February 2022

Art. 78 Response - FUSL000051 (2020-06-22)

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

In the Matter of the Application of
[redacted]

Petitioner,

-vs-

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ANTHONY J. ANNUCCI, ACTING COMMISSIONER, TINA STANFORD CHAIRWOMAN, BOARD OF PAROLE,

Respondents.

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

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VERIFIED ANSWER AND RETURN

Index [redacted]
Hon. Scott J. DelConte

Respondent, by its attorney, LETITIA JAMES, Attorney General of the State of New York, Ray A. Kyles, of Counsel, answering the Petition in the above entitled proceeding alleges as follows:

1. ADMITS the information contained in unnumbered paragraphs 1, 2, 3, 4, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Petition.

2. DENIES the allegations contained in unnumbered paragraphs 28, 29 31, 32, 33, 34, 35, 36, 37, 40, 44 and 45 of the Petition.

3. NEITHER ADMITS NOR DENIES the allegations contained in unnumbered paragraphs 6, 8, 9, 38 39, 41, 42, 43 and 46 of the Petition.

4. NEITHER ADMITS NOR DENIES the allegations contained in paragraphs 25, 26, 27, and 30 of the Petition as they are statements regarding the object of Petitioner's proceeding or legal conclusions and not statements of fact.

5. DENIES each and every allegation contained in the Petition that alleges or tends to allege that the challenged action was in any way contrary to constitutional, statutory, regulatory or case law.

6. DENIES each and every allegation of the Petition not heretofore admitted, controverted, or denied.

AS AND FOR A STATEMENT OF THE FACTS RELEVANT TO THE ISSUES HEREIN PRESENTED:

7. By way of background, the Petitioner was convicted of Murder (no degree) and was sentenced to a term of 25 years to life. The instant offense consisted of the Petitioner stabbing a police officer to death for no reason. See **Exhibits A, D and G**. One of the buttons on the Petitioner's hat that night was that of the Black Panther party. Several times in the PSI the Petitioner declined to discuss whether he promoted their viewpoints or not. The PSI indicates Petitioner appeared to have mental health issues, but never received treatment for them. See **Exhibit D (submitted under separate cover for in-camera review only).**

8. Petitioner was previously denied parole release in June 1996, June 1998, June 2000, June 2002, May 2004, June 2006, May 2008, May 2010, May 2012, May 2014, May 2016 and May 2018. As for the instant litigation, Petitioner had a reappearance Parole Board Release Interview on August 27, 2019, and once again release was denied, and Petitioner was ordered held for another 15 months. Petitioner timely perfected his administrative appeal on November 27, 2019. See **Exhibits C, J and K.** The Appeals Unit, concededly in a tardy manner, issued its decision dismissing the appeal on April 3, 2020. See **Exhibits C, J and K.** This article 78 proceeding followed. The Board of Parole was not served from what I can see.

9. A pre-sentence report was prepared on June 2, 19972 by the Probation Department, as a result of the Petitioners convictions on the charge of Murder. See **Exhibit D (submitted under separate cover for in-camera review only).**

10. On August 27, 2019, the Petitioner appeared before the Parole Board on his thirteenth (13th) reappearance interview for parole release consideration. The Parole Board reviewed his case and institutional records, and denied him parole for at least 15 months, stating that it was their determination that if released at that time, his release would be incompatible with the welfare of society. As of the time of his parole interview, the positive factors included Petitioners good behavior, community support, Risks, Needs, disciplinary history and all other required factors were well noted. See **Exhibits C and H.**

11. Petitioner has brought this proceeding against the New York State Department of Parole, contending that the Board of Parole failed to implement the 2011 amendment to Executive Law §259-c(4), when denying him parole release. This assertion is without merit.

12. A Notice of Appeal was filed by Petitioner and received by the New York State Division of Parole. See **Exhibit I.**

13. On November 27, 2019, the New York State Division of Parole received Petitioner's appeal brief. See **Exhibits I and K.** Said brief raised the following issues:

a) the decision is irrational bordering on impropriety in that the Board failed to consider and/or properly weigh the required statutory factors, and only looked at the instant offense;

b) no aggravating factors exist;

c) the decision was predetermined;

d) the Board failed to list any facts in support of the statutory standard cited;

e) that there appear to be inconsistencies in appellant's version of what happened doesn't constitute grounds for denying parole release;

f) the Board gave excessive credence to the fact the victim was a police officer;

g) the decision violated the 6th amendment to the constitution in that the PSI lists so called witnesses that never testified at trial;

h) the Board did not have the sentencing minutes, and the jury rejected the death penalty such that repeated denials of parole go against the wishes of the court; and

i) the Board failed to comply with the 2011 amendments to the Executive Law in that the COMPAS was ignored, and the statutes are present based.

14. On April 3, 2020, the New York State Division of Parole made its final determination and mailed to Petitioner and Petitioner's attorney a copy of the Appeal's Unit Administrative Appeal Decision and Notice. See **Exhibit J.**

15. There are no issues raised in the Petition that were not raised on appeal. Petitioner seeks to be released to parole supervision due to claimed errors. Assuming there are valid grounds to vacate the Board's decision, the only remedy that would be available to Petitioner would be to have a de novo Board interview before a different panel. See *Matter of Lichtel v. Travis*, 287 A.D.2d 837, 731 N.Y.S.2d 533 (3rd Dept 2001); *Quartararo v. New York*

State Division of Parole, 224 A.D.2d 266, 637 N.Y.S.2d 721 (1st Dept 1996), lv. denied, 88 N.Y.2d 805, 646 N.Y.S.2d 984 (1996); *Matter of Rentz v. Herbert*, 206 A.D.2d 944, 615 N.Y.S.2d 178 (4th Dept 1994), lv. denied, 84 N.Y.2d 810, 621 N.Y.S.2d 519 (1994); *Matter of King v. New York State Division of Parole*, 190 A.D.2d 423, 598 N.Y.S.2d 245 (1st Dept 1993).

16. More importantly, Petitioner is not in any way prejudiced by the failure of the Appeals Unit to issue a Findings Statement within four months. Nor does the failure to act make the underlying administrative decision constitutionally defective nor invalidate the administrative decision. Rather, per 9 N.Y.C.R.R. §8006.4(c), the sole consequence is that the Petitioner may deem his administrative remedy to be exhausted and may immediately seek judicial review of the underlying determination. *Graham v. New York State Division of Parole*, 269 A.D.2d 628, 702 N.Y.S.2d 708 (3rd Dept 2000), leave to appeal denied 95 N.Y.2d 753, 711 N.Y.S.2d 155 (2000); *People ex rel. Tyler v. Travis*, 269 A.D.2d 636, 702 N.Y.S.2d 705 (3rd Dept 2000); *Lord v. State of New York Executive Department Board/Division of Parole*, 263 A.D.2d 945, 695 N.Y.S.2d 461 (4th Dept 1999), leave denied 94 N.Y.2d 753, 700 N.Y.S.2d 427 (1999); reargument denied 95 N.Y.2d 826, 712 N.Y.S.2d 450 (1999); *D'Joy v. New York State Division of Parole*, 127 F.Supp2d 433, 442 (S.D.N.Y. 2001).

AS AND FOR A FIRST OBJECTION IN POINT OF LAW:
THE PAROLE BOARD DID NOT ACT IN AN IRRATIONAL, ARBITRARY, OR CAPRICIOUS MANNER

17. Petitioner contends that the Board's decision was arbitrary and capricious, and irrational, bordering on impropriety.

18. Furthermore, Petitioner argues that the Parole Board gave little to no consideration to his positive factors such as his institutional achievements, disciplinary record,

and rehabilitative efforts, but instead relied solely on his instant offense. He complains that "from the transcripts, the parole board performed only a minimal review of Petitioner's institutional record. There is minimal mention of Petitioner's rehabilitative gains...." (Memo of Law, pg. 13). As for the instant offense, he says that it is "not an adequate basis, in itself, upon which to deny parole release" (Id.). He takes issue with the Board's conclusion that there is a reasonable probability that if released, he would not live and remain at liberty without violating the law, (Id.). Petitioner claims that the decision was pre-determined as purportedly evidenced by Commissioner Cappola's complete fixation on the PSI report. (Id., pg. 17). Finally, Petitioner notes the 2011 amendment to Executive Law §259-c(4), and says that the Board failed to comply with that in that it did not consider neither COMPAS, or any other form of risk assessment.

19. In response to this Petition, Respondent contends that unless Petitioner is able to demonstrate convincing evidence to the contrary, the Board is presumed to have acted properly in accordance with statutory requirements, and judicial intervention is warranted only when there is a showing of irrationality to the extent that it borders on impropriety, with such determination to begin with a review of whether the Board's decision to deny parole was arbitrary or capricious. *Matter of Silmon v. Travis*, 95 N.Y.2d 470 (2000); *Matter of Phillips v. Dennison*, 41 A.D.3d 17 (1st Dept 2007*); Matter of Nankervis v. Dennison*, 30 A.D.3d 521 (2nd Dept 2006).

20. Petitioner contends that the Board, in denying him discretionary release to parole supervision, has encroached upon the authority of the Legislature in that the Board punished Petitioner for committing the instant offense, thus establishing a penal policy. For the reasons set forth in the Appeals Unit's decision, such argument is without merit, as the

record clearly shows that the Board denied Petitioner discretionary release to parole supervision after considering all required factors for such release to parole supervision, legitimately placing more weight upon Petitioner's instant offenses than upon all other factors for such release to parole supervision. Also, as explained in the enclosed Appeals Unit's decision, the Board legitimately placed appropriate weight upon evaluating Petitioner's demeanor during the interview in support of denying Petitioner such release to parole supervision. See **Exhibit J.** Moreover, there is no violation of the separation of powers doctrine here. Under New York State law the judicial task of administering parole laws by the Parole Board in a judicial capacity does not violate the separation of powers doctrine. *Tarter v. State,* 68 N.Y.2d 511 (1986); *Hecht v. Monaghan*, 307 N.Y. 461 (1954); *Matter of Silmon v. Travis*, 95 N.Y.2d 470 (2000); *Connelly v. New York State Division of Parole*, 286 A.D.2d 792 (3rd Dept 2001), *appeal dismissed* 97 N.Y.2d 677 (2001). In New York State, separation of powers does not divide the branches into watertight compartments, nor establish fields of black and white. The doctrine is flexible and practical. *Bourquin v. Cuomo*, 85 N.Y.2d 781 (1995).

21. For the same reasons, there is no merit to Petitioner's contention that the Board encroached upon the authority of the sentencing court when it denied Petitioner such release to parole supervision. Please refer to Page 5 of the enclosed Appeals Unit's decision for reference to appropriate case law. **See Exhibit L (pg 5).**

B. CONSIDERATION OF EXECUTIVE LAW §259-c(4)

22. Pursuant to Executive Law §259-i(2)(c), the Parole Board must consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record or criminal behavior, giving whatever emphasis they so choose to each

factor. *In re Garcia v. New York State Division of Parole*, 239 A.D.2d 235, 657 N.Y.S.2d 415 (1st Dept 1997); *People ex rel. Herbert v. New York State Board of Parole*, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept 1983). The Board is not required to give equal weight to each statutory factor. *Shark v. New York State Division of Parole Chair*, 110 A.D.3d 1134, 972 N.Y.S.2d 741 (3rd Dept 2013); *Jones v. New York State Parole Board*, 127 A.D.3d 1327, 6 N.Y.S.3d 774 (3rd Dept 2015); *Hill v. New York State Board of Parole*, 130 A.D.3d 1130, 14 N.Y.S.3d 515 (3rd Dept 2015); *Dolan v. New York State Board of Parole*, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3rd Dept 2014); *Fischer v. Graziano*, 130 A.D.3d 1470, 12 N.Y.S.3d 756 (4th Dept 2015); *De la Cruz v. Annucci,* 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept 2014); *Davis v. Evans*, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3rd Dept 2013); *Thomches v. Evans*, 108 A.D.3d 724, 968 N.Y.S.2d 888 (3rd Dept 2013); *Rodriguez v. Evans*, 10 A.D.3d 1049, 958 N.Y.S.2d 529 (3rd Dept 2013*); Martinez v. New York State Board of Parole*, 83 A.D.3d 1319, 920 N.Y.S.2d 742 (3rd Dept 2011); *Ward v. New York State Division of Parole*, 26 A.D.3d 712, 809 N.Y.S.2d 671(3rd Dept 2006) *lv. den.* 7 N.Y.3d 702, 818 N.Y.S.2d 193; *Morel v. Travis*, 18 A.D.3d 930, 793 N.Y.S.2d 920 (3rd Dept 2005); *Matter of Farid v. Travis*, 239 A.D.2d 629, 657 N.Y.S.2d 221 (3rd Dept 1997); *Phillips v. Dennison,* 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept 2007); *Davis v. Lemons*, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3rd Dept 2010); *MacKenzie v. Evans,* 95 A.D.3d 1613, 945 N.Y.S.2d 471 (3rd Dept 2012). That an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. *Matter of Faison v. Travis,* 260 A.D.2d 866, 688 N.Y.S.2d 782 (3rd Dept 1999); *Pulliam v. Dennison*, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3rd Dept 2007). Moreover, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for appellant's good conduct or achievements while

incarcerated. *Larrier v. New York State Board of Parole Appeals Unit*, 283 A.D.2d 700, 723 N.Y.S.2d 902, 903 (3rd Dept 2001); *Vasquez v. State of New York Executive Department, Division of Parole*, 20 A.D.3d 668, 797 N.Y.S.2d 655 (3rd Dept 2005); *Wellman v. Dennison*, 23 A.D.3d 974, 805 N.Y.S.2d 159 (3rd Dept 2005). A determination that the inmate's achievements are outweighed by the severity of the crimes is within the Board's discretion. *Kirkpatrick v. Travis,* 5 A.D.3d 385, 772 N.Y.S.2d 540 (2nd Dept 2004*); Anthony v. New York State Division of Parole*, 17 A.D.3d 301, 792 N.Y.S.2d 900 (1st Dept 2005); *Cruz v. New York State Division of Parole,* 23 A.D.3d 974, 805 N.Y.S.2d 159 (3rd Dept 2007); *Santos v. Evans*, 81 A.D.3d 1059, 916 N.Y.S.2d 325 (3rd Dept 2011). Parole release decisions are discretionary and will not be disturbed so long as the Board complies with the statutory requirements of the Executive Law. *Williams v. New York State Division of Parole*, 114 A.D.3d 992, 979 N.Y.S.2d 868 (3rd Dept 2014).

23. The denial of parole release primarily because of the severity of the crime is appropriate. *Copeland v. New York State Board of Parole*, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3rd Dept 2017); *Jones v. New York State Department of Corrections and Community Supervision,* 151 A.D.3d 1622, 57 N.Y.S.3d 265 (4th Dept 2017); *De la Cruz v. Annucci*, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4th Dept 2014); *Matter of Morales v. Travis*, 260 A.D.2d 710, 687 N.Y.S.2d 495 (3rd Dept 1999); *Matter of Walker v. Travis,* 252 A.D.2d 360, 676 N.Y.S.2d 52 (1st Dept 1998); *Pacheco v. Pataki*, 2010 WL 3155810 (N.D.N.Y. 2010); *James v. New York State Board of Parole*, 136 A.D.3d 1089, 25 N.Y.S.3d 391 (3rd Dept 2016); *Kenefick v. Sticht*, 139 A.D.3d 1380, 31 N.Y.S.3d 367 (4th Dept 2016); *Arena v. New York State Department of Corrections and Community Supervision*, 156 A.D.3d 1101, 65 N.Y.S.3d 471

(3rd Dept 2017); *Robinson v. New York State Board of Parole*, 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3rd Dept 2018); *Beodeker v. Stanford*, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3rd Dept 2018).

24. The seriousness of the offense alone has long been held to constitute a sufficient ground to deny parole release. *Matter of Secilmic v. Keane*, 25 A.D.2d 628, 639 N.Y.S.2d 437 (2nd Dept 1996); *Howithi v. Travis*, 19 A.D.3d 727, 796 N.Y.S.2d 195 (3rd Dept 2005); *Matter of Dudley v. Brown*, 227 A.D.2d 863, 642 N.Y.S.2d 386 (3rd Dept 1996), lv to app. den. 88 N.Y.2d 812; *People ex rel Thomas v. Superintendent Arthurkill Correctional Facility*, 124 A.D.2d 848, 508 N.Y.S.2d 564 (2nd Dept 1986) *app. den.* 69 N.Y.2d 611. The Board's emphasis on the serious nature of the crime does not demonstrate a showing of irrationality bordering on impropriety. *Philips v. Dennison*, 41 A.D.3d 17, 834 N.Y.S.2d 121 (1st Dept 2007); *Cardenales v. Dennison,* 26 A.D.3d 614, 810 N.Y.S.2d 233 (1st Dept 2007); *Berry v. New York State Division of Parole*, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3rd Dept 2008); *Smith v. New York State Division of Parole*, 64 A.D.3d 1030, 882 N.Y.S.2d 759 (3rd Dept 2009); *Robles v. Dennison*, 449 F. Appx. 51, 53-54 (2nd Cir. 2011*); Hodge v Griffin*, 2014 WL 2453333 (SDNY 2014); *Perea v Stanford*, 149 A.D.3d 1392, 53 N.Y.S.3d 231 (3rd Dept 2017); *Tafari v. Cuomo*, 170 A.D.3d 1351, 94 N.Y.S.3d 458 (3rd Dept 2019). The seriousness of the instant offense coupled with "all factors considered" is sufficient. *Zhang v. Travis*, 10 A.D.3d 828, 782 N.Y.S.2d 156 (3rd Dept 2004); *Alamo v. New York State Division of Parole*, 52 A.D.3d 1163, 860 N.Y.S.2d 326 (3rd Dept 2008); *Marcus v. Alexander*, 54 A.D.3d 476, 862 N.Y.S.2d 414 (3rd Dept 2008); *Dobranski v. Evans*, 83 A.D.3d 1355, 920 N.Y.S.2d 918 (3rd Dept 2011).

25. There is no requirement in the law that the board place equal or greater emphasis on appellant's present commendable conduct than on the gravity of his offense. *People ex rel. Herbert v. New York State Bd. of Parole*, 97 A.D.2d 128, 133, 468 N.Y.S.2d 881, 884 (1st Dept

1983). The Board was not required to give each factor equal weight and could place greater emphasis on the gravity of the inmate's offense. *Matter of Beodeker v. Stanford*, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3rd Dept 2018); *Matter of Robinson v. New York State Bd. of Parole,* 162 A.D.3d 1450, 81 N.Y.S.3d 235 (3rd Dept 2018); *Matter of Rivera v. Stanford*, 53 N.Y.S.3d 404, 149 A.D.3d 1445 (3rd Dept 2017); *Matter of Furman v. Annucci*, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3rd Dept 2016); *Matter of King v. Stanford*, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3rd Dept 2016); *Matter of Copeland v. New York State Bd. of Parole*, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3rd Dept 2017).

26. The standard of review in regard to parole release is whether the decision was so irrational as to border on impropriety. *Matter of Russo v. New York State Board of Parole,* SO NY2d 69 (1980); *Epps v. Travis,* 241 A.D.2d 738 (3rd Dept 1997); *Matter of Silmon v. Travis,* 95 NY2d 470 (2000). When considering the various factors, the weight accorded to any particular factor is solely within a parole board's discretion. *Matter of Santos v. Evans,* 81 AD3d 1059 (3rd Dept 2011); *Matter of Wise v. New York State Division of Parole,* 54 AD3d 463 (3rd Dept 2008), included in such factors are the seriousness of the instant offense(s) and an inmate's criminal history. Executive Law §259-i(2)(A).

27. The Board's emphasis on the violent nature of the crime does not establish irrationality bordering on impropriety. *Pulliam v. Dennison*, 38 A.D.3d 963, 832 N.Y.S.2d 304 (3rd Dept 2007); *Sterling v. Dennison*, 38 A.D.3d 1145, 833 N.Y.S.2d 684 (3rd Dept 2007); *Marziale v. Alexander*, 62 A.D.3d 1227, 879 N.Y.S.2d 636 (3rd Dept 2009). The Board may conclude that the violent nature of the crime is an overriding consideration warranting the denial of parole release. *Rodney v. Dennison*, 24 A.D.3d 1152, 805 N.Y.S.2d 743 (3rd Dept 2005). The

Board may emphasize the violent nature of the instant offense. *Marnell v. Dennison,* 35 A.D.3d 995, 824 N.Y.S.2d 812 (3rd Dept 2006), lv.den. 8 N.Y.3d 807, 833 N.Y.S.2d 426 (2007).

C. PETITIONER'S ASSERTION OF NO AGGRAVATING FACTORS EXIST IS WITHOUT MERIT

28. The Board may acknowledge the senseless and violent nature of the crime. *Sanchez v. Dennison*, 21 A.D.3d 1249, 801 N.Y.S.2d 423 (3rd Dept 2005*); Dorman v. New York State Board of Parole,* 30 A.D.3d 880, 816 N.Y.S.2d 765 (3rd Dept 2006).

29. The Board may place particular emphasis on the inmate's troubling course of conduct both during and after the commission of the instant offenses. *Jones v. New York State Board of Parole*, 175 A.D.3d 1652, 108 N.Y.S.3d 505 (3rd Dept 2019).

30. The Board may take note of the inmate's disregard for the life of another human being. *Hakim v. Travis*, 302 A.D.2d 821, 754 N.Y.S.2d 600 (3rd Dept 2003); *Angel v. Travis*, 1 A.D.3d 589, 767 N.Y.S.2d 290 (3rd Dept 2003). The Board may consider the inmate's blatant disregard for the law and the sanctity of human life. *Campbell v. Stanford,* 173 A.D.3d 1012, 105 N.Y.S.3d 461 (2nd Dept 2019).

31. The Board may deny parole release without the existence of any aggravating factors, no matter how exemplary the institutional record is. *Hamilton v. New York State Division of Parole*, 119 A.D.3d 1268, 1272, 990 N.Y.S.2d 714 (3rd Dept 2014).

D. THE BOARD'S DECISION WAS NOT PREDETERMINED

32. There is no evidence that the Board's decision to deny Petitioner parole release was predetermined. *Matter of Bonilla v. New York State Board of Parole*, 32 A.D.3d 1070, 820 N.Y.S.2d 661 (3rd Dept 2006); *Matter of Hakim-Zaki v. New York State Division of Parole,* 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3rd Dept 2006); *Matter of Guerin v. New York State Division of*

Parole, 276 A.D.2d 899, 714 N.Y.S.2d 770 (3rd Dept 2000). Though Petitioner does not even explain why such predetermination should be assumed. As explained already, the Board is required to consider the circumstances of the instant offense, and the record is unequivocal that Petitioner's crimes were unprovoked. **See Exhibit D (submitted for in-camera review only).**

33. There is a presumption of honesty and integrity that attaches to Judges and administrative fact-finders. *People ex.rel. Johnson v. New York State Board of Parole*, 180 A.D.2d 914, 580 N.Y.S.2d 957, 959 (3rd Dept 1992); *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed 2d 712 (1975). And, Courts presume the Parole Board follows its statutory commands and internal policies in fulfilling its obligations. *Garner v. Jones*, 529 U.S. 244, 120 S. Ct. 1362, 1371, 146 L. Ed 2d 236 (2000). The decision was not predetermined. *Dean v. New York State Division of Parole,* 21 A.D.3d 1207, 801 N.Y.S.2d 92 (3rd Dept 2005*) lv. den.* 6 N.Y.3d 705 (2006); *Hakim-Zaki v. New York State Division of Parole*, 29 A.D.3d 1190, 814 N.Y.S.2d 414 (3rd Dept 2006); *Tafari v. Cuomo*, 170 A.D.3d 1351, 94 N.Y.S.3d 458 (3rd Dept 2019); *Gonzalvo v. Stanford*, 153 A.D.3d 1021, 56 N.Y.S.3d 896 (3rd Dept 2017). There is no merit to the inmate's contention that the parole interview was improperly conducted or that he was denied a fair interview. *Black v. New York State Board of Parole*, 54 A.D.3d 1076, 863 N.Y.S.2d 521 (3rd Dept 2008); *Rivers v. Evans*, 119 A.D.3d 1188, 989 N.Y.S.2d 400 (3rd Dept 2014); *Mays v. Stanford*, 150 A.D.3d 1521, 55 N.Y.S.3d 502 (3rd Dept 2017).

E. THE BOARD IS NOT REQUIRED TO RECITE THE PRECISE STATUTORY LANGUAGE OF EXECUTIVE LAW § 259-I (2)(C)(A) IN SUPPORT OF ITS CONCLUSION TO DENY PAROLE

34. As for the required three-part statutory standard, contrary to Petitioner's claim, the Board is not required to repeat the language of the statute verbatim. Rather, it need merely insure that sufficient facts are in the decision which comply with the standard-

which it has clearly done in this case. The factors cited, which were Petitioner's serious and violent and senseless instant offense, the gravity of it, his lack of respect for human life, community opposition, and his not admitting to the full version of events as to the instant offense, show the required statutory findings were in fact made in this case. Language used in the decision which is only semantically different from the statutory language (e.g. continued incarceration serves the community standards) is permissible. *James v. Chairman of the New York State Division of Parole*, 19 A.D.3d 857, 796 N.Y.S.2d 735 (3rd Dept 2005); *Miller v. New York State Division of Parole*, 72 A.D.3d 690, 897 N.Y.S.2d 726 (2nd Dept 2010). Although the Board's determination could have been stated more artfully, this is insufficient to annul the decision. *Ek v. Travis*, 20 A.D.3d 667, 798 N.Y.S.2d 199 (3rd Dept 2005). The Board's failure to recite the precise statutory language of the first sentence in support of its conclusion to deny parole release does not undermine its determination. *Silvero v. Dennison*, 28 A.D.3d 859, 811 N.Y.S.2d 822 (3rd Dept 2006); *Reed v. Evans*, 94 A.D.3d 1323, 942 N.Y.S.2d 387 (3rd Dept 2012); *Mullins v. New York State Board of Parole*, 136 A.D.3d 1141, 25 N.Y.S.3d 698 (3rd Dept 2016).

F. THE BOARD MAY CONSIDER OTHER DOCUMENTS TO ESTABLISH INCONSISTENCIES IN APPELLANT'S VERSION OF WHAT HAPPENED

35. Credibility of an inmate's explanation is to be made by the Board. The Board may consider other documents (e.g. the parole packet) involving the inmate's capacity to tell the truth, and how this impacts the statutory factors. *Siao-Pao v. Dennison*, 51 A.D.3d 105, 854 N.Y.S.2d 348 (1st Dept 2008). So, inconsistencies with both the PSI, and in his prior interviews, gives the Board grounds to deny release.

G. THE ASSERTION THAT THE BOARD GAVE EXCESSIVE CREDENCE TO THE FACT THE VICTIM WAS A POLICE OFFICER IS WITHOUT MERIT.

36. The Parole Board may state the inmate needs to further reflect on why he singled out this particular victim. *Campbell v. Stanford*, 173 A.D.3d 1012, 105 N.Y.S.3d 461 (2nd Dept 2019). Furthermore, the Board could place greater emphasis on the serious nature of the crime that involved killing a police officer in the head. *Francis v. New York State Division of Parole,* 89 A.D.3d 1312, 934 N.Y.S.2d 514 (3rd Dept 2011), *MacKenzie v Evans*, 95 A.D.3d 1613, 945 N.Y.S.2d 471 (3rd Dept 2012).

H. THE BOARDS DECISION DID NOT VIOLATE PETITIONER'S 6TH AMENDMENT RIGHTS

37. Pursuant to Executive Law §259-i(2)(c)(A) and 259-k(1), the Board is required to obtain official reports and may rely on the information contained therein. See *Billiteri v. U.S. Board of Parole*, 541 F.2d 938, 944-945 (2d Cir. 1976); *Lee v. U.S. Parole Commission*, 614 F.Supp. 634, 639 (S.D.N.Y. 1985); *Carter v. Evans*, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3rd Dept 2011) *lv. app. den.* 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011). To the extent the appellant complains about the information contained within the pre-sentence report, the Board is mandated to consider it, is not empowered to correct information therein, and is entitled to rely on the information contained in the report. See, Executive Law §259-(a)-1; Executive Law §259-(1)(a); (2)(c)(A*); May v. New York State Division of Parole*, 273 A.D.2d 667, 711 N.Y.S.2d 349 (3rd Dept 2000); *Richburg v. New York State Board of Parole*, 284 A.D.2d 685, 726 N.Y.S.2d 299 (3rd Dept 2001); *Payton v. Thomas*, 486 F.Supp. 64, 68 (S.D.N.Y. 1980); *Baker v McCall,* 543 F.Supp. 498, 501 (S.D.N.Y. 1981), *affirmed* 697 F.2d 287 (2d Cir. 1982); *Williams v. Travis,* 11 A.D.3d 788, 783 N.Y.S.2d 413 (3rd Dept 2004); *Sutherland v. Alexander*, 64 A.D.3d 1028, 881 N.Y.S.2d

915 (3rd Dept 2009); *Wisniewski v. Michalski et.al.,* 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept 2014). The inmate is not permitted to collaterally attack the presentence report. *Cox v. New York State Division of Parole*, 11 A.D.3d 766, 768 (3rd Dept 2004); *Simmons v. Travis*, 15 A.D.3d 896, 788 N.Y.S.2d 752 (4th Dept 2005).

38. Moreover, the inmate cannot challenge the accuracy of information in the Pre-sentence Investigation Report, as that challenge should have been made to the original sentencing court. *Manley v. New York State Board of Parole*, 21 A.D.3d 1209 (3rd Dept 2005) *lv. den.* 6 N.Y.3d 702 (2005); *Champion v. Dennison,* 40 A.D.3d 1181, 834 N.Y.S.2d 585 (3rd Dept 2007). *lv.dism*. 9 N.Y.3d 913, 844 N.Y.S.2d 167. *Carter v. Evans*, 81 A.D.3d 1031, 916 N.Y.S.2d 291 (3rd Dept 2011*) lv. app. den*. 16 N.Y.3d 712, 923 N.Y.S.2d 416 (2011); *Vigliotti v. State of New York, Executive Division of Parole*, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3rd Dept 2012); *Wisniewski v. Michalski et.al.*, 114 A.D.3d 1188, 979 N.Y.S.2d 745 (4th Dept 2014); *Del Rosario v. Stanford*, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3rd Dept 2016).

I. THE CLAIM THAT THE SENTENCING MINUTES CONTAIN RECOMMENDATIONS BY THE TRIAL COURT IS WITHOUT MERIT

39. While the Board did not possess the sentencing minutes despite a diligent effort to obtain them, counsel for the appellant had now submitted them. See **Exhibit B**. A review of those minutes reveals the court made no recommendation with respect to parole. Accordingly, any error in failing to consider them is harmless and does not provide a basis for setting aside the appealed from decision. *Matter of Almonte v. New York State Bd. of Parole,* 145 A.D.3d 1307, 42 N.Y.S.3d 691 (3rd Dept 2016), *lv. denied*, 29 N.Y.3d 905 (2017); *Matter of Davis v. Lemons*, 73 A.D.3d 1354, 899 N.Y.S.2d 919 (3rd Dept 2010);

Matter of Valerio v. New York State Div. of Parole, 59 A.D.3d 802, 872 N.Y.S.2d 606 (3rd Dept 2009). And the minimum term of imprisonment is not tantamount to a sentencing recommendation-and a parole denial does not thus constitute a re-sentencing. *Gomez v. New York State Division of Parole*, 87 A.D.3d 1197, 929 N.Y.S.2d 338 (3rd Dept 2011) lv.app.den. 18 N.Y.3d 802, 938 N.Y.S.2d 860 (2011).

J. THE BOARD COMPLIED WITH THE 2011 AMENDMENTS TO THE EXECUTIVE LAW

40. Petitioner's claim that the Board failed to comply with the 2011 amendments to the Executive Law is rejected. *Dolan v. New York State Board of Parole*, 122 A.D.3d 1058, 995 N.Y.S.2d 850 (3rd Dept 2014); *Tran v Evans*, 126 A.D.3d 1196, 3 N.Y.S.3d 633 (3rd Dept 2015); *Boccadisi v. Stanford*, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3rd Dept 2015). Furthermore, the 2011 Executive Law amendments have been incorporated into the regulations adopted by the Board in 2017. The 2017 amended regulations doesn't create any substantive right to release, but rather, merely increase transparency in the final decision. Courts must defer to the Parole Board's interpretation of its own regulations so long as it is rational and not arbitrary nor capricious. *Brown v. Stanford,* 163 A.D.3d 1337, 82 N.Y.S.3d 622 (3rd Dept 2018); *Peckham v. Calogero*, 12 N.Y.3d 424, 883 N.Y.S.3d 751 (2009); *Henry v. Coughlin*, 214 A.D.2d 673, 625 N.Y.S.2d 578 (2nd Dept 1995).

41. Such changes, however, were by no means intended to limit parole boards' historic and well-established authority and independent judgment when considering and applying the statutory factors in parole matters, *People v. Lankford*, 938 NYS2d 784 (Sup. Ct. Bronx Co. 2012). Referring to the 2011 changes to the Executive Law, the *Lankford* court stated, "the legislation makes clear that the board shall continue to exercise its independence when making

such decisions. The new agency's provision of administrative support will not undermine the board's independent decision-making authority (see, Laws of 2011, Part C, Sub. A, 0)." Id., at 788, citing *Thwaites v. New York State Board of Parole*, 934 NYS2d 797 (Sup. Ct. Orange Co. 2011). Parole release has been, and remains, a discretionary function of a parole board. *Thwaites v. New York State Board of Parole*, 934 NYS2d 797 (Sup. Ct. Orange Co. 2011).

42. The 2011 amendments still permit the Board to place greater emphasis on the gravity of the crime. *Matter of Montane v Evans*, 116 A.D.3d 197, 981 N.Y.S.2d 866 (3rd Dept) *appeal dismissed* 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); *Hamilton v. New York State Division of Parole*, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3rd Dept 2014); *Moore v. New York State Board of Parole,* 137 A.D.3d 1375, 26 N.Y.S.3d 412 (3rd Dept 2016). The Board can still consider the nature of the inmate's crimes, the criminal history, the prison disciplinary record, the program accomplishments and post release plans. *Rivera v. New York State Division of Parole,* 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3rd Dept 2014). The Board is obligated to consider the serious nature of the crime. *Khatib v. New York State Board of Parole,* 118 A.D.3d 1207, 988 N.Y.S.2d 286 (3rd Dept 2014); *Hanna v. New York State Board of Parole,* 169 A.D.3d 503, 92 N.Y.S.3d 621 (1st Dept. 2019).

43. Moreover, the new requirements address the need for the board to establish written procedures that include a risk and needs analysis to determine when an inmate is ready for release. The amendments do not change the factors considered by the board, nor do they alter the historic discretion parole boards have when considering release. Parole boards are required to inquire of inmates what steps, if any, they have taken toward rehabilitation, but still have discretion as to what will be discussed during a parole interview. See, *Briguglio v. NYS Bd. of Parole*, 24 NY2d 21 [1969].

44. A positive COMPAS score does not create any guarantee to release, but rather is only one factor considered by the Board in exercising its discretion when making a parole determination. *Rivera v. New York State Division of Parole*, 119 A.D.3d 1107, 990 N.Y.S.2d 295 (3rd Dept 2014); *Dawes v. Beale,* 122 A.D.3d 1059, 994 N.Y.S.2d 747 (3rd Dept 2014); *Byas v. Fischer*, 120 A.D.3d 1586, 992 N.Y.S.2d 813 (4th Dept 2014*); Matter of Montane v. Evans,* 116 A.D.3d 197, 981 N.Y.S.2d 866 (3rd Dept) appeal dismissed 24 N.Y.3d 1052, 999 N.Y.S.2d 360 (2014); *LeGeros v. New York State Board of Parole*, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2nd Dept 2016); *Wiley v. State of New York Department of Corrections and Community Supervision*, 139 A.D.3d 1289, 32 N.Y.S.3d 370 (3rd Dept 2016); *Rodriguez v New York State Board of Parole*, 168 A.D.3d 1342, 92 N.Y.S.3d 482 (3rd Dept 2019).

45. Notably, the 2011 amendments to the Executive Law did not change the three substantive standards that the Board is required to apply when deciding whether to grant parole, namely (1) whether "there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law;" (2) whether release "is not incompatible with the welfare of society;" and (3) whether release "will not so deprecate the seriousness of his crime as to undermine respect for law." See Executive Law §259-i(2)(c)(A). Even uniformly low COMPAS scores and other evidence of rehabilitation would not resolve the broader questions of society's welfare, public perceptions of the seriousness of a crime, or whether release would undermine respect for the law. Thus, the COMPAS cannot mandate a particular result, and declining to afford the COMPAS controlling weight does not violate the 2011 amendments. *King v. Stanford*, 137 A.D.3d 1396, 26 N.Y.S.3d 815 (3rd Dept 2016); *Furman v. Annucci*, 138 A.D.3d 1269, 28 N.Y.S.3d 352 (3rd Dept 2016). The COMPAS is an additional consideration that the Board must weigh along with the statutory factors for purposes of deciding

whether the three standards are satisfied. *Rivera v. New York State Division of Parole*, 119 A.D.3d 1107, 1108, 990 N.Y.S.2d 295 (3rd Dept 2014); *Dawes v. Annucci*, 122 A.D.3d 1059, 1061, 994 N.Y.S.2d 747 (3rd Dept 2014).

46. The Board considered the COMPAS instrument and did not depart from it. That is, the decision was not impacted by a departure from a scale. Notice of Adoption, NY Reg, Sept. 27, 2017 at 2. For example, the Board did not find a reasonable probability that Petitioner will not live and remain at liberty without violating the law but rather concluded, *despite* low risk scores, release would be inappropriate under the other two statutory standards. This is entirely consistent with the Board's intention in enacting the amended regulation.

47. The inmate may not review the Board's weighing process or assess whether the Board gave proper weight to the relevant factors, since it is not required to state each factor it considers or weigh each factor equally or grant parole due to exemplary behavior. *Comfort v. New York State Division of Parole*, 68 A.D.3d 1295, 890 N.Y.S.2d 700 (3rd Dept 2009); *Hamilton v. New York State Division of Parole*, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3rd Dept 2014). The due process clause is not violated by the Board's balancing of the statutory criteria, and which is not to be second guessed by the courts. *Mathie v. Dennison*, 2007 WL 2351072 (S.D.N.Y. 2007); *MacKenzie v. Cunningham*, 2014 WL 5089395 (S.D.N.Y. 2014). Nothing in the due process clause requires the Parole Board to specify the particular evidence on which rests the discretionary determination an inmate is not ready for conditional release. *Duemmel v. Fischer,* 368 Fed. Appx. 180, 182 (2d Cir. 2010). There is no due process requirement that the Parole Board disclose its release criteria. *Haymes v. Regan*, 525 F.2d 540 (2d Cir. 1975).

48. Nonetheless, the transcript of the proceedings shows Commissioner Coppola asked questions of and acknowledge Petitioner's **COMPAS** assessment, community support

and future planning. See **Exhibits C and E**. There is nothing to suggest either commissioner failed to allow Petitioner to make any comments he wished; in fact, he was given ample opportunity to make additional comments at the end of the interview, which he did**.** Overall, there is nothing in the record to suggest the board failed to apply a risk and needs assessment to determine Petitioner's readiness for release, nor does the transcript support Petitioner's position that the inquiry regarding his rehabilitative efforts was "perfunctory," See*, Coaxum v. New York state Board of Parole*, 14 Misc3d 661 [Sup. Ct. Bronx Col. *See* **Exhibit C.**

CONCLUSION

49. Petitioner has failed to rebut the presumption that the Parole Board complied with the statutory requirements in considering the propriety of his release to parole supervision. *Matter of Hanson v. New York State Board of Parole*, 57 A.D.3d 994, 869 N.Y.S.2d 786 (2nd Dept 2008); *Lee v. Russi*, 211 A.D.2d 720, 621 N.Y.S.2d 895 (2nd Dept 1995); *Matter of Samperi v. Rodriguez*, 126 A.D.2d 653, 511 N.Y.S.2d 80 (2nd Dept 1987). Inasmuch as during the interview the circumstances of Petitioner's instant offense, his institutional activity, and his release plans were discussed, the record inarguably establishes that the Board considered the relevant factors. See, *Matter of Williams v. New York State Division of Parole*, 70 A.D.3d 1106, 894 N.Y.S.2d 224 (3rd Dept 2010); *Matter of Bonilla v. New York State Board of Parole,* 32 A.D.3d 1070, 820 N.Y.S.2d 661 (3rd Dept 2006); *Matter of Vasquez v. Dennison*, 28 A.D.3d 908, 812 N.Y.S.2d 190 (3rd Dept 2006); *Matter of Chrisner v. Dennison,* 22 A.D.3d 997, 802 N.Y.S.2d 795 (3rd Dept 2005); *Matter of McCorkle v. New York State Division of Parole*, 19 A.D.3d 791, 796 N.Y.S.2d 259 (3rd Dept 2005); See also, *Matter of Hurdle v. New York State Board of Parole*, 283 A.D.2d 739, 724 N.Y.S.2d 370 (3rd Dept 2001).

50. The fact that an inmate has numerous achievements within a prison's institutional setting does not automatically entitle him to parole release. Pearl v. New York *State Div. of Parole*, 25 A.D.3d 1058 (3rd Dept. 2006); *Rivera v. Travis*, 289 A.D.2d 829 (3rd Dept. 2001); *Matter of Faison v. Travis*, 260 A.D.2d 866 (3rd Dept. 1999).

51. It should also be pointed out that under Executive Law §259-i(5), actions undertaken by the Parole Board are deemed to be judicial functions and are not reviewable when made in accordance with law. *Cruz v Travis*, 273 A.D.2d 648, 711 N.Y.S.2d 360 (3rd Dept 2000). Thus, in order for there to be Judicial intervention, the decision must show irrationality bordering on impropriety in order to be reversed. The Petitioner has the burden of showing that the Parole Board's determination is irrational "bordering on impropriety" before judicial intervention is warranted. *Russo v. New York State Board of Parole*, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980); *Matter of Despard v. Russi*, 192 A.D.2d 1076, 598 N.Y.S.2d 753 (4th Dept. 1993). Thus, it is well established that the Board's release decisions are discretionary, and if made in accordance with the statutory requirements, determinations are not subject to judicial review. *Matter of Saunders v. Travis*, 238 A.D.2d 688, 656 N.Y.S.2d 404 (3rd Dept 1997), *lv denied*, 90 N.Y.2d 805, 661 N.Y.S.2d 831 (1997); *Matter of Davis v. New York State Division of Parole*, 114 A.D.2d 412, 494 N.Y.S.2d 136 (2nd Dept 1985); *Matter of Ristau v. Hammock*, 103 A.D.2d 944, 479 N.Y.S.2d 760 (3rd Dept 1984), *leave to appeal denied* 63 N.Y.2d 608, 483 N.Y.S.2d 1023 (1984); *Matter of Harden v. New York State Board of Parole*, 103 A.D.2d 777, 477 N.Y.S.2d 413 (2nd Dept 1984*); Matter of Ganci v. Hammock*, 99 A.D.2d 546, 471 N.Y.S.2d 630 (2nd Dept 1984). Parole release is a discretionary function of the Board, and appellant has not demonstrated that any abuse in this regard by the Board has occurred. Judicial review of the determinations of the New York State Division of Parole is narrowly

circumscribed. *Esquilin v. New York State Board of Parole*, 144 A.D.3d 846, 40 N.Y.S.3d 279 (2nd Dept 2016).

52. In addition, per Executive Law §259-i(2)(c), an application for parole release shall not be granted merely as a reward for Petitioner's good conduct or achievements while incarcerated. *Matter of Larrier v. New York State Board of Parole Appeals Unit,* 283 A.D.2d 700 (3rd Dept 2001); *Vasquez v. State of New York Executive Department, Division of Parole*, 20 A.D.3d 668 (2005); *Wellman v. Dennison*, 23 A.D.3d 974 (3rd Dept 2005).

53. For these reasons, the Board did not act arbitrarily or capriciously, as they had little to consider with respect to Petitioner's prison achievements.

54. The Board's challenged decision was made in accordance with the pertinent statutory requirements and, therefore, it exercised proper discretion in denying Petitioner early release on parole. *Matter of Rhoden v. New York State Div. of Parole*, 270 AD2d 550 (3rd Dept 2000), *leave dismissed*, 95 NY2d 898 (2000); *Matter of Barrett*, 242 AD2d 763.

55. Therefore, with the Petitioner having the burden of proving that the Parole Board's determination was irrational "bordering on impropriety" before administrative appellate or judicial intervention is warranted, and parole release being a discretionary function of the Board, Petitioner has not demonstrated that any abuse or infirm decision making on the part of the Board has occurred so as to warrant a de novo release interview. *Matter of Silmon v. Travis*, 95 N.Y.2d 470 (2000); *Matter of Russo v. New York State Board of Parole*, 50 N.Y.2d 69 (1980); *Johnson v. Dennison,* 48 A.D. 3d 1082 (4th Dept 2008); *Lu Po-Yen v. Dennison,* 28 A.D. 3d 770 (2nd Dept 2006).

AS AND FOR A SECOND OBJECTION IN POINT OF LAW:
THE SOLE REMEDY WHICH CAN BE ORDERED IS
A DE NOVO BOARD INTERVIEW

56. Even if this Court was to find that the Parole Board did not conduct itself properly with respect to Petitioner, the sole remedy which can be provided is a de novo parole board interview and not release from prison as Petitioner requests. See, *King v. New York State Division of Parole,* 83 N.Y.2d 788 (1994); *Matter of Rentz v. Herbert*, 206 A.D.2d 944 (4th Dept 1994), leave denied, 84 N.Y. 2d 810 (1994); *Matter of Quartararo v. New York State Division of Parole,* 224 A.D.2d 266 (1st Dept 1996), *leave denied,* 88 N.Y. 2d 805 (1996).

57. For all the reasons set forth above, and based upon the documents annexed hereto, the Petition should be dismissed as Petitioner has not shown that the Board's decision was arbitrary and capricious or affected by irrationality bordering on impropriety.

RETURN

58. The following documents are set forth for the court's review:

EXHIBIT A Sentence and Commitment

EXHIBIT B Sentencing Minutes

EXHIBIT C Transcript of Parole Board Hearing

EXHIBIT D Petitioner's Pre-Sentence Report **(submitted for in-camera review only)**

EXHIBIT E Redacted Risk Assessment

EXHIBIT F Case Plan

EXHIBIT G Parole Board Report

EXHIBIT H Parole Board Release Decision Notice

EXHIBIT I Petitioner's Brief on Appeal

EXHIBIT J Administrative Appeal Decision Notice

EXHIBIT K Statement of Appeal Unit Findings & Recommendation

WHEREFORE, the Respondent respectfully requests judgment dismissing the Petition or an Order transferring this proceeding to the Appellate Division, Fourth Department and for such other and further relief as to the court seems just and proper.

DATED: June 22, 2020
Syracuse, New York

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VERIFICATION

I, RAY A KYLES, ESQ., hereby affirm pursuant to CPLR 2106 that:

I am of counsel to LETITIA JAMES, Attorney General of the State of New York, and the person to whom the above-entitled lawsuit has been assigned for preparation of the defense and trial.

I have read the foregoing **ANSWER AND RETURN** and know its contents. The matters therein are stated on information and belief and I believe them to be true. The grounds for my belief as to all matters not stated upon my knowledge are correspondence and other material maintained in the file in this action in my office.

DATED: June 22, 2020
Syracuse, New York

/s/ Ray A. Kyles
RAY A. KYLES