**IN THE UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WISCONSIN**

CARLOS KING, THADDEUS KAROW, JAMES PRICE, CRAIG ALAN SUSSEK, and VICTORIANO HEREDIA, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

STEVEN LANDREMAN, AS ACTING CHAIRPERSON AND COMMISSIONER OF THE WISCONSIN PAROLE COMMISSION; DANIELLE LACOST, AS COMMISSIONER OF THE WISCONSIN PAROLE COMMISSION; DOUGLAS DRANKIEWICZ, AS COMMISSIONER OF THE WISCONSIN PAROLE COMMISSION; KEVIN CARR, AS SECRETARY-DESIGNEE OF THE WISCONSIN DEPARTMENT OF CORRECTIONS; and MARK HEISE, AS DIRECTOR OF THE BUREAU OF CLASSIFICATION AND MOVEMENT, all in their official capacities,

Defendants.

Case No. 19-cv-338

**CLASS ACTION COMPLAINT**

Plaintiffs CARLOS KING, THADDEUS KAROW, JAMES PRICE, CRAIG ALAN SUSSEK, and VICTORIANO HEREDIA (referred to hereinafter as "Named Plaintiffs" or "Plaintiffs"), on behalf of themselves and those similarly situated, by and through their attorneys, as and for their Complaint, allege the following:

## INTRODUCTION

1. The U.S. Supreme Court has recognized that, "children are constitutionally different from adults for purposes of sentencing." *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 471 (2012)).

2. Accordingly, the Supreme Court has held that it is unconstitutional to sentence juveniles, even those who commit heinous crimes, to life without parole, except for the "rare juvenile offender whose crime reflects irreparable corruption." *Montgomery*, 136 S. Ct. at 734 (2016) (*quoting Miller*, 567 U.S. at 479–80); *Graham v. Florida*, 560 U.S. 48, 82 (2010). Absent a finding of irreparable corruption, therefore, states must offer child offenders a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham,* 560 U.S. at 75.

3. Wisconsin's system for the parole of juvenile offenders fails to provide this meaningful opportunity; thus, by ostensibly creating a life-without-parole sentence, it violates the U.S. Constitution.

4. Defendants consistently deny release on parole to juvenile lifers who demonstrate unmistakable maturity, rehabilitation and reform, and a low risk to public safety, in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution.

5. Defendants regularly rely on purported "facts" that were neither found by a jury nor admitted by the person at the time to enhance the penalty imposed on juvenile lifers, in violation of the Sixth Amendment's right to a jury determination of facts affecting sentence.

6. As a result of these Constitutional violations, juvenile lifers in Wisconsin face a very low probability of release prior to death. On information and belief, only a minuscule number of parole-eligible juvenile lifers have been paroled during the past 15 years.

7. Plaintiffs are individuals who were convicted of crimes committed when they were children under the age of 18 and sentenced to life—or to terms of years that extend beyond their life expectancy—with the opportunity to seek parole after serving a statutorily calculated minimum prison term. They have been, continue to be, or will be subject to punishment disproportionate to their diminished juvenile culpability and deprived of due process of law as Defendants deny them a realistic and meaningful opportunity for release based upon demonstrated maturity and rehabilitation.

8. This is an action for declaratory and injunctive relief. Named Plaintiffs do not challenge their criminal convictions nor seek to invalidate their sentences. Rather, they seek an order that Defendants must afford them, and all of those similarly situated—a group of more than 120 individuals—a meaningful opportunity to obtain release as of their parole eligibility date, based on the constitutionally mandated standard of demonstrated maturity and rehabilitation.

## JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). The controversy arises under the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

10. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because each of the Defendants reside and have their principal place of business in the Western District of Wisconsin, a majority of Plaintiffs are or were incarcerated within the Western District of Wisconsin, and Defendants have conducted parole interviews and taken other actions leading to the denial of Plaintiffs' rights, as alleged further herein, within the Western District of Wisconsin.

## PARTIES

### A. Plaintiffs

11. Plaintiff Carlos King is an inmate at Waupun Correctional Institution in Waupun, Wisconsin. He was convicted of first-degree intentional homicide and attempted first-degree intentional homicide; he committed these crimes at the age of 16. In 1997, Mr. King was sentenced to life in prison, plus 45 years to be served concurrently, with eligibility to seek parole in 2013. A subsequent conviction resulted in a sentence of two additional years, delaying his parole eligibility by six months. He has served nearly 22 years in prison and has been denied parole four times.

12. Plaintiff Thaddeus Karow is an inmate at Oakhill Correctional Institution in Oregon, Wisconsin. He was convicted of first-degree intentional homicide, armed burglary and armed robbery; he committed these crimes at the age of 14. At the time of his trial, he was the youngest person to be tried as an adult in the history of Wisconsin. In 1988, he was sentenced to life in prison for the homicide, 20 years consecutive for the burglary, and 20 years consecutive for the robbery, with eligibility to seek parole in 2011. He has served 31 years in prison and has been denied parole six times.

13. Plaintiff James Price is an inmate at Oakhill Correctional Institution in Oregon, Wisconsin. He was convicted of first-degree intentional homicide party to a crime with use of a dangerous weapon; he committed this crime at the age of 14. In 1993, he was sentenced to 25 years to life, with eligibility to seek parole in 2018. He has served 26 years in prison and has been denied parole once.

14. Plaintiff Craig Sussek is an inmate at Fox Lake Correctional Institution in Fox Lake, Wisconsin. He was convicted of attempted first-degree intentional homicide with use of a dangerous weapon party to a crime, and armed burglary party to a crime; he committed these

crimes at the age of 16. In 1996, Mr. Sussek was sentenced to 45 years and 35 years to be served consecutively, with eligibility to seek parole in 2015. He has served 23 years in prison and has been denied parole twice.

15. Plaintiff Victoriano Heredia is an inmate at Fox Lake Correctional Institution, in Fox Lake, Wisconsin. He was convicted of first-degree intentional homicide party to a crime; he committed this crime at the age of 17. In 1997, he was sentenced to life in prison, with eligibility to seek parole in 2010. He has served 21 years in prison and has been denied parole three times.

16. Plaintiffs bring this action individually and on behalf of a class consisting of all persons who are or will become eligible for release to parole supervision who were convicted of crimes committed when they were children under the age of 18 and sentenced to life or a term of years exceeding their life expectancy in the custody of the Wisconsin Department of Corrections ("DOC") ("juvenile lifers" or "Class Members").[1]

**B. Defendants**

17. Defendant Steven Landreman is the Acting Chairperson and Commissioner of the Wisconsin Parole Commission. As Chairperson, Defendant Landreman is responsible for the administrative functions and supervision of "the [parole] commission and its activities and shall be the final parole-granting authority . . . ." Wis. Stat. § 304.01(1). The chairperson must approve or disapprove of any other commissioner's recommendation for release. Wis. Adm. Code § 1.07(1), (4) (commissioner "shall make the recommendation of release to the chairperson," and if the chairperson "disagrees with a recommendation of the commissioner, the chairperson shall inform the inmate."). The chairperson must also approve any deferral of more than one year for

[1] This case challenges the parole system as applied to people convicted of crimes committed as minors prior to January 1, 2000. Truth-in-Sentencing eliminated parole in Wisconsin for crimes committed on or after January 1, 2000.

subsequent parole consideration. Wis. Adm. Code § PAC 1.06(9). As Commissioner, Defendant Landreman is responsible for conducting "release consideration interviews" and making decisions to deny parole and determining the length of time, up to one year, before the applicant may seek parole again (the "deferral period"). Wis. Adm. Code §§ PAC 1.06(5), (7)–(9); § PAC 1.07(1) (commissioner "may deny release and defer consideration for a specified period of time"). The time period for renewed consideration is called a deferral period. Commissioners may also make "recommendations" to the chair that a prisoner be released (§ PAC 1.07(1)), but the chair makes the final decision when release is recommended. *Id.* at 1.07(4); Wis. Stat. § 304.01(1) (chairperson is "final parole-granting authority"). Defendant Landreman is sued in his official capacity.

18. Defendant Danielle LaCost is a Parole Commissioner. Defendant LaCost conducts "release consideration interviews," makes decisions to deny parole, determines the deferral period, and also may make recommendations for release to the chair. Wis. Adm. Code §§ PAC 1.06(5), (7)–(9). Defendant LaCost is sued in her official capacity.

19. Defendant Douglas Drankiewicz is a Parole Commissioner. Defendant Drankiewicz conducts "release consideration interviews," makes decisions to deny parole, determines the deferral period, and also may make recommendations for release to the chair. Wis. Adm. Code §§ PAC 1.06(5), (7)–(9). Defendant Drankiewicz is sued in his official capacity.

20. Defendant Kevin Carr is the Secretary-designee of the Wisconsin DOC, and in that capacity carries out the DOC's obligation to "[a]dminister parole, extended supervision, and probation matters, except that the decision to grant or deny parole to inmates shall be made by the parole commission." Wis. Stat. § 301.03(3). The DOC under Defendant Carr must also,

"provide . . . to the parole commission: (a) Records relating to inmates which . . . are necessary to the conduct of the [parole] commission's responsibilities. (b) Scheduling assistance for parole interviews . . . (c) Clerical support related to parole interviews. (d) Appropriate physical space . . . to conduct the parole interviews." Wis. Stat. § 304.01(2). Defendant Carr also has supervisory authority over the DOC's Bureau of Classification and Movement ("BOCM"), which determines prisoners' security classification, housing status and program access. Defendant Carr is sued in his official capacity.

21. Defendant Mark Heise is Director of the BOCM within the Division of Adult Institutions in the Wisconsin DOC and is sued in his official capacity. The BOCM, with input from institution-level reclassification or Program Review Committees, determines the security classification, the assignment of inmates to different institutions within the Wisconsin prison system, and eligibility for certain work assignments needed for parole. Wis. Adm. Code § DOC 302.17.

22. In practice, the Parole Commission denies release to any person with a security classification above minimum security. In addition, the Parole Commission requires inmates to participate in work "outside the fence" before granting parole. Yet, the BOCM and Program Review Committees control eligibility for such work while the Parole Commission can only recommend it.

## FACTUAL ALLEGATIONS

### I. JUVENILES HAVE DIMINISHED CULPABILITY AND GREATER PROSPECTS FOR REFORM THAN ADULTS, AND THE STATE MUST PROVIDE LIFE-SENTENCED JUVENILES A MEANINGFUL OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION.

#### A. The relevant scientific communities have recognized that children are categorically different from adults.

23. Scientific and psychological studies confirm that children are fundamentally different from adults and as a result their culpability is diminished.

24. The first characteristic of youth that diminishes the culpability of juvenile offenders is their lack of maturity and an underdeveloped sense of responsibility. *See* Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1011–14 (2003).

25. Children's lack of maturity often results in impetuous and ill-considered actions and decisions (*i.e.*, impulsive conduct), which explains why "adolescents are overrepresented statistically in virtually every category of reckless behavior." Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 339 (1992); *see also* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 9 (Thomas Grisso & Robert G. Schwartz eds. 2000).

26. Developmental research shows that juveniles engage in impulsive decision-making because they are unable to fully perceive and evaluate risks. Melinda G. Schmidt et al., *Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship*, 21 Behav. Sci. & L. 175, 180 (2003). Another explanation for their impulsive behavior is that

juveniles think more about immediate gains as opposed to long-term consequences. *Id.*; *see also* Kristin N. Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 245, 271–72 (2005).

27. A second characteristic difference between adults and adolescents is that juveniles are more vulnerable to negative influences and outside pressures, including peer pressure. Steinberg & Scott, *supra*, at 1014.

28. Children's susceptibility to outside pressure is explained, at least in part, by the fact that they have less control, or less experience with control, over their own environment than adults. *Id.*

29. It is no surprise, therefore, that psychologists have concluded that juveniles "lack the freedom that adults have to extricate themselves from a criminogenic setting." *Id.*

30. A third characteristic difference between adults and adolescents is that the character of a juvenile is not as well formed as that of an adult. Specifically, psychologists and psychoanalysts have recognized that the personality traits of juveniles are more transitory than those of adults. *See generally*, Erik H. Erikson, *Identity: Youth and Crisis* (1968); *see also* Steinberg & Scott, *supra*, at 1014.

31. Psychologists have recognized that most adolescents' impulsive and risky behaviors "cease with maturity" as their identities become settled, they learn to consider long-term consequences of potential actions prior to making choices, and they gain the resources and capacities to extricate themselves from negative influences. Steinberg & Scott, *supra*, at 1014.

32. As adolescents mature into adults, they gain an improved perspective on long-term consequences, become more risk averse and gain the self-regulatory capacities to conform

their actions to moral evaluation. Kristin Henning, *supra*, at 272. They "also come to regret decisions they made in earlier years." *Id.*

33. The behavior of adolescents evolves so much as they grow up that studies recognize that "[o]nly a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." Steinberg & Scott, *supra*, at 1014 (citations omitted).

**B. The law requires different treatment of children.**

34. Courts and legislatures have long recognized that children are not fully psychologically and socially developed, are susceptible to persuasion and abuse, and are marked by judgmental inexperience such that it is appropriate to limit their ability as a class to vote, marry, serve on juries, drink alcohol, gamble, leave school and otherwise exercise full autonomy under the law. *See J.D.B. v. North Carolina*, 564 U.S. 261, 272–77 (2011).

35. The inherent characteristics of children have also been recognized in the area of criminal punishment in a series of U.S. Supreme Court decisions. Specifically, the U.S. Supreme Court has recognized three distinctive attributes of juveniles that mitigate their culpability: juveniles have transient immaturity; they are vulnerable to external forces; and their character traits are still being formed. *Montgomery*, 136 S. Ct. at 733; *Miller*, 567 U.S. at 470–71; *Graham*, 560 U.S. at 68; *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

36. By recognizing the psychological and social characteristics of children, these decisions established constitutional limitations on the punishment that can be imposed on children, even for very serious crimes, reasoning that "children are constitutionally different from adults for purposes of sentencing," because they have "diminished culpability and greater prospects for reform." *Montgomery*, 136 S. Ct. at 733 (*quoting Miller*, 567 U.S. at 471 (*citing Roper*, 543 U.S. at 569–70; *Graham*, 560 U.S. at 68)).

37. Taken together, these cases establish that Eighth Amendment proportionality principles forbid a statutory scheme that (i) imposes life sentences upon minors, except those who are among the rarest of juveniles whose crimes reflects permanent incorrigibility, and (ii) fails to provide a meaningful and realistic opportunity for release for those whose crimes reflect unfortunate yet transient immaturity. Wisconsin law fails this test on both counts.

**C. Life sentences imposed on children are unconstitutional absent a parole scheme that provides a meaningful and realistic opportunity to obtain release based on demonstrated maturity and rehabilitation.**

38. "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*, 567 U.S. at 469 (internal quotation marks and citations omitted).

39. Accordingly, the U.S. Supreme Court has held that "sentencing a child to life without parole is [unconstitutionally] excessive for all but the 'rare juvenile offender whose crime reflects irreparable corruption.'" *Montgomery*, 136 S. Ct. at 734 (*quoting Miller*, 567 U.S. at 479–80).

40. Thus, while States may make parole decisions discretionary for adult offenders, as Wisconsin has, *State ex re. Gendrich v. Litscher*, 2001 WI App 163, ¶ 7, 246 Wis. 2d 814, 632 N.W.2d 878, they must provide juvenile offenders with more: a "meaningful opportunity for release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 50.

41. Proceedings bearing on life sentences for juvenile offenders must, in order to avoid being categorically unconstitutional, afford juvenile lifers who have evolved from troubled, misguided youth to model inmates, a meaningful opportunity to demonstrate that, even

if they have committed heinous crimes as children, they have changed. *Montgomery*, 136 S.Ct. at 724.

42. Courts across the country have recognized that parole decisions for juvenile lifers must incorporate the principles of *Roper*, *Graham*, *Miller*, and *Montgomery*, lest those principles become illusory in practice. *See, e.g.*, *Hawkins v. New York State Dep't of Corr. & Cmty. Supervision*, 140 A.D.3d 34, 38 (3d Dep't 2016); *see also*, *Brown v. Precythe*, No. 2:17-cv-04082, 2018 WL 4956519, at *7 (W.D. Mo. Oct. 12, 2018); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 943 (S.D. Iowa 2015); *Atwell v. State*, 197 So. 3d 1040, 1041–42 (Fla. 2016), *reh'g denied*, No. SC14-193, 2016 WL 4440673 (Fla. Aug. 23, 2016); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015), *appeal dismissed sub nom. Hayden v. Butler*, 667 Fed. App'x 416 (4th Cir. 2016); *Md. Restorative Justice Initiative v. Hogan*, No. ELH-16-1021, 2017 WL 467731, at *20–21 (D. Md. Feb. 3, 2017).

## II. WISCONSIN SUBJECTS JUVENILE LIFERS TO UNCONSTITUTIONALLY DISPROPORTIONATE PUNISHMENT BY DENYING THEM A MEANINGFUL AND REALISTIC OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION.

### A. Applicable Wisconsin sentencing law mandated life sentences with the possibility of parole for juvenile offenders as young as 10 years old.

43. Under Wisconsin sentencing law applicable to class members, courts were *required* to sentence defendants, including juveniles, to a life sentence for a first-degree intentional homicide (and five other crimes[2]) that occurred prior to December 31, 1999. *See* Wis. Stat. §§ 939.50(3)(a), 940.01(1) (1995–1996). If the crime was committed prior to July 1, 1988, the defendant became eligible for parole after serving 25% or six months of his or her sentence,

[2] Additional Class A felonies during this time period were (1) taking hostages, (2) kidnapping causing permanent physical injury, (3) causing death by tampering with household products, (4) causing death by carjacking, and (5) treason.

whichever was greater. Wis. Stat. §57.06(1)(b) (1987–1988). For a sentence of life, 25% was deemed to be 13 years and 4 months. *See*, *e.g.*, *State v. Borrell*, 167 Wis.2d 749, 765 n.6 (1992) (2/3 of 20-year minimum prison term). If the crime was committed between July 1, 1988 and December 31, 1999, the sentencing court had the option of: (1) allowing parole eligibility after 20 years in prison; (2) setting a date after 20 years in prison at which the person becomes parole eligible; or (3) denying parole eligibility altogether. Wis. Stat. § 973.014 (1993–1994). During this timeframe, children as young as 14 years old could be sentenced to life in prison for first-degree intentional homicide. *See* Wis. Stat. § 48.18(1) (1993–1994). Beginning on July 1, 1996, children as young as 10 years old were required to be tried as adults for first-degree intentional homicide and sentenced to a term of life imprisonment if convicted. *See* Wis. Stat. § 940.01, a Class A felony; *see id.* at § 939.50 & § 938.183(1)(am). Plaintiffs Price and Karow were sentenced to life for crimes they committed when they were 14 years old.

44. Also as of July 1, 1996, children as young as 10 years old were required to be tried as adults for first-degree reckless homicide, and if convicted could receive a sentence of up to 60 years of imprisonment. *See id.* at § 940.02, a Class B felony; § 939.50; § 938.183(1)(am). Other crimes could similarly result in sentences to terms of years that could exceed a person's life expectancy.

45. Persons convicted of felonies other than Class A felonies that occurred on or before December 31, 1999, are sentenced to a term of a specific number of years. *See* Wis. Stat. §973.01 (1995–1996). For Class B felonies, the maximum sentence was 20 years, and for Class C felonies, the maximum sentence was 10 years. *See* Wis. Stat. § 939.50(3)(b)–(c) (1993–1994). The aggregate imprisonment term for multiple convictions for felonies *other* than Class A felonies can total to more than an estimated lifespan if sentences are imposed to run

consecutively. Plaintiff Sussek, for example, was sentenced to o 45 years and 35 years to be served consecutively for attempted first-degree intentional homicide and armed burglary, aggregating to a term of years far exceeding his life expectancy.

46. In most instances, a person sentenced for a crime committed on or before December 31, 1999 is eligible for parole when "he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater." Wis. Stat. §304.06(1)(b) (1993–1994). Persons convicted of a designated subset of "serious felonies," including most homicides, most sex assaults, most sex crimes against children, and armed robberies, among others, committed after April 21, 1994 but before December 31, 1999, are sentenced, at the option of the court, to an indeterminate sentence with the option of setting a parole eligibility date later than service of 25% of the sentence but before service of two-thirds of the sentence. Wis. Stat. § 973.0135(1) & (2).

47. For most felonies, a defendant is entitled to mandatory release to parole after serving two thirds of his or her sentence. Wis. Stat. § 302.11(1) (1995–1996). But, for a defendant who committed a "serious felony" between April 21, 1994 and December 31, 1999, that mandatory release is merely "presumptive." Wis. Stat. § 302.11(1g)(am) (1995–1996). Serious felonies under the nonsensically termed "presumptive mandatory release" scheme are listed in § 302.11(1g)(a) and include most homicides, most sex assaults, most sex crimes against children, and armed robberies, among others.

48. All plaintiffs in this action received life sentences for "serious felonies" and have either no mandatory release dates at all (those sentenced to life for first-degree intentional homicide) or only "presumptive mandatory" release dates (those sentenced to terms of years longer than their life expectancy).

49. When a mandatory release is presumptive, the Parole Commission must decide, before the defendant reaches the presumptive mandatory release date, whether to deny mandatory release, based upon the need for protection of the public or upon refusal to participate in treatment while in prison. Wis. Stat. § 302.11(1g)(b) (1995–1996). If the Parole Commission denies mandatory release, the Commission must schedule "regular reviews to consider whether to parole" the defendant. Wis. Stat. § 302.11(1g)(c). Under Wisconsin law, there is no date when the Parole Commission *must* parole persons under the "presumptive mandatory release" scheme.

50. In this action, Plaintiffs challenge the Wisconsin parole process as applied to their sentences of life imprisonment for conduct that occurred on or before December 31, 1999. After 1999, Wisconsin's "Truth in Sentencing" ("TIS") law went into effect, requiring judges to impose "bifurcated" sentences of a fixed time in prison followed by a fixed period of "extended supervision" in the community. Although extended supervision, like parole, is subject to revocation, people sentenced under TIS are not eligible for parole release consideration by the Parole Commission. The plaintiff class does not include persons sentenced under TIS.

**B. The Wisconsin Parole Commission does not evaluate juvenile lifers for parole release under the standard of demonstrated maturity and rehabilitation.**

51. The only opportunity juvenile lifers in Wisconsin have for release prior to death is the opportunity to be released to parole supervision by the Parole Commission. Therefore, it must be commissioners who apply the standard of "demonstrated maturity and rehabilitation." *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75).

52. Wisconsin statutes do not provide *any* evaluative standard whatsoever against which Parole Commissioners must evaluate candidates when making release determinations. *See generally* Wis. Stat. ch. 304. Nor does the administrative agency's enabling statute require the Commission to consider any specific evidence or factors, much less evidence relevant to the

constitutionally mandated standard of maturation, rehabilitation and reform, when evaluating candidates for release suitability. *Id*.

53. Nor has the agency filled in the gaps in this broad grant of discretion by promulgating rules requiring commissioners to conform their decision-making powers to the constitutional requirement to provide life-sentenced juveniles with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. The Parole Commission's administrative rules allow Commissioners to deny parole to juvenile lifers if, for example, the Commissioner subjectively believes that releasing the applicant would "depreciate the seriousness of the offense," Wis. Admin Code. § PAC 1.06(16)(b), even though the applicant has served the minimum time authorized by the legislature and imposed by the sentencing judge under the existing parole regime.

54. Nothing in the administrative rules requires the Board to base its parole release decisions on whether a juvenile lifer demonstrates maturity and rehabilitation. Wis. Admin. Code. § PAC 1.04; 1.06.

55. In practice, when considering parole applications of juvenile lifers, the Parole Commission does not base its release determination on whether the applicant has demonstrated maturity and rehabilitation and therefore now presents a low risk to society.

56. Instead, the Commission denies parole *despite* clear records and explicit findings of rehabilitation and maturation on the grounds that, in their subjective judgment, release would "depreciate the seriousness of the crime" or simply that, often in the view of a single commissioner, the parole applicant needs to serve "more time" in prison. For example:

- On November 15, 2018, Defendant Landreman commended Plaintiff King for his completion of programming and institutional adjustment and for becoming a "role

model" for other inmates, but nevertheless denied him release to parole supervision because "[21 years is] certainly on the low end of time that lifers are serving before release."

- On January 9, 2018, Defendant Landreman denied parole release to Plaintiff Karow, not because he had not demonstrated rehabilitation and reform, but because he found that imposing "additional time for punishment is warranted," and that Plaintiff Karow had simply "NOT served sufficient time for punishment" for the crime.
- On September 13, 2018 Defendant Landreman denied Plaintiff Sussek release to parole supervision, stating: "You have NOT served sufficient time for punishment" even after explicitly acknowledging that Plaintiff Sussek *had* "matured" and had "successfully completed all needs *and more*."

57. Under this regime, parole is rarely granted to *any* person seeking parole for a crime committed as a child, even those not sentenced to life. On information and belief, fewer than 6 parole-eligible juvenile lifers from a population of more than 120 have been released from prison in the past 15 years, and at least one of them was released because he was exonerated of the crime after serving 17 years in prison.

### C. The procedures of the Wisconsin Parole Commission fail to afford juvenile lifers a meaningful and realistic opportunity for release upon rehabilitation.

58. The Due Process Clause of the Fourteenth Amendment prohibits the state from depriving any person of "life, liberty, or property without due process of law." The procedural component of the Due Process Clause requires that the government not deprive an individual of liberty interests unless it provides adequate notice and opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

59. Parole-eligible juvenile lifers who have not been adjudicated irreparably corrupt have a liberty interest, grounded in the Eighth Amendment, to release from imprisonment upon a showing of rehabilitation and maturity.

60. In determining what procedures are required to provide "meaningful" protection of a liberty or property interest, a court must balance "three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

61. The administrative rules of the DOC and the Parole Commission's consideration process fail, individually and collectively, to provide adequate procedural protections for juvenile lifers' substantive right to release upon a showing of rehabilitation and maturation.

**1. The Department of Corrections administrative rules, in combination with the Parole Commission's reliance on classification and programming decisions made by other entities, denies juvenile lifers a meaningful opportunity for release.**

62. Defendants' parole review process systematically prevents applicants, including Plaintiffs, from being released on their parole eligibility date.

63. Commissioners do not entertain the possibility of release to parole supervision until a person has been assigned for a significant time—usually at *least* half a decade—to a minimum-security prison and a work release assignment. The Notice of Parole Commission Consideration the Defendants provide to parole applicants specifies that "security classification" is a factor in assessing "institutional adjustment," one of the criteria for parole consideration.

Wis. Adm. Code § PAC 1.06(16)(c). BOCM is the sole entity empowered to determine custody classifications.

64. DOC administrative regulations prevent a life-sentenced person from even being *considered* for a minimum-custody classification or work release until the date of parole eligibility. Wis. Admin. Code § DOC 302.12; Wis. Stat. § 303.065.

65. Because the initial parole review occurs two months *before* the parole eligibility date, under no circumstance, no matter how unmistakably maturity and rehabilitation have been demonstrated, can an applicant obtain release to parole supervision after their first parole interview.

66. In addition, Defendant Heise, the director of the BOCM, and committees at each institution that make recommendations on prisoner classification (called Program Review Committees or reclassification committees, hereafter "PRCs") in many cases effectively prevent an inmate from obtaining parole from the Parole Commission by denying them minimum-security classification and access to programming the Parole Commission considers necessary for release.

67. For example, the Parole Commission requires an inmate to participate in supervised and then unsupervised work "outside the fence" before granting parole. Yet, the BOCM and PRCs control eligibility for this work, not the Parole Commission, which can only recommend it.

68. Moreover, BOCM's security classification procedure is independent from the Parole Commission. The institutional PRCs make recommendations to the BOCM director regarding any change in security classification for an inmate; the director of the BOCM makes the final decision on classification. *See* Wis. Admin. Code §§ DOC 302.17(1), (5) & (6)

(reclassification committee review and recommendations); § DOC 302.17(10) (BOCM director review and final decision); § DOC 302.03(45) (citing Wis. Stat. § 302.113(9g)(2), defining the Program Review Committee as an institutional committee that reviews security classifications and programming needs).

69. Although the Parole Commission may make security classification and programming recommendations to DOC, the BOCM is not required to base its classifications or grants of work release on the Commission's recommendations, much less on current risk or demonstrated rehabilitation and reform. In fact, administrative rules instruct BOCM to consider, among other things, length of the sentence being served, the nature of the crime of incarceration, age, and "criminal record and juvenile delinquency adjudications," all factors possibly prejudicial to juvenile lifers. Wis. Admin. Code § DOC 302.11.

70. BOCM does in fact give substantial weight to static factors, such as the nature of the crime of conviction and the length of the sentence being served, in making security classifications. On September 21, 2017, for example, the BOCM denied minimum-security classification to Plaintiff King despite finding that his "adjustment has been positive" with "last major conduct report on 12/12/03." The Committee based its decision on his juvenile crime and the sentence imposed for that crime, writing: "While noting positive adjustment … additional monitoring at current custody level is appropriate based on the heightened risk associated with his assaultative offense dynamics and lengthy sentence structure. A custody reduction with such a significant amount of time remaining to serve and with no indication from Parole that release may be imminent would create an unreasonable amount of risk when considering the dynamics of his offense."

71. Commissioners also make extensive use of other institutional records prepared by the DOC and the BOCM in making their parole release decisions and assign great weight to programming and employment, which are under the exclusive control of DOC and BOCM. Wis. Stat. § 304.01(2). The Parole Commission often recommends that prisoners be transferred to minimum-security institutions, obtain programming, or participate in work release programs, but BOCM, sometimes on the recommendation of the institutional PRC, thwarts the prisoner's ability to satisfy those recommendations.

72. Furthermore, the possibility of a meaningful and realistic opportunity for parole release is effectively dependent upon the availability of scarce space in minimum-security prisons and limited supervision resources for work release assignments, because commissioners view these milestones as prerequisites for release. On information and belief, the DOC often denies juvenile lifers access to programming or work experiences because they are filled with inmates who are approaching mandatory release dates or fixed release dates under TIS. Because juvenile lifers have indefinite release dates, they are not given priority to receive programming even though they need programming to be considered by the Parole Commission for release.

73. As a result of the role of classification, programming, and employment determinations in Parole Commission release decisions, the BOCM director and PRCs can, and do, effectively prevent matured and rehabilitated juvenile lifers from being released on parole.

**2. The Parole Commission's rules and practices prohibit juvenile lifers from presenting evidence of maturity and rehabilitation.**

74. Defendants' regulations, rules, practices, and policies individually and collectively prevent juvenile lifers from presenting evidence of maturity and rehabilitation.

75. The Commission severely restricts juvenile lifer parole applicants' ability to meaningfully present their case that they have been rehabilitated and reformed. Wis. Admin.

Code § PAC 1.06(7). Applicants receive a multiple-page, preprinted "Release Plan Information" form to complete. The form provides only a paragraph in which the applicant can explain how he or she has matured or rehabilitated over a period that often spans decades. The form comes with the strict instruction: "**DO NOT ATTACH ANY DOCUMENTS TO THIS FORM**." Upon information and belief, the Commission will accept letters in support of—or in opposition to—the applicant from persons outside the prison system, such as attorneys, but will often reject attachments to such statements or letters.

76. Defendants have access to and cite to previous involvement in the juvenile justice system and disciplinary tickets issued to juvenile lifers when they were still juveniles as factors in denying parole. For example, Plaintiff King was denied release to parole supervision on November 15, 2018. Defendant Landreman cited his "significant juvenile criminal history" and the fact that he had, "served time as a juvenile prior to confinement," as reasons for finding that he had "NOT served sufficient time for punishment" and that "release would involve an unreasonable risk to the public," even though all other evidence before Defendant Landreman pointed to Plaintiff King's unmistakable rehabilitation and reform. Defendant Landreman also cited an almost 20-year-old disciplinary violation on Plaintiff King's record that occurred when he was just 18 years old (and for which he spent 3 years in solitary confinement) as a "circumstance" for which now "additional time for punishment is warranted."

77. On information and belief, the interviewing commissioner's decision is often determined before the interview at which the applicant is supposedly given an opportunity to be heard. The outcomes of parole hearings reported in the Parole Commission Action sheets often contain similar, if not identical, language in successive decisions to defer (*i.e.*, deny) parole. The section on the sheet entitled "General Reasons For Action Taken," almost always includes the

reason "You have NOT served sufficient time for punishment"—*even if* other findings in the record indicate satisfactory or even exemplary institutional conduct, participation in programs, reflections of remorse, and all other conduct within the control of the parole applicant was positive.

78. To the extent a particular decision is not predetermined, any "deliberation" by the commissioner conducting the interview must take place *during* the interview, because the commissioner's decision is read into the audio record at the conclusion of the interview. As a matter of practice, commissioners will never recommend parole at the first interview, regardless of the facts of the case. Assuming the applicant does not have major conduct tickets (which are often issued for quite minor infractions) between interviews, subsequent parole consideration interviews result in predictable deferral periods. The commissioners also make predictable recommendations for additional programming and work experiences that are *de facto* prerequisites to release. This indicates that the reason for the deferrals has nothing to do with an assessment that the prisoner needs more time to mature or rehabilitate—particularly because the Parole Commission rarely, if ever, makes such a factual finding about a juvenile lifer, and has no established process for considering demonstrated maturity or rehabilitation during its evaluation.

79. A single parole commissioner conducts a release consideration interview but lacks the power to grant release. Wis. Admin. Code § PAC 1.06(5); Wis. Admin. Code § PAC 1.07(4). The single commissioner who interviews the parole candidates hears directly from petitioners their evidence of transformation and reform, and is in the best position to evaluate their maturation and rehabilitation, but is not the final decision-maker when it comes to granting release. (The opposite is not true of a denial of parole, however, which a commissioner can make without the approval of the chairperson.) The chairperson is the "final parole-granting authority,"

Wis. Stat. § 304.01, and often extends the deferral period beyond the term requested by the interviewing commissioner.

80. The Parole Commission's rules prohibit legal counsel from participating in parole interviews. Wis. Admin. Code § PAC 1.06(13). Although statutes expressly require that victims, the sentencing court, and the prosecuting district attorney be given notice and an opportunity to be heard, the applicant may not be supported by an advocate of any sort. Wis. Stat. § 304.06(1)(c)–(f). The Parole Commission's regulations even allow the commissioner to exclude the applicants *themselves* from the consideration interview under certain conditions. Wis. Admin. Code § PAC 1.06(11).

81. Commissioners consider "confidential" information and submissions from unknown entities that applicants do not have access to and therefore cannot rebut any erroneous information or characterizations of their crimes or institutional behavior contained in the "confidential" information and submissions.

82. The Parole Commission does not make available funds for inmates to retain their own experts—such as psychiatrists, psychologists, or social workers. The prevalence of mental impairments among juvenile offenders is substantially higher than among adolescents who are not involved with the justice system. *See generally*, Lee Underwood & Aryssa Washington, *Mental Illness and Juvenile Offenders*, 13 Int. J. Environ. Res. & Pub. Health 228 (2016). Lack of access to psychological experts significantly raises the risk that a person serving a life sentence for crimes committed as a juvenile is denied parole based on undiagnosed psychiatric or cognitive impairments, which are often untreated in prison. *See id.*

83. Commissioners rely on a risk-assessment instrument that Plaintiffs are not permitted to inspect for accuracy: the Correctional Offender Management Profiling for

Alternative Sanctions, or "COMPAS" program. COMPAS is a commercial risk-assessment product that employs secret, allegedly proprietary algorithms. As a result, neither Defendants nor Plaintiffs know whether or how COMPAS treats juveniles and the hallmark features of youth, and the vendor's refusal to disclose its algorithms makes it impossible for Plaintiffs to effectively contest potential "errors of material fact in the record." Wis. Adm. Code § PAC 1.06(7).

84. Plaintiffs and Class Members lack knowledge and are denied information about how their COMPAS scores are calculated, what variables enter into the scores, how variables are weighted in the algorithmic prediction, whether and how the scores can be improved through rehabilitative efforts and whether there is any way to challenge the inclusion of erroneous information.

85. In fact, on information and belief, COMPAS sometimes treats youth as an aggravating factor.[3] For example, it counts as negative not having a job prior to incarceration, not being married and the age of first offense, includes juvenile justice encounters at very young ages in the criminal involvement score and uses Plaintiffs' current age to predict risk of felony violence. Defendants' use of COMPAS thereby disadvantages Plaintiffs and Class Members who were sentenced as juveniles to serve longer sentences than their adult counterparts.

86. The Commission's parole consideration process does not provide sufficient opportunity for Class Members to be meaningfully heard and to receive decisions rendered based on demonstrated maturity and rehabilitation.

87. Compounding these defects in the Parole Commission's process, there is no administrative appeal procedure and access to records to challenge the hearing is limited. *See*

[3] *See* Megan Stevenson and Christopher Slobogin, Algorithmic Risk Assessments and the Double-Edged Sword of Youth, VAND. U. L. SCH., Res. Paper No. 18-36 at 1 (Aug. 2, 2018), available at https://ssrn.com/abstract=3225350.

Wis. Stat. § 304.01(1) (chairperson of commission is "the final parole granting authority"). The prisoner may request a copy of the audio record at his or her own expense, but cannot listen to it him or herself, and must have it sent to someone outside the prison. A transcript is made "only upon an order of the court which has jurisdiction over a petition for judicial review of the decision." Wis. Adm. Code § 1.06(10). The only available judicial review is through a common law writ of certiorari, in which the court reviews the agency action under an extremely deferential standard. *See, e.g., Doty v. Wisconsin Parole Comm'n*, 2017 WI App 71, ¶¶ 11, 14, 378 Wis. 2d 326, 904 N.W.2d 408.

88. The availability of a common law writ of certiorari does not correct the defects in the Parole Commission's process because Wisconsin courts, applying a presumption of correctness and validity to flawed agency action, almost never overturn a Commission's denial of parole, *see Doty v. Wisconsin Parole Comm'n*, 2017 WI App 71, ¶ 14 (citing *Pire v. Wisconsin State Aeronautics Comm'n*., 25 Wis. 2d 265, 273, 130 N.W.2d 812 (1964)); *see also Swinson v. Douma*, 2017 WL 549041, at *1 (Wis. Ct. App. Feb. 9, 2017, *review dismissed*, 376 Wis. 2d 639 (2017)), rendering the writ of certiorari process effectively meaningless for juvenile lifers and Class Members.

89. On information and belief, a Wisconsin court has never overturned on the basis of maturation or rehabilitation a decision of the Parole Commission to deny parole.

**D. Defendants routinely deny parole based on facts that were not found by a jury or admitted by the parole applicant.**

90. The Parole Commission proclaims its intention to consider facts not found at trial beyond a reasonable doubt as determinative of parole release. The notice provided to the parole applicant that initiates the consideration process lists parole consideration criteria, which includes those set forth in Wis. Adm. Code § 1.06(16), but also includes illustrative facts under

each criterion specified in the code. For example, under the criterion "Sufficient Time for Punishment," the notice identifies the following factors: "Mitigating (makes the crime less serious) and aggravating (makes the crime more serious) factors"; "Reason for committing the crime"; "Your part in the crime"; "Your feelings about the crime and the victim(s)." Some or all of these facts concern material elements of a different offense or the defendant's *mens rea* at the time of the offense and may not have been found by a jury or admitted by the offender at the time of sentencing. The notice provided by BOCM to applicants in advance of their parole review explains that the Commissioners take into account the "attitude of the judge and district attorney" from the time of the crime, neither of which have any bearing on the maturation and rehabilitation of the applicant at present.

91. On information and belief, the algorithms employed in COMPAS also incorporate information that was not found at trial beyond a reasonable doubt, the consideration of which violates the Plaintiffs' Sixth Amendment right to a trial by jury on any fact used to enhance their sentence.

**E. Plaintiffs have repeatedly been denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation.**

92. Defendants' failure to provide a meaningful opportunity for release based on maturation and rehabilitation is illustrated in their treatment of the Plaintiffs.

***Plaintiff Carlos King***

93. Plaintiff Carlos King is 38 years old and has been incarcerated nearly 22 years for crimes he committed as a juvenile.

94. In June 1997, Mr. King shot and killed one man and shot and injured another in the course of an attempted robbery. He was 16 years old.

95. Mr. King was convicted later that year by a plea in adult court and sentenced to life in prison plus 45 years, running concurrently, for first-degree intentional homicide, and attempted first-degree intentional homicide. The judge set a parole eligibility date of January 1, 2013.

96. Mr. King's father was in the military, so he moved frequently as a child. When he was in first grade his family moved back to Racine, Wisconsin, from California and his parents divorced. He lived with his mother and three siblings in what was widely considered a "bad" and dangerous neighborhood. His mother worked second and third shifts to support three children on one income. At the age of 10 he turned to the streets for a sense of belonging, and at the age of 14 began selling drugs for money, clothes, and food.

97. On June 6, 1997, at the age of 16, Mr. King was shooting dice in the backyard of a house. Realizing there was money inside, he left and went with a friend to get a gun. During the course of the subsequent robbery, he shot and severely injured one man and then shot and killed another. He left Racine and went to Mississippi, where he was apprehended.

98. When Mr. King entered prison in 1997 with a life sentence at the age of 17, he thought his life was already over, and frequently acted out with despair and anger. During his first year at Green Bay Correctional Institution, he threw a chair that struck a prison guard. He received a misconduct ticket for battery to the guard and spent about three years in solitary confinement at Green Bay and Columbia Correctional Institutions. He also pled to a charge of second degree recklessly endangering safety for throwing the chair and was sentenced to two additional years of prison time to run consecutive to his life sentence. This extended the date of his earliest possible parole release from January 2013 to July 2013.

99. In 2001, after finally getting out of solitary confinement Mr. King dedicated himself to the task of transformation. He has signed up for and successfully completed all rehabilitative programming available to him. He has earned 14 college credits, including in business administration and accounting from universities in the University of Wisconsin System, successfully completed programming in childhood trauma and anger management, succeeded in several vocational programs, and succeeded in cognitive behavioral programing that helped him recognize the consequences of his actions and taught him to take time to think before acting. He has used this rehabilitative programming in service of a prison-conditions committee at Stanley Correctional Institution, facilitating dialogue between the inmate population and prison administration.

100. In 2017, Mr. King, classified by the Bureau of Classification and Movement as "medium" security, asked to be transferred to Waupun Correctional Institution, a maximum-security prison where he is subject to many more restrictions and longer in-cell hours, for the purpose of enrolling in a Bachelor of Arts program, Operation Transformation, available at the maximum-security facility. Operation Transformation is a collaboration of the Wisconsin Inmate Education Association and Trinity International University.

101. Mr. King has maintained a nearly 4.0 grade point average into his sophomore year in the Trinity program and was selected by prison administration officials to a housing unit in the maximum-security prison for the purpose of serving as a role model for other prisoners.

102. Mr. King's last "major" ticket for misconduct was 15 years ago in 2003, and his last minor misconduct ticket was nearly six years ago.

103. Mr. King has accepted full responsibility for his crimes. He recognizes that he alone pulled the trigger that took a life and nearly took another. He sincerely regrets his

impulsive, thoughtless and opportunistic teenage actions. He feels incredible sadness for the loss of life and suffering that he caused his victims and their families and would do anything to bring back the life he took.

104. Mr. King is no longer the person he was at 16 years old. At 16, he had no empathy and no concept of the consequences of his actions. Today, he thinks carefully about the consequences of his actions and the impact of his behavior on others. He has been rehabilitated and is no longer the violent person he was as a teenager.

105. Mr. King also credits his Islamic faith for his rehabilitation and devotion to an ethically principled life. He makes every effort to empathize with others and resolve disputes without argument. Mr. King takes it upon himself to help others, to the best of his ability, by speaking up for those who are being mistreated. As a clerk in the chapel at Stanley, Mr. King would sometimes use his own limited and hard-earned funds to purchase educational and interfaith materials to aid other inmates in their own rehabilitation.

106. Mr. King has maintained strong family ties while in prison. His mother and siblings regularly visit, along with many nieces and nephews. His father occasionally visits as well. Several of his family members have law enforcement and corrections backgrounds and strongly believe in his ability to succeed. His mother has offered him a place to live upon release.

107. Mr. King was first eligible for parole consideration in July 2013. He has been denied parole four times. The first deferral was for 30 months. The second was for 24 months, and the last two were for 12 months each.

108. After his parole consideration interview in December 2017, Mr. King was denied release to parole for the third time. The commissioner noted that Mr. King had not had a major ticket in 14 years, that his institutional conduct was satisfactory, and that he had completed all

recommended needs "and more," but denied release to parole supervision because he had "NOT served sufficient time for punishment" for the crimes he committed as a teenager.

109. At his last Parole Commission interview in November 2018, the commissioner said that, despite his good conduct and exemplary efforts at education, he was going to continue with a 12 month defer because Mr. King would not complete his degree until 2021. He observed that the 21 ½ years he had already served was on the "low end" of what the Parole Commission expects lifers to serve, regardless of their parole eligibility date or risk assessment.

110. The BOCM has continued to classify Mr. King as "medium" security, despite his lack of a major disciplinary ticket in 15 years and positive institutional contributions. The BOCM has acknowledged his "positive institutional adjustment," but refused to classify him as "minimum," a prerequisite for parole, because of the "assaultive offense dynamics" of his juvenile crime 21 years ago and his "lengthy sentence structure," including that the parole commission had given no indication that release was imminent.

111. Denial of minimum security and the length of Mr. King's defers have combined to keep him from taking some programs that would help him further demonstrate his rehabilitation and readiness for release.

112. Nothing in Mr. King's record suggests, nor was any finding made, that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility." In fact, the sentencing judge, despite noting the aggravated nature of Mr. King's crimes, expressed hope that he would change and mature and be able to lead a productive life.

113. Mr. King has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the right to due process, and the

right to have facts that enhance the penalty to which a criminal defendant may be lawfully sentenced found by a jury beyond a reasonable doubt or admitted by the criminal defendant.

***Plaintiff Thaddeus Karow***

114. Plaintiff Thaddeus Karow is 46 years old and has been incarcerated for more than 31 years for crimes he committed as a 14-year-old child. At the time of his conviction, Mr. Karow was the youngest person in Wisconsin history to be tried as an adult.

115. Mr. Karow grew up in an unstable environment. His mother, who had previously spent time in reform school herself, gave birth to Mr. Karow when she was only 16 years old. By the time she was 18, his mother had already divorced Mr. Karow's biological father and she soon remarried. Mr. Karow's mother and stepfather were both addicted to drugs and alcohol. They sometimes left Mr. Karow and his older brother home for weeks at a time, unsupervised, while they were off drinking and using drugs. During this time Mr. Karow was physically abused by his stepfather to the point of partial paralysis.

116. In the 7th and 8th grade, Mr. Karow began to have significant behavioral problems. He skipped school, got in fights, and began to get in trouble with the law. He spent time in a series of group homes beginning in 1985.

117. In September 1987, Mr. Karow and another juvenile decided to run away from the group home in Oshkosh where they were living. Without any resources or a plan, the boys came across a nearby senior living complex and decided to steal a car and money in order to aid their escape to a better living situation. The door they knocked on was opened by an 80-year-old woman, and the boys pushed their way into the unit. The other boy retrieved a knife from the kitchen and instructed Mr. Karow to stab the woman. Mr. Karow complied. The boys then stole

the victim's car and roughly $20 from her purse. Rather than running away, they returned to the group home where they were arrested the next day.

118. Now, after more than 31 years in prison, Mr. Karow is a changed person. He has aged and matured. He has taken advantage of educational programs, work, and other opportunities to better himself. He has accepted full responsibility for his crimes. He blames no one but himself. He has developed substantial insight into his childhood and youthful behavior, for which he feels deep remorse. At Mr. Karow's January 9, 2018 parole interview, Defendant Landreman remarked, "I'm really proud of you, Mr. Karow. You are on the right track."

119. Mr. Karow has worked hard to improve and educate himself in prison. He earned his High School Equivalency Diploma early on. He successfully completed anger management training, studied math, and successfully completed a vocational education program in graphic arts and printing.

120. Mr. Karow has held dozens of prison jobs and received positive evaluations for his work. He has worked for Badger State Industries, making prison mattresses and bedding, glove and mitten manufacturing, and in kitchen, laundry and custodial positions. Mr. Karow has also served as Chapel clerk. Currently, he works in the hobby department at Oakhill, with very positive evaluations. During Mr. Karow's January 9, 2018 parole interview, Defendant Landreman remarked to Mr. Karow that he could "see that you are valued in your work positions, by the evaluations that are on file. I can see that you are sincere in … in what you're doing in your life, based upon your presentation, and your emotion in your presentation."

121. Mr. Karow has demonstrated good behavior and a very low risk of violence. His last major ticket was in 2003, more than 15 years ago, for possession of tattoo paraphernalia.

122. Mr. Karow became eligible for parole in January 2011. He has been denied parole six times. His most recent parole hearing was in December 2018.

123. Despite having matured dramatically, successfully availing himself of all rehabilitate programming, and the fact that the state's own risk-assessment tool scored Mr. Karow as a "low" risk across the board, Defendant Landreman has repeatedly told Mr. Karow that he needs to serve more time as punishment for the crimes he committed at age 14. During Mr. Karow's January 9, 2018 parole interview, Defendant Landreman informed Mr. Karow that the BOCM will not assign him a minimum-security classification—a prerequisite to release—because "when you're dealing with a lifer—just in and of itself—a life sentence elevates the flight risk, because you face serving the rest of your life in prison." Accordingly, Mr. Karow could not expect to be released at his parole eligibility date or anywhere close to it, even though Defendant Landreman "c[ould] see that [Mr. Karow has] steered clear of trouble—any significant trouble—for the better part of the past 15 years."

124. Defendant Landreman explained to Mr. Karow that the Parole Commission has established a set of requirements and "tests" for an inmate to be released to parole supervision, including "transitioning" through a community release program, and that this process would not start until long after he had reached his parole eligibility date and been assigned a "minimum" custody classification.

125. During Mr. Karow's December 19, 2018 parole interview, Defendant LaCost told Mr. Karow he needed significant savings, as much as $20,000, for "risk reduction" before Defendant LaCost would recommend parole. Even with full-time work at prison pay rates, saving this amount would take him years.

126. Mr. Karow has also been informed that he must hold a job continuously for 6 months in prison, then work for an outside employer in prison (with DOC supervision), and then a job on work release outside of prison (without DOC supervision) before being meaningfully considered for parole. Even when the Parole Commission recommends these step-ups, however, he can only progress if the Warden and PRC approve, and they often delay these opportunities.

127. Mr. Karow has tried to enroll in programming to further develop his skills and demonstrate his suitability for parole. He is often denied access to such programming, however, because his release date is far into the future and others with earlier mandatory release dates have priority. At Oakhill, for example, and while in minimum security, he has been denied a basic computer course three times and a building maintenance program twice for this reason. He was also put on a waiting list when he tried to enroll in a cognitive intervention program because he is considered "low risk."

128. Nothing in Mr. Karow's record suggested, nor was any such finding made, that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility."

129. Mr. Karow has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the right to due process, and the right to have facts that enhance the penalty to which a criminal defendant may lawfully be sentenced found by a jury beyond a reasonable doubt or admitted by the criminal defendant.

***Plaintiff James Price***

130. Plaintiff James Price is 40 years old and has been incarcerated for more than 26 years for a gang-related shooting crime he committed in 1992 when he was 14 years old.

131. Mr. Price was convicted on a plea in adult court and sentenced to 25 years to life for first-degree intentional homicide with use of a dangerous weapon.

132. When Mr. Price was 5 years old, his mother relocated her three children to Wisconsin in search of economic opportunities, while his father stayed behind to raise a separate family in Illinois. At the time, Mr. Price felt abandoned by his father and envious of the children that his father had chosen to care for. Mr. Price's relationship with his father dwindled and eventually became nonexistent.

133. Back in Wisconsin, Mr. Price's mother worked long hours trying to provide financially for her now four children. In 1988, Mr. Price's infant brother died unexpectedly. His mother developed a drug habit soon thereafter. Eventually, when Mr. Price started to lose focus on school, his mother, busy with her three other children and trying to hold down a job and struggling with her own drug habit, was unavailable. Mr. Price turned to the streets for a sense of belonging, financial support, and self-worth. The "Latin Kings," a gang in the Milwaukee area, accepted him with open arms.

134. On November 11, 1992, at the age of 14, Mr. Price was at his girlfriend's house when two of his fellow gang members, ages 14 and 16 at the time of the incident, showed up and asked for his help. Some members of a rival gang had been threatening members of the Latin Kings, and Mr. Price's fellow gang members wanted help standing up to the rival gang. At the time, Mr. Price believed it was his duty to help his friends and did not fully comprehend the potential consequences of his actions.

135. During the incident, Mr. Price's fellow gang member handed him a gun as they drove to where the rival gang member had been seen. The plan was to drive by and fire a few shots to warn the rival gang. As Mr. Price shot, however, the rival gang member turned, ducked, and was struck by a bullet in the back of the head. Another bullet struck his girlfriend in the leg.

136. In 1993, Mr. Price began his sentence at the Ethan Allen School for Boys. He was transferred to an adult maximum-security prison, Waupun Correctional Institution, at the age of 16. Mr. Price's life as a gang member initially followed him into prison. He relied on other members of his former gang for support and friendship, and he continued to get in trouble inside.

137. In 1999, when he was 21, Mr. Price was transferred to Boscobel Correctional Institution, where he escaped the reach of the Latin Kings and, with the help of new mentorship, committed to changing his life. From that point forward, he dedicated himself to becoming the type of person who could never be involved in an act that would cause others the type of suffering his victims and their families had to endure.

138. After resolving to turn his life around, Mr. Price earned his High School Equivalency Diploma and proudly served as graduation speaker. He successfully completed 24 college credits in a Building Service Course and finished at the top of his class. He received his Human Relations and Communications Skills certificate and participated in and successfully completed the Turning Point I Program, the Cognitive Thinking Program, and a Modumath Arithmetic Course. Driven by a desire to succeed upon his release, Mr. Price has completed every rehabilitative programming opportunity that was afforded to him.

139. Mr. Price has also learned the importance and joy of helping others. At Columbia Correctional Institution, he assisted in framing homes for Habitat for Humanity. Mr. Price used his talents for maintenance and construction to help people in need. As he completed new programming, Mr. Price also opted to serve as a tutor so that he could help others achieve the same success that he had. This included aiding predominately Spanish speaking inmates through his work for Literacy Volunteers of America as an ESL tutor. Serving others has given Mr. Price a new and profound sense of purpose.

140. Mr. Price has accepted full responsibility for his crimes and does not blame anyone but himself. He recognizes that he alone pulled the trigger that took a life and nearly took another. He sincerely regrets his teenage actions and fully accepts the accountability for the inconceivable loss of life and suffering that he caused his victims and their families.

141. Prison records reflect that Mr. Price has been rehabilitated and that he is not a violent person today. The last major ticket that Mr. Price received was in 2016 for giving a fellow inmate an aspirin to treat a headache. When Mr. Price was younger, he would have been angry that he was being punished for attempting to help and he would have been unwilling to listen to reason. However, because he has grown and matured, he was able to realize the potential danger in his actions in that he did not know the inmate's health history, or if his body would react adversely to the medication. As a result, he learned from his action and accepted his punishment. Prior to that, his last major ticket was in 2009.

142. Mr. Price is no longer the person he was at 14 years old. He has matured and reformed behind prison walls. The recent losses of his mother (in 2014) and older brother (in 2017) have deepened his understanding of the impact of the loss that he caused to his victims and their families. Mr. Price wishes to live a meaningful life, to make amends for his past actions, and to help others from falling into the same traps that he did. At 14, he had no empathy and no concept of the consequences of his actions. Today, he thinks carefully about the consequences of his actions and the impact of his behavior on others.

143. Mr. Price has maintained strong family ties while in prison. His sister and stepbrother visit regularly. Several of his family members have law enforcement and corrections backgrounds and strongly believe in his ability to succeed. His sister has offered him a place to live upon release.

144. Despite Mr. Price's dedication to reforming his life and his positive institutional accomplishments, he was denied parole on July 17, 2018. The Parole Commission's deferment decision applauded Mr. Price's positive attitude, educational endeavors, willingness to help others through tutoring, and work ethic in the various jobs that he sustained in prison. Nevertheless, the Parole Commission found that "due to the senseless loss of life, serving additional time for punishment is warranted." The Parole Commission explained that Mr. Price would need to spend at least 24 months at a secure minimum-security facility, prove himself there, and then spend another 24 months at a work-release site before being realistically considered for parole.

145. The Parole Commission has ignored the overwhelming evidence of Mr. Price's reform and rehabilitation and instead made its own sentencing determination.

146. Nothing in Mr. Price's record suggests, nor was any finding made, that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility." In fact, the sentencing judge, despite noting the aggravated nature of Mr. Price's crimes, expressed hope that he would change and mature and be able to lead a productive life.

147. Mr. Price has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the right to due process, and the right to have facts that enhance the penalty to which a criminal defendant may lawfully be sentenced found by a jury beyond a reasonable doubt or admitted by the criminal defendant.

***Plaintiff Craig Alan Sussek***

148. Plaintiff Craig Alan Sussek is 40 years old and has been incarcerated for more than 24 years for crimes he committed as a juvenile.

149. Mr. Sussek shot a woman while stealing her car in November 1995, when he was 16 years old. His victim survived.

150. Mr. Sussek spent his adolescence being shuffled back and forth between his parents, both of whom were more focused on partying than raising a son. Throughout his childhood, he was abused physically, verbally, sexually, and emotionally by family members. His family treated him as an inconvenience rather than a family member. As a result, Mr. Sussek felt utterly lost and alone, and gave up on life.

151. In November 1995, at 16 years old, Mr. Sussek decided to run away with an acquaintance, who was 15 at the time. Without much of a plan, the boys took two guns from Mr. Sussek's stepfather and attempted to steal a car. As the boys were getting into a car in an open garage, the owner of the vehicle unexpectedly came outside and confronted them. The boys took her back inside the home and instructed her to lay down. Holding a pillow over her head, Mr. Sussek shot her. Mr. Sussek and his accomplice drove to another town, but returned home later that day. He was arrested within a matter of hours.

152. Mr. Sussek was tried as an adult and convicted in 1996 at age 17 for attempted first degree intentional homicide with use of a dangerous weapon party to a crime and armed burglary party to a crime, and he was sentenced to 45 years and 35 years to be served consecutively. His combined sentences exceed his life expectancy.

153. In 1997, Mr. Sussek's victim visited him in prison and forgave him. When they met, Mr. Sussek promised her he would do everything he could to better his life and help others.

154. Since 1997, Mr. Sussek has visited with his victim in person at least once per year through the Restorative Justice Project of the University of Wisconsin Law School. Mr. Sussek and his victim also write back and forth frequently.

155. Every few years, Mr. Sussek writes letters for presentations that his victim gives in the community. She speaks to a wide variety of audiences, including incarcerated juveniles, children, incarcerated adults, and adults living in the community. As part of her presentation, she asks a member of the audience to read one of those letters. Mr. Sussek's letters urge those who may want to give up on life like he did to make better choices. Mr. Sussek has also joined his victim in interviews for newspapers as well as news programs on television, including The Oprah Winfrey Show, Dateline Australia, NBC 15 Madison and, most recently, 60 Minutes.

156. Mr. Sussek has successfully completed all rehabilitative programing available to him and more. When he was sentenced, he was required to earn his High School Equivalency Diploma, complete a vocational training program, and get a job. In addition to completing those requirements, Mr. Sussek has also completed almost all of the available self-paced re-entry modules when they were offered, successfully completed rehabilitative programming, invested 215 hours of community service, tutored other inmates, and learned skills that will help him upon release such as Microsoft Office.

157. Mr. Sussek would have completed even more programs during his incarceration, but the PRC does not allow him access to programming because of his long sentence. A month or two after arriving at Fox Lake Correctional Institution in 2014, Mr. Sussek saw PRC and requested another vocational program. A PRC member responded: "Unless parole says they want you to get a vocational program, you will never get into a vocational program, ever." This experience was consistent with his interactions with PRC at other Wisconsin prisons. At Stanley

Correctional Institution, he was told he had too much time remaining on his sentence for a vocational program. Mr. Sussek has also been told that he will be put into programming once he's closer to his release date. By withholding programs from Mr. Sussek, PRC is impeding Mr. Sussek's ability to demonstrate he is rehabilitated and ready for life outside prison.

158. Since 2015, Mr. Sussek has been rising through the ranks of Badger State Industries. He began as a custom table and chair builder, then was an assistant computer numerically controlled (C.N.C.) machinist, then a C.N.C. machinist lead operator, and he is now a C.N.C. programmer.

159. Mr. Sussek has been rehabilitated and is no longer the violent person he was as a teenager. His last "major" ticket for misconduct was seven years ago, in 2012, for participating in a one-meal food protest. Before that, he had not received a major ticket since 2002. His last minor misconduct ticket was five years ago and was for sharing food with another inmate.

160. Mr. Sussek has maintained strong family ties throughout his incarceration. He has been in close communication with his immediate and extended family. His aunt has offered him a place to live upon release, and family friends have offered him employment.

161. Despite Mr. Sussek's dedication to reforming his life and his demonstrated low risk of violence, the Parole Commission has denied his release twice—once in 2015 and again in 2018. On October 9, 2015, Defendant Landreman met with Mr. Sussek and acknowledged Mr. Sussek's remorse for his crime, his relationship with his victim, his good conduct in prison, and his successful completion of programming. Regardless, Defendant Landreman gave Mr. Sussek a twenty-four-month deferral period. On his Parole Commission Action report, Defendant Landreman wrote that "additional time, continued good conduct, continued positive involvement in available program and institution job opportunities, continued restorative justice efforts,

eventual transition through reduced security with a positive adjustment along the way, and eventually an approved parole plan will all be necessary in reducing your risk to a more reasonable level."

162. On October 20, 2015, Parole Commission Chairman Stensberg changed Defendant Landreman's decision. Although he noted Mr. Sussek's age at the time of the offense and "positive elements to the incarceration," including Mr. Sussek's relationship with his victim, the number of programs he's completed, and his positive adjustment, Chairman Stensberg—unilaterally and without a personal interview—increased Mr. Sussek's deferral period to thirty-six months "largely given current sentence structure."

163. On September 13, 2018, Mr. Sussek met with Defendant Landreman again. Defendant Landreman told Mr. Sussek that he was giving Mr. Sussek a twelve-month deferral period. Mr. Sussek asked Defendant Landreman if Defendant Landreman could provide him with any kind of timeline for his release. Defendant Landreman replied that Parole has a process. He said that if he sees Mr. Sussek next year, they could talk about a potential endorsement to a secure minimum facility. Once Mr. Sussek gets to a secure minimum, he would likely spend at least 18 to 24 months there. Then, Mr. Sussek could go to community custody and work release. Defendant Landreman told Mr. Sussek he would be in community custody for probably another 18 to 24 months before he would realistically be considered for parole. Defendant Landreman also told Mr. Sussek that Mr. Sussek should save tens of thousands of dollars and have a driver's license before he will even be considered for release.

164. In Mr. Sussek's Parole Commission Action report, Defendant Landreman repeated the language from the 2015 report: "You have matured and made positive progress throughout your incarceration, but considering the serious nature of your offense and your

lengthy sentence structure, serving additional time for punishment is warranted. . . . In conclusion, additional time, continued good conduct, continued positive involvement in available program and institution job opportunities, continued restorative justice efforts, eventual transition through reduced security with a positive adjustment along the way, and eventually an approved parole plan will all be necessary in reducing your risk to a more reasonable level."

165. Mr. Sussek has accepted full responsibility for his crimes and does not blame anyone but himself. He recognizes that he alone pulled the trigger that could have taken a life. He sincerely regrets his teenage actions. He deeply comprehends the indescribable pain his actions have had on his victim, her family, and others.

166. Mr. Sussek is no longer the person he was when he was 16 years old. Mr. Sussek has matured and reformed throughout his incarceration. Mr. Sussek has honored the promise he made to his victim over twenty years ago—a promise to reform his life and lift up those around him. Mr. Sussek has taken advantage of every opportunity he has had to learn and to better himself.

167. Nothing in Mr. Sussek's record suggests, nor was any finding made, that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility."

168. Mr. Sussek has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the right to due process, and the right to have facts that enhance the penalty to which a criminal defendant may be lawfully sentenced found by a jury beyond a reasonable doubt or admitted by the criminal defendant.

***Plaintiff Victoriano Heredia***

169. Plaintiff Victoriano Heredia is 38 years old and has been incarcerated for more than 21 years for crimes he committed as a juvenile.

170. Mr. Heredia participated in a robbery that turned into a murder in 1997 when he was 17 years old.

171. Mr. Heredia was sentenced to life in prison following a conviction for first-degree intentional homicide party to a crime, with eligibility for parole supervision after serving 13 years and four months in prison.

172. Mr. Heredia was born in a small, rural town in Mexico. His family was so poor growing up that he was born in his family's home because they could not afford to pay for a birth in a hospital. When Mr. Heredia was born, his father traveled to the United States, became a U.S. citizen, and found a job in Wisconsin. In 1992 at the age of 12, Mr. Heredia's visa was approved to move to the United States and he immigrated to Wisconsin legally to live with his father. Mr. Heredia had to leave his mother and sisters behind and was heartbroken because he knew he would not be able to communicate with them.

173. In his teenage years, Mr. Heredia possessed only a second-grade reading level, "had difficulty producing meaningful sentences," as well as with associative memory, and was on an "exceptional needs plan" in school. A psychological assessment conducted when Mr. Heredia was 15 concluded that Mr. Heredia's intellectual functioning was in the "low to extreme low range" and noted: "Victor's main peer group consists of Mexican-American youth, some of whom are no longer attending school. It is likely that many of Victor's associates are less than ideal role models for this 15-year-old student. Unfortunately, Victor appears cognitively and emotionally immature and quite susceptible to the negative influence of his peers."

174. Mr. Heredia decided to join his older cousin's gang when he was 14 years old so that he would have somewhere to go other than home and where people spoke Spanish, and accepted him. Through that gang, Mr. Heredia met a 20-year-old man, who asked him to participate in a robbery. Mr. Heredia made the foolish and life-changing decision to go along with his new friend. While Mr. Heredia had no idea that his friend was planning on potentially committing murder, he accepts responsibility for the role that he played the day of the murder.

175. Nothing in Mr. Heredia's record suggests, nor was any finding made, that he was among the "rarest of juvenile[s] . . . whose crime reflects permanent incorrigibility." On the contrary, Mr. Heredia's sentencing judge stated "I don't think we should give up on you just yet." Mr. Heredia's teacher wrote at the time of sentencing that "Victor tended to be a follower" and "his comprehension or reasoning as to what could be an outcome of a situation was usually very difficult for him." She wrote to the court, "I feel that you are dealing with a very immature and young boy with very low reasoning skills who can be rehabilitated and become a benefit to our society."

176. When Mr. Heredia was first sentenced to life in prison with the possibility of parole after 13 years and 4 months, he set out to do everything he could to learn how to be a better person and member of society, believing that if he worked hard at becoming a better person he would earn his freedom.

177. During Mr. Heredia's time in prison, he has successfully completed every rehabilitative opportunity offered. For example, he earned his High School Equivalency Diploma and has held several jobs, including as a unit interpreter, a server worker, a unit janitor, a maintenance mechanic, and carpenter for Badger State Industries at the sign shop and in the wood furniture shop. Additionally, he participated in the programming available to him,

including the completing the Youth Offender Program and Stanley Correction Institute Relay for Life program; earning certification in the following areas: keyboarding, Microsoft Word, advanced computers, math computation, achievement reading, using maps, charts, and graphs, information skills, family and community life, and success on the job. Mr. Heredia is currently participating in the Restorative Justice Program of the University of Wisconsin Law School.

178. Mr. Heredia has tried his best to stay out of trouble and stay focused on positive development throughout his time in prison. Mr. Heredia has only received five major tickets while in prison, all for non-violent offenses, a very low number for someone imprisoned for 21 years starting as a teenager. His most recent major citation was issued in 2018, but before that his most recent major citation was issued in 2006. Mr. Heredia went 12 years without receiving a major citation in prison.

179. Mr. Heredia has consistently received low scores on his COMPAS report and his inmate classification report from 2015 states that he has changed and has a positive attitude. The classification report states that Mr. Heredia separates himself from anything negative and that he is polite, respectful, and a role model for other men in his unit.

180. Mr. Heredia has accepted full responsibility for his actions and does not blame anyone but himself for participating in the crime that fateful day in 1997. Every single day Mr. Heredia regrets his decision to join his friend in a robbery that turned into a murder. Mr. Heredia feels deep remorse for the pain he caused to the victim's family, his own family, and his community.

181. Mr. Heredia has been rehabilitated and is no longer the follower he was as a teenager. He now understands the consequences of his actions and the importance of standing up for what is right. Mr. Heredia hopes to serve as a role model for his life partner's daughters, ages

14 and 16. He hopes to earn his freedom so that he can be a supportive and loving husband, father, son, brother, friend, and community member.

182. Throughout his incarceration, Mr. Heredia has maintained strong ties with his family and has rehabilitated relationships in his life, including with his father. Mr. Heredia is in constant contact with his immediate and extended family.

183. Mr. Heredia has secured employment upon his release and plans to attend Madison Area Technical College to build his vocational skills. Mr. Heredia also plans to marry his life partner upon release. His dream is to be able to watch his stepdaughter play in a basketball game.

184. In 2010, after serving 13 years and 4 months for his crime, Mr. Heredia became eligible for parole. A parole interview was held on October 20, 2010. Defendant LaCost denied Mr. Heredia release to parole supervision. Defendant LaCost did not indicate that Mr. Heredia was not sufficiently mature and rehabilitated, only that he must "serve additional time so as not to depreciate the seriousness of the crime" and that he had "an unmet" vocational education need. Defendant LaCost deferred parole for Mr. Heredia for 48 months—a full four years.

185. On September 9, 2014 Mr. Heredia was again reviewed for parole. Defendant LaCost noted that "there are no essential program needs identified," "you have continued to make progress" and "your conduct has remained positive" but she nonetheless denied parole on the sole basis that, "more time should be served to address the seriousness of the crime." Defendant LaCost deferred a determination of parole eligibility for Mr. Heredia for 42 months so that he would not come up for parole review again until May, 2018, *eight years* after the date set by the legislature for his parole eligibility.

186. Mr. Heredia's Classification Report from 2015 states that he has a positive attitude and that he separates himself from anything negative. The report also states that "[h]ousing staff report that Mr. Heredia is respectful, polite, and a role model to other men in the unit. The sergeant wishes he had 83 men like him on the unit." In 2016, the BOCM noted that COMPAS indicated Mr. Heredia had a risk level of "low," but nonetheless recommended that he receive "medium" security classification, a classification under which he could not be released to parole supervision. In its "Inmate Classification Report," BOCM explained that the security classification was due to his "sentence structure" alone.

187. Defendants last denied Mr. Heredia release on March 5, 2018, again on the unsubstantiated basis that due to the seriousness of the crime he should serve additional time. Mr. Heredia initially received a 24 month deferment of parole, but the deferment was increased to 36 months deferment due to a recent nonviolent major disciplinary ticket.

188. Mr. Heredia has been denied programming that would help him further demonstrate his rehabilitation and readiness for release. He has applied to enroll in vocational training in welding, but has been denied because he is not close enough to his release date. Because Mr. Heredia does not have a guaranteed release date, and because he is continually denied parole, he is given low priority for placement in scarce programming necessary to show continued efforts towards rehabilitation and reform, even though he was specifically transferred to Fox Lake because of their welding training program. Mr. Heredia is trying to better himself and gain valuable skills while incarcerated, but he has been told it would be a waste of time to train him because he is not going to be released any time soon, even though he has been eligible for parole for the past 8 years.

189. Mr. Heredia has been denied and continues to be denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the right to due process, and the right to have facts that enhance the penalty to which a criminal defendant may be lawfully sentenced found by a jury beyond a reasonable doubt or admitted by the criminal defendant.

## CLASS ACTION ALLEGATIONS

190. Named Plaintiffs bring this action individually and on behalf of a class consisting of all persons currently incarcerated who were convicted of crimes committed when they were children under the age of 18 and sentenced to life, or sentences for terms of years longer than their life expectancy, with the possibility of parole.

191. This action meets the requirements of Fed. R. Civ. P. 23(a) as follows:

i. The proposed class is so numerous that joinder of all of its members is impracticable. In Wisconsin, there are more than 120 persons currently serving life sentences for offenses they committed before age 18, and who are now, or will be in the future, eligible for release to parole supervision.

ii. The questions of law and fact presented by the Named Plaintiffs are common to other members of the class. Such questions include, generally, whether, under federal law, Defendants provide a meaningful opportunity for release upon demonstrated rehabilitation and maturity. More specifically the common questions may include but are not limited to:

a. Whether Plaintiffs and Class Members have been subject to disproportionate punishment in violation of the Eighth Amendment by being denied a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation under the current substantive parole criteria and considerations applied by the Defendants;

b. Whether Defendants' policies and practices in conducting parole release interviews and making parole release decisions, described in detail above, violate the Fourteenth Amendment rights of Class Members to procedural due process protections of their right to release upon a showing of maturity and rehabilitation;

c. Whether Defendants' reliance on the underlying juvenile crime, prior juvenile record, juvenile disciplinary history, and "community" or victim opposition, to deny release subjects Class Members to extended sentences based upon facts not found by a jury beyond a reasonable doubt or admitted by Plaintiffs, in violation of the Sixth Amendment.

iii. The violations alleged by Named Plaintiffs are typical of those suffered by the class. The entire class will benefit from the relief sought.

iv. Named Plaintiffs will fairly and adequately protect the interests of the class. Named Plaintiffs have no interests adverse to or in conflict with those of the other Class Members. Plaintiffs' counsel have experience in constitutional litigation and class action litigation.

v. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class. Fed. R. Civ. P. 23(b)(l)(A).

vi. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate declaratory or injunctive relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2).

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

**(Violation of the Prohibition Against Cruel and Unusual Punishment in the Eighth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983)**

192. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

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

194. 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 who have not been adjudicated irreparable corrupt without providing them with a realistic and meaningful opportunity for release upon demonstrated maturity and rehabilitation.

195. Defendants have denied and continue to deny Plaintiffs, and Class Members, a meaningful opportunity for release their showing of maturity and rehabilitation, in violation of the Eighth Amendment's proportionality requirements.

196. Plaintiffs Craig Allen Sussek, Carlos King, James Price, Thaddeus Karow, Victoriano Heredia, and other Class Members, have been injured and will likely suffer future injury by Defendants' policies and practices by being denied their rights to a meaningful opportunity for release from imprisonment based on a demonstration of maturity and rehabilitation, in violation of the prohibition against cruel and unusual punishments in the Eighth Amendment to the U.S. Constitution, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

## SECOND CAUSE OF ACTION

**(Violation of the Due Process Clause in the Fourteenth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983)**

197. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

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

199. Under established U.S. Supreme Court case law, the Eighth Amendment to the U.S. Constitution confers upon juvenile lifers a legitimate expectation of parole upon a showing of maturation and rehabilitation. This is a liberty interest protected by the Due Process Clause.

200. Defendants' conduct and actions in conducting the parole consideration process deny Plaintiffs, and other Class Members, due process of law to secure their liberty interest in parole release, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

201. Plaintiffs Carlos King, Thaddeus Karow, James Price, Craig Alan Sussek, and Victoriano Heredia, and other Class Members, have been injured and will likely suffer future injury, as a result of Defendants' official policies and regular practices, which fail to adequately distinguish between persons serving life sentences for crimes committed as children and those committed as adults, and Defendants' failure to provide sufficient procedural protections necessary to secure the substantive right to release upon a showing of maturity and reform in violation of the Due Process Clause of the Fourteenth Amendment, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

**THIRD CAUSE OF ACTION**

**(Violation of Right to a Jury Trial under the Sixth Amendment and to Due Process under the Fourteenth Amendment to the U.S. Constitution, actionable under 42 U.S.C. § 1983)**

202. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

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

204. Each Plaintiff was, and Class Members were, convicted of, or pleaded guilty to, a crime committed while he or she was a juvenile.

205. Any fact, other than the fact of a prior conviction, that enhances the penalty to which a criminal defendant may lawfully be sentenced must be found beyond a reasonable doubt or admitted by the criminal defendant. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Ring v. Arizona*, 536 U.S. 584, 604–05 (2002); *Blakely v. Washington*, 542 U.S. 296, 303–05 (2004); *Alleyne v. United States*, 570 U.S. 99, 114–15 (2013).

206. A state may impose a life sentence upon a juvenile offender only upon a finding that the defendant is among the "very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S. Ct. at 734.

207. Each Plaintiff was, and Class Members were, either convicted without a finding that, or pleaded guilty without admitting that, Plaintiffs' and Class Members' crimes reflected that they were among the rarest juveniles whose crimes reflect permanent incorrigibility.

208. Nor can Defendants deny parole release to juvenile lifers who have demonstrated unmistakable rehabilitation and have completed the term of imprisonment required under the sentencing scheme existing at the time sentence was imposed by the judge on the basis of a fact

about the crime committed or the defendant at the time of sentencing that was not found beyond a reasonable doubt or admitted by the criminal defendant.

209. Defendants' conduct and actions—including, *inter alia*, increasing the amount of time that must be served based on facts not found by a jury beyond a reasonable doubt or guilty plea—deny Plaintiffs, and Class Members, their right to have only facts found beyond a reasonable doubt or admitted by the criminal defendants expose them to punishment, in violation of the jury trial right of the Sixth Amendment and their right to due process of the Fourteenth Amendment to the U.S. Constitution.

210. Plaintiffs Carlos King, Thaddeus Karow, James Price, Craig Alan Sussek, and Victoriano Heredia, and other Class Members, have been injured and will likely suffer future injury, as a result of Defendants' denial of parole release based on alleged aggravating factors relating to the crime of conviction or the defendant that was not an element proved beyond a reasonable doubt or admitted by the criminal defendants at their original criminal trial, in violation of their right to a jury trial under the Sixth Amendment and their right to due process under the Fourteenth Amendment to the U.S. Constitution, giving rise to Plaintiffs' and Class Members' claims for relief under 42 U.S.C. § 1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

a) Certify a plaintiff class pursuant to Fed. R. Civ. P. 23(b)(1)(A) and (b)(2);

b) Declare, pursuant to 28 U.S.C. §§ 2201–2202, that Defendants are operating a parole scheme that violates the prohibition against cruel and unusual punishment in the Eighth Amendment, violates the Due Process Clause in the Fourteenth Amendment, and violates the right to a jury trial in the Sixth Amendment to the U.S. Constitution by denying Plaintiffs, and

other Class Members, a meaningful and realistic opportunity for release upon a showing of rehabilitation and maturation, including by:

i. Failing to release on parole juvenile lifers who have demonstrated rehabilitation and maturity;

ii. Failing to provide an opportunity to demonstrate maturity and rehabilitation in advance of the parole eligibility date and in support of parole;

iii. Failing to provide an opportunity to see and confront any evidence used against them;

iv. Failing to provide funds to obtain counsel in preparation for parole interviews, including the first parole interview for which juvenile lifers are eligible;

v. Failing to permit counsel to be present and make statements at parole interviews;

vi. Failing to allow the submission of evidence and arguments in support of a request for parole;

vii. Failing to provide funds for inmates to present testimony from relevant experts, such as psychologists, psychiatrists, criminologists and/or social workers;

viii. Failing to establish and apply objective and non-arbitrary standards and procedures, including standards and procedures for evaluating maturity and rehabilitation of persons who committed crimes while juveniles, for use in parole decisions;

ix. Failing to provide explanations as to what additional steps within Class Members' control that they must take to obtain parole;

x. Failing to rely solely on facts related to the Class Members' crimes that were found by a jury or admitted by the Class Members at the time to enhance the penalty imposed; and/or

xi. Being given a caseload that does not permit Defendants sufficient time to read and evaluate the materials presented by Class Members.

c) Enjoin Defendants immediately from continuing practices that violate the U.S. Constitution and to take remedial steps to address their past illegal conduct by granting Plaintiffs, and Class Members , a meaningful and realistic opportunity to demonstrate their rehabilitation,

maturity, and readiness for release, including by requiring that that Defendants alter the Parole Commission's operating procedures and the DOC administrative regulations to enable Defendants to meaningfully analyze the question of whether maturity and rehabilitation have been demonstrated, including by requiring that Defendants:

i. Provide Class Members an opportunity to demonstrate maturity and rehabilitation in advance of the parole eligibility date and in support of parole;

ii. Provide Class Members an opportunity to see and confront any evidence used against them;

iii. Provide funds for Class Members to obtain counsel in preparation for parole interviews, including the first parole interview for which juvenile lifers are eligible;

iv. Permit counsel to be present and make statements at parole interviews;

v. Allow the submission of evidence and arguments in support of a request for parole;

vi. Provide funds for inmates to present testimony from relevant experts, such as psychologists, psychiatrists, criminologists and/or social workers;

vii. Establish and apply objective and non-arbitrary standards and procedures, including standards and procedures for evaluating maturity and rehabilitation of persons who committed crimes while juveniles, for use in parole decisions;

viii. Provide explanations as to what additional steps within Class Members' control that they must take to obtain parole;

ix. Rely solely on facts related to the Class Members' crimes that were found by a jury or admitted by the Class Members at the time to enhance the penalty imposed; and/or

x. Be given a caseload that permits them sufficient time to read and evaluate the materials presented by Class Members.

d) Order Defendants to provide new release consideration interviews to all class members using a lawful standard and lawful procedures;

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

f) Grant such other and further relief as the Court may deem just and proper.

Dated this 30th day of April, 2019.

*s/Gregory T. Everts*

QUARLES & BRADY LLP

Gregory T. Everts (SBN 1001636)
Martha J. Snyder (SBN 1070865)
Carly S. Conway (SBN 1103644)
33 East Main Street, Suite 900
Madison, WI 53703
Telephone: (608) 251-5000
gregory.everts@quarles.com
martha.snyder@quarles.com
carly.conway@quarles.com

Patrick J. Proctor-Brown (SBN 1091326)
Joseph R. Santeler (SBN 1099684)
400 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202
Telephone: (414) 277-5000
patrick.proctor-brown@quarles.com
joseph.santeler@quarles.com

Issa Kohler-Hausmann (NY BN 4694576)
Yale Law School*
127 Wall Street
New Haven, CT 06511
Telephone: (203) 432-4956
issa.kohler-hausmann@yale.edu

Avery P. Gilbert (NY BN 4524237)
15 Shatzell Avenue, Suite 232
Rhinecliff, NY 12574
Telephone: (845) 380-6265
avery@agilbertlaw.com

ACLU FOUNDATION OF WISCONSIN

Laurence J. Dupuis (SBN 2029261)
R. Timothy Muth (SBN 1010710)
Asma I. Kadri (SBN 1114761)
Emma S. Shakeshaft (SBN 1092046)
207 East Buffalo Street, Suite 325
Milwaukee, WI 53202
Telephone: (414) 272-4032
ldupuis@aclu-wi.org
tmuth@aclu-wi.org
akadri@aclu-wi.org
eshakeshaft@aclu-wi.org

FOLEY & LARDNER LLP

H. Holden Brooks (SBN 1071254)
777 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 271-2400
HBrooks@foley.com

Hillary N. Vedvig (SBN 1113183)
Jared E. Padway (SBN 1104959)
Maria Lyon (SBN 1114574)
150 East Gilman Street, Suite 5000
Madison, WI 53703
Telephone: (608) 257-5035
HVedvig@foley.com
JPadway@foley.com
MLyon@foley.com

***Attorneys for Plaintiffs***

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