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STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION

BOARD OF PAROLE

In the Matter of

PETITIONER,

-against-

**APPEAL OF
PAROLE BOARD
DETERMINATION**

**Tina Stanford, Chair of the New York State
Parole Board,**

RESPONDENT.

PRELIMINARY STATEMENT

The April, 2022 Parole Board Decision denying parole to _____ was improper for several reasons. First, even though all the COMPAS scores were low, and although there was *no claim Mr. _____ was likely to be arrested again*, the panel said that they departed from the low risk of *felony violence* based on the instant offense, which is contradictory and should result in a *de novo* hearing. Similarly, despite incredibly strong remorse, insight and acceptance of responsibility, and an amazingly positive institutional record, parole was denied based only on the 1992 offense. The other reasons cited were not supported by the record (such as *clearly erroneous* claims regarding Petitioner’s heartfelt remorse) or were based on improper considerations, such as community opposition which was really the expression of a desire to resentence him to life without parole. For all those reasons, a *de novo* hearing must be granted.

In this case, where there was *no reason* to deny release other than the circumstances of the offense 30 years ago, yet where there was a great deal of “community opposition” (upon information and belief, this chiefly consisted of identical sign-on letters generated by a police benevolent association, due to one of the victims being an off-duty police officer who had been

involved in a bar fight) it sometimes appeared that the commissioners were grasping at straws to come up with reasons to deny release. For example, at one point in the interview, Commissioner Segarra seemed to imply that perhaps simply being in prison for 30 years had damaged

so much that it would be too difficult for him to reenter society – he said “[d]o you think that someone who has served so much time should participate in mental health treatment? Do you think you can reintegrate into society?” (Exhibit “A” at 47) While Mr. _____ said he has no problem participating in any treatment recommended by parole, an examination of his record shows that this should not be necessary.

What this case *really* comes down to is whether it is appropriate for the Parole Board to decide, in the face of community opposition to release, that a person should be resentenced to life without parole, no matter how positive their record. This flies in the face of both the 2011 statutory reforms and the later regulatory reforms discussed below. Yet that is what the panel did herein, and that can be seen clearly from the Decision, the interview transcript, and from another question by Commissioner Segarra, who asked, “What if [the victim’s] closure is you staying in prison for the rest of your life?” (Exhibit “A” at 41) The legally mandated opportunity for parole release becomes entirely meaningless if the parole board is allowed to deny release because they believe the sentence should really have been life without parole. This is improper and a *de novo* hearing must be granted.

STATEMENT OF FACTS

_____ was convicted via jury verdict in Queens County in 1993 of Murder in the second degree and Manslaughter in the first degree. (Exhibit “A” at 4) He received an aggregate sentence of 30 years to life. (Exhibit “A” at 4) The offense involved an incident where Mr. _____ became enraged after being struck on the head while working security at a bar, and

he tracked down the men involved and shot and killed two of them at close range, wounding a third.

Over the 30 years he has been incarcerated, Mr. [REDACTED] turned his life around, completing various therapeutic programs, and taking the lessons learned to heart. The Bard Prison Initiative (BPI) in which he excelled and earned two college degrees, was the most impactful in leading him to change his heart, his mind, and his behavior. [REDACTED] has very strong support from staff and fellow prisoners, who see the sincere, compassionate man he has become. He also has a strong support network of family and friends devoted to helping him succeed upon release.

Institutional Record

As discussed below, [REDACTED] has an exemplary institutional record with a very minimal disciplinary history (*no tickets in 17 years* and only two ever, one very early on in 1994 for fighting, and one in 2005 for refusing double bunking), the completion of all required programs; the earning of two college degrees with a 3.97 GPA in the Bard Prison Initiative; years of tutoring and teaching other prisoners; several glowing letters of support from staff and a fellow inmate; and many completely excellent Inmate Progress Reports. (Exhibit “C” at 11, 13, 14, 16, 17, 37-48)

Bard Prison Initiative

[REDACTED] was able to enter the Bard Prison Initiative (BPI) in 2014, and he excelled there to an incredible extent, earning both an Associates Degree in Liberal Arts in January, 2017, and a Bachelor’s Degree in Social Studies in June, 2021. (Exhibit “C” at 14) His overall GPA was 3.97. (Exhibit “C” at 16) Mr. [REDACTED] teachers were extremely impressed with him, writing

about his talent, his hard work, his positive influence on other students, and his generosity in tutoring/teaching Spanish. (Exhibit “C” at 13, 17-31)

, of the Center for Community Alternatives, and who worked with Mr. when he was employed by BPI, wrote a letter in support of him, and *even offered him a position doing restorative justice work upon release* – he stated:

“...I have known [Mr. since his enrollment in the Bard Prison Initiative College Program, where I was employed as a Clerk and Writing Fellow. ...*Not only was he an amazing student, but he also took on the role of educator and mentor to his fellow students.*

I know of many instances when Mr. put his work on hold to help others reach an upcoming deadline. I also witnessed him help a student type a 20-page handwritten paper that the student forgot to save. ...I cannot speak enough on the many occasions that he has guided other students on their educational journey. I hope that the parole board will see Mr. selflessness and kind heart.... and agree that he should be home doing amazing work in the community.

...I and some other colleagues *are currently preparing a role for Mr. with our organization to do Restorative Justice work.* We are hopeful and enthusiastic that he will be granted release so that he can continue to better the lives and communities around him.” (Exhibit “C” at 13, emphasis supplied)

In his Case Plan, discussed his work with the Bard Debate Team from 2015-2019 – he noted that in 2015, he helped the team beat Harvard by preemptively developing counter arguments to Harvard’s expected arguments. (Exhibit “C” at 32)

Mr. teachers wrote many extremely positive comments about him and his work on his course evaluations wrote with regard to Senior Project II in October, 2020:

“ wrote a *truly outstanding* senior project. He put a huge amount of work into his exploration of the importance of focusing on discursive practices in relation to the violence done to women. ...He drew on writings in philosophy, sociology, anthropology, biology, and feminist theory to produce a terrifically nuanced, sensitive and intelligent project. ...He... maintained an admirable openness to considering counter-evidence to his thesis. The project is *without question one of the strongest I have read in my 37 years of teaching.* ...” (Exhibit “C” at 18)

, who taught Intermediate Spanish I (Spanish 201), said he was the best student she could imagine, stating:

“...Your performance in every aspect of this course is stellar. I only sometimes worry that you aren’t being challenged enough. ...[J]ust bask in the knowledge that you are the best student I could imagine in the 201.

...I honestly don’t think I’ve ever had a student maintain such a high average throughout an entire course. ...You obviously have a talent for learning languages, but what impresses me the most is your unstoppable work ethic...” (Exhibit “C” at 19)

Professor for Feminism/Modern Political Thought, Stephen Todd,

wrote:

“... first paper was among the strongest in the class...

has all the foundational qualities of an exceptional scholar. His sense of the entire shape and flow of a discussion, and ability to gauge his interventions to fit the audience, is particularly noteworthy. He is also a mature writer, careful and accurate always. A pleasure to work with.

... should seek out intellectual challenges at the highest level. One of the rarest qualities even in professional scholars is the ability to generously comprehend opposing positions and to use them not to dilute but to strengthen one’s own. has already shown evidence of this ability. ...” (Exhibit “C” at 21)

, who taught Comparative Theory and Pedagogy, wrote:

“You were a positive presence in the class... fully engaged and focused. ...I have no doubt that your work as a writing fellow will be a great benefit to your classmates as well as yourself...” (Exhibit “C” at 23)

, who taught the Great American Novel, wrote:

“ has been a necessary presence in our class... Prepared in his reading and precise in his writing, is thinking fruitfully about Melville and the novel. ... final paper...was a carefully composed and artfully assembled piece of criticism. ... own mind revealed itself throughout this course, in short papers and long, in class comments and in his courtesy to his fellow Melvilleans, to be a refined and serious and sophisticated machine. *I would read anything writes, and am grateful to have had him in my classroom.*” (Exhibit “C” at 25)

Regarding Basic Spanish II, wrote:

“...I cannot stress enough how much of an excellent student you are!...[T]he effortless flow of your pronunciation is that of a native speaker!... Of course, I more than look forward to having you as a student again in the summer!” (Exhibit “A” at 26)

wrote many superlative comments regarding Mr. first

Spanish class, including his ability to help other students – she stated:

“Patricio, *you are a shining star* in this class. ...[Y]ou exert a positive influence over the others. ...I would like to speak to them about having you serve more of a mentoring role in the tutorials...maybe some 1:1 work with one of your classmates who is struggling more? En fin: gracias por todo tu esfuerzo y tu actitud tan positive. [Thank you for all of your efforts and your very positive attitude.]

...[I]t’s hard to imagine a more ideal student than you have been this semester... not only because you have mastered the material to perfection... but because you continued to exert a calmly positive influence over the whole group. I particularly appreciate you helping Mateo, who truly did improve... due in large part to your guidance. ...I look very much forward to working with you again in the 201!...” (Exhibit “C” at 28)

Volunteer Work

As could be seen from some of the above comments, in addition to his own coursework,

has helped tutor many other students. As noted above, BPI staff member

wrote about how Mr. had gone out of his way to help his fellow

students, and had been a strong mentor to many of them. (Exhibit “C” at 13)

In September, 2020, Dr. , BPI’s Director of Program and Family

Development, wrote Mr. a letter noting that he had been a BPI tutor for *nine* consecutive semesters, from Fall 2016 through Fall 2020, and stated, “we are grateful to you for your time and effort on behalf of your peers.” (Exhibit “C” at 17)

was even an assistant teacher of one of the BPI Spanish classes when formal classes were shut down during the pandemic. (Exhibit “A” at 43; Exhibit “C” at 8; 11) He discussed this during the interview, noting that due to the relationships he formed with the students, he could help them with other issues as well, stating:

“...[T]he students were a semester and a half into [the BPI Spanish track] and it just got cut off [due to the pandemic.] They kept asking me to try to help them...

So I wrote to the head of the Spanish Department... and I said if it's okay with her, I would be willing to take on the role that she did for me and teach the students until the professor can come back.

So one of the things I had to do was just say that I didn't want to transfer out of here, I would stay here. And since then, they're back in and they have a Spanish course and I am now preparing them, a new cohort of students, to take the Spanish 101 in September.

...[B]ecause they're basically students of mine, I told them they can talk to me about anything...

And many times, I've had students come to me in anger about something that has happened with them and I've been able to just sit down and talk to them and just calm them down so that they don't do anything.

I use myself, Commissioner, as an example of how anger and violence can just ruin so many lives and they get it." (Exhibit "A" at 44-45)

Programs Completed

has successfully completed all his required programs, including Aggression Replacement Training (ART) and TS I-III. He successfully completed ART back in 2002, and noted during the interview that it was helpful in recognizing triggers and signs of anger. (Exhibit "A" at 39-40; Exhibit "C" at 33-34) His ART evaluation stated, "Mr. has demonstrated complete knowledge of all 10 skills and does it quite naturally. His style and delivery of material is remarkable. Excellent job!" (Exhibit "C" at 34)

Inmate Progress Reports

Mr. received many excellent Inmate Progress Reports (IPAs) for varied duties including Culinary Arts, BPI, the Inmate Grievance Committee (IGRC) and more. (Exhibit "C" at 37-47) In March, 2022, his IPA for the Culinary Arts Program contained all "EXCELLENT" scores and stated:

"Mr. has shown himself to be an excellent student and a *role model for his peers. He has well-developed problem-solving skills and has resolved conflicts among his fellow incarcerated individuals peacefully and with lasting effect.*" (Exhibit "C" at 37)

He also received a couple of very positive IPRs as a BPI student, and one with all “EXCELLENT” scores in 2014 for his work cleaning. (Exhibit “C” at 38-40) In 2012 he received IPRs with all “EXCELLENT” scores for his work as an Inmate Grievance Committee Clerk – it was said he was “an asset to the program and the facility” and that he “possesses interpersonal skills which facilitate productivity within the Grievance Program.” (Exhibit “C” at 41-42)

also received all “EXCELLENT” IPRs for his work in the “Work Control” Unit – one 2010 IPR stated, “... works well with civilians, officers and other inmates. ...For the past four years that I have worked with he has more than earned his excellent evaluation.” (Exhibit “C” at 43) Similarly, a 2008 IPR for the same unit stated, “Inmate has consistently performed his duties as Work Control Clerk in an exemplary manner, and he continues to do an excellent job...” (Exhibit “C” at 44)

Cornell University Parole Initiative (CUPI) Letter

Five volunteers with the Cornell University Parole Initiative (CUPI) who worked with on parole preparation wrote a lengthy glowing letter of recommendation, noting that he was CUPI’s first client, and that they were very lucky to have worked with him. (Exhibit “C” at 3-9) The letter stated:

“...[W]e say full heartedly that could not have been a better first client for our organization. He was eager to work with us, determined to better himself, and came to us taking full responsibility for his actions... He is a completely changed man from when he first entered prison around 29 years ago, and we believe that he is more than ready to reenter society and live a productive and fulfilling life.

... has taken every measure to rehabilitate himself... ...[H]e has become an exceptional scholar, teacher and debater. ... has gone to all lengths in order to rehabilitate himself, and he has an exemplary understanding of how violence and anger are not solutions to one’s problems. will not pose a risk to the community upon release, rather the opposite: he will continue to give back, to improve upon himself, and to contribute to his community.” (Exhibit “C” at 3, 6-7)

His Statements

wrote both a Personal Statement and an incredible essay entitled “Ripple Effects” which describes his heartbreakingly full understanding of the far-reaching impact of his crime – the essay stated:

“My mother died when I was more than halfway into a 30-to-life prison sentence. For over seventeen years, I caused her heartache. ...From the moment a SWAT team – searching for me – yanked my mother from her house and held her at gunpoint, I became the albatross that hung around her neck... ...[She] continued to make the eighteen hour trips to visit me until her body became so frail that she could no longer walk... During one of our weekly phone conversations she confided, “Seeing you go to prison was the worst thing that’s ever happened to me.” ...

...I thought about all the horrible things that she endured... She woke up one morning to find her husband – my father – dead on the floor...; almost bled to death...in an accidental fall; saw her daughter – my sister – end up a virtual vegetable from a drug overdose... My mother endured all that... yet I became the worst thing that ever happened to her.

...By killing and I killed a part of everyone they have ever known. My actions have caused those people anguish that doesn’t go away with time. ...

...When I apologized to the family and friends of and on the day of my sentencing, I could see in their faces that my words meant nothing to them. More accurately, my words did nothing to assuage their grief. When I looked around the courtroom, *I saw nothing but sadness in the eyes of the people who hated me and the people who loved me.* ...So not only did I cause unimaginable heartache to people I didn’t know, but I also destroyed the lives of everyone I cared about. ...

...I will always feel the overwhelming weight of the grief I have caused [and mothers]; the emotional devastation that I inflicted upon two mothers who loved their sons as much as my mother loved me. ... I recognized their anguish when I looked at their faces every day in the courtroom, and although they never spoke a word directly to me, the expressions on their faces said it all. They had one question for me: Why? Although my mother never confronted me with that question, I saw it floating below the surface of love that flowed forth from her eyes... Why?

There ... can never be an acceptable answer to the earnest why? I saw in everyone’s eyes. Anger, pride, selfishness: nothing can adequately explain that flash of violence that erupted from me one summer night back in 1992. ...

Everything has a ripple effect. Everything. ...

Shortly after my mother’s funeral, I met a guy in prison who... knew my sister. After expressing his condolences... he told me something that I never knew. ...He told me how bad he felt about my sister being ‘brain-dead,’ ... (She OD’d ... clinically died, was resurrected and now lives ... in a paralyzed speechless state.) But what hit home with a vengeance was when he revealed to me the cause of her addiction:

Yeah, man, that shit with your sister – I mean, everyone saw it coming.

After you got locked up, she was never the same. ... She used to get doped up just to deal with all the shit that happened to you. ...

I had heard about my sister's descent into addiction, but up until that moment, I have never considered that I was the cause. ... [A]fter I went to prison, she began drinking every day, eventually started using heroin, became an addict... Ripple effects.

...How many more have I generated in my ocean of misery? I can't even begin to imagine the ripple effects that have reached the families of and I never wanted to be a monster, but how can I blame everyone for thinking of me as one?

Because of this, I never forget that every decision I make, every action I take, affects so many more people than myself. And this is true for everyone. ..." (Exhibit "C" at 1-2, emphasis supplied)

In his Personal Statement, described the mindset he had in 1992 and how it led to his crime – he also talked about his remorse, and explained how he had worked hard to alter that mindset and his accompanying behavior. He stated:

"In 1992, my conception of being a man meant that if someone pushed me, I needed to push back harder. ... [I]t normalized my use of violence. ... That kind of thinking is toxic. I killed and that night because someone cut my head with a bottle and I couldn't let it go. ... I didn't let the police handle it. I made a choice that devastated the and families. ... I cannot forget the look of bereavement on Mrs. Heiderlberger's face. ... I have never stopped reproaching myself for not only taking two lives, but also for the unending pain that I have brought into the lives of everyone who knew and cared about and ... [W]hen I first came to prison, I realized that I was still carrying the same toxic way of thinking that led me to take two lives. After I had a fight, I understood that in order to keep from repeating the same bad behavior that led me to prison, I had to change the way that I dealt with frustration and problems. ...

...Anger and strident conceptions of masculinity are a toxic mix. Although I successfully completed Aggression Replacement Training (ART)... I feel that the most pivotal experience that helped me understand this toxic mix began in 2014 when I enrolled in ...the Bard Prison Initiative (BPI). ...BPI taught me that having empathy towards others is a core component of the human condition. ... [W]hen you have empathy for another human being, you will not harm that person. ... At that time [1992] my toxic conception of what makes a man tough did not leave room for empathy. Because I know I can never undo what I did 29 years ago, I decided to live my life in here in a way that positively influences others. ... [M]ost importantly [I] talked other prisoners out of going to fight or harm other prisoners whom they were angry with... I used myself as an example of how anger and violence has a ripple effect that harms everyone. I have matured into a person who understands that there are no excuses for what I did. ... I don't like to simply say that I've changed because that statement sounds too trite. Yet, I did change, and ... I now live every day in atonement. ..." (Exhibit "C" at 10-12)

Letters of Support

Mr. [redacted] received many glowing letters of support from family members and friends, who spoke about his immense remorse and insight; the positive influence he has had on them and others, and how they would support him upon release. There were also letters of reasonable assurance from BPI and Exodus. (Exhibit “D” at 33-34) Several of the letters are excerpted here.

[redacted] brother, wrote about his many accomplishments, and offered him a job and a place to live, stating:

“...I would personally hire [redacted] as a caretaker for my weekend house in Southampton ...at \$20/hour. ...I would also work with him to find other employment opportunities given his education.

[redacted] would live in the Southampton house...

...One of my sons attended his graduation from BARD... *Inmate after inmate and professor after professor would keep coming up to us and telling us what a great person is. ...*

[redacted] is pained and sorry about what happened that tragic night 29 years ago. ...Every day he continues to improve himself and help others around him. ...

...His personal commitment to help others while continuing to grow both intellectually and spiritually is evident. ...” (Exhibit “D” at 1-2, emphasis supplied)

Mr. [redacted] childhood friend, [redacted], wrote a remarkable letter about how much he helped her teenage son, [redacted] when he was really struggling, stating:

“...My son [redacted] went through a terrible period in his pre-teens and teenage years. ...*He was sad all the time, hates everyone, doesn't like to go to school, and wishes he could hurt everyone the way they hurt him.* ...There is only so much a single mother can do. His psychiatrist, family and friends try to talk to [him] but *he would not talk.* I wrote to [redacted] bearing my soul. He asked if perhaps [redacted] would speak to him. [redacted] has known his whole life that [redacted] is in prison, and he calls him ‘Uncle Bear.’ [redacted] agreed to finally meeting his Uncle Bear and talking to him. ...I mailed information on Asperger’s, [which [redacted] was diagnosed with as a pre-teen. I provided [redacted] with articles... about [redacted] crime...

[redacted] and [redacted] met, and it was beautiful. ... [redacted] *talked to [redacted] about anger, hurt, misunderstandings, fighting, violence and bullying.* [redacted] *used his own experience of that horrible day that altered his life, the lives of the victims, their families and his own family and friends. He spoke about learning to calm down... To reach out and talk to someone...* [redacted] asked if what he read was true and if he was sorry. [redacted] said that he repented and mourned every day...

...[redacted] *asked [redacted] to use his life as an example of how important it is to stay*

calm, violence is not the answer because it only brings sorrow... To use his life as an example of how you can change and become the person ... you want to be. He asked him to read up on Stephen Hawking... told he is not disabled but rather able to do anything just [like] Hawking.

That visit... was *better than any therapy session...*...[] empowered him and even dare say was the catalyst in his path toward his active healing process. My son graduated... with a Regents High School Diploma... Today he is a junior at Queens College, an honor student working on a bachelor's in English with a minor in Philosophy.

If you... grant [release]...I am confident that he will ...use [his life] to help others ...as he did with my son. ...

will not add to the recidivism rate but rather work to reduce it. ...” (Exhibit “D” at 4-6, emphasis supplied)

Sandra Ochoa’s son, [redacted], also wrote a letter, stating:

“My name is [redacted] a 20 year old student at Queens College... I grew up hearing about Mr. [redacted] who I knew as Tio Bear. ... I grew up knowing that ...he had done a bad thing and had gone to jail, that bad thing never being disclosed to me until...my mother had deemed myself mature enough... ..I had met him once in Upstate New York, where we talked... It was around this time I received my diagnosis of High Functioning Autistic Disorder, previously known as Asberger’s, something he has shown support for.

My father very early on decided maintaining the family unit was not desirable for him... Mr. [redacted] ...has done more for me than my own father... ..The lesson of morality is the duty of the parent, and the fact that in both men’s absences, one has provided more for me than the other, is astonishing. My face-to-face meeting served only as confirmation of what I had known ... about him. ...

...If he is given his liberty, I will provide friendship to him, as I know what it is not to have one. ...

...[H]e is a man worthy of a second chance. ...” (Exhibit “D” at 7-8, emphasis supplied.)

[redacted], another long-term friend of [redacted] also wrote, stating:

“...[redacted] was my first friend. ...

While incarcerated [redacted] still made sure to encourage me pursuing some of my interests which provide benefits for others. I told him how I had the opportunity to help coach my niece’s girls basketball team.... ..[H]e suggested ...a role I could possibly play in helping them expand to... maximize the reach and benefits the girls receive. So even while he is inside prison, he still thinks about ways to help others.

If [redacted] is granted parole, I know he will pose no threat to society; moreover, he will add value to society and will continue to make the very active effort to help others...” (Exhibit “D” at 9-11)

Eric Whitfield, a friend and fellow prisoner, wrote about how [redacted] had helped him, stating:

“I am currently incarcerated at Eastern Correctional Facility. ... [redacted] is of remarkable character. I do not make this claim lightly... In prison, we are conditioned to focus only on ourselves. ... [redacted] is laser focused on himself, but, he also sees when others are in need. He is always willing to lend a hand... I had recently arrived at Eastern... and... I knew few people. ...

...[S]everal months later there was a special dinner for a Catholic celebration. I sat at the table, alone. *And it looked as if others had made a special effort to ‘not’ sit anywhere near me. It is not a situation I am unfamiliar with, being that I am openly gay... But, Patricio picked up his tray, left his friends, and sat down at the table with me – as if we were old friends. We chatted ...and when the event was over – I felt as if I had made a friend. I had. I call [redacted] Patricio because he tutors me, as well as the entire Spanish Level Two class...*

...It is hard to imagine all the work he has done, from that point in his life [28 years ago] to become the man he is today. ...I am frankly amazed, because in this environment... there are so many distractions which makes it easier to regress. ...[I]n a sense I have a front row seat in seeing who I wish to never have as a neighbor, in society.

On the other hand, Patricio is exactly the type of person that can live in society... He would make a great neighbor for anyone. ...” (Exhibit “D” at 12-13, emphasis supplied)

[redacted] daughter, **Chelsea** [redacted] wrote:

“...My father has always been a presence in my life, albeit from New York, and I remember learning at a young age from my mother, Stacie [redacted] who I lived with in Omaha... why my father...was incarcerated. ...I visited my father in the family reunion program in both Eastern and Clinton...

...My father is a smart, hard-working, caring man. He is an amazing father... ...I have seen my father study diligently and... graduate with his Bachelor’s of Arts with a 3.97 GPA... He learned how to speak Spanish, and even helped me with my Spanish...

My dad has a strong loving support system of his brothers and sisters, his wife and myself... We talk on the phone regularly and send emails... My father is ready to become a productive member of society again...” (Exhibit “D” at 14-15)

Dr. [redacted], a long-term friend of [redacted] wrote:

“...I write for [redacted] because he is one of the good ones. ...I have no question that... he will live out his days as someone who can meaningfully contribute with purpose in life. I will be part of his circle of support...

As a person who works with children, I stand at the center of hope for a human being’s ability to understand the impact of their choices, cultivate remorse, be forgiven and accountable... I firmly believe this for [redacted] and have full confidence in his

capacity to make a path for the rest of his days. *Granting this man parole doesn't mean we absolve him, granting him parole is mercy for someone who has been irrevocably transformed by his choices and the time he has taken to understand and account for the impact of those choices.* is deserving of a second chance.” (Exhibit “D” at 19-20)

Another long-term friend, _____, wrote:

“...I have known _____ for 48 years...

He is a greatly motivated individual who seeks to better himself... I have known him as a practicing Catholic throughout life and one who still maintains his faith strongly. ...One is more apt to seek reconciliation while exhibiting remorse if he maintains and follows a faith-based system...

...I strongly urge the board members to grant him ...parole based on his accomplishments and self-improvement in character and moral outlook. ...” (Exhibit “D” at 21)

friend _____ wrote:

“... _____ has used his time to better himself as a human being. ...In 29 years he has exhibited the hard work, skills, training and maturity it takes to prosper and give back to the community.

_____ has my full support. He has helped so many in prison... ...[W]hen he is on parole he will continue to be a helpful, giving... part of the community.” (Exhibit “D” at 24)

Another friend since childhood, _____, wrote:

“...Today, as a 54 year old woman, and having a better understanding of what _____ was convicted of, I can say that in the most profound part of my heart, I feel for everyone involved. I feel for the families who experienced loss. I feel for _____ who has paid his debt back to society and is doing the work to ensure he can be a valuable member of society. ...

It seems to me that the Department of Correction’s ultimate goal is/should be rehabilitation... to help the inmate transform... I firmly believe _____ has arrived and has clearly demonstrated that he: 1) has paid his debt to society and 2) can integrate back into society...” (Exhibit “D” at 25)

_____, a friend who was inspired by _____ in prison, and now is in a position to help him with his reentry into the community, and to work with him mentoring youth, wrote:

“...While I can tell you how deeply remorseful [_____ is for his actions, he can verbalize it better than I ever could. What I would like to do is explain to you the man that I have come to know...

I met [redacted] in the weight room almost a decade ago, but our relationship evolved in college. ...The work that he put into becoming a student... left me in awe. ... He learned Spanish in two semesters, and I mean he really learned it. He was able to have deep conversations....

But even beyond his drive and commitment, [redacted] is kind and compassionate. He is literally a peacemaker. He would hand write his essays... in order to give other people access to the computers... He would give me the shirt off his back if he could. ... I'm happy and proud to know him, and I always will be.

...[B]ecause of positive influences like [redacted] I currently co-own a gym in New York City... *I also do work mentoring adolescents who are currently in NYC jails. I cannot wait for [redacted] to bring his kind presence into our space.* ... [redacted] is like a brother to me, and he will always have a space to work with me if he needs it. ...I have no doubt that [redacted] is going to accomplish even greater things when he is released. ...” (Exhibit “D” at 27)

[redacted], [redacted] friend (whom he almost dated), a clinical psychologist, wrote:

“ [redacted] and I met at work, where he was a bouncer in 1992, we became friends... One night... we talked and he said ...words that I never forgot... ‘first we are going to date, then you are going to be my fiancé and then you will be my wife.’

I never thought those will be the last words I would hear from him, then the next time I had to go to work, I obviously asked about him and no one wanted to tell me anything.

...And then I see [redacted]’ [that is how we used to call him] on America’s Most Wanted... I was so mad, hurt and confused I went home and never knew anything about him.

Then ...20 years went by and one day I decided to search for him ...and write to him...and then one day he wrote back to me and he never forgot about me either and we have been writing, talking on the phone and now communicating by emails.

I had the chance to visit him [only] twice since I live in Puerto Rico...

In my first visit I was able to hear his version of the crime he committed...and he was crying, very sorry...he is a very transparent man, *he had so much pain in him by just telling me, he cried so much...* Well we cried both of us, because he knows the mess he caused and he knows [it] is irreparable, he didn’t only ruin his own life, he took someone else’s life, he cause[d] a lot of pain to friends and family, and the victim’s family and friends.

Me as a clinical psychologist... I want to believe in humanity, in forgiveness, in transformation.....

When I think of [redacted] [being] out here in society, I think of a man that can contribute so much to this world in so many beautiful ways that *I get upset at him sometimes, for [being] in there, because he has so much knowledge, so much love, so much compassion that I’m sure he could make a difference in so many people’s lives. Specifically his daughter, I think she deserves the chance to spend the years [redacted] has*

left with him.

I also understand the responsibility the board has with society and the victims' families when reviewing a case of this magnitude...

I would write 100 pages of all the reasons why _____ deserves a chance, but I know this simple letter will be enough, *all I ask before just denying him... take the time to observe, investigate his trajectory, his achievements...*" (Exhibit "D" at 29-30, emphasis supplied.)

COMPAS Risk Assessment Instrument

A COMPAS Risk Assessment Instrument (RAI) was prepared in order to help determine if Mr. _____ would be able to live in a law-abiding fashion upon his release. (2022 Risk Assessment Instrument attached as Exhibit "B").

The RAI found a low risk in every single category. (Exhibit "B" at 1) The RAI went on to document that Mr. _____ has a high school diploma or GED, a skill or trade, family support, and a job waiting for him. (Exhibit "B" at 4, 5)

Interview

_____ interview was conducted by Commissioner Segarra, along with Commissioner Samuels. (Exhibit "A" at 1) For some reason, there were several other people present, including the Parole Board Chair, Tina Stanford, Assemblywoman Carrie Woerner, and a couple of her staff. (Exhibit "A" at 1)

The panel started discussing the instant offense, noting that the incident began when Mr. _____ was working as a bouncer in a club (_____ and there was a fight outside of a neighboring club (_____ (Exhibit "A" at 7) Mr. _____ said that the _____ owners had asked _____ staff to come help defuse the situation. (Exhibit "A" at 7) When he did so, he was struck in the head with a bottle and started fighting. (Exhibit "A" at 8) Soon police showed up, and when Mr. _____ showed them his bloody head and asked them to arrest the person who hit him, he was told to just get medical attention. (Exhibit "A" at 9-10) When the panel asked

who had hit him, he responded that he learned at trial that it had been one of his victims. (Exhibit “A” at 10)

When learned that the police had let the men involved go, he was very angry and started driving around looking for them. (Exhibit “A” at 10) He said (as also described in his Personal Statement) that back then he had a concept that if someone pushes you, you push back harder, adding, “that kind of thinking is very toxic...” (Exhibit “A” at 11) Mr. added that back then he used to deal with things with violence, but that he now had a whole different mindset. (Exhibit “A” at 17)

told how when he found the three men in question in a car, he pulled in front of them to stop them from leaving, and got out and fired several shots from the licensed gun he carried with him in a lockbox in his trunk. (Exhibit “A” at 16-17, 21-22) He said he hit and and then ran around the front of the car and shot both of them in the head before fleeing. (Exhibit “A” at 17-18) Another man was hit in the shoulder. (Exhibit “A” at 18, 20)

Mr. said that was on the ground when he shot him in the head. (Exhibit “A” at 19-20) When asked if he had been pleading for his life, Mr. said that was stated in the PSR, but that he had never heard that at the time. (Exhibit “A” at 18) When asked about a claim that the gun had jammed at first, Mr. said the gun had never jammed¹. (Exhibit “A” at 20)

He said he heard later that one of the victims [had been an off-duty police officer, and he was afraid of reprisals from police, so he hid out for 40 days until he

¹ While apparently the PSR (which Mr. has never been able to obtain as of yet) stated the gun had jammed before Mr. was shot in the head, there is nothing in the Sentencing Minutes about that – the district attorney gave a statement describing the offense, and never mentioned anything about the gun having jammed.

managed to secure an attorney, and then turned himself in. (Exhibit “A” at 18)

When asked why Mr. [redacted] had shot [the two men] in the head, he said:

“Commissioner, I ask myself that question all the time and in those 10 seconds that I did this horrible thing, it wasn’t that it was a methodical decision that I made. It was... a combination of anger, both fear that they had guns... wounded pride, adrenaline and when I shot, I aimed for the head.” (Exhibit “A” at 21)

Later, when the panel asked [redacted] where his extreme anger had come from, he tried to explain, though sometimes he was interrupted – the following occurred:

“The anger was from getting hit with the bottle and then not having -- [he was interrupted]

Q. But the reaction to that, that anger stems deep.

A. Yeah.

Q. Did you normally just react like that... I mean, it sounds like... the anger is a lot more deep-rooted than that. I’m looking for your insight into what was all that anger about?

A. No, Commissioners, I never reacted like that before, but it doesn’t mean I’ve never reacted with violence before...

So the violent behaviors had to do with fighting; that if someone even verbally picked a fight with me, I wouldn’t walk away...

...[W]hen somebody pushed me, I wouldn’t let it go.

Q. But you’re still not giving me insight into the anger. What went on in your life that made you so angry?

A. In my life? My father died when he was young, when I was young, and I learned how to be a man on the streets... And one of the things ... [is that] in the neighborhood I was growing up in ... violence is a solution, and it’s not.” (Exhibit “A” at 28-29)

Mr. [redacted] was then asked how he felt about what happened to his victims, and he said:

“There’s not a day that goes by that I don’t think about what I did not only to them but the harm I caused their families. And I know that even after 30 years, they have to be feeling pain every time they think of [redacted] or [redacted]

I took their life. I took the opportunity for them to go on and get married and have children and see their children have children. I know there’s nothing that I can do to even express how much I took from them.” (Exhibit “A” at 29-30)

Later, Commissioner Samuels asked him what he thought was the most significant way

he had changed, and responded:

“...[T]he way that I deal with things now...violence is not on the table anymore, it’s just not.

There’s no way – and I’m not talking about something as horrific as I did now, but just even *in prison, fighting is just routine and you can see I haven’t had any fights. And I’ve done a tremendous amount of sidestepping and walking away and everything to avoid that. ...[T]he fight that I had in 1994 is when I realized, I said, I’m still following this toxic behavior, so that’s why I made that choice.*

...[I]n 2014... I started the Bard Prison Initiative and we started learning about ...empathy, and I realized I was on the right track with no violence.

I just didn’t know why it was that I felt I had to be violent. Then, when we talk about conceptualization of masculinity, I realized this was in my head for all those years and it was still lingering in my head throughout my prison career. But then I was able to take that conceptualization and pull it out.” (Exhibit “A” at 38-39, emphasis supplied)

Commissioner Samuels then asked if Mr. responded: felt he would be able to use the tools

he learned from BPI and ART in the community if paroled, and he said:

“Commissioner, I am utilizing them now and I certainly...would utilize them in the community. ...[T]he ART program helps you recognize triggers, physical triggers, you’re getting angry... It never really got to the root of what it is.

Why are you getting angry if someone calls you a name or somebody pushes you or hits you? There’s something going on there that has to do with how we conceptualize masculinity.” (Exhibit “A” at 39-40)

Commissioner Segarra then asked, “...*What if [the victim’s] closure is you staying in prison for the rest of your life*²? (Exhibit “A” at 41) responded:

“...I couldn’t fault them for that. ... But I would want to convey to them ...that the things I can do outside, the positive things, the hope that I can affect people so [that] other families would never have to experience what the and families experienced...

...[T]here are organizations that have offered to give me positions where I can influence people before they come to prison, and I would really like that opportunity.” (Exhibit “A” at 41)

² This question really gets to the heart of this denial. Although the sentence was *not* one of life without parole, and although release is not supposed to be denied only because of the circumstances of the offense, it appears that in this case, and others, the commissioners felt that, no matter how positive the record, no matter how much remorse and insight the person showed, and no matter how clear it is that they will pose no risk upon release and actually provide benefit to the community, release should still be denied because of the crime itself and the desires of the victims’ families and others that the person never be released.

Subsequently, Commissioner Segarra noted that Mr. [REDACTED] had done “numerous things to work on your rehabilitation” including the Bard Program, the Bard Debate Team, and serving as a tutor and teacher of Spanish. (Exhibit “A” at 43) [REDACTED] then discussed, as described above, how he had ended up teaching Spanish during the pandemic; how he had been able to counsel his students on other matters beyond Spanish (such as how to avoid fights); and how appreciative the students were. (Exhibit “A” at 44-45)

Commissioner Segarra responded, “That’s good. That’s excellent.” (Exhibit “A” at 45) She then noted that Mr. [REDACTED] COMPAS scores were all low, showing a low risk of re-offense. (Exhibit “A” at 45-46) She then asked how Mr. [REDACTED] would continue to work on avoiding anger and hurting someone, and Mr. [REDACTED] responded:

“Commissioner, I’ve had a lot of experience dealing with that in here, how to – just from the tool that I have of walking away, of talking something out rather than reacting violently, of keeping an even tone even when the other person is acting aggressively toward me.

And I would just continue that in the community if I were to be released. And there’s two programs that have offered that I want to try to work with. There’s An Alternative for Community Justice Restoration. That’s in the Bronx.” [He also described the potential expansion of the basketball program his friend Gilbert was involved in.] (Exhibit “A” at 46-47, see also Exhibit “C” at 13 and Exhibit “D” at 10)

Commissioner Segarra said, “Sounds like great opportunities for you.” (Exhibit “A” at 47) And then she asked a question that made it sound as if he thought being in prison for so long may have damaged rather than rehabilitated Mr. [REDACTED] – the following occurred:

“Q...[Y]ou know what? You’ve done almost 30 years?

A. Yes.

Q. It’s a question: *Do you think that someone who has served so much time should participate in mental health treatment? Do you think you can reintegrate into society?* Because you talked about walking away. That’s not so easy when you’re in the street.

A. It’s not so easy in prison, because there’s nowhere to walk away to sometimes.

Q. I get it.

A. It’s more of a – Commissioner, I’m glad you brought this up, because this is more of a

³ If that were the case one obvious response is that sentences should be shorter, as they are in many European countries, with very positive results.

mental conditioning thing that - it's not something that happens in an instant. It's something that you have to live your life by." (Exhibit "A" at 47, emphasis supplied)

At the end of the interview, when _____ was asked about his Case Plan (about which Commissioner Segarra said "good work") and his goals, he noted that just recently, he had been made the facility deejay, where, since he was bilingual, he would make all the announcements in both Spanish and English. (Exhibit "A" at 54-55) Commissioner Segarra responded, "*That's excellent. You continue to work on your rehabilitation and work on helping other people.*" (Exhibit "A" at 55)

At the very end, Commissioner Segarra said, "We have your packet here. We're going to consider the official letters, your interview and that statement you just made and all the heartfelt statements you made and all the efforts you made at your rehabilitation..." (Exhibit "A" at 56)

Decision

The Decision stated:

"...You... fired four shots into the group striking and

After the victims fell to the ground, you ran around the car, placed your gun to the head of Mr. _____ and shot him. You then straddled Mr. _____ and placed your gun to his head and pulled the trigger. The gun jammed, so you racked and reloaded your gun, pulled Mr. _____'s head up...and placed the gun to his forehead... Mr. _____ pleaded for you not to kill him and you fired your gun, killing him. ...

The instant offense represents your first contact with the Criminal Justice System... ..You appear to have utilized this period of incarceration to work on your rehabilitation.

Also considered was a letter of support from your defense attorney and a letter of opposition from the district attorney's office.

...[W]e also reviewed the COMPAS risk and needs assessment which presents your risk scores as low. ...*The Panel departs from your low risk score of felony violence due to your behavior in the instant offense ...* During the interview, you failed to acknowledge that one of your victims was a New York City police officer who laid crippled and paralyzed when you executed him...

The recent and strenuous community opposition and official opposition letters indicate that your release at this time would be incompatible with the welfare of society. Furthermore, releasing you when you continue to express what appeared to be disingenuous remorse and had minimal insight about what may have caused your built-

up internalized anger... would trivialize the tragic loss of life and would so deprecate the serious nature of the crime as to undermine respect for the law.” (Exhibit “A” at 59-62, emphasis supplied)

ARGUMENT

POINT I

THERE WAS NO JUSTIFICATION FOR DEPARTING FROM THE LOW COMPAS SCORES

Section 8002.2(a) of the New York Codes, Rules and Regulations mandates Parole Boards to be guided by COMPAS scores. If a board chooses to depart from the COMPAS scores, it must specify which scale of the assessment it is departing from and provide individualized reasons for such departure. The Rule states:

“8002.2

(a) Risk and Needs Principles: In making a release determination, the Board shall be guided by risk and needs principles, including the inmate’s risk and needs scores as generated by a periodically-validated risk assessment instrument, if prepared by the Department of Corrections and Community Supervision... If a Board determination, denying release, 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 NYCRR S8002.2(a), emphasis supplied.]

In this case the Board stated, “The Panel departs from your low risk score of felony violence due to your behavior in the instant offense ... During the interview, you failed to acknowledge that one of your victims was a New York City police officer⁴ who laid crippled and paralyzed when you executed him.” (Exhibit “A” at 62)

However, very significantly, the panel did *not* claim that there was a reasonable probability that Mr. _____ would not live and remain at liberty without again violating the law.

⁴ This is false, as Mr. _____ *did* acknowledge that one of the victims was a police officer who he heinously shot in the head while he was on the ground – he just had no way of knowing that this man (who he later learned was the one who had hit him on the head with a bottle) was a police officer until after the fact. (See Pages 15-16 herein and Exhibit “A” at 10, 17-20)

This represents a clear contradiction where (based on his outstanding record) there is no claim that re-arrest is likely, yet somehow the panel is departing from the low risk scores for “felony violence” (which involves not just re-arrest, but the commission of a new violent felony) based only on the circumstances of the offense. The Appeal Unit has vacated denials of release recently in several cases based on improper COMPAS departures. (See cases of Abdul Wahedi [subsequently granted release] AC No: 12-044-21 B, June 21, 2022; Brian Pulliam, AC No: 10-066-21 B, July 29, 2022; Jamone West, AC No: 11-121-21 B, August 5, 2022; Frank Johnston, AC No: 11-017-21 B, July 29, 2022; and Stephen Azzollini, AC No: 11-087-21 B, March 4, 2022.)

In the Pulliam and West cases, the Appeal Unit noted that the panel had stated that it was departing from the low risk scores for felony violence (in Pulliam) and arrest (in West.) In Pulliam, the panel “failed to fully articulate their reasoning and explanation as to why they were departing from that specific score,” and in West, “no clear reason is given” for a departure. In this case, it is also true that the explanation for the departure was not clear. Not only was it not clear, it was completely contradictory given the lack of a claim of a likelihood of new arrest. Thus, the Appeal Unit should grant a *de novo* in this case as well.

In addition, new hearings were granted based on improper COMPAS departures in *Phillips v. Stanford*, Index No. 2020-50485 (Dutchess Co. 2020); *Voii v. Stanford*, Index No. 2020-50485 (Dutchess Co. 2020); *Jennings v. Stanford*, Index No.2020-51294 (Dutchess Co. 2020); *Comfort v. NYS Bd. of Parole*, Index No. 1445/2018 (Dutchess Co. 2018); *Sullivan v. NYS Bd. of Parole*⁵, Index No. 100865/2018 (NY Co. 2019); *Diaz v. Stanford*, Index No. 2017-53088 (Dutchess Co. 2018.)

⁵ Veronica Sullivan was released in September, 2019 and has not been re-imprisoned.

In *Voii*, supra, the court held that it was improper to depart from low risk COMPAS scores based on the circumstances of the offense, as occurred herein, stating:

“The Board asserts that it is departing from COMPAS because of the ‘tragic, reckless nature of the crimes themselves.’ However, the COMPAS Risk Assessment contains twelve categories, none of which involve the nature of the underlying crimes. Thus, the alleged ‘individualized’ reason provided by the Board for the departure is unrelated to any scale contained in the COMPAS assessment.” *Voii*, supra, at 6-7.

Based on *Voii* and the other cases cited herein, the Appeal Unit should grant a *de novo* hearing for this reason as well.

POINT II

THE PAROLE BOARD BASED ITS DECISION SOLELY ON THE CIRCUMSTANCES OF THE OFFENSE, AND THUS SAID DECISION WAS ARBITRARY AND CAPRICIOUS, AND SO IRRATIONAL AS TO CONSTITUTE AN ABUSE OF DISCRETION

A parole board may not deny release solely on the basis of the seriousness of a defendant’s offense. *Rivera v. Stanford*⁶, 172 AD3d 872 (2nd Dep’t 2019); *Ferrante v. Stanford*⁷, 172 AD3d 31 (2nd Dep’t 2019).

There have also been court decisions in numerous other cases over the past few years granting or upholding new parole hearings for this same reason. *Matter of Kellogg v New York State Bd. of Parole*⁸, 2018 N.Y. App. Div. LEXIS 1469 (1st Dep’t 2018); *Esquilin v. NYS Bd. of Parole*⁹, 2018 NY Misc. 483 (Orange Co. 2018); *Matter of Villa v. Stanford*¹⁰, Index No. 53877/21 (Dutchess Co. 2021); *Matter of O’Connor v. Stanford*¹¹, Index No. 54/2021 (Dutchess Co. 2021); *Matter of Jennings v. Stanford*¹², Index No.2020-51294 (Dutchess Co. 2020); *Hill v.*

⁶ Richard Rivera was released in 2019 and has not be reincarcerated.

⁷ Danielle Ferrante is John MacKenzie’s daughter and the representative of his estate – John tragically committed suicide in prison in 2016 after his tenth denial of parole.

⁸ Laurie Kellogg was released in April, 2019 and has not been re-imprisoned.

⁹ Adolfo Esquilin was released in May, 2018 and has not been re-imprisoned.

¹⁰ Ricardo Villa was released in February, 2022, and has not been reincarcerated.

¹¹ Raymond O’Connor was granted release in December, 2021 and has not been re-imprisoned.

¹² William Jennings was released in February, 2021 and has not been re-imprisoned.

*NYS Bd of Parole*¹³, Index No. 100121/2020 (NY County 2020); *Matter of Voii v. Stanford*¹⁴, supra; *Almonte v. Stanford*¹⁵, Index No. 10476/2018 (Orange Co. 2019); *Phillips v. Stanford*¹⁶, supra; *Slade v. Stanford*¹⁷, Index No. 203/19 (Dutchess Co. 2019); *Butler v. NYS Board of Parole*, Index No. 2703/17 (Dutchess Co. 2018); *Morales v. NYS Board of Parole*, Index No. 934/2017 (Dutchess Co. 2017); *Kelly v. NYS Board of Parole*, Index No. 580/2017 (Dutchess Co. 2017); *Darshan v. NYS DOCCS*¹⁸, Index No. 652/2017 (Dutchess Co. 2017); *Matter of Ciaprazi v. Evans*, Index No. 0910/2016 (Dutchess Co. 2016.)

In this case, it is clear that the denial was really based on the instant offense – aside from clearly erroneous claims regarding remorse and insight, discussed below, all of the reasons for denial were based on the offense itself, as institutional record and conduct during the interview were exemplary and entirely positive.

As mentioned above, it seemed that the commissioners were struggling to find reasons to deny release. For example, at one point, Commissioner Segarra, after pointing out Mr. had served thirty years in prison, said “[d]o you think that someone who has served so much time should participate in mental health treatment? Do you think you can reintegrate into society?” (Exhibit “A” at 47) Mr. said he would appreciate support with reentry, but this question is problematic because it implies that such a lengthy sentence inherently may make someone unworthy of release. The twisted logic underlying this reasoning should not be accepted.

Another reason cited for denial was the opposition to release, both official opposition and community opposition (also discussed below in Point IV). However, both of those types of

¹³ George Hill was released in January, 2021 and has not been re-imprisoned.

¹⁴ Sergei Voii was released in August, 2020 and has not been re-imprisoned.

¹⁵ Juan Almonte was released in June, 2020 and has not been re-imprisoned.

¹⁶ George Phillips was released in December, 2021 and has not been re-imprisoned.

¹⁷ Derek Slade was released in May, 2022 and has not been re-imprisoned

¹⁸ Travis Darshan was released in September, 2017 and has not been reincarcerated.

opposition are *entirely based on the circumstances of the offense* and thus cannot constitute a separate reason for denial. Yet Commissioner Segarra asked, “What if [the victim’s] closure is you staying in prison for the rest of your life?” (Exhibit “A” at 41) As noted above, the legally mandated opportunity for parole release becomes *entirely meaningless* if the parole board is allowed to deny release because they believe the sentence should really have been life without parole.

Finally, the panel stated, “...you continue to express what appeared to be disingenuous remorse and had minimal insight about what may have caused your built-up internalized anger...” (Exhibit “A” at 62) That statement completely flies in the face of the record, which shows both incredibly strong remorse and in-depth and thoughtful insight into what led to the offense. And Commissioner Segarra even recognized that Mr. [redacted] statements during the interview were “heartfelt.” (Exhibit “A” at 56)

In addition to [redacted] incredible essay entitled “Ripple Effects” which expresses his remorse in a particularly compelling and heartbreaking way, and his Personal Statement, which also expresses very strong remorse and very clear insight into what led to the offense, he made many very clear statements during the interview which also expressed that heartfelt remorse and insight.

Mr. [redacted] explained that what led to the offense was his belief that being a man meant pushing back harder, physically, whenever you were pushed in any way, even verbally, and that violence was the answer to any confrontation. He also explained his intense anger by noting that his underlying thought and behavior patterns necessitated a violent response to being hit over the head with a bottle, and when police essentially told him to ignore it, he became enraged and hunted the men down and shot them. He said:

“It [the violence he committed] was inevitable where those circumstances happened where I got seriously cut with a bottle, I wasn’t able to start fighting. When I wanted somebody arrested, they weren’t arrested. Those kinds of things made what happened happen.

And I don’t say that as an excuse. I say that to provide insight as to why I could have done something so terrible when everything else was going well.” (Exhibit “A” at 14)

Then the following occurred later in the interview:

“The anger was from getting hit with the bottle and then not having -- [he was interrupted]

Q. But the reaction to that, that anger stems deep.

A. Yeah.

Q. Did you normally just react like that... I mean, it sounds like... the anger is a lot more deep-rooted than that. I’m looking for your insight into what was all that anger about?

A. No, Commissioners, I never reacted like that before, but it doesn’t mean I’ve never reacted with violence before...

So the violent behaviors had to do with fighting; that if someone even verbally picked a fight with me, I wouldn’t walk away...

...[W]hen somebody pushed me, I wouldn’t let it go.

Q. But you’re still not giving me insight into the anger. What went on in your life that made you so angry?

A. In my life? My father died when he was young, when I was young, and I learned how to be a man on the streets... And one of the things ...in the neighborhood I was growing up in is that violence is a solution, and it’s not.” (Exhibit “A” at 28-29)

A little bit later in the interview, he stated:

“...[T]he way that I deal with things now....violence is not on the table anymore, it’s just not.

There’s no way – and I’m not talking about something as horrific as I did now, but just even in prison, fighting is just routine and you can see I haven’t had any fights. And I’ve done a tremendous amount of sidestepping and walking away and everything to avoid that. ...[T]he fight that I had in 1994 is when I realized, I said, I’m still following this toxic behavior, so that’s why I made that choice.

...[I]n 2014... I started the Bard Prison Initiative and we started learning about ...empathy, and *I realized I was on the right track with no violence.*

I just didn’t know why it was that I felt I had to be violent. Then, when we talk about conceptualization of masculinity, I realized this was in my head for all those years and it was still lingering in my head throughout my prison career. But then I was able to take that conceptualization and pull it out.” (Exhibit “A” at 38-39, emphasis supplied)

As to remorse, _____ stated:

“There’s not a day that goes by that I don’t think about what I did not only to them but the harm I caused their families. And I know that even after 30 years, they have to be feeling pain every time they think of _____ or

I took their life. I took the opportunity for them to go on and get married and have children and see their children have children. I know there’s nothing that I can do to even express how much I took from them.” (Exhibit “A” at 29-30)

Later, he said:

“...[E]very day that I have been doing things to help people has been done to try to atone for the lives that I took. And if I could tell them and if I could speak to them, I would want them to know that I’m not the same person in 1992 that callously took the lives of their loved ones. And I have been trying to atone and will continue to try to atone for everything that I took from them.

But if I can have a positive ripple effect the way that I had so much harmful ripple effect, I believe that I can just keep doing this until I take my last breath. And I want them to know that if they could find it at some point for forgiveness, it would mean a lot to me if I knew that they could find closure, too, because I can’t imagine what they have to think about every day.” (Exhibit “A” at 37-38)

It can also be seen from many of the letters of support that _____ had expressed his extremely strong remorse for the victims and their families to his family and friends as well.

For example, _____ described how _____ cried and cried when he was telling her about the irreparable crime he committed. (Exhibit “D” at 29)

Based on all of that, it is hard to imagine how either his remorse or his insight could have been stronger, and the panel’s claims in that regard were entirely contradicted by the record.

In *Jennings*, supra, the court granted a *de novo* interview where the denial was based on the seriousness of the offense, as well as the panel’s concerns regarding the depth of the petitioner’s remorse. The *Jennings* court stated:

“...[T]he Court finds said Decision should also be vacated because the Board focused exclusively on the serious nature of Petitioner’s crime and its perception that his remorse was ‘shallow.’ ... The Board’s Decision details the manner in which Petitioner stabbed his girlfriend and his alleged prior aggressions against her and concludes that this

‘course of conduct leads the panel to concur that the instant offense is an absolute display of [his] criminal, assaultive and murderous behavior.’

...[A]lthough Respondent argues that the Board may consider an inmate’s limited expressions of remorse and a lack of insight, the record here does not support the Board’s finding that Petitioner’s remorse was ‘shallow.’ The Court notes that in his final statement to the Board... Petitioner states:

I would like to say, as I’ve said in the past, that I’m sorry for what happened and I had no right to take anyone’s life and it was wrong for me to do something like that. I want to apologize to the family as well... I not only hurt their family but I hurt mine as well so I want to say I’m sorry to everyone, and if I’m released, something like that will never happen again...

Moreover, Petitioner’s personal statement letter is contained in the record... The letter goes into detail regarding the remorse that he feels...” *Jennings*, supra, at 5-7.

As in *Jennings*, the claims regarding remorse herein were also not supported by the record, and the real reason for the denial was the offense itself. Therefore, a *de novo* hearing must be granted before different commissioners.

POINT III

THE REASONS GIVEN FOR THE DENIAL WERE NOT SUPPORTED BY THE RECORD

It is clear that the reasons given for parole decisions must be detailed, and not simply perfunctory, and they must be supported by the record. *Rivera v. Stanford*, 2019 NY App. Div. LEXIS 3595 (2nd Dep’t 2019); *Ramos v. NYS Board of Parole*¹⁹, Index No. 2022-50440 (Dutchess Co. 2022); *Sullivan v. NYS Bd. of Parole*, Index No. 100865/2018 (NY Co. 2019); *Matter of Coleman v. DOCCS*, 2018 NY App. Div. LEXIS 136 (2nd Dep’t 2018); *Almonte v. Stanford*, Index No. 10476/2018 (Orange Co. 2019); *Winchell v. Evans*, 32 Misc.3d 1217(A) (Sullivan Co. 2011); *Matter of Rossakis v. NYS Bd. of Parole*, 146 AD3d 22 (1st Dep’t 2016); *Ramirez v. Evans*, 118 AD3d 707 (2nd Dep’t 2014); *Perfetto v. Evans*, 112 AD3d 640 (2nd Dep’t 2013); *Ruiz v. NYS Division of Parole*, Index No. 2310/2017 (Dutchess Co. 2018); *Maddaloni v.*

¹⁹ David Ramos was released in July, 2022 and has not been reimprisoned.

*NYS Bd. of Parole*²⁰, Index No. 0623/2018 (Dutchess Co. 2018); *Morales v. NYS Board of Parole*, Index No. 934/2017 (Dutchess Co. 2017.)

In the instant case, as discussed above, in Point II, the claim that remorse and insight were somehow lacking was not only not supported by the record, but was thoroughly contradicted by the record. Moreover, as noted above on Page 22, the claim that Mr. [redacted] failed to acknowledge that one of his victims was a police officer was likewise contradicted by the record.

There is Nothing in the Record Indicating that Petitioner’s Release Would be Incompatible with the Welfare of Society or Would Deprecate the Seriousness of the Offense

The record contained no indication that Petitioner’s release was somehow incompatible with the welfare of society, or would deprecate the seriousness of the offense. His institutional record has been excellent, and there are simply no facts to back up these spurious claims. The fact that there were many internet-generated sign-on letters submitted from a police benevolent association expressing the view that the sentence herein should be life without parole does *not* mean that release is incompatible with the welfare of *society*, or that release would deprecate the seriousness of the offense, especially in this case, where the officer was *not* shot in the line of duty, and where Mr. [redacted] did not even know he was an officer until later.

In *Rivera v. Stanford*, *supra*, the Second Department reversed the denial of a *de novo* hearing in a murder case, stating, at 4, “...The Parole Board’s finding that the petitioner’s release was not compatible with the welfare of society... is without support in the record.”

Likewise, in *Almonte*, *supra*, the court granted a *de novo* hearing for the same reason, stating, at 7, “...[t]he Board’s failure to explain, other than the facts of the crime, why the

²⁰ Jack Maddaloni was released on September 10, 2018 and has not been reincarcerated.

inmate's release was incompatible with the welfare of society, could not be supported.”

Similarly, in *Matter of Diaz v. Stanford*, supra, the court likewise granted a new hearing, stating, at 8:

“The Board does not explain in its decision how releasing Mr. Diaz after 27 years of incarceration... would ‘so deprecate the serious nature of the crime as to undermine respect for the law.’”

As in the above cases, the Board's conclusory claims in this regard were meaningless boilerplate with no support in the record, and cannot be relied upon to justify denial.

Therefore, because all the reasons given for the denial of release were not supported by the record herein, there must be a *de novo* hearing.

POINT IV

IT WAS IMPROPER TO RELY ON COMMUNITY OPPOSITION

The Decision herein relied in part on “recent and strenuous community opposition.” (Exhibit “A” at 62) Upon information and belief, unlike the letters of support from people who actually know _____ and have interacted with him, the community opposition was from people who don't actually know him, and were simply expressing their belief that anyone who killed a police officer should never be released from prison. This is an expression of penal philosophy, contrary to the actual governing law, and the Board may not rely on such opposition in its Decision.

It has been held several times that the Board may *not* base its decision upon penal philosophy, which means that any “community opposition” letters which are themselves based on penal philosophy cannot have any impact on the determination, and it is improper for the Board to take them into consideration in making said determination. *Matter of Clark v. NYS Bd. of Parole*, Index No. 106965/2017 (New York Co. 2018); *Matter of Ruzas v. Stanford*, supra;

Matter of Hopps v. NYS Bd of Parole, Index No. 2553/18 (Orange. Co. 2018); *Matter of MacKenzie v. Stanford*, Index No 2015-2789 (Dutchess Co. 2015). See also *King v. NYS Division of Parole*, 83 NY2d 788 1994.

In *Clark*, *supra*, the court stated:

... [T]he Parole Board has not explained why the numerous letters of support from those who personally know Ms. Clark are outweighed by the opposition letters submitted by the community. The Parole Board must be careful not to be swayed by appeals that include considerations outside the scope of the factors outlined in the Executive Law... ...[T]he Parole Board’s own words and stated reliance on letters from public officials and others opposed to Mr. Clark’s release strongly signals that the Parole Board considered factors that are impermissible under the statute, such as penal philosophy. As a result, this court finds from this record that the Parole Board’s decision was arbitrary, capricious and contrary to law.” (*Clark*, *supra*, at 4, 6-7, some emphasis supplied.) (On appeal, the First Department held that the opposition letters should have been provided to Petitioner, but held that the remedy was a new administrative appeal.)

Similarly, in *MacKenzie v Stanford*, Index No. 2789/15 (Dutchess Co. 2015) the court granted a *de novo hearing*, stating:

“...To the extent that the board’s determination here is based upon letters of community opposition, respondent has failed to demonstrate a rational basis for the challenged determination. ...Petitioner suggested at his parole hearing that the letters were written from police benevolent association groups who did not know the victim or petitioner and have no first-hand knowledge of the facts underlying his conviction. Accordingly, any such letters would reflect opposition to release based on penal philosophy; namely that individuals convicted of killing a police officer should never obtain parole release. *This is not law and members of the parole board are not permitted to apply their own penal philosophy in determining whether release is appropriate.* Thus, it is beyond cavil that the parole board may not deny parole based solely on letters from unknown third parties expressing their penal philosophies.” *MacKenzie*, *supra*, at 3, emphasis supplied.

Because, upon information and belief, the “community opposition” herein is from people who don’t know Petitioner, and are expressing their opinion on penal philosophy it is clearly improper for the Board to take them into consideration in making its decision.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Appeal Unit vacate the Decision of the Parole Board, grant an immediate *de novo* hearing before commissioners who did not sit on the April, 2022 Board.

Dated: August 30, 2022.

Kathy Manley
Attorney for
26 Dinmore Road
Selkirk, New York 12158
518-635-4005
Mkathy1296@gmail.com

TO: NYS Department of Corrections and Community Supervision
Board of Parole - Appeal Unit
Harriman State Campus - Building 4
1220 Washington Avenue
Albany, New York 12226

(Address on file)

CERTIFICATE OF SERVICE

Kathy Manley hereby certifies that on August 30, 2022 she served the above Appeal of Parole Board Determination to each of the above named individuals, via Priority Mail.

Kathy Manley