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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of [redacted], Petitioner, -against- TINA STANFORD, CHAIRWOMAN, NEW YORK STATE BOARD OF PAROLE, Respondent For Judgment Pursuant to Article 78 of the Civil Practice Law and Rules	:	Verified Petition Index No. ___________ **ORAL ARGUMENT REQUESTED**

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PRELIMINARY STATEMENT

Petitioner [REDACTED] is currently serving an indeterminate sentence of twenty-one years to life at Taconic Correctional Facility, Bedford Hills, NY. She has been incarcerated for over twenty-four years. Respondent New York Board of Parole ("Board") denied [REDACTED] parole for the fourth time on September 5, 2019.

Through her hard work and commitment to pursuing every positive opportunity presented to her, [REDACTED] has undergone the exact metamorphosis the justice system seeks to catalyze and reward. As explained by retired Superintendent of Bedford Hills Correctional Facility, Elaine Lord, in her letter of support to the Parole Board "Keeping [[REDACTED]] in prison cannot change the circumstances of her crime" but "to deny her parole is to send the message that what one does to rehabilitate while in prison does not matter, and we know this is not what we believe." Ex. 1.

Virtually ignoring her stellar record, the Board violated its statutory and regulatory requirements to meaningfully consider her for release in the following ways:

First, the Board stated in its initial decision that it did depart from her virtually perfect Correctional Offender Management Profiling for Alternative Sanctions ("COMPAS") risk assessment scores but it failed to provide any individualized reason for its departures from those twelve scores, in contravention of statutory and regulatory requirements as interpreted by numerous Supreme Court decisions. Ex.2, p. 27. Compounding this error, the Board then rejected [REDACTED]s administrative appeal and insisted that it had NOT departed from the COMPAS scores because its "decision was not impacted by a departure from the scale." Ex. 3, p. 6. Not only does that reversal demonstrate irrationality, it further flouts the explicit language of

Executive Law § 259(i)(c)(A) and the Board's own regulations that require explanation of any departure from a COMPAS score.

Second, the Board improperly relied solely on the facts of the offense and failed to explain how it considered statutorily required factors that weighed in [redacted] favor. Specifically, neither the parole interview nor the decision examined or explained how the Board weighed [redacted] institutional record, including program goals and accomplishments, her academic achievements, vocational education training or work assignments, her therapy and interactions with staff and inmates, her release plans, including community resources, employment, education and training, any support services available to her upon release and the complete absence of any prior criminal record.

Third, the Board improperly relied on unspecified and undisclosed "community opposition" to conclude that release would not be compatible with the welfare of society and that her release would deprecate the seriousness of her crime. Ex. 2, p. 27. Notwithstanding this reliance by the interview panel, the Board also refused to disclose any written community opposition to [redacted] prior to her administrative appeal, in violation of NYCRR 8000.5. After repeatedly denying that such opposition material existed, the Board delivered a last minute disclosure less than two weeks before this petition was due. That disclosure revealed that, prior to the 2019 interview, the Board was provided with predominantly cryptic and crude expressions of personal penologoical philosophy generated in response to a petition for support on social media. Those anonymous expressions of anger and outrage were not written statements made to the Board. The overwhelming majority were not based on personal knowledge of the facts and none of them meet the statutory criteria for consideration.

Fourth, the Board's written decision denying [REDACTED] release does not meet the legally required standards of detailed explication for parole denials. The Board's arbitrary and capricious actions are irrational.

Each error warrants annulment of the Board's September 2019 parole denial and requires a *de novo* interview.

VENUE

This action is properly commenced in New York County because it is the county where the Board conducted the parole release interview and made the decision to deny parole. An Article 78 petition may be filed in "any county within the judicial district where the respondent made the determination complained of." N.Y. C.P.L.R. §506(b) and § 7804(b); see also *International Summit Equities Corp. vs. Van Schoor*, 560 N.Y.S.2d 811, 812 (2d Dep't 1990) (noting that venue is preferable in the specific county "in which the matter sought to be reviewed originated.") As noted on the hearing transcript, the interview was conducted via video-conference at 314 West 40th Street, New York, New York. Thus, this action is properly commenced in New York County. Ex. 2.

PROCEDURAL HISTORY

On September 3, 2019, [REDACTED] appeared before the Board for a hearing conducted by Commissioners Alexander and Demosthenes. The Board denied release two days later on September 5, 2019. Ex. 2, pp. 26-27. [REDACTED] filed a timely Notice of Appeal on September 24, 2019 Ex 4 and subsequently perfected the appeal on January 23, 2020. Ex. 3. Board Counsel Kathleen Kiley wrote a letter to Petitioner's counsel on May 1, 2019 stating that community opposition documents relied on by the Board had been discovered and were being reviewed.[1] Ex.

[1] That letter did not reach Petitioner's counsel, who has not returned to the office due to the COVID-19 pandemic, until September when mail that had been stored was forwarded.

5. Without further notification or disclosure, on June 30, 2020, the Board belatedly denied administrative appeal. Ex 3. has therefore exhausted her administrative remedy and this petition is timely filed within the applicable four-month statute of limitations. *See* N.Y. C.P.L.R. § 217(1).

STATEMENT OF FACTS

. She is serving an indeterminate sentence of twenty years to life for murder in the second degree and has been imprisoned in New York State correctional institutions for almost all of her adult life. has accepted responsibility for and confirmed the facts of her underlying her conviction at each of her four parole interviews, in response to extensive questioning by each panel of parole commissioners. [2]

On January 14, 1995, who was living with at the time—arrived home with his two-year old son, . He then went to work the night shift at his job. served the children dinner and put them to bed. Later that night, was suddenly awakened by an unknown noise. She went to the room where and her daughter were sleeping to investigate. The door was blocked and fell into the bedroom as she pushed it open. She fell on to who was sleeping on the floor. Upset by her fall and, with her "mind flooded with chaotic thoughts of everything that" she "perceived was wrong in [her] life" at the time, she "lashed out" at Ex. 6.

stopped when she realized what she was doing, put back to bed, left the room, and returned to her own room. She thought that he was all right the next morning and

[2] Although they did not mention it during the interview, each Commissioner had conducted an earlier interview with Commissioner Alexander interviewed on September 5, 2015; Commissioner Demosthenes interviewed on September 12, 2017. Those interviews also focused almost exclusively on the crime and was asked about many of the same facts and asked many of the same questions during those interviews. Her answers remain the same.

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attributed his vomiting to the fact that he had been sick before coming to her house. She did not get him medical attention and did not report that she had fallen on him and hit him. ■■■■■ left later that morning to take ■■■■■ to his mother. That night, ■■■■■ called ■■■■■ and told her that ■■■■■ had died. She was shocked and remained unable to accept that she had caused his death. Her denial continued through her first months of incarceration.

Parole History

Based on her outstanding institutional record, ■■■■■ became eligible for a limited credit time allowance parole interview that was held on March 10, 2015. The Board denied release and subsequently denied release after her reappearances on September 8, 2015, on September 12, 2017, and on September 3, 2019.

The subject of this petition is the fourth parole interview held on September 3, 2019 and the decision denying release on September 5, 2019. In their decision, the Commissioners stated that they were departing from the COMPAS scores, each of which classified ■■■■■ as low risk of reoffending, but did not provide any reasons for such deviation. Ex. 2. The Commissioners also cited "community opposition" in their decision. *Id*., p. 27.

In December, 2019, while preparating the administrative appeal, counsel for Petitioner formally requested ■■■■■ parole file, including all documentation of community opposition, pursuant to 9 N.Y.C.R.R. § 8000.5. On December 23, 2019, certain documentation was disclosed but it did not include community opposition material. Ex. 7. On December 29, 2019, Morningside Heights Legal Services once again requested "community opposition," explaining its specific reference in the Board's decision. Ex. 7.

As mentioned in the December 29, 2019 request, the commissioners specifically referred to "continued community opposition" in their decision. That phrase also appears in

Commissioner Alexander's worksheet. Ex. 7. On December 30, 2019, the Board confirmed that it had disclosed everything it was required to disclose under its regulations. Ex. 7. On January 24, 2020 filed her administrative appeal asserting, *inter alia*, that the Board had improperly relied on purported community opposition that it failed to identify or disclose to Ex. 8, pp. 21-23.

Board Counsel Kathleen Kiley wrote a letter to Petitioner's counsel dated May 1, 2019 stating that community opposition documents relied on by the Board had been discovered and were being reviewed. Ex. 5. Without further notification or disclosure, on June 30, 2020, the Board belatedly denied administrative appeal. Ex. 3.

On September 19, 2020, counsel for wrote to Board Counsel Kiley to inquire whether the Board had determined to release the documents described in her May 1, 2020 letter. After looking into the matter, Counsel Kiley reported that no community opposition documents had been discovered. Counsel for confirmed that report in correspondence dated September 29, 2020 and advised Counsel Kiley that an argument would be included in this petition that would state the Board's earlier position that community opposition material exists. Ex. 9. The next day, staff from Taconic Correctional Facility called to report that there indeed was a great deal of material and that it would take some time to review and redact it. After additional follow up, 200 pages of redacted material were produced on October 14, 2020. The material included 40 pages of responses to a Change.org petition posted in 2019. The names and location of all responders had been redacted. Ex. 10.

COMPAS Risk Assessment

Shortly before her hearing, the Board administered a risk and needs assessment to using the Correctional Offender Management Profiling for Alternative Sanctions

(COMPAS) tool. In her 2019 COMPAS, [redacted] was assessed as a level 1 risk—the lowest possible risk assessment score—for the following categories: Risk of Felony Violence, Arrest Risk, Abscond Risk, Criminal Involvement, History of Violence, Prison Misconduct, ReEntry Substance Abuse, Negative Social Cognitions, Low Self-Efficacy/Optimism, ReEntry Financial, and ReEntry Employment Expectations. Ex. 11. [redacted] excellent COMPAS scores mirror the results of her previous assessments in 2017 and 2015 and provide compelling evidence of her low risk of recidivism and suitability for release. Commissioner Alexander stated at the hearing, "We do use the COMPAS as a tool to see what your needs might be out in the community if you were released. Your scores are all low. I'm not having any needs out in the community, so that's a positive document." Ex. 2, p. 16.

Acceptance of Responsibility and Remorse

With the help of intense rehabilitative programming and self-examination, [redacted] has taken full responsibility for her offense, has come to terms with its tragic consequences and has apologized to [redacted] parents by filing a letter with the Apology Bank maintained by the DOCCS Office of Victim Services.[3] Ex. 12.

She has used her time not only to analyze the factors that led to her conduct, but also to address those issues through education, vocational training, and psychological development. Through her extensive participation in therapy and institutional programs, she has learned skills and strategies that have not only helped her to confront her past, but have also allowed her to take positive steps toward building her future and to prepare for her life as a productive member of society.

[3] Commissioner Alexander oddly asked why [redacted] had written the apology letter. Ex. 2, p. 11.This process is governed by DOCCS Directive 0510 and provides a mechanism for incarcerated individuals to communicate accountability, genuine remorse and acknowledge the pain caused by their criminal actions.

Through her exhaustive programming regime, [redacted] has developed insights into her tumultuous childhood and collapsing personal life in the months preceding her offense. In a letter that she included in her parole packet, [redacted] described to the Board how the programs she has participated in during her incarceration have facilitated her own rehabilitation. Ex. 6. [redacted] does not look back at her personal circumstances as an excuse for what she has done. There is no excuse. Rather, she has reflected on her background as part of her programming to ensure that she will never react in the same manner again. As she writes:

> *My search to figure out my once destructive behavior allows me to live peacefully today. Though I am destined to live with the tragic consequences of my actions in 1995, and will always be deeply and fundamentally ashamed of who I was then, I am no longer that broken woman. Today, I emphatically know that I will never create such destructive behavior again. Instead, I have been conditioned to embrace a healthy path of continuous change and self-improvement that I earnestly choose to follow every day.*

By addressing the factors that led to her offense, and working to improve and reform herself every day for decades, [redacted] has constructed her rehabilitation.

[redacted] has taken responsibility for, and expressed deep regret and sadness about, the crime she committed. In her letter to [redacted]'s family (Ex. 12), she explained

> *I would like to apologize to you for causing your lives to be filled with heartbreaking grief and sorrow; you should never have had to experience the loss of your child. Every precious moment you missed with [redacted] is because I took your beloved son from you. What I did was wrong…I will carry the enormous weight of the knowledge that I am responsible for [redacted]'s death always.*

During her parole interview, she told the Board that learning to accept responsibility in the early years of her incarceration was the most important thing she has accomplished – a "turning point" in her words. Ex. 2, p. 12

Rehabilitation and Programmatic History

has completed a number of courses designed to deal with anger, violence, and conflict resolution—including Aggression Replacement Training ("A.R.T."), Down On Violence, Anger and You, and Learning Tolerance by Starting Small workshops, among many others. Ex. 13. has been deeply committed to the Alternatives to Violence Project ("A.V.P."), which she has been involved with for twenty-two years. A.V.P. was not offered at Taconic when arrived in the fall of 2018. But, knowing how important it was to her early evolution on the inside, worked to bring the program to her peers.

completed an undergraduate degree in Sociology at Marymount Manhattan College while incarcerated. She was valedictorian of her class. Numerous former instructors have written in strong support of release. Ex. 14. As Ronald Day, a Vice-President of the Fortune Society and a leading expert on reentry writes, s programming "demonstrates her willingness to be a mature and responsible individual, one that seeks to increase her communication/interpersonal skills and her ability to resolve issues without conflict." Ex. 14, May 3, 2019 letter from Ronald Day.

a family friend who has known all her life—also attests to her rehabilitative transformation through programming:

> *In speaking with her, I garnered that she is an educated woman who developed into a leader, teacher, speaker, presenter, role model, and mentor. She is intellectually, spiritually, and emotionally mature. She maintains integrity, dignity, and humility.*

Ex. 14. She learned to express herself in essays, letters, and as the managing editor of Bedford Hills's newsletter. Motivated by a passion for learning, has found service rewarding. She also received numerous awards and certificates recognizing her outstanding academic achievements and service to the college program and broader community.

For the past twenty-four years, ████ has been a model of good behavior and has not received even a single disciplinary infraction. Ex. 15. She has participated in religious studies courses, bible study groups, workshops from the Diocese of Rochester, and Kairos spiritual counseling. ████ has been committed to her faith for decades – a major positive force in her life. Ex. 16.

Employment History

████ has also cultivated a diverse array of professional experiences, ranging from her work as a program aide and administrative school clerk at both Taconic and Bedford Correctional Facilities' college programs, to her employment as an industrial factory and food services worker at Albion Correctional Facility, and as managing editor of *The Insider*. Ex. 17. She has excelled in each of these roles. Ex. 18. Since her graduation, ████ has become an essential and invaluable leader in the college programs.

Employability and Work Recommendations

████ outstanding educational pedigree, diverse work experiences, and marketable skillset uniquely situate her for employment success upon release. She has worked to develop her vocational skills as well. Ex. 19. Her assignments have included working as an administrative clerk in the school, in the Children's Center, and in Chaplain Services. She has also been an IPA, and has worked in various state shops, including as an industries worker, at the sign shop and the metal painting shop. She has trained for each of these assignments.

Staff and volunteers who have worked with ████ rave about her strong work ethic, warm and encouraging demeanor, and her unparalleled "dedication to the welfare and success of her fellow students." Exs. 20, 21. A large number of her former teachers have written in support of her release. Ex. 14. ████ is also supported by a wide range of community members who

understand that her remarkable progress in prison will inspire other women. They look forward to working with her after her release.

Aileen Baumgartner, Director of Bedford Hills's college program, writes in her letter that ██████ served as a force for expanding educational opportunities in correctional facilities through her "essential" and "invaluable" work with the Bedford Hills college program and through her work at Taconic. Ex.14, April 26, 2019 Baumgarnter Letter. ██████ work, along with her colleagues, has expanded access to education for numerous women who are incarcerated in New York State. Ex. 14, April 20, 2019 Rubenstein memo. With the personal, professional, and spiritual tools she has developed from her education, programming, and employment, ██████ plans to continue repaying her debt by giving back to her community and helping to expand access to education.

Re-Entry Plan

Once released, ██████ will benefit from a large support system and a detailed release plan that will allow her to productively contribute to her community. ██████ has several offers and opportunities for housing in New York City, including from Hope House in the Bronx, which is an initiative of The Ladies of Hope Ministries that provides housing, programming, and employment resources to formerly incarcerated women, with Hudson Link's New Beginnings initiative and a place on the waitlist for Hour Children's housing in Queens, which also offers integrated housing, programming, and employment resources. Ex. 22.

██████ has used her period of incarceration productively to obtain the employment and educational skills that will allow her to pursue her goal of becoming a social worker in the field of reentry. Specifically, ██████ would like to use her skillset to help provide reentry support for other people returning from prison and to expand their educational opportunities.

[redacted] will have access to a number of employment resources upon her release. Columbia University's Center for Justice has offered [redacted] an internship as an administrative assistant and offered to provide her with ongoing reentry support. Ex. 22, August 26, 2019 letter from Cameron Rasmussen. Additionally, a number of large nonprofit reentry organizations—such as the Fortune Society and Women's Prison Association—have offered [redacted] access to their employment resources. Ex. 22.

In addition to obtaining employment after her release, [redacted] will have the opportunity to obtain a master's degree in social work ("MSW"), a credential that will allow her to pursue her goal of becoming a social worker and further enhance her employability. She has the "personal commitment" from Benay Rubenstein—a leader in the field of correctional education and reentry services—to "serve as a guide" for [redacted] when she applies to MSW programs. Ex. 14, April 20, 2019 Rubenstein memo. And [redacted] has received an offer from John Jay's College Initiative to assist her in applying for an MSW program at Lehman College and to cover any of the costs. Ex. 22. [redacted] is excited about these opportunities for her to continue pursuing her education after her release.

ARGUMENT

I. The Board Violated Its Regulatory And Statutory Requirements When It Failed To Explain Its Departure From The COMPAS Assessment

In 2011, the New York legislature emphasized the importance of rehabilitation by amending the law to require the Parole Board to issue regulations in order to evaluate "whether an inmate is rehabilitated and ready for release." *Rabenbauer v. New York State Dep't of Corr. & Cmty. Supervision*, 995 N.Y.S.2d 490, 493 (Sup. Ct. Sullivan Cty. 2014) ("the changes were intended to shift the focus of parole boards to a forward-thinking paradigm, rather than a backward looking approach to evaluating whether an inmate is rehabilitated and ready for

release"); *Menard v. New York State Board of Parole*, No. 159376-17 (Sup. Ct. N.Y. Cty. 2019); *see* N.Y. Exec. Law § 259-c(4).

The Board resisted promulgating new regulations and initially failed to solicit public comment as formal regulatory rulemaking requires. On September 27, 2017, the Board finally issued final regulations and made significant changes to the Parole Release Decision-Making process. 9 N.Y.C.R.R. § 8002.2. Those regulations state that if, in denying release, "the Board departs from the Department Risk and Needs Assessment's scores, the Board shall specify *any* scale within the Department Risk and Needs Assessment from which it departed *and provide an individualized reason for such departure*." 9 N.Y.C.R.R. § 8002.2(a) (emphasis added).

Here the Parole Board Panel failed entirely to fulfill its regulatory obligation when it did not provide an individualized reason for its explicit departure from any of [REDACTED] low COMPAS scores. In rejecting her administrative appeal, the Board reversed course and attempted to rescue its unlawful decision by insisting that it "did not depart" from the COMPAS instrument because "release would be inappropriate under the other two statutory standards."[4] Ex. 3, p.6. This post hoc rationalization cannot relieve the Board of its statutory and regulatory obligation to consider whether there is a reasonable probability that [REDACTED] would live and remain at liberty without violating the law in light of her low COMPAS scores, and to explain its conclusion that her release would not be compatible with the welfare of society. Exec. Law § 259-i(2)(c)(A); 9 N.Y.C.R.R. § 8002.2(a). *Robinson v. Stanford*, No. 2392/2018, at *2 (Sup. Ct. Dutchess Cty. Mar. 13, 2019) (ordering *de novo* interview for man with two murder convictions and low COMPAS scores because "the Parole Board's finding that discretionary release would

[4] As noted by the Board (Ex. 3, p. 1), it is statutorily required to consider "if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law." Exec. Law § 259-i(2)(c)(A).

not be compatible with the welfare of society directly contradicts these scores in his COMPAS assessment.") She in no way poses "a current danger to society." *See Cappiello v. New York State Bd. Of Parole*, 800 N.Y.S.2d 343 at *5 (Sup. Ct. N.Y. Cty. 2004) ("The Parole Board's failure to qualitatively determine whether petitioner presented a current danger to society, based on all of the relevant statutory factors, was a clear abdication of its statutory duty").

A. The Board departed from every COMPAS scale without any explanation

virtually perfect COMPAS score, the findings of which the Board deviated from without detailed explanation, in violation of its mandate. Ex. 2, p. 27. In explaining its departure, it relied only on comments by the judge and a non-existent jury verdict.[5] That explanation entirely ignores the fact that was assessed to pose a low risk of recidivism on each of the twelve COMPAS scores. Ex. 11. was, for example, assessed to be at the lowest risk for committing a violent felony, being arrested, criminal involvement, absconding from parole supervision or ren-entry issues.

In denying administrative appeal, the Board continued to deny that the 2011 amendments and new regulations "represent a forward-looking shift." Ex. 3, p. 6. Equally troubling, the Board also insisted, without authority, that the COMPAS "is not predictive."[6] *Id.* Indeed, the Board explained that it "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." *Id.* (emphasis added).

Courts have repeatedly reversed Board decisions that depart from COMPAS without

[5] was not tried by a jury. *People v.* , 674 N.Y.S.2d 531 (4th Dep't 1998).

[6] According to DOCCS, the COMPAS instrument administered at the the time of the pre-Board interview is an empirically validated "research based clinical assessment instrument" used to assess the risks and needs of a person being considered for release by "gathering quality and consistent information to support decisions about supervision, treatment and other interventions." DOCCS, Directive No. 8500: COMPAS Assessment/Case Plan, Nov. 19, 2015, available at http:/www.doccs.ny.gov/Directives/8500.pdf.

explanation. *See e.g., Rossakis v. New York State Bd. Of Parole*, 146 A.D.3d 22, 28-29 (1st Dep't 2016) characterizing as "unsupported" the Board's assertions contradicting petitioner's COMPAS score, and affirming grant of *de novo* interview); *Bottom v. Stanford*, E2020-745 (Sup. Ct. Sullivan Cty, Aug. 10, 2020) (granting *de novo* interview and ordering the Board to specify the specific COMPAS scores from which it was departing and to provide an individualized explanation for departing from those scores); *Voii v. Stanford,* No. 2020/20485 (Sup. Ct. Dutchess Cty. May 13, 2020) (granting *de novo* interview and rejecting Board's argument that other statutory factors, including the nature of the crime, relieved it of the regulatory obligation to provide detailed individualized explanation for departure from each COMPAS score).

Like the petitioners in these cases, ████ was entitled to an explanation of the reasons the Board had for departing from COMPAS scores that placed her at the lowest risk of recidivism. Without such an explanation, the decision must be anulled.

B. The Board failed to meaningfully consider the COMPAS Assessment

Unsurprisingly, multiple courts have held that "it is unquestionably the duty of the Board to give fair consideration to each of the applicable statutory factors" provided by Exec. Law § 259-i(2)(c)(A). *See, e.g., Menard v. N.Y. Bd. of Parole*, No. 159376-17 (Sup. Ct. N.Y. Cty. 2019); *Coaxum v. N.Y. Bd. of Parole*, 827 N.Y.S.2d 489, 494 (Sup. Ct. 2006) ("actual consideration of factors means more than acknowledging that evidence of them was before the Board"). In ████ case, these factors include her exemplary institutional record, academic achievements, remarkable programmatic accomplishments, work experiences, therapy and dedicated rehabilitative initiatives, positive interactions with staff and inmates, and her thorough release plans.

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In the Panel's written decision, there are fifteen sentences revisiting [redacted] crime from 25 years ago, yet her COMPAS scores, which reflect the person she is today, are mentioned only in one sentence – which states the Board's refusal to rely on them. Because the Board failed to put forth an individualized reason for its departure from the low scores and took inconsistent positions about its departure from those scores, its decision was irrational and improper.

The Commissioners acknowledged that they were departing from the COMPAS and cited [redacted] conduct 25 years ago and comments of the judge to justify their departure. Those statements display a fundamental misunderstanding of the Board's obligation to consider the COMPAS assessment. By relying solely on the facts of the crime and comments about that crime to explain its departure from COMPAS scores, the Board determined the crimes outweighed them. But the purpose of COMPAS is not to "excuse" a person's crime; it is to determine whether the person who committed a crime decades ago still presents the same risks to society today.

COMPAS was implemented to provide greater objectivity, consistency and transparency in the Board's decision-making. DOCCS Notice of Adoption: Parole Board Decision Making, p. 2 (NY State Register, Sept. 27, 2018)("The new regulation is also intended to increase transparency in the Board's decision making by providing an explanation when the Board departs from any scale in denying an inmate release. Additionally, the Board will state the reasons for denial in detailed, factually individualized and non-conclusory terms"); 9 N.Y.C.R.R. § 8002.2(a). It is not, and never has been, a mitigating factor for a person's crime. COMPAS is a forward-looking risk assessment, not a backward-looking value judgment. It is meant to assess a person's risk if they are released, not the sufficiency of their sentence for the crime they committed decades ago.

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The Board improperly disregarded ██████ demonstrably low risk, outstanding achievements and clear rehabilitation because it deemed decades of incarceration insufficient for her crime. *See e.g., Ely v. Bd. of Parole*, No. 2016/100407 (Sup. Ct. N.Y. Cty. 2017) (granting *de novo* interview based on finding that Petitioner's COMPAS assessment, lack of a criminal record, clear expression of remorse, acceptance of responsibility for her crime, post-release plans, many letters of support and the many positive initiatives she undertook during her incarceration indicate "that no amount of evidence of rehabilitation would have outweighed [Respondent's] interest in retribution").

In summary, the Parole Board failed to apply the rehabilitative aspect of the amended Executive Law, as reinforced by the 2017 regulatory changes it required. The Board's blatant and unjustified departure from ██████ highly positive COMPAS scores, its failure to follow its own procedures, and its attempt to rewrite the panel's decision in response to her appeal was irrational and improper. Its decision must be annulled.

II. The Board Violated the Regulations By Not Explaining How It Considered All The Parole Decision-Making Factors

Regulations the Board promulgated require it to "address how the applicable parole decision-making principles and factors listed in 8002.2 were considered." 9 N.Y.C.R.R. § 8002.3(b). The Board loosely referred to certain factors but devoted the overwhelming majority of its interview and decision to one statutory factor – the seriousness of the offense.

The Board cannot base a decision to deny parole solely on the nature of the crime. *Rossakis v. NYS Bd of Parole, supra,* 146 A.D.3d at 27 (holding the Board acted irrationally in focusing exclusively on the seriousness of petitioner's conviction and victim impact statements without giving genuine consideration to petitioner's remorse, institutional achievements, release plan, and her lack of any prior violent criminal history); *V. Sullivan v. NYS Bd of Parole*, No.

2018/100865 (Sup.Ct. NY Cty, 2019) (finding Board relied almost exclusively on the seriousness of the crime and statements petitioner made at the time of sentencing); *Menard v. NYS Board of Parole*, *supra,* (Sup.Ct. NY Cty, 2019) (granting *de novo* hearing based on interview that focused primarily on questions focused on the seriousness of the crime); *Pulinario v. N.Y. State Dep't of Corr. & Cmty Supervision*, 42 Misc. 3d 1232(A) (Sup. Ct. N.Y. Cty. 2014) ("[T]he Parole Board's overwhelming emphasis was on the offense…At the hearing, there were only passing references to the contents of petitioner's application. In the decision there was only a perfunctory mention of all the statutory factors that weighed in [applicant's] favor."); *Ramirez v. Evans*, 112 A.D.3d 640 (2d Dep't 2013).

Courts look to the Board's written decision and parole interview transcript to determine whether the Board placed impermissible weight on the severity of the crime. *See Fraser v. Evans,* 971 N.Y.S.2d 332, 333 (2d Dep't 2013). The Board's decision merely lists a few of [redacted] [redacted] many programmatic, educational, and vocational successes over her time in prison and "notes [[redacted]] personal growth and productive use of time after 24 years in prison." Ex. 2, p. 26. The panel asked [redacted] 96 questions about the crime, (Tr. 2–13, 16–24), and only 13 questions about any other topic, (Tr. 13–16). Twenty pages of the twenty-four page transcript are devoted to questions about the crime.

That cursory mention of programming did not satisfy the Board's statutory obligation because "actual consideration of factors means more than acknowledging that evidence of them was before the Board." *Perfetto v. Evans*, 976 N.Y.S.2d 183, 184 (2d Dept. 2013) (finding that although the written determination of the Board mentioned the petitioner's institutional record, it is clear that they denied parole solely on the basis of the seriousness of the crime); *Coaxum*, *supra*, 827 N.Y.S.2d at 494*; In re Winchell*, 32 Misc. 3d 1217(A), 934 N.Y.S.2d 37 (Sup. Ct.

Sullivan Cty. 2011) ("[t]he mere mention that petitioner did participate in rehabilitative progress, is itself insufficient to satisfy the strict requirements of Executive Law § 259–i*"); Phillips v. Dennison,* NYLJ, Oct. 12, 2006, at 23, col 1(finding that "it appears that such [rehabilitative] achievements were mentioned only to dismiss them in light of the seriousness of petitioner's crime"); *Mitchell v. NY State Div. of Parole,* supra, 871 N.Y.S.2d at 688–89 (2d Dep't 2009) (finding that the board failed to consider other statutory factors and focused on the seriousness of the crime); *West v NYS Bd of Parole*, 41 Misc. 3d 1214(A) (Sup. Ct. Albany County 2013 (granting Article 78 petition finding that similar, improper, perfunctory mention of statutory factors was "corroborated by its boilerplate decision.").

Governing regulations required the Board to consider ██████ "institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interactions with staff and inmates" and her "release plans, including community resources, employment, education and training and support services available" and "prior criminal record." 9 N.Y.C.R.R. § 8002.2(d)(1), (3) and (8). Despite having been provided with an extensive packet that included documentation that each of these factors weigh heavily in ██████ favor, the Board only touched on a few items and did not explain, either during the interview or in its decisions how it had weighed them, if at all.

A. The Board ignored evidence of extensive programming and therapy that ███ ███ has successfully completed

While the Board is entitled to consider the seriousness of ██████ offense, it did not consider her consistent acceptance of responsibility and profound expressions of remorse for that offense—including at her three prior interviews with the Board and in her Apology Bank letter to ██████ family. Carrying the weight of her responsibility for ██████ death, ██████

has devoted herself to rehabilitation. In her own heartfelt words, she "is responsible for this terrible crime." Ex. 2, p. 24.

The Board failed to weigh the fact that ███ has pursued an exhaustive psychological and behavioral programming regime to come to terms with the nature of her offense and to address the factors that led her to the worst moment in her life those decades ago. As ███ wrote in her letter to the Board, programming has helped her to fully accept that she is "responsible for ███'s death," and this understanding has become the "driving force that steered [her] through an exhaustive search to figure out why [she] acted the way [she] did" that night. Ex. 6. In partnership with mentors and colleagues, many of whom wrote to the Board on her behalf, ███ has identified these factors as, among other things, her tumultuous and abusive childhood—which deprived her of tools for expressing her emotions in a healthy manner—and a sudden and simultaneous collapse of her family and professional life in the year leading up to the offense. Having identified these factors, ███ has successfully worked to learn healthy means of managing emotions and stress. Importantly, ███ also has the capacity to understand that while identifying these factors was an early and critical aspect of her journey, those factors in no way excuse her actions or diminish the personal accountability she must take for the crime she committed.

The Board failed to consider that ███ has completed a number of courses designed to deal with anger, violence, and conflict resolution—including Aggression Replacement Training ("A.R.T."), Down On Violence, Anger and You, and Learning Tolerance by Starting Small workshops, among many others. In particular, ███ has been committed to the Alternatives to Violence Project ("A.V.P."), which she has been involved with for twenty-two years. She has completed all three levels of A.V.P. and has served as an A.V.P. facilitator since

2001, and she has worked on more than 20 A.V.P. workshops since—each lasting twenty-two hours over three days. As a facilitator, [redacted] leads exercises to help her peers reflect on how and why situations in their lives escalated to violence. And she teaches workshops that help them learn to employ various conflict resolution strategies. A.V.P. was not offered at Taconic when [redacted] arrived in the fall of 2018, but she has been working to bring the program to her peers (an effort that looked highly promising before the 2020 Coronavirus pandemic hit).

B. The Board failed to consider [redacted] outstanding institutional record

[redacted] remarkable rehabilitative transformation is reflected in her institutional record, which the Board merely "notes" in its decision, despite its regulatory obligation to consider it. She has maintained a spotless disciplinary record for twenty-five years.

Prior to her conviction, [redacted] had a high school degree and no intention of pursuing higher education. Soon after she began serving her sentence, she discovered her love for learning—ultimately graduating from the Marymount Manhattan College Program with a bachelor's degree and as the valedictorian of her class. Since her graduation, [redacted] has become an "essential" and "invaluable" leader in the college programs at Bedford Hills and Taconic correctional facilities. She has also developed a passion for writing and literature. She has learned to express herself in essays, letters, and as the former managing editor of Bedford Hills's newsletter. Professor [redacted] of Columbia University wrote (Ex. 14) of the "privilege" of teaching [redacted]:

> *[redacted]'s participation in this course was outstanding. She is a gifted, almost lyrical, writer and an insightful critic…In short, I found [redacted] [redacted] to be an outstanding student and a wonderfully responsible person. I would be delighted to have her in my regular undergraduate Columbia courses.*

[redacted] has also cultivated a diverse array of vocational experiences, ranging from her work as a program aide and administrative school clerk at both the Taconic and Bedford Correctional Facilities' college programs, to her employment as an industrial factory and food services worker at Albion Correctional Facility, and as managing editor of *The Insider*. She has excelled in each of these roles. [redacted] outstanding educational pedigree, diverse work experiences, and job-ready professional skills uniquely situate her for employment success upon release.

C. The Board failed to consider the strong support and detailed, comprehensive release plan [redacted] has developed to insure a successful re-entry

The Board also failed to weigh [redacted] extensive post-release plans. Once released, she will benefit from a large support system and a detailed release plan that will allow her to productively return to the community. She plans to relocate to New York City, where she will have a strong support system, housing, education, and employment resources available to her. For long-term support, [redacted] has commitments from an armada of large organizations—including the Fortune Society, the Women's Prison Association, Hudson Link, Columbia University's Center for Justice, and John Jay's College Initiative—to support her housing, employment, educational, and social service needs. Her strong support network and release plan position [redacted] for a successful return as a productive member of society.

Additionally, The Board failed to sufficiently weigh that over the course of her rehabilitative journey, [redacted] has touched the lives of many people, ranging from educational staff to those with whom she is incarcerated. Many of these individuals have written letters on her behalf, some of which are quoted from in earlier sections of this memorandum. Their letters provide heartfelt accounts of [redacted] passion for education; her instrumental role with the Bedford Hills college program, which has become a model for correctional education across

New York State and across the country; and her desire to give back to society once she is released by working with other women who are reentering our communities and lack her educational opportunities. Each letter is a testament to the comprehensive rehabilitation [redacted] has achieved in over two decades of incarceration. As [redacted] noted in her letter to the Board, she "can be a leader when called upon" and hopes "to give back to [her] community via volunteer work." Ex. 6.

In this case, every statutorily required factor, other than seriousness of the crime, weighs in [redacted] favor. In light of this remarkable record, the Board failed entirely to explain the determination that [redacted] release would be incompatible with the welfare of society. *Robinson*, 800 N.Y.S. 2d at *4 (holding that "Board's finding that discretionary release would not be compatible with the welfare of society directly contradicts these scores in his COMPAS assessment"); *Cappiello*, *supra*, 800 N.Y.S.2d at *4.

By denying [redacted] parole release, the Board therefore "made clear that those factors no matter how impressive, could not justify … release from prison when weighed against the seriousness of [her] crime." *Rios v. N.Y. State Div. of Parole*, 836 N.Y.S.2d 503 at *3 (Sup. Ct. Kings Cty. 2007) (holding that the Board acted arbitrarily because it failed to rationally explain its parole denial when all factors weighed in favor of release except the underlying offense of murder). The Board attempts to bolster its denial by repeatedly referring to "community opposition." Because neither the statute nor the regulations identify this as a valid factor to consider, as they do for the victim's representative, the Board cannot rely on it to justify denial of release.

III. The Parole Board Violated Statutory and Regulatory Requirements by Considering and Denying Release Based on Inappropriate "Community Opposition" Statements of Penological Philosophy

The Board not only failed to consider factors it is required to consider when making a parole release determination, it injected a non-statutory element of "community opposition" into its decision-making process. Citing that purported factor as a reason to rely solely on the seriousness of the offense in both the panel and administrative appeal decisions was unlawful and irrational.

A. The Board Failed to Disclose Material That It Considered and Relied On Beyond the Scope of Statutorily Authorized Factors

As part of a disturbing pattern, the Board failed to disclose the alleged "community opposition" material that it considered as part of [redacted] file, as it is required to do by the regulations. *See e.g., Kinard v. NY State Bd. of Parole*, (Sup. Ct. Dutchess Cty, 2018); *Ramirez v. NY State Bd. of Parole*, (Sup. Ct. Dutchess Cty, 2017); *Hopps v. NY State Bd. of Parole*, (Sup. Ct. Dutchess Cty, 2018); *Williams v. NY State Bd. of Parole*, (Sup. Ct. Albany Cty, 2015). The central role this material played in the Board's analysis is clearly stated in its decisions. In the concluding paragraph of the panel decision, the Board states: "The continued opposition by the community indicates your release would not be compatible with the welfare of society" and that "your release would trivialize . . . the years of harm to the community and would therefore deprecate the serious nature [of] this crime so as to undermine respect for the law." Ex. 2, p. 27. Despite these assertions, the Board failed to disclose any community opposition material in response to a request pursuant to the regulations. *See* pp. 5-6, *supra*. Courts have repeatedly granted *de novo* interviews where the Board has similarly relied on "community opposition" but has not produced such material either to a petitioner or to the court. *See, e.g., Clark v. N.Y. Bd of*

Parole, No. 160965/2017 (Sup.Ct. N.Y. Cty, April 27, 2018), *aff'd as modified*, 166 A.D.3d 531 (1st Dept 2018); *Voii v. Stanford, supra*.

On October 14, 2020, almost ten months after the undersigned initially asked for the parole file, including any community opposition material, the Board disclosed 200 pages of redacted material. That material included responses to a Change.org petition from 2015, and fourteen short messages that appear to have been submitted through the DOCCS portal in 2017 and included in the "Community Supervision folder for Commissioner review".[7] The only material submitted after the last Board review and prior to the September 2019 interview is 40 pages of responses to a Change.org petition from 2019 (Ex. 10) and a two-page letter that appears to be from a lawyer. The Board redacted all names and locations from this material.

Change.org hosts petitions on a publicly available social media platform. It describes itself as a place where "more than 200 million people in 196 countries" are "starting campaigns" and mobilizing supporters. https://www.change.org/about. Anyone can post a message simply by registering with the website and providing basic information. The Board's disclosures include responses to petitions posted in 2015 and 2019. Those responses do not include any written statements to the parole board and therefore do not meet the criteria of 9 NYCRR 8000.5[c][2] which allows the Board to withhold names and addresses of "persons who submit to the parole board a written statement." Many of the responses are short, evidence no personal knowledge of the facts of the case[8] and express strong statements of penal philosophy that are well beyond the bounds of criteria the Board can lawfully consider.

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[7] DOCCS provides a formal mechanism for people who either support or oppose parole release to communicate directly with the Board. https://doccs.ny.gov/form/letters-in-support-or-opposition.

[8] Brief internet research revealed that unverifiable people who identify their location as more than 1,000 miles from New York – from other states including Florida, Iowa, South Carolina, Pennsylvania, and Virginia – responded to the 2019 petition. Courts have rejected efforts to expand the scope of "interested people" whose views can be considered to be part of the community. *See e.g., Clark v. NYS Bd. of Parole*, 2018 WL 1988851 (N.Y.Sup.) (Sup. Ct. NY Cty 2018), *affirm'g as modified* 166 A.D.3d 531 (1st Dept 2018) (an opposition letter by a legislative body

B. The Board Cannot Consider and Rely on the Penal Philosophy of Individuals

Although the First Department has permitted consideration of opposition from members of the public, it has required the Board to disclose that opposition and has limited it to members of the public who are either authorized by statute or regulation. *Clark v. N.Y. Bd of Parole*, No. 160965/2017 (Sup.Ct. N.Y. Cty, April 27, 2018), *aff'd as modified*, 166 A.D.3d 531 (1st Dept 2018). Moreover, although Judge Kelly was unable to review material the Board relied on in *Clark*, he specifically noted that it would be statutorily impermissible to consider opposition letters expressing penal philosophy. *See King v. New York State Div. of Parole*, 83 N.Y.2d 788,791 (1994) ("There is evidence in the record that petitioner was not afforded a proper hearing because one of the Commissioners considered factors outside the scope of the applicable statute, including penal philosophy, the historical treatment of individuals convicted of murder, the death penalty, life imprisonment without parole, and the consequences to society if those sentences are not in place.")[9]

The short statements posted by Change.org that the Board provided as "community opposition material" have recurrent themes and vulgar language.[10] Many comments admit that they know nothing about ██████ or the facts of the case, other than what they read in the petition. Some misstate the crime of conviction and nature of the injury. Other comments

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that sits more than 300 miles away from both the place of the crime and the current location of the applicant's incarceration "should fall outside the scope of reasonable community opposition").

[9] The Board relie on *Applewhite v. New York State Bd. of Parole*, 167 A.D.3d 1380 (3d Dep't 2018) in denying ███ █████ administrative appeal. In *Applewhite*, a divided panel of the Third Department held that the Board may consider "community opposition." Without the benefit of oral argument from uncounseled petitioner, the majority decision was based, in part, on incomplete legislative history and a faulty premise: that 9 N.Y.C.R.R. § 8005(2), a regulation promulgated in 1978 to express the Board's unwritten policy regarding "community opposition," somehow established the "clear intent" of the legislature to authorize consideration of such material. As the dissenting justices correctly observed, the clearest indication of legislative intent are the words of a statute. *Applewhite*, 167 A.D.3d 1385. And Executive Law § 259-i(2)(c)(A) clearly does not include "community opposition" as one of the factors that may be considered by the Board. Accordingly, the Board's September 5, 2019 decision should be annulled because "community opposition" is not a factor the Board should consider or rely upon.

[10] Given the uninformed, highly charged and vitriolic nature of these comments, it is unsurpring that the Board resisted producing them. Petitioner has attached a limited number of the least offensive comments as Ex. 10.

repeatedly refer to [redacted] as a female dog, are riddled with profanity and express their wish that she "rot in hell." The responses contain expressions of penal philosophy that would be impermissible factors for the Board to consider. For example, responders express their frustration that [redacted] cannot be executed or killed in a dramatic fashion. They also repeatedly complain about the fact that she is eligible for parole at all.

Other submissions repeatedly and erroneously refer to [redacted] lack of remorse and their belief that she will reoffend. There is no evidence that the Board considered [redacted]s remorse or her impressive rehabilitation, as documented by her COMPAS score, in the context of its reliance on these comments. Disturbingly, the Board explicitly defended its reliance on "community opposition" in a long paragraph before it concluded that its decision "was not impacted by a departure from a [COMPAS] scale." Ex. 3, pp. 2, 6.

The opposition material in [redacted] file is filled with penal philosophy, highly inflammatory invective and erroneous assumptions about her rehabilitation. It extends well beyond the statutory factors and guidance delineated in Exec. Law § 259-i.

IV. The Parole Board's Decision Violated Lawful Procedure Because It Failed To Explain Its Denial In Detailed Or Non-Conclusory Terms

When denying release, the Board must provide the "factors and reasons for such denial of parole. . . in detail and not in conclusory terms." N.Y. Exec. Law § 259-i(a)(2); *Rossakis v. N.Y. State Bd. of Parole*, 146 A.D.3d 22 (1st Dep't 2016); *Ramirez v. Evans*, 118 A.D.3d 707 (2d Dep't 2014). The Board must address how the applicable parole decision-making principles and factors listed in 8002.2 were considered in the individual's case. *Cappiello v. N.Y. State Bd. of Parole*, 6 Misc.3d 1010A (Sup. Ct., NY Cty, 2004). If the record reveals that the Board did not give "due consideration" to the required positive statutory factors, the courts have consistently intervened to grant applicants a new parole interview. *See, e.g.*, *Mitchell*, 871 N.Y.S.2d at 689

("the record supports the petitioner's contention that the Parole Board failed to take other relevant statutory factors into account"); *Malone v. Evans*, 919 N.Y.S.2d 911 (2d Dep't 2011); *Huntley v. Evans*, 910 N.Y.S.2d 112, 113 (2d Dep't 2010); *Menard*, No. 159376-17 (Sup. Ct. N.Y. Cty, 2019); *Ely,* No. 100407-16 (Sup. Ct. N.Y. Cty, 2017); *Cutting v. New York State Board of Parole*, No. 100553-14 (Sup. Ct. N.Y. Cty, 2015).

Here, the Parole Board's fourteen-sentence written decision failed to explain its denial "in detail and not in conclusory terms" as required by Exec. Law § 259-i(2)(a). In doing so, the Board violated lawful procedure and failed to articulate a rational basis for its determination. *Vaello v. Parole Bd. Div. of State of New York*, 851 N.Y.S.2d 745, 747 (3d Dep't 2008) (ordering a new hearing because the written determination did not comply with statutory requirements); *Prout v. Dennison*, 809 N.Y.S.2d 261, 262 (3d Dep't 2006) (granting a new hearing because the Board's "terse decision" did not explain its denial); *Bruetsch v. N.Y. State Dep't of Corrections and Community Supervision*, 992 N.Y.S.2d 157at *1(Sup. Ct. Sullivan Cty. 2014) (concluding the Board issued an inadequate decision that "simply restated the usual and predictable language contained in so many parole release denial decisions, with no specificity or other explanation to justify parole denial").

Where, as here, every factor other than the severity of the crime favors release, the Board has a heightened burden to state its decision in non-conclusory terms. *Mitchell*, 871 N.Y.S.2d at 743 ("while the seriousness of the underlying offense remains acutely relevant in determining whether the petitioner should be released on parole, the record supports the petitioner's contention that the Parole Board failed to take other statutory factors into account.") *See Rios v. N.Y. State Div. of Parole*, 836 N.Y.S.2d 503 at *3 (Sup.Ct. Kings Cty. 2007) (explaining that given "almost all of the statutory factors…weigh in petitioner's favor…the court would expect a

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rational explanation by the Parole Board for its decision as to why parole was nonetheless denied").

In *Rossakis*, 41 N.Y.S.3d at 495, the court granted a *de novo* interview when the Board summarily listed the petitioner's institutional achievements and then denied parole without further analysis or genuinely considering "petitioner's remorse, institutional achievements, release plan, and her lack of any prior violent crime." Similarly, in [redacted] case, the Board lists the statutory factors considered but does not analyze them before concluding that her "release would not be compatible with the welfare of society" and would "deprecate the serious nature of this crime as to undermine respect for the law"—language lifted directly from the statute. *In re Winchell*, *supra*, 934 N.Y.S.2d 37 (finding that the Board cannot deny parole by "merely repeating the statutory criteria"). Here the Commissioners discussed [redacted] crime for the majority of the interview and decision, while only briefly acknowledging her acceptance of responsibility, remorse, and impressive record of rehabilitation during incarceration.

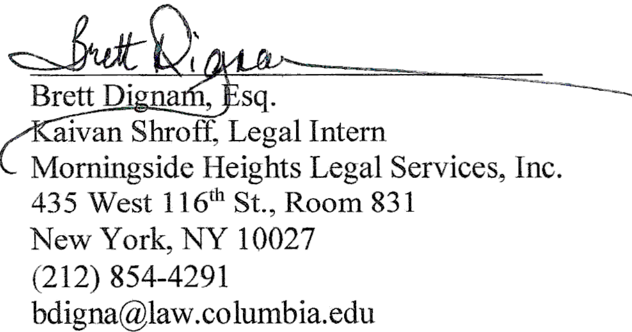
Additionally, the Board provided no guidance to [redacted] on how she might achieve parole in the future, thus thwarting the rehabilitative goals animating the statutory scheme for parole in New York. *See Cappiello*, *supra*, 800 N.Y.S.2d at *6 (noting that "[t]he requirement of a detailed written explanation also serves as a helpful guide to an inmate's conduct while in prison and in [her] endeavor to return to society as a useful citizen").

Because the Board's conclusory written denial gave an unsatisfactory explanation for how it reached its decision, it violated lawful procedure and did not demonstrate that the decision was grounded in any rational basis.

CONCLUSION

For all of the above reasons, [redacted] petitions this Court to annul the September 2019 parole denial and order a properly conducted *de novo* parole interview before a new panel that does not include Commissioner Alexander or Demosthenes, nor any other commissioner who has previously denied parole.

Dated: October 25, 2020



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Attorneys for Petitioner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of ,

Petitioner,

-against-

TINA STANFORD, CHAIRWOMAN,
NEW YORK STATE BOARD OF PAROLE,

Respondent

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

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Index No. ___________

ATTORNEY VERIFICATION

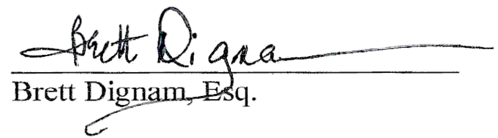
Brett Dignam, an attorney duly admitted to practice in the State of New York, affirms the following to be true under penalties of perjury:

I am a member of Morningside Heights Legal Services, Inc. and counsel for Petitioner.

I have read the foregoing Petition and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

I make the foregoing affirmation pursuant to NY CPLR §3020(d)(3) because Petitioner is not in the county where I have my office.

Dated: October 25, 2020



Brett Dignam, Esq.