sued in his official capacity only.

21. Defendant David Blumberg chairs the Maryland Parole Commission, a division of the Maryland Department of Public Safety and Correctional Services ("DPSCS"). The Maryland Parole Commission makes recommendations regarding parole and commutation for individuals serving life sentences. The Parole Commission's operations are governed by statute and regulations. There are ten Commissioners, who are appointed by the DPSCS Secretary with the Governor's approval and Senate advice and consent to six-year terms. Commissioners conduct parole hearings and make determinations about whether particular individuals will be recommended for parole and/or commutation, as well as making decisions about intermediate steps such as programmatic requirements. As Chair, Mr. Blumberg exercises ultimate authority – in consultation with the Governor and the other Commissioners – with respect to the Parole Commission's policies, practices, and procedures. He is the primary policymaker, spokesperson and administrator for the MPC, as well as the primary liaison between the MPC and the Governor. Mr. Blumberg is sued only in his official capacity as Chair of the Maryland Parole Commission.

22. Defendant Stephen Moyer is the DPSCS Secretary. In his capacity as Secretary, Moyer exercises authority over the policies and practices of the DOC, a subdivision of DPSCS and the parent organization for the

Maryland Parole Commission. Secretary Moyer is sued in his official capacity only.

23. Wayne Webb is the Commissioner of Corrections. As Commissioner, he oversees the DOC, reporting only to Defendant Moyer. In his capacity as Commissioner, Webb is responsible, among other things, for managing the state-operated prisons in which lifers are housed and for establishing policies and practices for the DOC that apply system-wide, including how individuals are assigned to any particular security status or facility. Commissioner Webb has ultimate decision-making authority about any individual's classification, access to programs, and determinations about whether or not the DOC will honor a recommendation for programming or security change from the MPC. He is sued in his official capacity only.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1323, 1367, 2201 and 2202.

25. Venue is proper in the District of Maryland, as the conduct out of which this action arose occurred in this district. 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

I. YOUTH HAVE DIMINISHED CULPABILITY AND GREATER PROSPECTS FOR REFORM THAN ADULTS AND THE STATE CANNOT, EXCEPT IN THE RAREST OF CASES, CONDEMN YOUNG OFFENDERS TO DIE IN PRISON WITHOUT A MEANINGFUL OPPORTUNITY FOR RELEASE.

A. Cases of the U.S. Supreme Court establish that youth are different from adults in ways that diminish the penological justifications for the harshest punishments.

26. A series of U.S. Supreme Court decisions have established that "children are constitutionally different from adults for purposes of sentencing." *Montgomery*, 136 S.Ct. at 733 (quoting *Miller*, 132 S.Ct. at 2464 (citing *Roper*, 543 U.S. at 569-570; *Graham*, 560 U.S. at 68 (2015))).

27. "These differences result from children's diminished culpability and greater prospects for reform, and are apparent in three primary ways." *Id.* (internal quotation marks and citations omitted).

28. "'First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. *Id.* (internal quotation marks and citations omitted).

29. "Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* (internal quotation marks and citations omitted).

30. "And third, a child's character is not as well-formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Id.* (internal quotation marks and citations omitted).

31. "The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. That right … flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." *Miller*, 132 S.Ct. at 2463 (internal quotation marks and citations omitted).

32. A life without-parole sentence "'means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.'" *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State,* 105 Nev. 525, 526, 779 P.2d 944 (1989)) (parenthetical original).

33. "[T]he penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" *Montgomery*, 136 S.Ct. at 734 (quoting *Miller*, 132 S.Ct. at 2465).

34. "Because retribution 'relates to an offender's blame-worthiness, the case for retribution is not as strong with a minor as with an adult.'" *Id.* at 733 (quoting *Miller*, 132 S.Ct. at 2465).

35. "The deterrence rationale likewise does not suffice, since 'the same characteristics that render juveniles less culpable than adults – their immaturity, recklessness, and impetuosity – make them less likely to consider potential punishment.'" *Id.* (quoting *Miller*, 132 S.Ct. at 2465).

36. "The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender 'forever will be a danger to society.'" *Id.* (quoting *Miller*, 132 S.Ct. at 2465).

37. "Rehabilitation cannot justify the sentence, as life without parole 'foreswears altogether the rehabilitative ideal.'" *Id.* (quoting *Miller*, 132 S.Ct. at 2465).

38. Thus, "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate" to juvenile offenders' culpability for crimes they commit, and thus in violation of the Eighth Amendment's prohibition against grossly excessive punishment. *Miller*, 132 S. Ct. at 2465-66.

B. As a result of these differences, the Court has forbidden LWOP as unconstitutionally disproportionate punishment for all but the rarest of youth who demonstrate "irreparable corruption."

39. In 2010, the U.S. Supreme Court banned LWOP sentences for juvenile offenders in non-homicide cases as unconstitutionally disproportionate

punishment that violates the Eighth Amendment. *Graham*, 560 U.S. at 82.

40. In 2012, the Court prohibited mandatory LWOP for juvenile offenders in homicide cases as unconstitutionally disproportionate punishment that violates the Eighth Amendment. *Miller*, 132 S.Ct. at 2475. It required sentencing courts to "consider a child's 'diminished culpability and heightened capacity for change' before condemning him or her to die in prison[,]" and to "take into account 'how juveniles are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Montgomery*, 136 S.Ct. at 726 and 733 (quoting *Miller*, 132 S.Ct. at 2460 and 2469, respectively).

41. "Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rarest juvenile offender whose crime reflects irreparable corruption, it rendered 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.* at 734 (internal quotation marks and citations omitted).

42. In 2016, the Court ruled that *Miller* announced a substantive rule of constitutional law and was therefore retroactive. *Id.* at 736.

43. "[A] lifetime in prison is a disproportionate sentence for all but the rarest of juveniles, those whose crimes reflect 'irreparable corruption.'" *Id.* at 726 (quoting *Miller*, 132 S.Ct. at 2469; *Roper*, 543 U.S. at 573).

44. "*Miller* made clear that 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'" *Id.* at 733-734.

45. "*Miller's* conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution." *Id*. at 736.

C. For those who are not "irreparably corrupt," there must be a meaningful and realistic opportunity to obtain release, and Maryland's parole system fails to meet this standard.

46. The Eighth Amendment forbids for all but the rarest juveniles a "sentence [that] guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes." *Graham*, 560 U.S. at 79.

47. To avoid this unconstitutionally disproportionate punishment for juveniles, the state must provide 'some meaningful opportunity to

obtain release based on demonstrated maturity and rehabilitation.'" *Miller*, 132 S.Ct. at 2469 (quoting *Graham*, 560 U.S. at 75).

48. "'The remote possibility of [executive clemency] does not mitigate the harshness of the [life-without-parole] sentence." *Graham* at 70 (citing *Solem*, 463 U.S. at 300-301) (parenthetical added).

49. The differences between clemency and parole were explained in *Solem v. Helm:*

> As a matter of law, parole and commutation are different concepts, despite some surface similarities. Parole is a regular part of the rehabilitative process. *Assuming good behavior, it is the normal expectation in the vast majority of cases.* The law generally specifies when a prisoner will be eligible to be considered for parole, and details the standards and procedures applicable at that time. Thus it is possible to predict, at least to some extent, when parole might be granted. Commutation, on the other hand, is an *ad hoc* exercise of executive clemency. A Governor may commute a sentence at any time for any reason without reference to any standards.

Solem, 463 U.S. at 300-01 (citations omitted and emphasis added).

50. In Maryland, as a matter of law, the authority to parole any lifer lies exclusively in the hands of the Governor. Thus, rather than affording youth a meaningful and realistic opportunity for release, Maryland's parole scheme functions as a system of *ad hoc* executive clemency in which grants of release are exceptionally rare, are governed by no substantive, enforceable standards, and are masked from view by blanket assertions of executive privilege.

51. "Allowing [juvenile] offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, 136 S.Ct. at 736.

52. Juvenile lifers "must be given the opportunity to show 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 736-737.

53. "Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual." *Graham*, 560 U.S. at 79.

54. "In some prisons, moreover, the system itself becomes complicit in the lack of development. … [I]t is the policy in some prisons to withhold counseling, education, and rehabilitation programs for those who are ineligible for parole consideration. A categorical rule against life without parole for juvenile nonhomicide offenders avoids the perverse consequence in which the lack of maturity that led to an offender's crime is reinforced by the prison term." *Id.* (cross-reference omitted).

55. The Supreme Court has determined that, at least, the following evidence is relevant to the issue of rehabilitation of juvenile lifers:

whether the juvenile was a "troubled, misguided youth;" whether the juvenile offender has become "a model member of the prison community;" whether the juvenile offender participates in programs and is a "trainer and coach;" and whether the juvenile offender offers "advice and serve[s] as a role model to other inmates." *Montgomery*, 136 S.Ct. at 736.

II. MARYLAND'S POLICIES AND PRACTICES SUBJECT JUVENILE LIFERS TO UNCONSTITUTIONALLY DISPROPORTIONATE PUNISHMENT BY DENYING ALL JUVENILE LIFERS A MEANINGFUL AND REALISTIC OPPORTUNITY FOR RELEASE REGARDLESS OF INDIVIDUAL MERIT.

A. Overview of how Maryland violates the Constitutional rights of juveniles.

56. Maryland's current practices all but guarantee that juveniles sentenced to life -- even those with a theoretical opportunity for parole -- will die in prison no matter how thoroughly they have been reformed, all without adequate consideration of their youth status.

57. Maryland law permits life sentences for youth in certain non-homicide cases, *see, e.g.*, Md. Code, Crim. Law § 3-303(d), and mandates life sentences in all cases of first-degree murder without consideration of the youth of the offender. Md. Code, Crim. Law § 2-201(b) ("Section 2-201(b)"). In practice, the State has for decades denied those sentenced under this law any meaningful opportunity for release on parole

regardless of demonstrated rehabilitation. This violates the rights of juvenile lifers under the Eighth Amendment and Article 25.

58. Although the law describes such sentences as "parole-eligible" life sentences, in practice juvenile lifers are *never* paroled, regardless of their demonstrated maturity, rehabilitation, or other individual aspects of their record. Over the last 20 years, and as of the date of this filing, no juvenile lifer has been paroled, irrespective of their reform as they matured into adulthood, or their readiness for release.

59. Maryland's parole scheme for juvenile lifers is a system of parole in name only. In all significant respects, it is an *ad hoc* system of executive clemency in which opportunities for release are all but non-existent. It fails to afford juvenile lifers a meaningful and realistic opportunity for release upon rehabilitation.

60. As a matter of law, the authority to parole any lifer is exclusively in the hands of the Governor without any transparency, constraints, standards or mechanisms for review and without regard for an individual's juvenile status at time of offense.

61. Moreover, the state's parole policies and practices make no distinction between youth and adults, fail to adequately consider the attributes of youth, and rely upon risk assessment tools that penalize those who were young at the time of offense, all while fundamentally impeding

individuals from vindicating their rights to a meaningful opportunity for release.

62. By automatically classifying all juvenile lifers as maximum security upon commitment to DOC and categorically barring lifers, including juvenile lifers, from progression to security classifications below medium, Maryland denies juvenile lifers opportunities to progress through the DOC system to demonstrate their maturity and rehabilitation, in violation of the Eighth Amendment and Article 25.

63. By operating a scheme in which the only opportunity for release is *ad hoc* and unreviewable executive clemency, devoid of standards, by which it is nearly impossible to actually obtain release regardless of individual merit, Maryland's policies and practices convert life-with-parole sentences into *de facto* life-without-parole sentences. As applied to individuals serving life sentences for offenses committed as youth, this subjects them to unconstitutionally disproportionate punishment in violation of the Eighth Amendment and Article 25.

B. Maryland mandates or permits life sentences for juveniles whose crimes do not reflect irreparable corruption.

64. Approximately 200 individuals who were juveniles at the time of their offenses are serving life sentences in Maryland that purport to be parole-eligible.

65. The majority of these juvenile lifers were sentenced under a mandatory sentencing scheme that requires judges to impose a sentence of life in any case of first-degree murder regardless of a person's juvenile status. Md. Code, Crim. Law § 2-201(b). Judges may also impose life without parole. *Id.*

66. Judges may impose life or LWOP as punishment for certain non-homicide offenses as well. *See, e.g.*, Md. Code, Crim. Law § 3-303(d)(2)-(4).

67. There is no minimum age for being charged with murder or receiving a mandatory life sentence in Maryland.

68. There is no minimum age for being charged with and receiving a life with parole sentence for a non-homicide crime.

69. Maryland law requires no consideration of youth in sentencing proceedings in such cases. If considered at all, an offender's youth is generally only considered in passing, as the life sentence is mandatory.

C. Maryland's parole scheme operates as a system of clemency that fails to afford juvenile lifers a meaningful and realistic opportunity for release upon rehabilitation.

1. The Governor's clemency authority is exclusive and devoid of standards.

70. By statute only the Governor may grant parole to any individual serving a life sentence. Md. Code, Corr. Serv. § 7-301(d)(4); *see also* Code of Maryland Regulations ("COMAR") 12.08.01.01 ("The Governor

has the exclusive power to grant parole to prisoners serving a sentence of life imprisonment.").

71. Likewise, only the Governor may commute an individual's sentence pursuant to Maryland Correctional Services Article § 7-601. Such acts are expressly defined as acts of clemency. Md. Code, Corr. Serv. § 7-101(d) ("'Commutation of sentence' means an act of clemency in which the Governor, by order, substitutes a lesser penalty for the grantee's offense for the penalty imposed by the court in which the grantee was convicted.").

72. The Maryland Parole Commission can make recommendations regarding parole, but the Governor has no obligation to consider or to adopt them. *See* Md. Code, Corr. Serv. § 7-206(3)(i) ("The Commission shall … (3) review and make recommendations to the Governor: (i) concerning parole of an inmate under a sentence of life imprisonment."). Similarly, if requested by the Governor, the Maryland Parole Commission may make recommendations regarding commutations as it does in cases of parole. Md. Code, Corr. Serv. § 7-206(3)(ii).[1]

[1] Regulations provide that "[t]he Commission will recommend to the Governor a commutation of a life sentence where the case warrants special consideration or where the facts and circumstances of the crime justify special consideration, or both." COMAR 12.08.01.15(B).

73. There are no substantive statutory or regulatory factors guiding or limiting the Governor's decision-making regarding parole for lifers.[2] Md. Code, Corr. Serv. § 7-301(d)(4); *see also Lomax v. Warden*, 356 Md. 569, 578 (Md. Court of Appeals 1999) ("The statutory provision applicable to the Governor's approval, § 7-301(d)(4) of the Correctional Services Article, contains no factors or guidelines for the Governor's exercise of discretion. Accordingly, the Governor is free to employ whatever guidelines he desires in exercising his discretion, except for guidelines that are constitutionally impermissible.").

74. Nothing requires the Governor to consider an individual's youth at time of offense in exercising his discretion for parole, and all evidence suggests that youth is not in fact considered, given that no juvenile lifer has been paroled in the past 20 years.

75. There are no statutory limits or constraints upon the Governor's commutation authority, nor factors that the Governor must consider in deciding such cases.

76. As is the case for commutations, the Governor is under no obligation to announce the bases upon which he will consider granting or denying parole, and Maryland governors have not promulgated or issued any written, publicly-available guidance about any such criteria.

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[2] Legislation enacted in 2011 requires the Governor to act within 180 days of a recommendation of the Parole Commission. Md. Code, Corr. Serv. § 7-301(d)(5).

77. In fact, even if a Governor did announce such criteria, he would not be bound by them and would be under no obligation to adhere to them, and could change them at any time without notice or explanation.

78. Whether the Governor rejects a recommendation for parole or a recommendation for commutation, no explanation or rationale is provided to the individual who has been denied release.

79. There is no process for appeal or review of the Governor's decision in either case.

80. This statutory framework has remained largely unchanged for at least half a century, with the single exception that since 2011 the Governor has been required to exercise his unfettered discretion on parole within 180 days of an MPC recommendation.

2. MPC policies and practices, combined with the scheme of executive clemency, deny juveniles a meaningful opportunity for release.

81. The policies and practices of the MPC exacerbate Maryland's unconstitutional parole system, which functions as a system of executive clemency rather than parole with respect to juvenile lifers.

82. The MPC's policies and practices make no distinction between youth and adults, fail to adequately consider the attributes of youth, and in some respects disproportionately penalize those who were youth at the time of offense, all while fundamentally impeding individuals from vindicating their right to a meaningful opportunity for release.

83. The MPC's policies make no distinction between those whose offenses occurred as youth and those whose offenses occurred as adults.

84. None of the statutory factors to be considered in determining whether an individual is suitable for parole include explicit consideration of youth at the time of the offense. *See* Md. Code, Corr. Serv. § 7-305. Upon information and belief, plaintiffs aver that parole commissioners receive no training pertaining to adolescent psychological development or any other training that would assist commissioners in contextualizing offenses committed by youth in accordance with the findings of *Roper*, *Graham*, *Miller* and *Montgomery*.

85. Maryland does not provide juvenile lifers with counsel in parole proceedings, nor permit any privately-retained counsel to attend or to participate in parole hearings. Typically, no written record is made of what is said and the Parole Commission provides no written explanation of its decision other than a pre-printed parole sheet stating that all statutory factors were considered, which commissioners may annotate briefly and sign. MPC policies prohibit individuals from seeing key information in their own files, including recommendations of the sentencing judge, states' attorney, or case manager, Commissioner notes, victim statements, and risk assessments. These practices impede individuals from vindicating their right to a meaningful opportunity for release by undermining their ability to

prepare for parole hearings, correct inaccurate information in their files and to know what steps they must take to improve their chances for release.

86. In several instances, MRJI members have learned only indirectly, through the statements of parole commissioners in their hearings, that there is critical, damaging and erroneous information in their files that is adversely affecting their chances for parole.

87. Moreover, MPC practices penalize juvenile lifers by relying heavily upon risk assessment tools that assess the individual as if frozen in time upon their arrival to DOC rather than who he or she is at the time of assessment. These tools take no account of an individual's maturation over time, accomplishments and institutional record. Rather, they penalize those who were youth upon arrival to DOC by assessing them as they were when they were most risky and too young to have developed factors that the tools deem "protective" against recidivism. By utilizing these tools, MPC virtually ensures that every juvenile lifer will demonstrate a moderate or high level of risk even when individuals have been thoroughly rehabilitated and present little or no risk.

88. In some instances, individuals have been told by commissioners that the MPC officials were skeptical of the validity of the risk assessment tools but bound to rely upon them. Upon information and belief,

members of the parole commission themselves have raised concerns about the validity of the assessments used to determine risk and/or the weight they are given in determining suitability for parole.

89. The MPC takes the position that its recommendations and communications with the Governor and his staff are privileged, regardless of whether they are recommendations for parole or commutation. Thus, all an individual may know is that his file is "on the Governor's desk." The person does not know, because the MPC refuses to say, whether he is being considered for parole or commutation.

90. Upon information and belief, at various points during the past two decades, the MPC has directly or indirectly been instructed to slow down or to limit the number of individuals it is recommending for parole and/or commutation.

3. DOC policies automatically deny all juvenile lifers rehabilitative opportunities that affect their opportunity for release.

91. In 1994, the DOC adopted policies that bar juvenile lifers, as well as any other lifer, from moving below medium security status regardless of the individual's institutional record. In 1997, the DOC adopted policies that serve categorically to bar lifers, including juveniles, from eligibility for work release and family leave programs. These policies have remained in effect without significant change for the last two

decades and continue to govern the classification and access to programs for all juvenile lifers.

92. In the DOC, security classifications determine virtually all aspects of an individual's conditions of confinement. An individual's security classification determines in which institutions he or she may be housed, the level of restriction upon his or her freedom of movement, and all aspects of programmatic eligibility, including access to treatment, training, and employment.

93. From lowest to highest, DOC's security classification levels are pre-release, minimum, medium, and maximum. Typically, classification is assigned upon commitment to the DOC and reviewed periodically thereafter. DOC's classification scheme is a score-based system that assigns and deducts points based on certain factors to determine at which security level an individual may be safely assigned. To carry out this scheme, DOC uses an initial "security classification instrument" and subsequently reassesses such determinations using a "security re-classification instrument."

94. However, DOC largely disregards this scoring scheme with respect to juvenile lifers. DOC automatically classifies juveniles who are committed to the DOC with a life sentence as maximum security regardless of how they score on the tool. This is so even though the tool already incorporates the severity of offense.

95. The result is that individuals who are juveniles at the time of their offense, who are more vulnerable and in greater need of supportive programming, are immediately and automatically housed with individuals DOC has deemed the most dangerous, in institutions with the highest security and the least programming.

96. Yet, because of their differences from adults, juveniles arrive at the DOC more susceptible to being assaulted and preyed upon, and with greater need for supportive programming and for opportunities that will enable them to be rehabilitated. Categorically assigning juveniles to maximum security regardless of any individualized determination unlawfully denies them a core component of a meaningful opportunity for release.

97. Moreover, once juveniles are able to progress to medium security, they are categorically and permanently barred from any further progression through the DOC system regardless of individual merit.

98. As noted above, DOC's security classification instrument automatically scores juvenile lifers higher by virtue of their mandatory life sentences. The same is true for DOC's re-classification instrument. But, no matter how a juvenile lifer scores on the tool, DOC's policy builds in a mandatory override, such that the individual is categorically barred from moving below medium security regardless of his or her track

record. In this way, DOC's scheme reinforces the unattainability of opportunities for release for juvenile lifers.

99. Because virtually every aspect of programming is determined by an individual's classification level, DOC's mandatory override and prohibition against movement below medium security prevent juvenile lifers from progressing through DOC and demonstrating their maturity and rehabilitation regardless of individual merit. Similarly, juveniles are severely limited in their ability to demonstrate rehabilitation through the gradual earning of additional privileges and the ability to succeed in lower-security settings.

100. DOC's categorical bar on progression beyond medium security for all juvenile lifers without regard for individual merit lacks penological justification. Unlike their adult counterparts, youth arrive in the DOC while still developing and mature in prison. They are in greater need of opportunities for education, and to develop employment histories, family ties, and a general track record of operating as responsible adults.

101. Until the mid-1990s, juveniles serving parole-eligible life sentences routinely received opportunities to demonstrate their rehabilitation by progressing through reduced security levels within the DOC. They were able to proceed to minimum and pre-release security classifications and thus participate in work-release and family leave

programs. Through participation in these programs, they were able to gradually re-establish family and community ties, maintain steady employment, pay taxes, and even volunteer in the community, all while being subjected to regular and random drug testing and other supervision, including psychological evaluations.

102. Lifers' demonstrated success in these settings and ability to access programs only available at these statuses, including work release and family leave, were a crucial factor in the assessment of their readiness for parole by the Parole Commission. Parole records from that era repeatedly reference the belief of commissioners that individuals require "testing" in such settings, with increasing privileges and access to society, to demonstrate their preparedness to reenter society.

103. Unlike Maryland's prior policies, the current policies force Defendants to make decisions about juvenile lifers' suitability for release with far less certainty about how they are likely to fare upon release. In this way, Defendants are effectively discouraged from recommending or approving parole for juvenile lifers as a result of DOC's practices, and juvenile lifers are deprived of critical opportunities to demonstrate their rehabilitation.

III. THE ORIGINS AND EFFECTS OF MARYLAND'S SYSTEM OF *DE FACTO* LIFE WITHOUT PAROLE.

104. Prior to the mid-1990s, the Maryland Parole Commission regularly recommended lifers for release on parole, and Maryland Governors

were willing to approve these recommendations. Parole for lifers varied by Governor and was still subject to the political machinations of any particular Governor—such as when Governor William Donald Schaefer rejected every single one of the 29 parole recommendations made by the Maryland Parole Commission during his first term in office. Nonetheless, parole was available to lifers who demonstrated their rehabilitation, particularly through being successful as they progressed through increasingly less restrictive security levels of the DOC.

105. Maryland's parole system changed dramatically in 1995, when then-Governor Parris Glendening took office and announced that he was unwilling to grant parole to individuals serving life sentences, no matter their level of rehabilitation, no matter how many years they had served, no matter how young they might have been at time of offense.

106. Specifically, on September 21, 1995, during his first year in office, Governor Glendening called a press conference to announce that he was rejecting eight recommendations for parole by the Maryland Parole Commission. Henceforth, he announced, "life means life" and so he had ordered the MPC to stop sending recommendations to him for parole of any lifer, regardless of the youth of the offender at the time of his criminal act. *Lomax*, 356 Md. at 573 ("Governor Glendening

announced that he would not approve parole for any inmates sentenced to life imprisonment unless they were very old or terminally ill. The Governor's announcement went on to state that he had 'directed the Parole [Commission] not to even recommend-to not even send to [his] desk-a request for parole for murderers and rapists.'") (parentheticals original).

107. During Governor Glendening's tenure, the number of grants of parole to Maryland lifers, including juvenile lifers, plummeted to zero. It has remained near zero ever since.

108. Walter Lomax, one of the lifers denied parole at Governor Glendening's 1995 press conference, challenged the "life means life" announcement in court, arguing that the Governor's pronouncement amounted to an *ex post facto* change of his sentence. In rejecting this claim, the Maryland Court of Appeals stated that: "The Governor's statement … was simply an announcement of guidelines as to how the Governor would exercise the discretion which he has under the law. The Governor's announcement did not bind him, and he can employ different guidelines whenever he desires to do so." *Lomax*, 356 Md. at 577.

109. This case thus established that Maryland Governors have unfettered discretion to grant or deny parole for any reason, without explanation, and without any opportunity for review.

110. Nonetheless, the Court of Appeals ruled in *Lomax* that the MPC was obligated to continue reviewing parole applications and making recommendations, contrary to Glendening's instruction. *Id.* at 579 (Noting State's concession that the MPC "'has a statutory obligation to submit to the Governor for approval the names of any inmates that the Commission finds suitable for parole, and that statutory obligation cannot be dismissed by the Governor; and ... the Governor cannot direct the Parole Commission to ignore a statutory responsibility....'") (quoting State's brief).

111. After being compelled to do so by the courts, the Maryland Parole Commission continued recommending reviewing lifers' parole applications and issuing recommendations, but the fundamental character of its work changed as, year after year, Governor Glendening and his successors consistently denied all recommendations for release without explanation, regardless of the strength of an individual's record, and regardless of the individual's youth at the time of his or her offense.

112. The actions of Governor Glendening functionally abolished Maryland's parole process for juvenile lifers and led to the entrenchment of practices that have operated to deny parole-eligible juvenile lifers any meaningful opportunity for rehabilitation and release through the terms of successor Governors to the present day.

113. The practices of successor Governors further entrenched this policy. During the tenure of Governor Ehrlich, from 2003-2007, the Maryland Parole Commission all but ceased making recommendations for parole, shifting to a practice of making recommendations for commutation in a handful of cases.

114. Governor Martin O'Malley took office in 2007. During Governor O'Malley's tenure, recommendations from the MPC regarding release for lifers, both parole and commutation, languished on his desk for years. Individuals like plaintiff Calvin McNeill earned the MPC's recommendation that he be released based upon his model record, notwithstanding the denial to him of rehabilitation opportunities due to punitive DOC policies. But Mr. McNeill waited three years while the Governor failed to act on the MPC recommendation. Largely in response to the unfairness of the lifers in this situation, in 2011, the General Assembly enacted legislation to bring greater finality to this process by limiting the time the Governor had to consider parole requests to 180 days. When the legislation went into effect, Governor O'Malley rejected every one of the dozens of long-pending recommendations without any explanation, including that of Plaintiff Calvin McNeill.

115. Between 1995 and 2014 there were more than 2,000 individuals, juvenile and adult, serving parole-eligible life sentences in Maryland.

116. The MPC recommended 24 lifers, both juveniles and adults, for parole. Every recommendation was rejected without any explanation to the individual denied parole.

117. During this two-decade period, no lifer, juvenile or adult, was paroled, as the below chart listing paroles by Governor shows.

Governor	**Years in Office**	**Paroled**
Glendening (1st term)	1995-1999	0 paroled
Glendening (2nd term)	1999-2003	0 paroled
Ehrlich	2003-2007	0 paroled
O'Malley (1st term)	2007-2011	0 paroled
O'Malley (2nd term)	2011-2015	0 paroled
Hogan	2015	1 paroled

One lifer, not a juvenile, was paroled in 2015.

118. By contrast, between 1969-1994, 181 lifers were paroled:

Governor	**Years in Office**	**Paroled**
Mandel (including two years serving Agnew's unfinished term)	1969-1979	92 lifers paroled
Hughes	1979-1987	64 lifers paroled
Schaefer (1st term)	1987-1991	1 paroled to detainer
Schaefer (2nd term)	1991-1995	24 paroled

IV. PLAINTIFFS' RIGHTS HAVE BEEN VIOLATED AND THEY HAVE SUFFERED GRAVE HARMS AS A RESULT OF MARYLAND'S SYSTEM OF *DE FACTO* LIFE WITHOUT PAROLE.

A. Maryland Restorative Justice Initiative

119. As a result of the policies and practices of Defendants, and illustrated by the Defendants' failure to parole any juvenile lifer for more than 20 years, MRJI members – including more than 100 juvenile lifers and their families -- have consistently been denied any meaningful opportunity for release. In many instances, they have come to regard parole proceedings as futile and the promise of parole as completely illusory. No matter how well they behave, how consistently they demonstrate their trustworthiness, or how much they mature, they can never progress below medium security to lesser classifications that will allow them to demonstrate their readiness for release. Similarly, MRJI members who receive psychological evaluations are measured using risk assessment instruments that penalize them for their youthfulness at the time of their offense and totally fail to consider their institutional history and track record since incarceration. As such, MRJI juvenile lifer members and their families have suffered, and continue to suffer, violation of their rights under the Eighth

Amendment to the U.S. Constitution and Article 25 of the Maryland Declaration of Rights.

B. Plaintiff Calvin McNeill

120. Calvin McNeill was sentenced to life with parole under Maryland's mandatory sentencing scheme and without adequate consideration of his youth status, for his role in a fatal robbery of a dice game that occurred in 1981, the day he turned 17 years old.

121. Mr. McNeill is now 51 years old. He has spent 35 years, more than two thirds of his lifetime, incarcerated for this offense.

122. Mr. McNeill was sentenced to life in prison under Maryland's mandatory sentencing scheme for felony murder. Nothing in Mr. McNeill's record suggests, nor was any finding ever made, that his crime reflected that he was among the "rarest juvenile[s] whose crime[s] reflects permanent incorrigibility."

123. In 1982, when Mr. McNeill was sentenced, the prevailing understanding and practice was that lifers were regularly and frequently paroled. Indeed, nearly 100 lifers had been paroled in the preceding ten years.

124. Mr. McNeill has an exceptional institutional record in the DOC. He has taken advantage of every program available to him, earned positions of trust in employment, and taken leadership roles in programs to promote alternatives to violence within and outside DOC.

Mr. McNeill has even earned recognition from correctional officers and administrators who submitted letters of support on his behalf, including a commendation for helping to save someone's life. He has had only one infraction in the last 25 years, and that an exceedingly minor one.

125. In recognition of this strong record, in 2008, the Maryland Parole Commission recommended Mr. McNeill for commutation.

126. Three years later, in 2011, Governor O'Malley rejected this recommendation without explanation. Mr. McNeill does not know on what basis he was denied. His case was among dozens of others that were rejected by Governor O'Malley without comment that year.

127. The Maryland Parole Commission scheduled Mr. McNeill's next parole hearing for 2015, seven years after he was recommended for commutation.

128. At Mr. McNeill's 6th parole hearing in 2015, the two commissioners who met with him told him they would be recommending him for a risk assessment. However, there is a lengthy waiting list for assessment at Patuxent Institution and as of the filing of suit Mr. McNeill has not been transferred for the assessment.

129. As was the case previously, even if the MPC again recommends Mr. McNeill for release, whether on parole or for a commutation, the

governor who receives such a recommendation can reject it for any reason without explanation and without any opportunity for review.

130. When Mr. McNeill first arrived in the DOC, he had no prior record except for one juvenile offense. Yet, because he was serving a life sentence, he was automatically designated as maximum security and sent to the Maryland Penitentiary in spite of his young age.

131. Year after year, DOC classification counselors assessing Mr. McNeill's readiness for parole have noted his "excellent" record and observed that the only issue hindering his release is the State's policies governing lifers. For nearly 20 years, Mr. McNeill has been identified as a strong candidate for progression to lesser security but has been denied this opportunity solely because of his status as a lifer and without regard for his youth at the time of offense.

132. For example, as early as 1997, *nearly 20 years ago*, Mr. McNeill's classification counselor wrote:

> Division of Correction policy does not allow the inmate to progress to lesser security; however, he could be considered for progression when/if the 'lifer policy' changes. Since his last parole hearing, the inmate received his G.E.D. He has received superior ratings from his State Use Industries supervisors for the past three years. He has been a facilitator for Alternatives to Violence program. If institutional behaviors are indicative of behaviors on parole, this inmate would be a very good candidate for parole should current policy change.

In 2000, a classification counselor again noted that Mr. McNeill had 'maintained an excellent adjustment and work history; however, [h]is [life] sentence hinders his progress."

133. Every year, DOC conducts a security reclassification assessment for Mr. McNeill. The classification tool relied upon by DOC has two sections; one section measuring a "security" score, and a second section measuring an "institutional" score. DOC does not complete the tool for individuals serving life sentences and Mr. McNeill's security classification instruments often reflect this practice. Rather, classification counselors check boxes marking Mr. McNeill as categorically prohibited from moving below medium security because he is serving a life sentence.

134. Upon information and belief, were DOC to properly complete and score Mr. McNeill, the classification instrument would demonstrate that, due to his strong institutional record and steady employment within DOC, he can safely be moved to a lesser security level, where he would be able to participate in work release and family leave programs. The mandatory overrides deny Mr. McNeill the ability to make this progression.

135. Mr. McNeill has been denied and continues to be denied a meaningful opportunity for release, in that 1) he is unable to move below medium security regardless of how impeccable an institutional record he

achieves, and thus he is barred from developing skills that allow him to demonstrate his rehabilitation; 2) he is denied any explanation for what additional steps he must take to be recommended for parole; 3) he has been discriminated against with respect to his opportunities for rehabilitation and release by Defendants' use of risk assessment tools that hold his youth at time of offense against him; 4) he is subjected to a parole system that operates no differently than a system of executive clemency; and 5) he is subjected to parole practices that penalize him for his young age at the time of his offense.

C. Kenneth Tucker

136. Mr. Tucker was sentenced to life with parole in 1974 at age 17 under Maryland's mandatory sentencing scheme and without adequate consideration of his youth status, for participating in a robbery-murder with another teenager. During the robbery, Mr. Tucker's co-defendant killed the victim. Mr. Tucker has now been incarcerated for 42 years, nearly three quarters of his life. He is 59 years old.

137. Because the case involved a homicide that occurred during the course of a robbery, Mr. Tucker was charged with felony murder and faced a mandatory penalty of life in prison.

138. Mr. Tucker pled guilty to the offense and accepted a paroleable life sentence based on the understanding that such a sentence meant that he would have a realistic opportunity for release when he reached

parole eligibility. At the time, Mr. Tucker had known of other individuals who had received life sentences and been paroled back to the community.

139. Mr. Tucker began turning his life around almost immediately upon his incarceration, earning his high school equivalency in 1975, an associate's degree in 1989, and a bachelor's degree in psychology in 1994. He has obtained certification or training in several professions, including metal and wood work apprenticeships, clerical work, and food service sanitation. He is currently an observation aide in JCI's hospital, where he provides consolation and coping strategies to terminally ill and mentally distressed peers. He is a member of the JCI Scholars program and volunteers weekly as a mentor for other men.

140. Prior to the 1990s, Mr. Tucker was on track to progressing through DOC and earning his release. In 1987, for example, *nearly 30 years ago*, case management recommended his transfer to preferred trailer housing and medium security because of his good institutional adjustment and infraction-free record, while his 1989 security reclassification instrument noted that he was an "excellent worker" with an "AA degree." In a detailed statement, the commissioners in his first parole hearing in 1987 wrote: "The Parole Commission Panel would like to see the subject progress through the system and finally

receive an extensive period of work release before a favorable recommendation could be offered." At his second hearing in 1990, the Commission again reiterated: "Mr. Tucker is in C-3 medium security and is not eligible for C-3 minimum until 5-91. Given the aforementioned, and the nature of the crime, Mr. Tucker was advised by the Commission Panel to remain infraction free and to progress to minimum security, and work release status." Prior to his third hearing in 1992, his DOC classification counselor noted in a summary prepared for the parole commission that he would become eligible for minimum and pre-release security upon a recommendation from the Parole Commission. At that hearing, the Commissioners wrote: "The Panel notes Mr. Tucker's good institutional adjustment and finds that he needs the benefit of gradual reentry into the community and a period of work release testing. The Panel will rehear Mr. Tucker in December 1993. The Panel explicitly recommends work release."

141. In 1993, Maryland suspended its work release program and returned all lifers to medium security. That December, Mr. Tucker received his fourth parole hearing. On the pre-printed form that the commissioners had begun using, the hearing officers wrote "Needs to maintain good adjustment and participate in those programs available." Below that, in "Commissioner's remarks," it was further noted: "Policy for [illegible], work release for life cases needs resolution before

progression can be made." Mr. Tucker was set for his next parole hearing in 1995. In June 1995, the Commissioners who held his parole hearing scheduled him for a rehearing the following year, noting "Awaiting Lifer Policy." In addition, despite confirming Mr. Tucker's eligibility for progression past medium security on his 1994 security reclassification instrument, it was noted that no change could be made because "current lifer status is on hold."

142. In September 1995, Governor Glendening announced that he would not parole any lifer. In light of the Governor's statements and actions, Mr. Tucker declined his parole hearing in 1996, believing the process was futile. He did not have any parole hearing again for nearly 20 years, until 2014, as he did not see much point to reinstating hearings when no lifers were being paroled. In 2014, at the urging of his case manager, he requested a parole hearing.

143. At Mr. Tucker's 6th parole hearing in 2014, the Commissioners who heard his case recommended that he progress to the next step, which is the risk assessment at Patuxent. After the evaluation was completed, the parole commission denied parole and set his next hearing for 2017. The Commissioners noted "Given results of recent psych evaluation, a 1/2017 rehear would be more appropriate in this case." No additional information was provided about which aspects of the assessment caused concern nor what he might do to demonstrate his readiness at

his next parole hearing, and Mr. Tucker received no reply to a letter requesting an explanation.

144. Upon information and belief, the primary basis for the Commissioners' refusal of parole was a section of the evaluation called "Assessment of Risk." The report's author noted that he relied solely upon two actuarial tools, both of which rely exclusively on "static" factors, to assess risk, and do not take into account Mr. Tucker's maturity, rehabilitation or institutional record. Furthermore, the "static" factors upon which Mr. Tucker was assessed were all based on who he was as age 17, penalizing him for his youth, such as being unmarried at the time of the offense.

145. Mr. Tucker has been denied and continues to be denied a meaningful opportunity for release, in that 1) he is unable to move below medium security regardless of how impeccable an institutional record he achieves, and thus he is barred from developing skills that allow him to demonstrate his rehabilitation; 2) he is denied any explanation for what additional steps he must take to be recommended for parole; 3) he has been discriminated against with respect to his opportunities for rehabilitation and release by Defendants' use of risk assessment tools that hold his youth at time of offense against him; 4) he is subjected to a parole system that operates no differently than a system of executive

clemency; and 5) he is subjected to parole practices that penalize him for his young age at the time of his offense.

D. Nathaniel Foster

146. In 1983, at 17 years old, Nathaniel Foster was involved in a botched robbery attempt along with his co-defendant, who was eight years his senior and is the father of his sister's children. During the course of the robbery, the victim was killed. Mr. Foster had no prior record.

147. Because the case involved a homicide that occurred during a robbery, Mr. Foster was charged with first-degree murder and subjected to a mandatory penalty of life imprisonment without adequate consideration of his youth status.

148. There is nothing in Mr. Foster's record to suggest, nor was any finding ever made, that he was among those rare juveniles whose crimes reflect irreparable corruption. Rather, at the time of the incident, Mr. Foster had graduated Southwestern High School where he had been an honor student. He was working as a janitor and had planned to attend Capitol Institute of Technology in Kingston, Maryland on scholarship. At Mr. Foster's sentencing, both his attorney and the judge stated that the judge had no "real latitude…in disposing of the case."

149. Mr. Foster has now been incarcerated for more than three decades—32 years.

150. Mr. Foster has an exemplary institutional record. He has had only two minor infractions in the last three decades. He has not had an infraction of any kind in the last 16 years, and has never had a violent infraction.

151. During his incarceration Nathaniel has pursued his education, earning a place on the Dean's List for his high grades while attending Coppin State University for Criminal Justice. He was unable to finish this degree before funding for the program was cut, just twenty-four credits short of completion.

152. He has held a number of jobs while incarcerated including working in the canteen and cooking for the Officer's Dining Room. Currently he works for the Maryland Correctional Enterprise in the sheet metal shop where he is a lead office clerk, working directly under the Plant Manager. He has been entrusted with extraordinary responsibilities in these jobs.

153. For the last year, Mr. Foster has also served as a volunteer helping to care for men who are gravely and terminally ill at the prison hospital. He is a religious leader with Little Flock, a Seventh Day Adventist community.

154. He has family members who support his return to the community.

155. Mr. Foster has had six parole hearings in the last twenty years, in 1995, 2000, 2005, 2008, 2011 and 2013.

156. Mr. Foster has remained at medium security for the last twenty-two years, since 1994, despite a 1995 Maryland Parole Commission recommendation that he progress to lesser security as well as significant progress and an institutional record that demonstrates that he could safely progress to a lesser security classification. Upon information and belief, if DOC were to properly score Mr. Foster, DOC's own security classification instrument would score him for a reduced security classification. Because of DOC's mandatory override provisions for all lifers, Mr. Foster is unable to progress to a lesser security level and demonstrate his readiness for release.

157. In January 1995, Mr. Foster had his first parole hearing. He was a medium security inmate at that time. The only notation made by the parole commissioners who heard his case was to check a box under "Re-Hearing Recommendations" that was marked "Progress to Lesser Security" with a handwritten annotation "If possible." The commissioners scheduled his next hearing for five years later, in 2000.

158. At Mr. Foster's 2000 parole hearing, in indicating the rationale for their decision, the Commissioners marked "other" and wrote "Needs to serve more time for the crime." No mention was made of Mr. Foster's status as a juvenile at the time of the offense. His next hearing was scheduled for five years later.

159. In 2005, at Mr. Foster's third parole hearing, under Re-Hearing Recommendations the Commissioners checked "Other" and wrote "No infraction and any available programming." At that hearing, Mr. Foster was told "off the record" that the Governor was not going to sign any lifer parole papers and therefore he should just continue to do good. They set his next hearing for three years later.

160. Pursuant to Mr. Foster's request for reconsideration of the Parole Commission's decision, on August 15, 2007, Defendant Blumberg indicated that his file had been reviewed and the Commission found no basis to change its decision.

161. At Mr. Foster's fourth parole hearing in 2008, at which point he had served 25 years, the commissioners denied parole and scheduled his next hearing for three years later, in 2011. After noting Mr. Foster's "good institutional record," the Commissioners indicated they were rejecting parole due to the nature of the crime. They indicated he should participate in vocational training as available and avoid any infractions.

162. A 2010 case plan completed by Mr. Foster's case manager noted among other things that Mr. Foster had not had any infractions in a decade. It also stated, under supervision strategy: "Continue current excellent behavior and programming. On [waiting list] for more groups, which he will take when assigned."

163. Mr. Foster's fifth parole hearing was in 2011. He was again denied parole. On his form, the Commissioners noted Mr. Foster's employment, participation in groups, and home plan, but stated without any explanation that they were unwilling to recommend parole.

164. By 2013, Mr. Foster had spent three decades incarcerated. At his sixth parole hearing that year, the commissioners wrote: "Offender presented well, has excellent job evaluations and mentors younger prisoners. After considering all factors, a rehear for 1/2015 is suitable given nature & circumstances of offense." His case was set for a hearing in January 2015.

165. At the beginning of 2015, disheartened by his sense of futility in the parole process as he was repeatedly recognized for having an excellent record but then denied release due to the offense itself, without regard for his juvenile status, Mr. Foster declined a parole hearing. Despite this loss of confidence in the parole process, with it being the only means available for Mr. Foster to continue to demonstrate his readiness for release, he reconsidered and reinstated his participation in the parole process. At his seventh parole hearing in 2016, he was advised that he will be sent to Patuxent for a psychological evaluation.

166. Mr. Foster has been denied and continues to be denied a meaningful opportunity for release, in that 1) he is unable to move below medium

security regardless of how impeccable an institutional record he achieves, and thus he is barred from developing skills that allow him to demonstrate his rehabilitation; 2) he is denied any explanation for what additional steps he must take to be recommended for parole; 3) he has been discriminated against with respect to his opportunities for rehabilitation and release by Defendants' use of risk assessment tools that hold his youth at time of offense against him; 4) he is subjected to a parole system that operates no differently than a system of executive clemency; and 5) he is subjected to parole practices that penalize him for his young age at the time of his offense.

CAUSES OF ACTION

Count One
Violation of the Eighth Amendment Prohibition Against Cruel and Unusual Punishment and 42 U.S.C. § 1983
(All Plaintiffs Against All Defendants)

167. Plaintiffs reallege paragraphs 1 to 166 and incorporate them as if fully stated herein.

168. The Eighth Amendment forbids a statutory scheme that mandates life imprisonment for juveniles or permits life sentences for juveniles in non-homicide cases without adequate regard for their status as minors, and then denies them a realistic and meaningful opportunity for release upon demonstrated rehabilitation. A meaningful opportunity for release includes the opportunity to demonstrate rehabilitation.

169. Defendants operate a parole scheme that is indistinguishable from a system of *ad hoc* executive clemency in which grants of release are exceptionally rare, are governed by no substantive or enforceable standards, and are masked from view of those affected by assertions of executive privilege.

170. Maryland's system of standardless, *ad hoc* executive clemency, as applied to Plaintiffs, has not afforded them a meaningful and realistic opportunity for release upon demonstrated rehabilitation, in violation of the Eighth Amendment.

171. Moreover, the Maryland Parole Commission's application here of risk assessment tools that discriminate against youth has denied Plaintiffs a meaningful and realistic opportunity for release upon their showing of rehabilitation, in violation of the Eighth Amendment.

172. The DOC's practice of automatically classifying all lifers, including juvenile lifers such as the Plaintiffs, at maximum security and then prohibiting them from moving below medium security denies the Plaintiffs critical rehabilitative opportunities that are essential to their ability to demonstrate maturity and rehabilitation.

173. Plaintiffs McNeill, Foster, and Tucker and Plaintiff MRJI and its members have been injured by the Defendants' policies and practices by being denied their rights to meaningful opportunity for release from imprisonment notwithstanding their youth at the time of their offense

and despite their demonstration of rehabilitation, in violation of the Eighth Amendment, giving rise to their claims for relief under 42 U.S.C. §1983.

Count Two
Violation of Article 25, Md. Decl. of Rights Prohibition Against Cruel or Unusual Punishment
(All Plaintiffs Against all Defendants)

174. Plaintiffs reallege paragraphs 1 to 166 and incorporate them as if fully stated herein.

175. Article 25 of the Maryland Declaration of Rights forbids a statutory scheme that mandates life imprisonment for juveniles or permits life sentences for juveniles in non-homicide cases without adequate regard for their status as minors, and then denies them a realistic and meaningful opportunity for release upon demonstrated rehabilitation. A meaningful opportunity for release includes the opportunity to demonstrate rehabilitation.

176. Defendants operate a parole scheme that is indistinguishable from a system of *ad hoc* executive clemency in which grants of release are exceptionally rare, are governed by no substantive, enforceable standards, and are masked from view of those affected by assertions of executive privilege.

177. Maryland's system of standardless, *ad hoc* executive clemency, as applied to plaintiffs, has not afforded them a meaningful and realistic

opportunity for release upon demonstrated rehabilitation, in violation of Article 25.

178. Moreover, the Maryland Parole Commission's application of risk assessment tools that discriminate against youth has denied Plaintiffs a meaningful and realistic opportunity for release upon their showing of rehabilitation, in violation of Article 25.

179. The DOC's practice of automatically classifying all lifers at maximum security and then prohibiting lifers from moving below medium security denies juveniles critical rehabilitative opportunities that are essential to their ability to demonstrate maturity and rehabilitation.

180. Plaintiffs McNeill, Foster, and Tucker and Plaintiff MRJI and its members have been injured by the Defendants' policies and practices by being denied their rights to meaningful opportunity for release from imprisonment notwithstanding their youth at the time of their offenses and despite their demonstration of rehabilitation, in violation of the Eighth Amendment to the U.S. Constitution, and Article 25 of the Maryland Declaration of Rights.

Count 3

For Declaratory Judgment that Maryland Code, Criminal Law Article § 2-201(b) Is Unconstitutional
(All Plaintiffs Against All Defendants)

181. Plaintiffs reallege paragraphs 1 to 166 and incorporate them as if fully stated herein.

182. Maryland Code, Criminal Law Article § 2-201(b) mandates that judges impose a sentence of life imprisonment for individuals convicted of murder irrespective of any consideration of the youth status of the offender.

183. The Eighth Amendment to the U. S. Constitution requires youth status to be considered and a finding of "irreparable corruption" before youth may be sentenced to life imprisonment without a meaningful opportunity for release upon rehabilitation.

184. Section 2-201(b) violates the prohibition against cruel and unusual punishment under Eighth Amendment to the United States Constitution.

185. Plaintiffs McNeill, Foster, and Tucker and Plaintiff MRJI and its members have been injured by sentencing pursuant to Section 2-201(b) by being denied adequate consideration of their youth before being sentenced to life imprisonment without a meaningful opportunity for release upon their demonstrated rehabilitation, in violation of the Eighth Amendment to the U.S. Constitution, and Article 25 of the Maryland Declaration of Rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court

(a) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Defendants have operated, and continue operate, a parole scheme that denies individuals, such as the Plaintiffs, who are serving parole-eligible life sentences for offenses committed as juveniles, a meaningful and realistic opportunity for release, in violation of the prohibition against cruel and unusual punishment in the Eighth Amendment to the U.S. Constitution and the prohibition against cruel or unusual punishment in Article 25 of the Maryland Constitution;

(b) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Plaintiffs are serving *de facto* life without parole sentences pursuant to which they have been afforded no realistic or meaningful opportunity for release, in violation of the prohibition against cruel and unusual punishment in the Eighth Amendment to the U.S. Constitution and the prohibition against cruel or unusual punishment in Article 25 of the Maryland Constitution;

(c) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Maryland Code, Correctional Services Article § 7-301(d)(4), granting the Governor the exclusive authority to parole an individual serving a parole-eligible life sentence, is unconstitutional as applied to individuals, including the Plaintiffs, who were juveniles at the time of their offenses;

(d) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that the Defendants' reliance upon risk assessment tools that discriminate against those who were juveniles at the time of offense to assess opportunities for release has denied Plaintiffs a meaningful and realistic opportunity for release upon their showing of rehabilitation, in violation of the Eighth Amendment;

(e) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that, at least since 1995, Defendants have denied juvenile lifers, including the Plaintiffs, a meaningful and realistic opportunity for release by denying them access to critical rehabilitative opportunities through policies and practices automatically classifying them as maximum security and prohibiting them from progressing to security levels below medium regardless of individual merit, in violation of the Eighth Amendment prohibition against cruel and unusual punishment of the U.S. Constitution and the prohibition against cruel or unusual punishment in Article 25 of the Maryland Constitution;

(f) Declare, pursuant to 28 U.S.C. §§ 2201-2202, that Md. Criminal Law Code Ann. § 2-201(b) is unconstitutional because it mandates imposition of life sentences that deny youth a meaningful opportunity for release without consideration of the youth status of the offender.

(g) Enjoin Defendants immediately to discontinue these practices and to take remedial steps to address their past illegal conduct, by granting

Plaintiffs, and others represented by the Maryland Restorative Justice Initiative, a meaningful and realistic opportunity to demonstrate their readiness for release;

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

(i) Grant such other and further relief as the Court may deem just and proper;

Dated: April 6, 2016

Respectfully Submitted,

/s/ _____
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