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Art. 78 Responses

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Art. 78 Response - FUSL000097 (2021-02-26)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IAS PART

-----X
 In the Matter of the Application of :
 : **VERIFIED ANSWER**
 :
 [REDACTED] :
 Petitioner, : Index No. [REDACTED]
 :
 - against - : Hon. Arthur Engoron
 :
 TINA M. STANFORD, Chairwoman of the New York State :
 Board of Parole, and THE NEW YORK STATE BOARD :
 OF PAROLE, :
 Respondents. :
 -----X

Respondents Tina M. Stanford and the New York State Board of Parole, by their attorney LETITIA JAMES, New York State Attorney General, object that the Petition generally does not comply with the plain and concise statement rule in CPLR § 3014, and answer the allegations of the Verified Petition (“Petition” or “Pet.”), as follows:

INTRODUCTION

1. Respondents deny that a response is required to the allegations of paragraph 1 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that Petitioner is entitled to relief.

2. Respondents deny that a response is required to the allegations of paragraph 2 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents object that it does not comply with CPLR § 3014 and deny the allegations of paragraph 2, except deny knowledge or information sufficient to form a belief as to the truth of Petitioner’s health, and admit that he is currently 58, one of his 1996 convictions is for murder, and that he has been in New York State Department of Corrections and Community Supervision (“DOCCS”) custody since 1996.

3. Respondents deny that a response is required to the allegations of paragraph 3 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 3, except admit that Petitioner is subject to a deportation order to Jamaica.

4. Respondents deny that a response is required to the allegations of paragraph 4 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 4.

5. Respondents deny that a response is required to the allegations of paragraph 5 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 5.

6. Respondents deny that a response is required to the allegations of paragraph 6 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 6.

TIMELINESS OF PETITION AND VENUE

7. Respondents deny the allegations of paragraph 7, except admit that this matter was filed within four months of the administrative appeal decision.

SUMMARY OF ARGUMENT

8. Respondents object to paragraph 8 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 8, except admit that the quotes are textually accurate.

9. Respondents object to paragraph 9 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 9, except admit that Petitioner was denied parole and that the quotes are textually accurate.

10. Respondents deny that a response is required to the allegations of paragraph 10 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 10.

11. Respondents deny that a response is required to the allegations of paragraph 11 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 11.

12. Respondents deny that a response is required to the allegations of paragraph 12 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 12, and the documentary record speaks for itself.

13. Respondents deny that a response is required to the allegations of paragraph 13 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 13.

14. Respondents deny that a response is required to the allegations of paragraph 14 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 14.

15. Respondents deny that a response is required to the allegations of paragraph 15 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 15.

16. Respondents deny that a response is required to the allegations of paragraph 16 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 16.

17. Respondents deny that a response is required to the allegations of paragraph 17 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 17.

18. Respondents deny that a response is required to the allegations of paragraph 18 as they consist of argument and conclusions of law. To the extent that a response is required, Respondents deny the allegations of paragraph 18.

THE CRIME

19. Respondents admit the allegations of paragraph 19, except deny knowledge or information sufficient to form a belief as to the truth of the footnote, and the documentary record speaks for itself.

20. Respondents object to paragraph 20 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 20, except admit that Petitioner purchased a firearm, shot the decedent to death, and that Petitioner was convicted and sentenced regarding these events.

21. Respondents object to paragraph 21 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 21, except admit that Petitioner has a prior misdemeanor conviction and has at least one child.

22. Respondents object to paragraph 22 as non-compliant with CPLR § 3014. Respondents deny knowledge or information sufficient to form a belief as to the truth of paragraph 22, except admit that Petitioner is from Jamaica and at some point traveled to New York City.

[REDACTED]'S TWENTY-FIVE YEARS IN PRISON AND HIS PLANS IF RELEASED

23. Respondents deny that a response is required to the allegations of paragraph 23 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents

deny the allegations of paragraph 23, except admit that Petitioner has been in DOCCS custody for the underlying conviction since 1996, and that his latest prison disciplinary incident was in 2012.

24. Respondents object to paragraph 24 as non-compliant with CPLR § 3014. Respondents deny knowledge or information sufficient to form a belief as to the truth of paragraph 24.

25. Respondents object to paragraph 25 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 25, except deny knowledge or information sufficient to form a belief as to the truth of Petitioner's medical history, and admit that Petitioner is currently 58, was scored by COMPAS as warranting Level 4 supervision, and has an order of deportation against him.

THE EVIDENCE BEFORE THE BOARD AND THE PAROLE DENIAL

26. Respondents object to paragraph 26 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 26, except admit that the interview panel had all appropriate information before it including statements in support of Petitioner, that Petitioner spoke at his interview, and that Petitioner alleged personal development and remorse.

27. Respondents object to paragraph 27 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 27.

THE DECISION OF THE APPEALS UNIT

28. Respondents object to paragraph 28 as non-compliant with CPLR § 3014. Respondents deny the allegations of paragraph 28, except admit that the administrative appeal was denied on August 24, 2020, and that the quotes are textually accurate.

A. THE PAROLE DENIAL SHOULD BE REVERSED AND [REDACTED] SHOULD BE GRANTED A PROMPT HEARING DE NOVO

29. Respondents deny that a response is required to the allegations of paragraphs 29-33 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

B. THE PAROLE DENIAL’S CENTRAL PREDICATE – [REDACTED] WOULD BE “CONTRARY TO THE WELFARE OF SOCIETY” – WAS CONCLUSORY AND DID NO MORE THAN PARROT THE STATUTORY LANGUAGE

30. Respondents deny that a response is required to the allegations of paragraphs 34-39 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

C. THE PAROLE DECISION INDICATES THAT THE COMMISSIONERS FAILED TO CONSIDER [REDACTED]’S IMMIGRATION STATUS FOR IMPENDING DEPORTATION

31. Respondents deny that a response is required to the allegations of paragraphs 40-43 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

D. THE PAROLE DENIAL FAILED TO EXPLAIN IN ANY MEANINGFUL FASHION WHY THE BOARD WAS DEPARTING FROM [REDACTED]’S COMPAS SCORES

32. Respondents deny that a response is required to the allegations of paragraphs 44-49 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

E. THE BOARD’S DENIAL OF PAROLE BASED ON [REDACTED]’S ALLEGED “SUPERFICIAL EXPRESSION OF REMORSE” IGNORED OVERWHELMING OBJECTIVE EVIDENCE

33. Respondents deny that a response is required to the allegations of paragraphs 50-53 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

CONCLUSION

34. Respondents deny that a response is required to the allegations of paragraphs 53 (number repeated in the Petition) – 54 as they consist of argument and conclusions of law. To the extent an answer is required, Respondents deny that its actions fell beneath the applicable standards.

OBJECTION IN POINT OF LAW

THE PETITION FAILS TO STATE A CAUSE OF ACTION IN PART, AND EXCEEDS THE SCOPE OF ARTICLE 78 REVIEW

35. As more fully set forth in the accompanying Memorandum of Law, Petitioner misinterprets the applicable legal standards and thus fails to state a cause of action in part.

36. As more fully set forth in the accompanying Memorandum of Law, Petitioner exceeds the scope of CPLR § 7803 by seeking to have the Court substitute its judgment for that of the Board.

CONCLUSION

WHEREFORE, Respondents respectfully request that the court grant the following relief:

- (a) a judgment confirming Respondent’s determination and dismissing the Petition;
- (c) and for such other relief as this Court deems just and proper.

Dated: New York, New York
February 26, 2021

LETITIA JAMES
Attorney General of the
State of New York
Attorney for Respondents
By:

/s/ David T. Cheng
David T. Cheng
Assistant Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-6139

VERIFICATION

DAVID T. CHENG, an attorney admitted to practice before the courts of the State of New York, affirms the following to be true under penalties of perjury:

1. I am an Assistant Attorney General in the Office of Letitia James, Attorney General of the State of New York, attorney for Respondent in the above-captioned proceeding. I am duly authorized to make this verification.

2. I have read the annexed Verified Answer and know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters I believe them to be true.

3. The grounds of my belief as to the matters not stated upon my knowledge are as follows: records and correspondence of Respondent and conversations with employees of Respondent.

Dated: New York, NY
February 26, 2021

/s/ David T. Cheng
David T. Cheng
Assistant Attorney General