

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HENRY HILL, et al.,

Plaintiffs,

vs.

GRETCHEN WHITMER, et al.,

Defendants

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Case No. 10-cv-14568

Hon. Mark A. Goldsmith

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**CLASS SETTLEMENT**  
**AGREEMENT**

**CLASS ACTION SETTLEMENT AGREEMENT**

**I.**

**RECITALS**

The Parties have engaged in extensive settlement negotiations that were conducted in good faith and at arm's length to resolve Counts VI (due process programming) and VIII (delay in resentencing). Through these settlement negotiations, the Parties have reached a settlement agreement that they believe to be fair, adequate and reasonable, and in the best interests of the Parties, which are the named Plaintiffs and the Members of the Class (defined as those class members awaiting resentencing), and the Defendants. A list of the affected Class Members is attached as Exhibit 1. This Settlement Agreement memorializes the terms of the final settlement between the Parties at the conclusion of the settlement negotiations.

Pursuant to the terms set forth below, and based on the Parties' belief that settlement is in their best interests and the interest of the Class, the Plaintiffs and the Defendants enter into this Settlement Agreement to bring about a full, complete, and final resolution of all claims which are raised in this Class Action.

This Settlement Agreement, upon execution, binds the State of Michigan, the Michigan Department of Corrections, the Michigan Parole Board, Attorney General, and Class Representatives and all Members of the Class.

## II.

### SCOPE OF SETTLEMENT

**Final Order.** As used in this Settlement Agreement, “Final Order” means the date on which the Court enters a final order approving this Settlement Agreement (“Order”) following the fairness hearing. The Settlement in this matter consists solely of equitable relief as to Counts VI and VIII (the remaining Counts in this litigation) and attorney fees and costs as set forth below.

All other Counts, including Count V, have been previously resolved by judicial rulings or voluntary dismissal. Plaintiffs’ counsel will continue to monitor compliance with the final judgment as to Count V until all class members who committed their offenses before December 15, 1998 are resentenced and good-time and disciplinary credits which they are entitled to by the judgment of this Court have been properly awarded.

## III.

### SETTLEMENT TERMS

This agreement is a proposed settlement subject to notice to the class and approval by the Court in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. The obligations and timelines enumerated in this agreement shall commence upon entry by the Court of an order approving the settlement following a fairness hearing in this matter.

This Agreement is contingent upon the Court approving the agreement on the record, the satisfaction of notice and a fairness hearing for the class, and expressly retaining jurisdiction to enforce the agreement as part of any order that otherwise dismisses Counts VI and VIII.

This agreement is a proposed settlement subject to notice to the class and approval by the Court in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. In light of the class members being readily identifiable, and the value of expediency in this matter, the parties agree to propose that notice of the terms of this proposed settlement shall be provided within 7 days of the Court's preliminary approval, that the class shall have 14 days to file objections, if any, and that a fairness hearing shall be scheduled within 14 days of the objection deadline. The obligations and timelines enumerated in this agreement shall commence upon entry by the Court of an order approving the settlement following a fairness hearing in this matter.

**A. COUNT VI**

Within 21 days of entry of this agreement, the Michigan Department of Corrections ("MDOC") Program Centralization Unit will complete a file review and propose programming recommendations for all class members who have not yet been resentenced. The Michigan Parole Board shall then review the proposed recommendations and either accept, modify, or waive the recommendation(s). The

Board's review will be completed within 21 days of receiving the recommendations from the Program Centralization Unit. The Program Centralization Unit will enter the final recommendations into OMNI. A copy of the CSX-175 form will be provided to Plaintiff class members and counsel for Plaintiff class members.

For class members who have not yet been resentenced, an artificial Earliest Release Date ("ERD") of 25 years will be calculated on their life-without-parole sentence. The MDOC Program Centralization Unit will arrange for these class members to be placed in programming or on the waitlist for any recommended programming based on their artificial ERD as soon as possible after the Unit has entered final recommendations into OMNI.

Once a class member has been resentenced, their placement on the programming waitlist will be automatically adjusted based on their actual ERD, if any.

This Agreement is contingent upon the court approving the agreement on the record, the satisfaction of notice and a fairness hearing for the class, and expressly retaining jurisdiction to enforce the agreement as part of any order that otherwise dismisses Count VI.

Additionally, the parties stipulate to the following:

Defendants having filed a motion for reconsideration of this Court's opinion and order on Defendants' motion for summary judgment, it is hereby agreed and stipulated that the parties' settlement agreement as to Count VI under the terms set forth above is contingent upon entry of the following stipulated order resolving the motion for reconsideration:

The parties do not dispute that:

1. to date, only a small minority of class members have been denied parole release at their first review;
2. Michigan Parole Board policies have allowed the Board to deny parole based in part upon a failure of a prisoner to have completed recommended programming;
3. Board policies have allowed the Board to:
  - a. waive a prisoner's failure to complete recommended programming to grant them parole,
  - b. defer parole to allow a prisoner to complete recommended programming, or
  - c. require a prisoner to complete additional programming as a condition of granting them parole.

The Court denied Defendants' motion for summary judgment because the Court found that there remain material facts in dispute as to whether MDOC's policies and procedures related to programming opportunities for class members have an impact on parole decisions in such a manner that the class-members could

prevail on their claim that the denial of programming impacts their right to a meaningful and realistic opportunity to obtain their release on parole.

The Court's denial of Defendants' motion for summary judgment was based on the fact that Defendants' motion was a Rule 56 motion and the Court having determined that there were material facts being disputed by the parties. Any findings and legal conclusions in the opinion denying Defendant's motion for summary judgment are limited to the parties before this Court and based on the record presented.

**B. COUNT VIII**

Attorney General Nessel understands the class members' due process concerns related to the delay in their resentencings, and consequently their opportunities for release, and the impact that preparation for the hearings and the hearings themselves have on the prosecutors' resources.

Therefore, to resolve Count VIII of Plaintiffs' Fourth Amended Complaint, and to ensure the completion of the outstanding resentencing hearings for the class as expeditiously as possible in light of the above realities, the Attorney General agrees to send written communications to all elected county prosecutors in each county where class members' resentencing hearings have not been completed within 10 days of the court's final approval of this agreement advising them of the



terms of this agreement. The Attorney General shall provide a copy of the communications to Plaintiffs' counsel when they are sent.

The Attorney General's communications to prosecutors shall include the following:

1. The Attorney General shall request that, within 90 days, prosecutors complete a new review of the cases of those class members who have not been resentenced in their jurisdiction and determine whether they intend to seek to reimpose a life-without-parole sentence on any such class member, or whether they will withdraw their motion seeking to reimpose that sentence.
2. At the completion of the review, prosecutors shall notify the sentencing court and the Attorney General of their decisions and shall advise the sentencing court that, subject to the court's capacity to schedule hearings and defense counsel preparedness or waiver, the prosecution is ready to proceed with the resentencings as follows:
  - a. Within 60 days for all cases where the offense was committed before December 15, 1998;
  - b. Within 120 days in all other cases.

Nothing in this agreement shall be construed to conflict with the requirements of MCL 769.25a(5).

4. An offer to provide staffing and other resources will be made from the Department of the Attorney General to counties that need and request assistance in preparing the cases to meet these deadlines.
5. An offer will be made from the Attorney General to intervene and complete a case upon request of the prosecuting attorney.

This agreement is not intended to, and shall not, usurp or supplant a prosecutor's authority to pursue any sentence that they believe is supported by the facts and the law or interfere in the criminal sentencing procedure in state court.

Plaintiffs' enforcement of this agreement as to the Defendant Attorney General shall be limited to the explicit terms of the actions committed to be taken in this settlement agreement by the Attorney General. A class member may not use this agreement to challenge a prosecutor's decisions regarding individual criminal prosecutions.

As consideration for the terms enumerated above, Plaintiffs agree to dismiss Count VIII with prejudice and waive recovery of attorneys' fees and costs as to Count VIII.

This agreement is contingent upon the Court approving the agreement on the record following the satisfaction of notice and a fairness hearing for the class, and upon the Court expressly retaining jurisdiction to enforce the agreement as part of any order that otherwise dismisses Count VIII.

**C. ATTORNEY FEES**

The Michigan Department of Corrections shall pay to Plaintiffs' counsel the negotiated sum of \$800,000 for attorney fees and costs attributable to Counts V and VI. Plaintiffs' counsel waives any right to future fees arising from obtaining approval by the Court and the class members as well as for monitoring and compliance of the terms of this agreement. The Legislature passed Mich. Comp. Laws §§ 769.25 and 769.25a and the Michigan Department of Corrections implemented the statute until it was recognized as unconstitutional in *Hill v. Snyder*, 308 F. Supp. 3d 893 (E.D. Mich. 2018), *aff'd*, 900 F.3d 260 (6th Cir. 2018). Settlement of the attorney fees and costs and Count VI is not an admission of liability or wrongdoing by the MDOC.

Plaintiffs' requested attorney fees and costs in this matter exceeding \$1.3 million over a ten-year period. The parties have agreed to a settlement of all fees and costs past and future in the amount of \$800,000.00, with the exception of any fees and costs resulting from any non-compliance with the terms of this agreement and court orders.

**IV.**

**NOTICE OF CLASS ACTION SETTLEMENT**

The parties agree to provide a Notice of Class Action Settlement to all affected Members of the Class. The content of the Notice, manner of submission

of the notice, time for submission and manner of objection and the date of the Fairness Hearing are as follows:

1. The Defendant MDOC will provide hand delivered copies of the Notice and this Settlement Agreement to all individual class members listed in Exhibit 1.
2. The Notice will be delivered by October 7<sup>th</sup>, 2020, and Defendant MDOC shall certify to the Court the delivery by October 9<sup>th</sup>, 2020.
3. The Notice advises all class members that objections, if any, must be made in writing and submitted via JPay to lead class counsel within fourteen (14) days of receipt of Notice and this Agreement. Class counsel shall provide copies of all objections received to the Court and Defendant's counsel seven (7) days prior the scheduled Fairness Hearing.
4. A Fairness Hearing shall be scheduled by Zoom on October \_\_\_\_, 2020, and Defendant MDOC will facilitate the participation by designated class representatives and any objectors.
5. Should this Court find the Settlement to be fair and reasonable, a final order of approval shall be entered at the Fairness Hearing.

V.

**NULLIFICATION, SUSPENSION, or TERMINATION OF THE SETTLEMENT AGREEMENT**

In the event that: (i) the Court does not approve the Settlement Agreement as presented; (ii) the Court does not enter a dismissal order incorporating the Parties' agreed terms and expressly retaining jurisdiction to enforce them; or (iii) the Settlement does not become final for any other reason, the Settlement Agreement shall be null and void and the Class Action shall be fully reinstated. The Parties agree that prior to terminating the Settlement Agreement on the grounds set forth above, the issues causing termination will (where applicable) first be submitted to facilitation for attempted resolution.

## VI.

### ADDITIONAL TERMS

#### 1. Exclusive Agreement

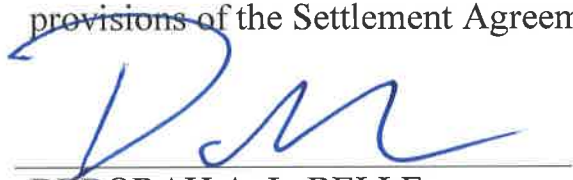
The attached exhibits are incorporated by reference into this document and shall together compromise a full and exclusive agreement of the Parties with respect to the matters discussed herein.

There have been and are no representations or inducements to compromise these actions other than those recited or referenced in this Settlement Agreement.

#### 2. Exclusive Enforcement

Nothing in this Settlement Agreement is expressly or impliedly intended to confer any rights upon any person other than the Parties hereto. The right to seek judicial enforcement of this Settlement Agreement is vested exclusively in the

Parties. Enforcement of this Settlement Agreement is governed by the applicable laws and federal court rules. The Parties further agree that this Court has full authority to enforce the terms and conditions of this Settlement Agreement and may issue any orders of compliance, costs, or fees related to the enforcement of the provisions of the Settlement Agreement.



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American Civil Liberties Union  
Fund of Michigan

Steven M. Watt  
Brandon J. Buskey  
American Civil Liberties Union  
Foundation

Dated: September 28, 2020



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SCOTT A. MERTENS (P60069)  
SARA E. TRUDGEON (P82155)  
Michigan Dep't of Attorney  
General  
Assistant Attorney General  
Counsel for Defendants

Dated: September 28, 2020

# EXHIBIT 1

## LIST OF CLASS MEMBERS

128535	COOK ROBERT CHARLES	Oakland
137278	MORTON ROBERT	Wayne
138245	COTTINGHAM KEVIN	Oakland
149597	CARTER KENNETH RAY	Wayne
162243	GARRETT ALBERT LEE	Wayne
165773	ANDERSON MICHAEL	Muskegon
166007	DUKES ROBERT LOUIS	Muskegon
166420	DAVIS DONNIE JAY	St. Joseph
167106	DANIEL CHARLES EDWARD	Wayne
168548	TOLBERT RONALD	Wayne
168550	JACKSON FONZA DAVID	Wayne
168552	WILLIAMS RONNIE LYNN	Wayne
169924	POWELL CHRISTOPHER	Oakland
170935	PORTER DAREN	Wayne
171785	PORTER JAMES DEWEY IV	St. Clair
175566	RICHEY SHANE PATRICK	Genesee
179552	PORTER CHARLES DENNIS JR	Jackson
182117	RATA SCOTT ANDREW	Macomb
182264	TOLLIVER DEXTER	Saginaw
182685	BRYANT WILLIAM	Wayne
186487	ANDERSON KENNETH	Wayne
189283	MORRIS TERRY	Genesee
190782	BENJAMIN WILLIE	Wayne
192009	BANKS MELVIN	Wayne
194057	BLACK DONYELLE MICHAEL	Oakland
195160	PATTERSON MICHAEL EARL	Kent
198334	TAYLOR JAMES BOISE	Oakland
201545	GILL CLIFTON	Wayne
201721	MARTIN JONATHAN DAVID	Oakland
201907	JEWELL HENRY DUANE	Muskegon
203116	PAREDES EFRAN JR	Berrien
203782	EDWARDS MICHAEL	Genesee
207286	JACKSON JOHN HENRY	Genesee
208079	CALLOWAY ANDRE M	Wayne
208373	JOHNSON JAMAR DAMON	Oakland
208665	PASSENSO JOSEPH ANDREW	Oakland
208666	MICHAELS BRUCE CHRISTOPHER	Oakland
209814	BONELLI ANTHONY J	Oakland
209927	HARRIS SHAWN	Wayne
211451	ALLORE JERRY ALVIN JR	Saginaw
211512	GRAY PATRICK JAY	Kalamazoo
214984	MILLER KISHAN	Wayne
217778	BLACK AMY LEE	Muskegon
217934	WATERFORD VICTOR LAMAR	Wayne
221171	BASSETT THOMAS	Wayne
221288	BAKER DARYLE	Kalamazoo
225054	JENNINGS ERVIN LEE	Wayne



## LIST OF CLASS MEMBERS

225614	ANDERSON ROBERT D	Oakland
232703	GERMAN ROBERT L	Oakland
233439	HAYNES DEON LATROY	Saginaw
233924	WALKER WILLIAM RAY	Wayne
234311	SHARP JENARD EDWARD	Wayne
234427	NEILLY WILLIAM EDWARD	Kalamazoo
235019	POLK VICTOR LEE	Genesee
235021	ADAMS STANLEY JAMES	Genesee
236302	JOHNSON SHAVANTE	Wayne
236305	CHEEKS CLINTON	Wayne
237761	PAYNE ANTONIO DUANE	Macomb
238588	LAUNSBURRY STEPHEN N	Kent
239339	WESLEY TAVARES	Wayne
240464	SCOTT MICHAEL	Wayne
240689	DEBARDELABEN WILLIE	Saginaw
243169	SYMONDS JASON BENJAMIN	Calhoun
244473	FUSON JAMES DEAN	Wayne
244601	HO MING C	Oakland
246866	BURDIS DOMINIC PAUL	Bay
247926	SWORD SEAN	Oakland
249210	PEREZ JUAN J	Oakland
250616	GRANDION BRIAN L	Oakland
250980	CARTER PAUL	Kent
251228	MARTIN BENSON L	Oakland
251329	PATTON WILLIS L	Oakland
252358	QUALLS YUSEF	Wayne
252622	MITCHELL CHRISTOPHER B	Saginaw
252806	WYRICK DEVON LEE	Kalamazoo
253728	MELFI DAVID MICHAEL	Genesee
256195	MARTIN ALLAN GENE-REEDER JR	Berrien
257297	MATTHEWS EDWARD M	Oakland
258660	POWELL SHANNON L	Wayne
259094	GIVENS ANTHONY JOVAN	Berrien
260107	BELL NATHAN GREGORY	Genesee
260160	WILLIAMS SHYTOUR TONRAY	Saginaw
260818	TREMBLE TJ JAMES	Arenac
260916	ABBATOY MARK ANTHONY	Berrien
261275	CRUZ FEDERICO LUIS	Kent
261367	JOHNSON DARNELL DEVON	Cass
265168	POWELL TIEREE T	Oakland
265390	WILSON ROBERT	Muskegon
266511	REYES TYRONE LEE	Genesee
270103	MCCRADY TERRENCE LEE	Genesee
270321	SHUMAN DOUGLAS S	St. Joseph
270825	HAYWOOD LONNELL V	Wayne
270992	MARTINEZ ANTHONY	Wayne
274787	WHITTINGTON ELLIOT LASHON	Saginaw

## LIST OF CLASS MEMBERS

277651	WALKER JEROME	Wayne
278182	ESPIE JOHN RONALD	Shiawassee
279609	JACKSON DAMON ANDREW	Kent
283097	PETTY GREGORY	Wayne
283528	WEBB OLIVER IV	Saginaw
288794	GONZALEZ DANIEL JESSE	Saginaw
293586	HYNES CHRISTOPHER W	Clinton
294293	HAYWOOD LAMAR A	Wayne
297874	HALL CHAVEZ	Calhoun
302122	MCLEMORE PATRICK JAMES	Genesee
304730	OSBORNE MARC ANTHONY	Kent
308045	LOGAN AKIL L	Oakland
313560	COPELAND CORNELIUS C	Oakland
316482	GONZALEZ MARK AARON	Genesee
316846	BURNS RECHO	Wayne
320502	PRINCE ROBERT SAMPSON	Macomb
324495	TILLMAN TRAVIS	Wayne
370249	ROBINSON KEVIN	Muskegon
372355	WILLIAMS LEON	Wayne
375597	WALKER MARLON DEWAYNE	Muskegon
384572	CHAPMAN ANTHONY JOSEPH	Montcalm
403858	DAVIS JAJUAN L	Oakland
409968	WILLIAMS FREDERICK	Wayne
410196	HINDS ROBERT T	Wayne
424363	POWELL CORDELL	Wayne
459953	KIRKSEY MICHAEL LANCE	Oakland
468515	RODGERS EARL	Wayne
485040	SIESLING JON DONALD	Kent
487692	BURNS-PERRY BRANDON JUSTIN	Oakland
492717	COLLIER LARKETA	Wayne
503492	SWANIGAN JARRETT WADE	Wayne
516680	FIELDS ANTHONY	Wayne
594095	HILLS MICHAEL REID	St. Clair
595067	JACKSON CHRISTOPHER EUGENE	Oakland
599905	DUPURE NICOLE ANN	Macomb
615809	HERNANDEZ LOUIS FERNANDO	Wayne
618518	GILBERT NATHANIEL TYRONE	Macomb
623369	CARP RAYMOND CURTIS	St. Clair
625984	NICHOLS ADRIAN WENDELL	Oakland
650315	MOORE MARK DEKHAIRA	Wayne
652228	WALKER JERRY O'KEITH	Genesee
656895	MCCONNELL ANGELA RENEE	Kalamazoo
659241	WOOLFOLK DEANDRE MARTEZ	Wayne
660230	BLACKSHERE JUSTIN CHRISTOPHER	Wayne
665309	HAWKINS DEANTE	Wayne
685577	JOHNSON DEQUAVIOUS TRAYONNE	Saginaw
687570	ORLEWICZ JEAN PIERRE	Wayne

## LIST OF CLASS MEMBERS

687791	COMMIRE SHAWN MICHAEL	Bay
692728	MURRAY ODIES ARDAY	Kalamazoo
705258	MAXEY KEITH LENARD	Wayne
744816	MORTON WILLIAM	Wayne
748594	MCCLLOUD THOMAS JAY JR	Oakland
785056	MCDADE DALLAS AUGUSTA JR	Kalamazoo
788526	BELTON JONATHAN	Oakland
790800	WARREN DEVONTE	Kent
791795	KEY ELIJAH DUJUAN	Wayne
793937	HOWARD DEONTE	Wayne
796157	STEWART DEQUARIUS DEVONTAE	Berrien
807416	STEPHENS JUSTIN DEWAYNE	Ionia
831271	LOVE MENDO ROMAN	Wayne
846544	WILLIAMS TAYWON KESHAUN	Wayne
857789	TENNILLE TIMOTHY	Wayne
868066	MORAN SEMAJ	Oakland
869215	KING QUINTIN	Wayne
876508	CAVAZOS FRANCISCO	Oakland
931296	HICKERSON JONATHAN	Oakland
940418	HYATT KENYA	Genesee
949384	GARAY VICTOR	Kalamazoo