

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HENRY HILL, JEMAL TIPTON, DAMION
TODD, BOBBY HINES, KEVIN BOYD,
BOSIE SMITH, JENNIFER PRUITT,
MATTHEW BENTLEY, KEITH MAXEY,
GIOVANNI CASPER, JEAN CARLOS
CINTRON, NICOLE DUPURE and
DONTEZ TILLMAN, individually and on
behalf of all those similarly situated,

Case No. 10-cv-14568

Hon. John Corbett O'Meara

CLASS ACTION

Plaintiffs,

vs.

RICK SNYDER, in his official capacity as
Governor of the State of Michigan, HEIDI E.
WASHINGTON, in her official and
individual capacity as Director of the
Michigan Department of Corrections,
MICHAEL EAGEN, in his official and
individual capacity as Chair of the Michigan
Parole Board, and BILL SCHUETTE, in his
official capacity as Attorney General of the
State of Michigan,

Defendants.

SECOND AMENDED COMPLAINT & JURY DEMAND

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NOW COME Plaintiffs, by and through their counsel, and for their Second Amended Complaint, state as follows:

INTRODUCTION

1. This action for declaratory and injunctive relief and damages is brought under 42 U.S.C. § 1983 to enforce Plaintiffs' rights under the United States Constitution and customary international law.
2. Plaintiffs are individuals who were charged and tried as adults for crimes committed when they were children under the age of eighteen and punished by a mandatory sentence of life imprisonment. Based on their convictions, the Michigan parole statute, M.C.L. § 791.234, deprived Plaintiffs of a meaningful opportunity for release.

3. Plaintiffs filed this action on November 17, 2010, seeking a declaration that M.C.L. § 791.234 was unconstitutional insofar as it excludes children convicted of first degree homicide offenses and denied Plaintiffs a meaningful opportunity for release.

4. This Court, on January 30, 2013, issued a declaratory judgment, ruling that Michigan's parole statute, which deprived children convicted of first degree homicide offenses any opportunity for parole, was unconstitutional.

5. On August 12, 2013, this Court set forth the reach of its declaratory judgment, holding that every person convicted of first degree homicide murder in the State of Michigan as a juvenile, and who was sentenced to life in prison shall be eligible for parole.

6. Nearly four years ago, the United States Supreme Court ruled in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that Plaintiffs' mandatory life sentences are unconstitutional, and all youth subject to these sentences are entitled to a meaningful opportunity for release. The Court ruled on January 25, 2016, in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), that this ruling applies retroactively.

7. Despite these rulings, Plaintiffs are still being treated as serving nonparolable life sentences and remain unconstitutionally subject to life imprisonment without a meaningful opportunity for release. Defendants continued

to imprison all youth issued a mandatory life sentence without providing any opportunity for parole or rehabilitative programming based on their assertion that Plaintiffs are still serving nonparolable life sentences.

8. On March 4, 2014, M.C.L. § 769.25 and 769.25a were enacted and set forth a legislative scheme for resentencing of youth in light of *Miller* and *Montgomery*. The legislation provides that a child may be punished with a sentence of life in prison without the possibility of parole, or a term of years, and it fails to provide any meaningful opportunity for release in violation of Plaintiffs' constitutional rights.

9. The legislation also:

- a. requires a minimum punishment of 25 to 40 years in prison without any opportunity for release and without consideration, for purposes of proportional sentencing, of the mitigating factors of the child's age and its hallmark features that reflect a lesser degree of culpability and a unique capacity for rehabilitation as compared to adults;
- b. otherwise requires a punishment of up to 60 years in prison without guaranteeing a meaningful opportunity for release;

- c. retroactively deprives individuals issued term-of-years sentences of the good-time and/or disciplinary credits they were entitled to accumulate at the time of their offense;
- d. fails to provide any guidelines or timelines for reviewing youths' current unconstitutional sentences and treatment as non-parolable lifers.

10. Plaintiffs seek a declaration that Michigan's laws, policies and practices, insofar as they mandate that Plaintiffs serve life imprisonment without a meaningful opportunity for release on parole, violate the United States Constitution's Eighth and Fourteenth Amendments, and customary international law.

11. Further, Plaintiffs as persons sentenced to life in prison for offenses committed before they were eighteen years old seek an order that Defendants afford them a meaningful opportunity to obtain release based on their demonstrated maturity and rehabilitation. Plaintiffs do not challenge their judgments of conviction, do not seek to invalidate their life sentences, and do not seek an order from this Court ordering their release.

JURISDICTION AND VENUE

12. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions, and by 28 U.S.C. § 1343(a), which authorizes federal courts to hear civil rights cases.

13. Venue is proper in this Court, as the Defendants conduct their business across the state, including in the Eastern District of Michigan, and some of the named Plaintiffs are incarcerated in the Eastern District of Michigan.

PARTIES

Plaintiffs

14. Plaintiff Henry Hill was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Saginaw County, Michigan, for crimes committed when he was sixteen years old. Plaintiff Hill has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Hill is imprisoned at the Thumb Correctional Facility in Lapeer County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Henry has served thirty-four years in adult prison.

15. Plaintiff Jemal Tipton was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Oakland County, Michigan, for crimes committed when he was seventeen years old. Plaintiff Tipton has never been afforded a meaningful opportunity to obtain release on parole. He is currently

in the custody of the Michigan Department of Corrections. Plaintiff Tipton is imprisoned at the Ryan Correctional Facility in Wayne County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Jemal has served twenty-eight years in adult prison.

16. Plaintiff Damion Todd was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Wayne County, Michigan, for crimes committed when he was seventeen years old. Plaintiff Todd has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Todd is imprisoned at the Ryan Correctional Facility in Wayne County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Damion has served twenty-nine years in adult prison.

17. Plaintiff Bobby Hines was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Wayne County, Michigan, for crimes committed when he was fifteen years old. Plaintiff Hines has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Hines is imprisoned at the Earnest C. Brooks Correctional Facility in Muskegon County, Michigan, where he is assigned to the lowest custody level possible for an

individual serving this sentence. Bobby has served twenty-six years in adult prison.

18. Plaintiff Kevin Boyd was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Oakland County, Michigan, for a crime committed when he was sixteen years old. Plaintiff Boyd has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Boyd is imprisoned at the Thumb Correctional Facility in Lapeer County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Kevin has served twenty years in adult prison.

19. Plaintiff Bosie Smith was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Washtenaw County, Michigan, for a crime committed when he was sixteen years old. Plaintiff Smith has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Smith is imprisoned at the Chippewa Correctional Facility in Chippewa County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Bosie has served twenty-three years in adult prison.

20. Plaintiff Jennifer Pruitt was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Oakland County, Michigan, for crimes committed when she was sixteen years old. Plaintiff Pruitt has never been afforded a meaningful opportunity to obtain release on parole. She is currently in the custody of the Michigan Department of Corrections. Plaintiff Pruitt is imprisoned at the Women's Huron Valley Correctional Facility in Washtenaw County, Michigan, where she is assigned to the lowest custody level possible for an individual serving this sentence. Jennifer has served twenty-two years in adult prison.

21. Plaintiff Matthew Bentley was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Huron County, Michigan, for crimes committed when he was fourteen years old. Plaintiff Bentley has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Bentley is imprisoned at the Richard A. Handlon Correctional Facility in Ionia County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Matthew has served eighteen years in adult prison.

22. Plaintiff Keith Maxey was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Wayne County, Michigan,

for crimes committed when he was sixteen years old. Plaintiff Maxey has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Maxey is imprisoned at the Thumb Correctional Facility in Lapeer County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Keith has served eight years in adult prison.

23. Plaintiff Giovanni Casper was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Kent County, Michigan, for crimes committed when he was seventeen years old. Plaintiff Casper has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Casper is imprisoned in the Thumb Correctional Facility in Lapeer County, Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Giovanni has served nine years in adult prison.

24. Plaintiff Jean Carlos Cintron was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Oakland County, Michigan, for crimes committed when he was sixteen years old. Plaintiff Cintron has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Cintron is imprisoned in the Thumb Correctional Facility in Lapeer County,

Michigan, where he is assigned to the lowest custody level possible for an individual serving this sentence. Jean has served seven years in adult prison

25. Plaintiff Nicole Dupure was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Macomb County, Michigan, for crimes committed when she was seventeen years old. Plaintiff Dupure has never been afforded a meaningful opportunity to obtain release on parole. She is currently in the custody of the Michigan Department of Corrections. Plaintiff Dupure is imprisoned in the Women's Huron Valley Correctional Facility in Washtenaw County, Michigan, where she is assigned to the lowest custody level possible for an individual serving this sentence. Nicole has served ten years in adult prison.

26. Plaintiff Dontez Tillman was charged, convicted and sentenced as an adult to a mandatory sentence of life imprisonment in Oakland County, Michigan, for a crime committed when he was fourteen years old. Following the United States Supreme Court's decision in *Miller v. Alabama*, he was resentenced to serve between 32.5 and 60 years in prison. Plaintiff Tillman has never been afforded a meaningful opportunity to obtain release on parole. He is currently in the custody of the Michigan Department of Corrections. Plaintiff Tillman is imprisoned in the Thumb Correctional Facility in Lapeer County, Michigan, where he is assigned to

the lowest custody level possible for an individual serving this sentence. Dontez has served six years in adult prison.

Defendants

27. Defendant Rick Snyder is Governor of the State of Michigan. Defendant Snyder is invested with executive power pursuant to Art. V § 1 of the Michigan Constitution and is responsible for ensuring compliance with the laws of the State of Michigan. Governor Snyder is sued in his official capacity.

28. Defendant Heidi E. Washington is Director of the Michigan Department of Corrections. Defendant Washington has authority over the Michigan Parole Board pursuant to M.C.L. § 791.231a, which determines which Michigan prisoners are eligible for parole. Defendant Washington also has authority over policies and placements regarding programming for prisoners. She is sued in her official capacity and in her individual capacity.

29. Defendant Michael Eagen is Chair of the Michigan Parole Board. Under M.C.L. § 791.234, the Parole Board determines which prisoners, under their jurisdiction, to parole. Defendant Eagen is sued in his official capacity.

30. Defendant Bill Schuette is Attorney General of the State of Michigan. As Attorney General he has supervisory power over prosecuting attorneys throughout Michigan. Defendant Schuette is sued in his official capacity

BACKGROUND FACTUAL ALLEGATIONS

Michigan's Former Sentencing Framework

31. Since abolishing capital punishment, the harshest punishment the State of Michigan can impose against any individual for any crime or series of crimes is a life sentence without the possibility of parole.

32. Michigan's Penal Code sets forth the punishments for crimes categorized as first-degree homicides, which include premeditated murder, felony murder, and murder of a peace officer. M.C.L. § 750.316.

33. Michigan's Code of Criminal Procedure provides that a person who aids or abets a murder is punishable as if that person had directly committed the offense. M.C.L. § 767.39.

34. The mandatory punishment for first-degree murder, whether it be premeditated, felony murder or aiding and abetting a murder, is imprisonment for life. M.C.L. § 750.316.

35. Plaintiffs' judgments of conviction and sentence state that they were sentenced to imprisonment for life for a conviction under M.C.L. § 750.316.

36. Prior to 2013, this mandatory punishment applied to individuals, including Plaintiffs, who committed offenses before they were 18 years old.

37. Michigan law grants the Department of Corrections' Parole Board ("Michigan Parole Board") the authority to release individuals sentenced to life if a prisoner meets certain specified criteria. M.C.L. § 791.234.

38. Since 2008, the Michigan Parole Board has had the authority to grant release to individuals sentenced to life imprisonment after serving 15 years except for individuals serving a life sentence for a conviction under M.C.L. § 750.316.

39. Prior to 2013, Plaintiffs were excluded from ever being considered for release on parole because of their mandatory convictions and life sentences imposed under M.C.L. § 750.316.

40. On January 30, 2013, this court struck down as unconstitutional M.C.L. § 750.316 as it applied to children convicted of first degree homicide offences.

41. At this time, Defendants are continuing to apply M.C.L. § 791.234(6) to exclude Plaintiffs, and all youth convicted of first degree homicide offences, from the Parole Board's jurisdiction.

Punishment of Children in Michigan

42. Over 360 youth are serving a life sentence in Michigan, for offenses committed as children, without any meaningful opportunity for release upon maturation and rehabilitation. Michigan is one of only three states that authorizes

the imposition of life-without-parole sentences on children as young as 14 for all homicide offences including felony murder.

43. Michigan, Pennsylvania, Texas, Florida and Louisiana account for two-thirds of all youth sentenced to life without parole sentences, with Michigan having the second highest number of youth sentenced to life without possibility of release.

44. Since *Miller*, Texas and Florida have abolished life-without-parole sentences for youth. Pennsylvania has abolished the sentence for felony murder, and has committed to not seek life-without-parole sentences upon resentencing of youth convicted of first degree premeditated homicide offenses. Louisiana and Michigan remain the states who still impose this sentence on any significant level.

45. Thirty-six states now either prohibit life-without-parole sentences for youth or have not imposed this sentence since *Miller*.

46. Michigan has sentenced or resentenced twenty-eight youth convicted of first degree homicide offences after *Miller*; and half of these children have received life-without-parole sentences.

The Current Michigan Sentencing Scheme

47. In January 2013, this Court granted summary judgment in favor of Plaintiffs on their First Amended Complaint. The Court declared M.C.L. § 791.234(6) unconstitutional as applied to Plaintiffs and all others serving life

sentences for first-degree homicide offenses committed before they were under 18 years of age. In November 2013, the Court ordered Defendants to create an administrative structure to allow persons who committed their offenses when they were under 18 years of age to be considered for parole. Defendants appealed and this ruling was stayed.

48. On March 4, 2014, Michigan enacted M.C.L. §§ 769.25 and 769.25a. These statutes provide that Plaintiffs and similarly-situated individuals are subject to resentencing, including the re-imposition of their life-without-parole sentences.

49. The legislation does not establish a time frame for when individuals must be resentenced.

50. Under the new legislation, the Prosecutor may seek a life-without-parole sentence for persons who commit certain homicide offenses when they are below 18 years of age by filing a motion in the state trial court.

51. If the prosecutor does not file such a motion, or if the court chooses not to impose a life-without-parole sentence, the court must sentence the individual to a term-of-years sentence with a minimum sentence of between 25 and 40 years imprisonment, and a maximum sentence of no less than 60 years.

52. The new legislation does not require that the resentencing court consider the child status of an offender, or any other *Miller* factor, before imposing

a term-of-years sentence, and does not require a proportional sentence that considers the child's status and hallmark characteristics.

53. For individuals who are resentenced to a term-of-years sentence, there is no opportunity for release on parole until the minimum sentence is served in its entirety. After the minimum sentence has been served, parole eligibility and determinations are governed by M.C.L. §§ 791.231-791.246, the same parole process that applies to adults.

54. The parole review process does not require consideration of the *Miller* factors; nor does it take into consideration the age of the offender as a mitigating factor.

55. Should Plaintiffs be resentenced pursuant to the legislation, they will not be credited with any earned good-time or disciplinary credits accumulated prior to their being resentenced.

56. On August 5, 2015, Plaintiff Dontez Tillman was resentenced under M.C.L. § 769.25 to a term of imprisonment of thirty-two and a half to sixty years. This sentence provides that Dontez only becomes eligible for parole consideration at the age of forty-six and a half, and does not provide for any consideration of his child status and lesser culpability at the time of his offense, and growth or maturation in determining his eligibility for parole.

57. All other Plaintiffs remain in Defendants' custody serving the same mandatory sentences of life-imprisonment imposed following their convictions. Defendants continue to assert that the Michigan Parole Board does not have jurisdiction to consider them for parole. None have been afforded any other meaningful opportunity for release based on their reduced culpability at the time of their offenses and their unique capacity for change and rehabilitation as compared to adult offenders.

58. Defendants continue to deny Plaintiffs rehabilitative programming including rehabilitative programming specifically recommended in their sentencing reports as a condition of parole, substance abuse, violence prevention, anger management and skill based rehabilitative programs based on Defendants' continued consideration of them as serving life-without-parole sentences.

GENERAL FACTUAL ALLEGATIONS

59. None of the Plaintiffs have been considered for release on parole, nor afforded any other meaningful opportunity for release based on their child status and lesser culpability as compared to adults when they committed their offenses, and their demonstrated maturity and rehabilitation.

60. Plaintiffs did not have the same maturity and sense of responsibility as adults when they committed their offenses.

61. The State of Michigan recognizes this relative lack of maturity and responsibility based on their age in other areas of the law by prohibiting persons below 18 years of age from voting, entering into valid contracts, serving on juries, joining the armed forces, smoking tobacco, marrying without parental consent, leaving school, working full time, or applying for a driver's license without first undergoing youth-specific driver education classes.

62. Plaintiffs were more vulnerable to adult influences and peer pressure than adults.

63. Plaintiffs were more likely to act impetuously without regard for consequences as compared to adults.

64. Plaintiffs have a greater capacity for change, growth and rehabilitation than adults.

65. Plaintiffs' ineligibility earned disciplinary credits and earned good time renders immaterial maturity, good behavior, character and rehabilitation for purposes of consideration of release on parole.

66. The sentencing schemes under which Plaintiffs are being punished do not provide for a meaningful opportunity to obtain release upon demonstration of their maturity and rehabilitation.

67. The imprisonment of Plaintiffs without affording them a meaningful opportunity for release once they have grown and matured fails to take into

consideration whether Plaintiffs' actions were as a result of transient immaturity and whether they have been rehabilitated.

68. Plaintiffs' ages at the time they committed their offenses means that they will be punished more severely than adults who may have been given the same sentence because they will serve more years and a greater percentage of their lives in prison than adult offenders.

69. There is no legitimate penological justification for punishing Plaintiffs without also affording them a meaningful opportunity for release because such a denial fails to serve any of the recognized penal objectives.

70. Michigan accounts for over 15% of all persons in the United States who were subjected to a life-without-parole sentence for crimes committed when they were children and 40% of individuals serving life-without-parole sentences in those states that continue to authorize the sentence.

71. Michigan is in the minority of states that continues to impose life-without-parole sentences for persons who commit their offenses when they are below 18 years of age.

72. Of the five states responsible for nearly two-thirds of individuals serving life-without-parole sentences for crimes they committed below 18 years of age, only Michigan has failed to amend its laws to restrict the imposition of such life-without-parole sentences.

73. Currently, fewer than 15 states continue to allow life-without-parole sentences to be imposed on persons below 18 years of age in the manner that Michigan does.

74. The United States is the only country in the world that authorizes and imposes life-without-possibility-of-release sentences on persons who commit offenses when they were below 18 years of age.

75. The United Nations Human Rights Committee identified this practice as non-compliant with Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR).

76. The United States is a party to the ICCPR, but has reserved the right to treat juveniles as adults only in “exceptional circumstances.”

77. Michigan’s laws do not constitute such an exceptional circumstance, as they presumptively treat all persons below 18 years of age involved in homicide offenses as adults and continue to detain such persons as if they were adults for such involvement without affording them a meaningful opportunity for release based on upon demonstrated rehabilitation.

78. In December 2006, the United Nations General Assembly passed a resolution, 185-1 (United States), calling upon all nation states to abolish life imprisonment without possibility of release sentences for those persons who commit offenses when they are below 18 years of age.

79. In 2008, the United Nations Committee on the Elimination of Racial Discrimination in its consideration of U.S. compliance with the Convention on the Elimination of All Forms of Racial Discrimination found that the practice of sentencing persons who commit offenses when they are below 18 years of age to life without possibility of release violated key provisions of the treaty, and called upon the United States to end the practice and to review the situation of prisoners currently serving such sentences.

80. Article 37(a) of the United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), ratified by every member state of the United Nations except the United States, explicitly prohibits the imposition of “life imprisonment without the possibility of release ... for offenses committed by persons below 18 years of age.”

81. In Michigan, 363 individuals are serving sentences of mandatory life imprisonment for first degree homicide convictions for offenses they committed when they were below 18 years of age. Defendants do not consider any of them parole-eligible, and none of them has been afforded a meaningful opportunity for parole or release.

82. One hundred and forty-three have served over 25 years. Two hundred and ninety-six have served over 15.

83. None have had an opportunity for parole in the years following this Court's ruling, nor have there been any parole opportunity or resentencing under the legislation since the *Montgomery* decision, over six months ago.

84. Of these youth convicted after *Miller*, 6 of the 11 have received life-without-parole sentences by judges.

85. Of those youth resentenced after *Miller* as on direct appeal, 8 of the 17 received life-without-parole sentences.

PLAINTIFFS' INDIVIDUAL FACTUAL ALLEGATIONS

Henry Hill

86. One evening in 1980, Henry Hill, aged sixteen, went with two of his cousins, Larnell Johnson and Dennis Johnson, to a park in Saginaw, Michigan. There they saw Anthony Thomas, a young man with whom Henry's cousins had prior conflicts. Henry's cousins shot at Anthony Thomas. Henry was reported to have been shooting into the air before he fled the park with his cousin Dennis. His other cousin, Larnell Johnson, remained, shooting and killing Anthony Thomas.

87. At the time of the incident, Henry had been attending Saginaw High School where he had undergone psychological testing and found to have a verbal IQ of 69, a performance IQ of 58, and a full scale IQ of 61. He had a reading word recognition level of 3.6 grade level, a spelling performance at a 3.0 grade level, and an arithmetic ability at 3.3 grade level. The psychologist who conducted the

tests concluded that these results showed signs of a suppressed mental age, and that his general insight and maturity level was that of a pre-adolescent.

88. Henry was charged for his participation in the Anthony Thomas death with aiding and abetting first degree murder. Based on this charge, the juvenile court waived its jurisdiction over Henry and one of his co-defendants, sixteen-year-old, Dennis Johnson. Both stood trial as adults.

89. Following his trial, Henry was convicted by a jury of first degree aiding and abetting murder.

90. Henry's pre-sentence investigation report notes that his intelligence classification was in the mentally defective range with an academic ability at the third grade level. In the examiner's opinion Henry had the maturity of a nine-year-old child and was motivated by instant gratification, and the desire to be accepted and secure.

91. The trial court had no discretion to consider Henry's juvenile status, mental age or maturity. Michigan law required that the trial court charge and punish Henry as if he were an adult and sentence him as such to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board was never given jurisdiction to consider Henry for parole. At no stage in his prosecution was Henry's juvenile status considered and,

following his conviction, he has never been afforded a meaningful opportunity for release based on his demonstrated maturity and rehabilitation.

92. Henry Hill is now fifty-two years old and has served thirty-four years in prison for his actions. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as nonparolable.

93. He works and participates in his bible study group for which he consistently receives excellent reports. Henry has not had a misconduct citation for over a decade and has a custody level II, the lowest possible for his sentence. He is regarded as a model prisoner.

Jemal Tipton

94. In 1987, Jemal Tipton, then aged seventeen, participated in a robbery at the Hunter's Ridge Condominium Complex in Farmington Hills, Michigan with two adults, Nellie McInnis, a forty-six-year-old acquaintance of his mother, and his older brother, Anthony Parks.

95. Nellie McInnis drove Jemal and Anthony to where the robbery took place. She gave Jemal a .22 caliber pistol and identified an acquaintance of hers, Edward Chapman, as the person to rob.

96. Armed with the .22 pistol, Jemal approached Edward Chapman and demanded his valuables. A scuffle ensued and the gun went off twice. One shot struck Edward Chapman, killing him.

97. Jemal had a difficult upbringing in which he was shuttled between family members and friends during his mother's stays in jail or drug treatment facilities before ending up in the care of Nellie McInnis, a family acquaintance with a long criminal history.

98. Under Michigan laws then in force, Jemal was automatically charged as an adult with felony murder. He was tried as an adult, and after trial he was convicted and given the mandatory adult sentence for the offense, life in an adult prison.

99. In sentencing Jemal, the trial court had no discretion to consider his juvenile status.

100. Michigan law required that the trial court punish Jemal as if he were an adult and sentence him as such to the mandatory adult sentence of life imprisonment.

101. Because of the nature of the offense, the Michigan Parole Board never had jurisdiction to consider Jemal for parole. At no stage in his prosecution was his juvenile status considered and he has never been afforded a meaningful

opportunity for release based on this status and his demonstrated maturity and rehabilitation.

102. Since his incarceration, Jemal has taken every opportunity to rehabilitate himself. He obtained his GED and electrician certification. He currently earns three dollars a day doing electrician work detail and mentors younger prisoners, encouraging them to continue their education while in prison. Defendants continue to preclude Jemal from participation in rehabilitation programs based on their consideration of Jemal as nonparolable.

103. Jemal has exhausted all of his post-conviction appellate options.

104. Since his incarceration, Jemal has been given a total of eight misconduct tickets, the last one occurring over twenty years ago. Jemal has now served twenty-eight years in adult prison.

Damion Todd

105. In 1986, Damion Todd was a seventeen-year-old entering his senior year in high school. On a Saturday night in August, Damion and three friends drove to an end of the summer party in Detroit, Michigan. A short while after they had left the party and were driving home, a group of men drove by and shot at them in their car. Convinced that they were from the party, one of Damion's companions suggested they get his gun and look for the men.

106. They drove back to the party where they were again shot at. Damion's friend then gave him a shotgun, and told him to fire back. Damion asserts he intended only to fire at the group that shot at them to scare them. However, a young woman who was at the party, Melody Rucker, was struck and died shortly thereafter.

107. At the time of the incident, Damion was a senior at Henry Ford High School in Detroit. He was captain of his football team and had received Letters of Intent from several Division I AA football schools. Damion had no prior involvement in any juvenile or adult criminal proceedings.

108. Damion had volunteered for two summers with the Detroit Police Cadets, a member of the Police Athletic League sports teams, and he was active in his church choir. He worked part-time in a family restaurant in Southfield, as well as in his family's business.

109. Damion was automatically charged and tried as an adult with assault with intent to kill, first degree murder and felony firearm possession. Damion was subsequently convicted on these charges and sentenced to life on the murder charge, 100 to 200 years on the assault conviction and two years for felony firearm possession.

110. The Michigan Department of Corrections' psychologist's intake report noted that persons with profiles as similar to Damion's "tend to be persons

with very good institutional and post-release adjustment” and that he “could have been dealt with just as efficiently and less expensively through probation in the community,” as “by the time Mr. Todd reaches his early 30’s, he would have matured out of a youthful exuberance and indiscretions which resulted in the needless and tragic death of an innocent female bystander.”

111. Damion’s sentence for the assault with intent to murder was reversed in 1996 as being excessive and an abuse of discretion. He was resentenced to ten to thirty years on this charge. His mandatory life sentence for his conviction under M.C.L. § 750.316, however, remains.

112. The trial court had no discretion to consider Damion’s juvenile status, mental age or maturity. Michigan law required that the trial court charge and punish Damion as if he were an adult and sentence him as such to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Damion for parole. At no stage in his prosecution was Damion’s juvenile status considered, and he has never been afforded a meaningful opportunity for release based on this status and his demonstrated maturity and rehabilitation.

113. Since his incarceration, Damion has obtained certificates in food technology, custodial maintenance, officiating certificates for basketball, volleyball, baseball and Jaycees (a worldwide organization that does humanitarian

acts such as donating toys to children). He is a member of the Prisoners of Christ Church and in 1987 he received his GED. Damion has received only four misconduct tickets in the twenty-four years he has been incarcerated. He acts as a mentor to young prisoners and is considered by prison officials to be a respectful, thoughtful adult who does his job with excellence and with no management problems. Defendants continue to preclude Damion Todd from rehabilitation programs based on their consideration of him as non parolable.

Bobby Hines

114. In 1989, fifteen-year-old Bobby Hines went with nineteen-year-old Christopher Young and sixteen-year-old Derius Woolfolk to confront James Warner about Warner's alleged involvement in the theft of a jacket from a boy in the neighborhood. The boy had reported that James Warner had threatened him and taken his jacket for money owed on a drug deal.

115. When the young men saw Warner, Derius Woolfolk fatally shot him and wounded another man he was with. Bobby, who touched neither the weapon nor the victims, was charged as an adult with felony murder. He was tried and subsequently convicted on this charge and sentenced to life imprisonment.

116. The incident occurred in the summer of 1989 shortly after Bobby had completed his eighth grade education at Brooks Middle School in Detroit, Michigan, where he had regular attendance and average grades.

117. Bobby's co-defendants – Christopher Young, who provided the weapon and sixteen-year-old, Derius Woolfolk, who fatally shot the victim – were both convicted of second degree murder and are serving parolable life sentences.

118. Bobby was automatically charged as an adult under Michigan's post-1988 laws without consideration of his juvenile status, mental maturity or relative culpability. He was tried as an adult and upon conviction the court had to choose between punishing him as an adult or releasing him at age twenty-one.

119. The pre-sentence investigation report set forth an evaluation of and plan for Bobby stating that there was no dispute as to what occurred but that due to the "seriousness of the present offenses this writer feels the services and facilities in the adult program would offer more time and circumstance to rehabilitate this defendant. For these reasons and for the best interest of the public welfare and security, it is recommended this defendant be sentenced to a period of incarceration in an adult facility."

120. The court had no discretion but to sentence Bobby to "a period of incarceration in an adult facility." Michigan law required that the trial court either sentence him as a juvenile to be released at age twenty-one or sentence him as an adult to a mandatory sentence of life. Bobby was sentenced to serve "the rest of [his] natural life to hard labor and solitary confinement." Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Bobby for

parole, and he has never been afforded a meaningful opportunity for release based on his juvenile status and his demonstrated maturity and rehabilitation.

121. Bobby is assigned to the lowest custody level available for his sentence. He has now served twenty-six years in prison on a life sentence. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants consideration of him as nonparolable.

Kevin Boyd

122. In 1994, Kevin Boyd, then aged sixteen, was convicted of first degree premeditated murder for his role in the murder of his father, Kevin Boyd, Sr. by his mother, Lynn Boyd.

123. Kevin's mother and father had been separated for six years on August 5, 1994, when Kevin's mother and her lover asked Kevin to give them the keys to his father's apartment, telling him they were going to kill his father. Kevin gave his mother the keys and did not report his mother's threat to the police. The next day Kevin went to his father's apartment, found him murdered and immediately called the police.

124. Four months later, on October 18, 1994, Kevin's mother confessed to the murder and was arrested. Kevin was also arrested at this time. He was interrogated without counsel or a guardian present.

125. Kevin admitted to having given the keys to his mother knowing that she was planning to murder his father and therefore takes responsibility for his role in the murder. He maintains he did not participate in the actual stabbing incident.

126. Kevin was automatically charged under Michigan's post-1988 laws and tried as an adult without a judicial waiver hearing.

127. By the time of his sentencing Kevin had turned nineteen, giving the court a difficult choice: to sentence Kevin as a juvenile with mandatory release in two years or to sentence him as an adult which would result in a mandatory life sentence.

128. Despite positive reviews for Kevin from supervisors at the juvenile facility where he was detained pending trial and sentencing, opinions that he was nonviolent and unlikely to be a repeat offender and his involvement being based on his youthful desire to please his mother, it was felt that three years would be inadequate for the juvenile system to fully rehabilitate Kevin. Kevin was therefore sentenced to life imprisonment.

129. Kevin appealed and the Michigan Court of Appeals reversed his sentence, finding that the trial court had abused its discretion in sentencing Kevin as an adult, as Kevin was "a model prisoner, an excellent student, amenable to treatment, not a danger to the public and remorseful for his actions." Four months later, with little explanation, the appeals court reversed itself.

130. Michigan law required that Kevin be sentenced to mandatory life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Kevin for parole and he has never been afforded a meaningful opportunity for release based on his juvenile status and his demonstrated maturity and rehabilitation.

131. During his incarceration, Kevin has received his GED, several trade certificates and is considered a model prisoner. Kevin has now served twenty years in adult prison and is a Level II prisoner, the lowest custody level for his sentence. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as nonparolable.

Bosie Smith

132. In 1992, Bosie Smith, then aged sixteen, was involved in the stabbing death of an adult male during a fight.

133. Although the adult male who initiated the fight was eight years older and twice the size of the 103 pound Bosie, the jury rejected Bosie's claim of self-defense and convicted him on the first degree murder charge.

134. Bosie was born with fetal alcohol syndrome. He was abandoned by both his parents and was raised by his maternal grandmother. At the time of his

conviction, he had completed schooling through the eighth grade. Bosie was a member of his school's wrestling team and local church youth group.

135. Bosie was tried as an adult under Michigan's automatic transfer laws. He was charged and tried as an adult without a judicial waiver hearing or any consideration of his juvenile status, mental age or maturity.

136. Both the case evaluator and the judge were troubled by the idea of sentencing Bosie to life imprisonment. Nevertheless, the case evaluator recommended adult sentencing because the only other option was four years in the juvenile system. The trial judge stated that he would sentence Bosie to a term of years if he had that option but that he was bound by the statute, which required a mandatory life sentence.

137. On appeal, the conviction was affirmed but the case was remanded upon a finding that the trial court abused its discretion in sentencing Bosie as an adult. The Court of Appeals ordered Bosie to undergo psychological testing to assist the trial court in its sentencing. However, the Supreme Court reversed the Court of Appeals remand order, finding that there was no clear error or abuse of discretion by the trial court.

138. Michigan law required that the trial court sentence Bosie to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Bosie for parole

and, he has never been afforded a meaningful opportunity for release based on his juvenile status and his demonstrated maturity and rehabilitation.

139. Since his incarceration, Boise has completed his GED and has been involved in numerous prison groups, including Commitment to Change, Career Scope, Second Chance at Life, and Retired Greyhound Prison Program. Boise has also earned certificates pertaining to “Communication Skills,” “Diversity,” “Critical Thinking,” “Prisoner Rape Elimination Act Education,” and “Blood Bourn.” Presently, Boise is in the process of completing training in custodial maintenance, conflict resolution, and substance abuse counseling training.

140. Boise has been imprisoned in an adult facility for twenty-three years and throughout this time has maintained Level II custody, the lowest allowed for his offense. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants consideration of him as nonparolable.

Jennifer Pruitt

141. In 1992, Jennifer Pruitt, then aged sixteen, participated in a plan to rob one of her neighbors in Pontiac, Michigan.

142. Jennifer was a runaway from sexually and physically abusive parents when she committed her crime. She had no prior criminal record.

143. At the time of the robbery, Jennifer was staying with Donnell Miracle, a twenty-three-year-old neighbor. While Miracle initiated the robbery plan, Jennifer was the one who singled out the neighbor, Elmer Heichel, as the person to rob.

144. Elmer Heichel let Jennifer and Miracle into his house at 1:30 a.m. on August 30, 1992. Jennifer went to use the bathroom and then went into the back room to steal the neighbor's wallet. When she came out of the room she witnessed Miracle stabbing Elmer Heichel.

145. Jennifer did not participate in the stabbing. She also reported the incident and her involvement to the police that same day, leading to the subsequent arrest of Miracle.

146. The trial of Jennifer Pruitt was delayed. Jennifer's remorse was so strong that she became self-injurious and was committed to a psychiatric facility where she was deemed incompetent to stand trial for over a year.

147. Under Michigan law, Jennifer was automatically charged as an adult with first degree murder and armed robbery. She was convicted of felony murder and sentenced as an adult based upon the pre-sentence investigation report's assertion that the adult facilities would afford greater opportunities for her rehabilitation. However, the report failed to acknowledge that her rehabilitation

and eventual return to society was impossible because under Michigan law, the court had no discretion to give her any sentence other than life in prison.

148. Given the nature of the offense for which Jennifer was convicted, the Michigan Parole Board did not have jurisdiction to consider her for parole, and she has never been afforded a meaningful opportunity for release based on her juvenile status and her demonstrated maturity and rehabilitation.

149. During Jennifer's initial years in adult prison, she was raped by two male correctional officers. She has also undergone counseling to assist her recovery from post-traumatic stress disorder.

150. Jennifer has now served twenty-two years in prison. In the last ten years, Jennifer completed her GED and all recommended rehabilitation programs offered her. Jennifer has been waived to a Level I security classification, based on her special status as a counselor and mentor. She has been described as an "inmate role model and excellent worker, dependable, honest, sincere and reliable." She has exhausted all prison educational programs and resources available to her and continues to be denied rehabilitative programming due to Defendants' consideration of her as nonparolable.

Matthew Bentley

151. In 1997, Matthew Bentley was a fourteen-year-old ninth grader at Bad Axe High School in Michigan when he decided to break into a house in his neighborhood.

152. Matthew was the youngest child of his mother and father's second marriage, and he was five when his father was incarcerated for sexual abuse of his sister. He was then raised by his mother. Matthew had a difficult time focusing at school, and in grade school he was diagnosed with Attention Deficit Disorder. He was prescribed Ritalin and he took the medication until his mother could no longer afford it. He was an active member of the Boy Scouts, young marines, and his local church. He helped with his brother-in-law's business, swam, wrote poetry, played basketball and babysat his nieces and nephews.

153. Matthew began drinking alcohol at the age of eleven and using marijuana at age thirteen. In 1996, he was prescribed Zoloft for depression and Dexedrine for hyperactivity. His use of drugs and behavior resulted in foster care placement shortly before he committed his offense.

154. On the day of the incident, Matthew left school early and broke into a home he thought was unoccupied. While he was in the house, he found the owner's gun, which he took with him while rummaging through the house for

other valuables. When unexpectedly confronted by the owner of the house, Matthew shot and fatally wounded her before fleeing the scene.

155. Matthew was arrested the same day and, under the newly enacted Michigan law lowering the age for automatic waiver to adult prosecution to fourteen, was charged as an adult with felony murder, home invasion, and felony firearm possession.

156. Tried as an adult, Matthew was convicted of all three offenses and given the mandatory sentence of life imprisonment. The judge stated at his sentencing hearing that if he had a choice he would have given Matthew a term of years which would have afforded him the opportunity for release in fifteen years.

157. In addition to lowering the age for automatic adult prosecution to fourteen, the 1996 laws under which Matthew was charged and sentenced eliminated any discretion to consider Matthew's juvenile status at sentencing. Matthew was charged, tried, convicted and sentenced without any discretion to consider his juvenile status, mental age or maturity. Michigan law required that the trial court punish Matthew as if he were an adult and sentence him to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Matthew for parole.

158. At no stage of his criminal prosecution and sentencing was Matthew's juvenile status considered, and he has never been afforded a meaningful opportunity for release based on this status and his demonstrated maturity and rehabilitation.

159. Since being imprisoned, Matthew has earned his GED and a trade certificate in custodial maintenance. He acts as a mentor and a guardian to incoming young prisoners who are targeted by older sexually predatory inmates.

160. Matthew has now served eighteen years in prison. He is currently a Level II custody level prisoner, the lowest allowed for his offense. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as nonparolable.

Keith Maxey

161. In 2007, Keith Maxey was sixteen when he accompanied two adult acquaintances to meet some men to buy marijuana. Three people were shot during the drug deal, including Keith. Keith and one of his co-defendants were subsequently charged with attempting to rob the drug dealers and in the death of one of them, who later died from his wound.

162. Keith's co-defendant, Tyrell Adams, a twenty-year-old who shot the victims and committed the murder, pled to second degree murder and is serving a

term of years. The second co-defendant Antoine Bailey, who was also a twenty-year-old, was charged and convicted of assault with intent to commit murder and sentenced to fifteen years.

163. Keith, the only juvenile involved in the incident, was automatically charged and tried as an adult and convicted of first degree felony murder.

164. Keith was then sentenced as an adult to a mandatory life sentence.

165. Keith appealed his conviction and sentence but the Court of Appeals affirmed the lower court's order. His application for leave to appeal to the Michigan Supreme Court was denied.

166. The 1996 laws under which Keith was charged and sentenced eliminated any discretion to consider Keith's juvenile status at sentencing. Keith was charged, tried, convicted and sentenced without any consideration of his juvenile status, mental age or maturity. Michigan law required that the trial court punish Keith as if he were an adult and sentence him to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Keith for parole, and he has never been afforded a meaningful opportunity for release based on his juvenile status and his demonstrated maturity and rehabilitation.

167. Keith has been imprisoned for eight years. During this time he has not received any misconduct citations, is taking classes to complete his GED and is

classified to the lowest security level allowed for his offense. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as nonparolable.

Giovanni Casper

168. In 2006, Giovanni Casper was in the tenth grade and had just turned seventeen when he attended a social event at a local roller rink with his friends. A fight broke out at the roller rink, between Giovanni and his friends and another group of teenagers, which was broken up by employees at the roller rink. Another fight began when Kenneth Dear approached Giovanni and began swinging punches.

169. The testimony at trial was that Giovanni was standing in front of Kenneth Dear at the roller rink when Dear suffered a single and fatal gunshot wound to the chest. The prosecution argued that although no one saw a gun in Giovanni's hand his proximity to Mr. Dear and the testimony of prior bad blood between the two teens was sufficient to sustain a conviction.

170. Giovanni was automatically charged and tried as an adult and convicted of first-degree pre-meditated homicide.

171. Giovanni was sentenced as an adult to a mandatory life sentence.

172. Giovanni maintains his innocence and appealed his conviction to the Michigan Court of Appeals which affirmed his sentence in 2009. His application for leave to appeal to the Michigan Supreme Court was denied.

173. The laws under which Giovanni was charged and sentenced eliminated any discretion to consider his juvenile status at sentencing. Giovanni was charged, tried, convicted and sentenced without any consideration of his juvenile status, mental age or maturity. Michigan law required that the trial court punish Giovanni as if he were an adult and sentence him to the mandatory adult sentence of life imprisonment. Because of the nature of the offense, the Michigan Parole Board had no jurisdiction to consider Giovanni for parole, and he has never been afforded a meaningful opportunity for release based on his juvenile status and his demonstrated maturity and rehabilitation.

174. Giovanni has been imprisoned for nine years. During this time he has completed his GED and is classified to the lowest security level allowed for his offense. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as nonparolable.

Jean Carlos Cintron

175. Jean Carlos Cintron was sixteen years old in 2008 when he went with his older brother and two of his brother's friends to the house of Laval Crawford, a man alleged to have beaten and robbed Jean at gun point earlier in the day.

176. Laval Crawford and a group of his friends returned to the home armed with guns. Jean, with his brother and two co-defendants, ran out of the house, shooting their guns. Jean's co-defendant Diego Galvan was convicted of fatally shooting Laval Crawford and sentenced to life for first-degree premeditated murder. Jean's older brother was also convicted of first-degree murder and sentenced to life.

177. Jean, the only juvenile involved in the incident, was automatically charged as if he were an adult with felony murder. He was tried as an adult, without any consideration of his juvenile status, and convicted of felony murder and received the mandatory punishment of life without parole.

178. Prior to this offense, Jean was an 11th grade student, in excellent standing, at Pontiac Central High School, with no prior juvenile, misdemeanor or felony offenses.

179. At no stage of his criminal proceeding was Jean's juvenile status considered, and he has never been afforded a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

180. Jean has already earned his GED and is currently a level II custody prisoner, the lowest level allowed for his offense. He has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants consideration of him as nonparolable.

Nicole Dupure

181. In 2004, Nicole was seventeen when her older boyfriend, William Blevins, was charged with robbery and murder of an elderly woman, Shirley Perry, in Macomb County, Michigan.

182. Initially, William Blevins admitted that he had acted alone in stabbing Shirley Perry but later, in exchange for a plea to second degree homicide, Blevins testified that Nicole aided and abetted the robbery and homicide William Blevins, the individual who actually committed the murder, is eligible for release in 2024.

183. Nicole Dupure was charged as an adult and convicted of first degree homicide under alternate theories of felony murder and first degree premeditated murder. She was given the mandatory sentence for an adult, life without possibility of parole, and incarcerated in an adult prison.

184. Nicole Dupure had no prior contact with the criminal justice system, juvenile record or misdemeanors.

185. At no stage of her criminal prosecution and sentencing was Nicole's juvenile status considered, and she has never been afforded a meaningful

opportunity for release based on this status and her demonstrated maturity and rehabilitation.

186. Since her imprisonment, Nicole has participated in all programs available to her and she has maintained an excellent work record.

187. The Court of Appeals affirmed Nicole's first degree conviction and dismissed her second degree conviction.

188. Nicole is currently a Level II custody level prisoner, the lowest allowed for her offense. She has exhausted all prison educational programs and resources available to him and continues to be denied rehabilitative programming due to Defendants' consideration of him as non-parolable.

Dontez Tillman

189. In 2008, Dontez Tillman was a fourteen year old middle school student who had just finished the seventh grade when he was arrested and charged as an adult with felony murder in Oakland County, Michigan.

190. Dontez was subsequently convicted of felony murder for his role in the beating of a homeless man, Wilford Hamilton, who died four days later as a result of his injuries.

191. Dontez, at fourteen years old, was charged as if he were an adult, tried and convicted at the age of fifteen. Dontez was then punished with a mandatory life-without-parole sentence to be served in an adult prison.

192. Dontez' co-defendants included Darrin Higgins, a 15 year old who was charged with the beating deaths of two men. Darrin pled to two charges of second degree murder and received a term-of-years sentence.

193. Another of Dontez' co-defendants, Thomas McCloud, who, like Dontez, was also fourteen years old, was charged, tried, convicted as if he were an adult and sentenced to life-without- possibility of parole.

194. Following the Supreme Court's decision in *Miller v. Alabama*, Dontez was resentenced to 32.5 to 60 years in prison by a judge. Under the statutory scheme then in place, there was no requirement that the resentencing court consider as mitigating factors Dontez's age and its attendant characteristics. Nor is there any requirement that the Michigan Parole Board consider these factors, or Dontez subsequent growth and maturation when the Board considers him for release on parole. Dontez will never be afforded a meaningful opportunity for release based on his age at the time he committed his offense, or demonstrated maturity and rehabilitation.

195. Since his imprisonment, Dontez has been denied participation in recommended substance abuse programming and has not been provided violence prevention programming. Dontez recently completed his GED.

196. Dontez currently is a Level II custody level prisoner, the lowest allowed for his offense.

CLASS ALLEGATIONS

197. Plaintiffs seek relief on behalf of themselves and all others similarly situated, namely all current individuals in Defendants' custody who received a life sentence for a first-degree homicide offense committed by them when they were below 18 years of age.

198. After this Court granted summary judgment in Plaintiffs' favor on the claims in Plaintiffs' First Amended Complaint, Defendants refused to recognize that the Court's order applied to anyone other than the named plaintiffs.

199. Therefore, it is necessary and appropriate to certify this case as a class action under the Federal Rules of Procedure, Rule 23(b)(2). Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Plaintiffs seek class certification to ensure that this Court's declaratory and injunctive orders will cover all individuals who are subject to Defendants' continuing refusal to comply with *Graham*, *Miller*, *Montgomery*, and other related constitutional requirements pertaining to the punishment of persons who commit offenses when they are below 18 years of age.

200. The class is so numerous that joinder of all members is impracticable. There are over 360 individuals in Defendants' custody serving life sentences for offenses committed when they were below 18 years of age.

201. There are questions of law or fact common to the class. All class members are individuals in Defendants' custody for first-degree homicide offenses committed when they were below 18 years of age, and the question of law common to the class is whether they are being denied a meaningful opportunity for release based on their demonstrated maturity and rehabilitation.

202. Plaintiffs' claims are typical of the claims of the class. Plaintiffs' claims arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and their claims are all based on the same legal theories.

203. Plaintiffs will fairly and adequately assert and protect the interests of the class. Plaintiffs have common interests with the other class members, and are not antagonistic to the interests of other class members. Additionally, the attorneys for Plaintiffs are experienced and capable litigators in the field of civil and human rights, including litigation on behalf of incarcerated individuals and in class actions.

CAUSES OF ACTION
42 U.S.C. § 1983

FIRST CAUSE OF ACTION
(CRUEL & UNUSUAL PUNISHMENT AND DUE PROCESS)

204. M.C.L. § 791.234(6), as it continues to be enforced, violates Plaintiffs' rights under the Eighth and Fourteenth Amendments, because it deprives

Plaintiffs punished with a mandatory sentence of life imprisonment to a meaningful opportunity to obtain release based on their demonstrated maturity and rehabilitation.

**SECOND CAUSE OF ACTION
(CRUEL & UNUSUAL PUNISHMENT)**

205. M.C.L. §§ 750.316, 769.25, 769.25a and 791.234 violate the Eighth Amendment, because they subject Plaintiffs to sentences of life imprisonment without the possibility of release on parole for offenses committed by them when they were below 18 years of age.

**THIRD CAUSE OF ACTION
(EX POST FACTO)**

206. At the time of Plaintiffs' offenses, the mandatory and maximum sentence for first-degree murder under M.C.L. § 750.316 was life imprisonment.

207. For individuals convicted of second-degree murder under M.C.L. § 750.317, the maximum sentence is also life imprisonment.

208. When Plaintiffs were convicted, Plaintiffs' eligibility for release on parole while serving their life sentences was determined by M.C.L. § 791.234, which authorizes the Michigan Parole Board to exercise jurisdiction over individuals serving life sentences who were convicted of second-degree murder but prohibits the Board from considering for release on parole individuals serving life sentences for first-degree murder.

209. Because M.C.L. § 791.234 is a provision of the Michigan corrections code and a component of the judgment of sentence, the legislature was and is free to enlarge the Parole Board's jurisdiction to include prisoners serving life sentences for convictions under M.C.L. § 750.316, just as it has jurisdiction over prisoners serving life sentences for convictions under M.C.L. § 750.317.

210. Following the Supreme Court's ruling in *Miller v. Alabama*, the legislature amended M.C.L. § 750.316 and enacted M.C.L. §§ 769.25 and 769.25a, which changed the maximum sentence for first degree murder from life imprisonment to life imprisonment without the possibility of parole for persons who committed their offenses when they were below 18 years of age.

211. The life-without-parole punishment of M.C.L. §§ 750.316, 769.25 and 769.25a, as applied only to Plaintiffs, and others below 18 years of age at the time they committed their offenses, violates the Ex Post Facto Clause of Article I, § 10, of the United States Constitution because it subjects Plaintiffs to a harsher sentence than the law in effect at the time of their offense and original sentencing and imposes this sentence only on Plaintiffs and those similarly situated.

**FOURTH CAUSE OF ACTION
(CRUEL & UNUSUAL PUNISHMENT AND DUE PROCESS)**

212. Under the Eighth Amendment, a mandatory punishment of life in prison without the possibility of release on parole is cruel and unusual punishment

when imposed for an offense committed by persons when they were below 18 years of age.

213. For children who face a punishment of imprisonment for the rest of their lives, the Eighth Amendment and Due Process Clause requires that opportunities to obtain release be meaningful.

214. Under M.C.L. §§ 750.316, 769.25 and 769.25a, Plaintiffs face a mandatory term of imprisonment that is the equivalent of life imprisonment. If Plaintiffs are not sentenced to life without the possibility of parole, they must be sentenced to a term of years that requires their imprisonment for up to a minimum of 60 years. A 60 year sentence substantially exceeds their life expectancy in prison.

215. Under M.C.L. §§ 791.231 through 791.246, Plaintiffs who are subject to a prison term of no less than a 60-year maximum sentence are not guaranteed a meaningful opportunity for release on parole before the end of their natural lives due to Defendants' policies and procedures governing access to prison programming and parole eligibility, consideration and release.

216. This statutory scheme violates Plaintiffs' rights under the Eighth and Fourteenth Amendments.

**FIFTH CAUSE OF ACTION
(EX POST FACTO)**

217. Until 1987, Michigan allowed reduction of sentences for those prisoners who served “good-time” without misconducts or accumulated disciplinary credits. Prisoners could earn from 5-15 days per month off their minimum sentences and could also reduce their maximum sentence. M.C.L. § 800.33.

218. Over 75 individuals serving life sentences have accumulated good-time and/or disciplinary credits.

219. In *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Supreme Court confirmed that Plaintiffs’ life sentences were void *ab initio*.

220. Under M.C.L. §§ 769.25 and 769.25a, Plaintiffs are now subject to term-of-years sentences to replace their void life sentences.

221. However, M.C.L. § 769.25a(6) deprives Plaintiffs of any good-time or disciplinary credit on time already served.

222. M.C.L. § 769.25a(6), as applied to Plaintiffs, violates the Ex Post Facto Clause of Article I, § 10, of the United States Constitution because it subjects Plaintiffs to a harsher punishment than the law in effect at the time of their offense and original sentencing.

**SIXTH CAUSE OF ACTION
(EIGHTH AMENDMENT AGAINST DEFENDANTS WASHINGTON &
EAGEN)**

223. In 2013, this Court declared that all individuals convicted and punished to mandatory sentences of life-without-possibility of parole for crimes committed when they were below 18 years of age to be serving parolable life sentences.

224. The Eighth Amendment and Due Process Clause require that any person below 18 years of age who is convicted of a homicide offense that does not reflect irreparable corruption must receive a fair and meaningful opportunity for release, including a right to educational and other rehabilitative programming, necessary for them to demonstrate growth, maturity, and suitability for release.

225. Defendants Washington and Eagen have continued to treat Plaintiffs as if they were serving nonparolable life sentences, and have and continue to deprive Plaintiffs of any meaningful opportunities for release.

226. Defendants Washington has refused and failed to provide programming, education, training and rehabilitation opportunities necessary for Plaintiffs to demonstrate their suitability for release.

227. Defendants have continued to deny Plaintiffs parole opportunities by invoking M.C.L. § 791.234, despite this statute having been declared unconstitutional. Therefore, Defendants have deprived Plaintiffs of meaningful

opportunities to obtain release based on their demonstrated growth, maturity and rehabilitation.

228. Defendants continued refusal to provide Plaintiffs rehabilitative programming and consequent meaningful opportunities to obtain release on parole has resulted in Plaintiffs' loss of liberty, extended their incarceration, causing them physical injuries and severe emotional distress.

229. Defendants' failure to provide Plaintiffs with access to the programming, education, training, rehabilitation opportunities violates Plaintiffs' rights under the Eighth and Fourteenth Amendments.

**SEVENTH CAUSE OF ACTION
(CUSTOMARY INTERNATIONAL LAW)**

230. By subjecting Plaintiffs to life in prison without a meaningful opportunity for release based on their juvenile status and their demonstrated maturity and rehabilitation, Defendants are punishing Plaintiffs with no legitimate penological justification, and as such subjecting them to cruel, inhuman or degrading treatment or punishment in violation of customary international law as reflected, *inter alia*, in the Universal Declaration on Human Rights, the ICCPR and the U.N. Convention on the Rights of the Child, which extend special measures of protection to children, prohibit life imprisonment without the possibility of release for offenses committed by persons below eighteen years of age, and condemn the practice as a form of cruel, inhuman or degrading treatment or punishment.

231. Defendants' violations of customary international law are actionable pursuant to 42 U.S.C. § 1983 in that customary international law has been held, since the Constitution's adoption, to be part of the laws of the United States.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for a judgment against Defendants and request that this Court:

- a. issue a declaratory judgment declaring that the continued incarceration of Plaintiffs without affording them a meaningful opportunity to obtain release based on their child status at the time they committed their offenses and demonstrated maturity and rehabilitation, violates Plaintiffs' rights guaranteed by the United States Constitution, statutory law, and customary international law;
- b. issue a declaratory judgment that M.C.L. §§ 750.316, 769.25, 769.25a, and 791.234, as applied to Plaintiffs, violates the United States Constitution's Ex Post Facto Clause and its Eighth and Fourteenth Amendments and customary international law;
- c. grant injunctive relief ordering Defendants to provide Plaintiffs with a meaningful opportunity to obtain release;

d. retain jurisdiction over this action until the Court is satisfied that the unlawful laws, policies, practices, rules, acts and omissions complained of have been satisfactorily rectified;

e. Award damages to Plaintiffs and members of the class caused by Defendants' unconstitutional actions including loss of liberty, denial of opportunities for release, continued incarceration, failure to provide meaningful parole opportunities, denial of rehabilitative programming, and infliction of severe emotional distress, including punitive damages where applicable.

f. award Plaintiffs attorney fees and costs; and

g. award such other and further relief as seems just and proper.

DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs by and through their counsel and hereby demand a trial by jury as to all those issues so triable as of right.

Respectfully submitted,

Dated: June 20, 2016

/s/ Deborah LaBelle

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via U.S. Mail to all non-ECF participants.

/s/ Deborah LaBelle
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