

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHARLES KING, ANDREW BROWN, )  
CHIOKE HILL, THOMAS GILBERT, )  
NELSON MUNIZ, ANTHONY SMITH )  
and ANDRE McGREGG, )

Plaintiffs, )

v. )

No. 06 C 204

ROGER E. WALKER and )  
JESSE MONTGOMERY, )

Defendants. )

Hon. Robert W. Gettleman

**DEFENDANTS’ OUTLINE OF THE CASE**

The Defendants, through their attorney LISA MADIGAN, Attorney General of Illinois, hereby submit the following for their Outline of the Case as required by the Court during the pre-trial conference on September 27, 2013:

**I. INTRODUCTION**

This matter involves the Plaintiffs’ Amended Motion for Rule to Show Cause (Docket No. 157) which seeks to hold the Defendants in contempt of court for failing to implement and/or follow the procedures set forth in the Consent Decree entered in this matter in 2007 (“Decree”) (Docket No. 77) regarding preliminary hearings for alleged parole violators. This litigation should be a simple and straightforward application of the facts to the requirements set forth in the Decree. However, the evidence will show that the Plaintiffs make numerous arguments based upon “requirements” that are not found in the Consent Decree. The Court should disregard these arguments as beyond the scope of the Amended Motion for Rule to Show Cause and not supported by the facts.

Furthermore, the Plaintiffs rely on intermingled case law analysis and single, cherry-picked facts for their arguments. Out of the approximately 350 full parole files produced to the Plaintiffs, they rely on only a handful of files to support their legal claims. In fact, for many issues they rely on only one or two files, but still extrapolate that the entire system is in violation of the Decree. They rely on these small number of files to suggest that the Defendants should be held in contempt of court for completely failing to follow the requirements of the Consent Decree. The evidence will show that the Plaintiffs' arguments lack support in the facts and are not based upon the dictates of the Decree.

**II. THE DEFENDANTS ARE MEETING THE TIME FRAME TO CONDUCT THE HEARINGS AS SET FORTH IN THE DECREE**

The Defendants expect that the evidence in this matter will show that the procedures set forth in the Consent Decree have been enacted and are being followed by the Illinois Department of Corrections ("IDOC"). Specifically, there will be testimony that the preliminary hearings are either: (1) occurring within the period required by the Decree; (2) being postponed by the parolee; or (3) if the hearing did not properly occur in a timely manner, pursuant to the Decree the Hearing Officer finds no probable cause.

**III. THE DEFENDANTS ARE PROVIDING NOTICE OF THE CHARGES AGAINST THE PAROLEES AND NOTICE OF THEIR RIGHTS PURSUANT TO THE PROCEDURES SET FORTH IN THE DECREE**

The evidence will also show that proper notice is given to the parolees as to the charges against them. The specific charges against the parolees are set forth in the Parole Violation Reports. Agent Alexsei Norton is one of the parole agents assigned to serve these Reports and the Notice of Rights on parolees. He will testify that the Notice of Rights (as approved by this

Court and required to be served on parolees by the Consent Decree) sets forth the parolees' rights. He will also testify that the Notice of Rights and Parole Violation Reports are served on the parolees properly and in a timely manner. Shunique Joiner, the Hearing Officer for the King preliminary hearings, will testify that she does not consider any information outside of the charges listed in the Parole Violation Report in making her decisions. Neither the Consent Decree nor federal law requires that parolees be given notice of the evidence against them for preliminary hearings. *See Morrissey v. Brewer*, 408 U.S. 471 (1972). Therefore, contrary to the Plaintiffs' position, the fact that parolees do not receive access to computer databases containing evidence against them is immaterial to this matter.

**IV. KING INVESTIGATIONS INCLUDE REVIEWING THE DOCUMENTS AND CONTACTING THE ARRESTING OFFICERS, AS REQUIRED BY THE DECREE**

The Decree states that “[t]he King Investigation shall include, at a minimum, a review of the police report and any supporting documentation, and an interview with the arresting officer(s).” (*See* Decree, Section III, paragraph 5, part (d), pg. 9). Agent Eric Harris, a King Investigator, will testify that all investigators are trained to review the police reports, the Parole Violation Reports, and other documents. He will also testify that King Investigators are trained to contact the arresting officers or parole agents to ask them about the circumstances surrounding the arrest. Hearing Officer Joiner will testify that if the Investigator does not speak with the arresting officer within the relevant time period, she will find no probable cause, as contemplated by the Decree. There are no requirements in the Decree that King Investigators contact victims or the parolee's witnesses.

**V. FINDINGS OF PROBABLE CAUSE ARE BASED UPON THE EVIDENCE AND ARE NOT IMPERMISSIBLY ENTERED AUTOMATICALLY**

All parties agree that when a court of law finds probable cause that a parolee committed a crime, then the King Hearing Officer can enter an automatic finding of “probable cause” to hold a parolee on the parole violation. Agent Harris and Sharon Shapinski, an administrator in the Parole Division of the Illinois Department of Corrections, will testify that King Investigators are trained to distinguish between a court’s finding of probable cause and a direct indictment. When there is direct indictment, Hearing Officer Joiner will testify that she holds a King hearing and does not automatically find probable cause. Additionally, contrary to the Plaintiffs’ position, the Hearing Officer will testify that she does not automatically enter a finding of probable cause in cases involving Domestic Violence, or when a parolee has been “AWOL.”

**VI. THE STATEMENTS OF THE PAROLEE’S WITNESSES ARE TAKEN INTO ACCOUNT BY THE HEARING OFFICER**

Parolees are entitled to list any witnesses they want to testify in their behalf on the Notice of Rights, along with the witnesses’ contact information. Prior to the King hearing, the Hearing Officer will contact the witnesses to hear their statements. At the hearing, the Hearing Officer summarizes the statements made by the parolee’s witnesses. The Hearing Officer then asks the parolee to testify if he or she wishes. This system is set up to benefit the parolees. Since hearings are held during regular business hours, witnesses may not be available to testify. To avoid this harsh result, the Hearing Officer can take statements at the witnesses’ convenience.

**VII. PAROLEES ARE ALLOWED TO CROSS EXAMINE THE KING INVESTIGATORS**

Parolees are given the chance to cross examine the King Investigators. The Decree does

not require that arresting officers or complaining witnesses appear at the hearing. The Hearing Officer will testify that she explains to the parolees that they may question the King Investigators after the Investigators have finished testifying. Evidence will also show that the Hearing Officer informs the parolees that they can testify on their own behalf.

**VIII. THE HEARING OFFICER ACCEPTS PAROLEES' WRITTEN EVIDENCE**

The Hearing Officer will testify that she accepts documents given to her by parolees during the hearing. However, if the documents are not related to the alleged parole violations (such as documents regarding the offender's original conviction) or if they are merely copies of the Parole Violation Report or other documents which she already has, she does not accept them. Such documents do not further the hearing process. The Hearing Officer will also testify that she forwards tendered documents to the Prisoner Review Board.

**IX. THE LOCATIONS OF THE HEARINGS DO NOT VIOLATE THE PROCEDURES SET FORTH IN THE DECREE**

The evidence will show that the Northern Reception and Classification Center ("NRC") is an appropriate venue for the King Hearings. The relevant witnesses will testify that the noise level at the NRC does not impede the King hearings. The evidence will further show that the hearing area at the Cook County Jail is loud and busy. However, the Defendants have neither the ability nor authority to change the location of the hearings in the Jail. Once the remodeling of the Jail is complete, it is anticipated that the jail administration will move the location of the hearings.

**X. PAROLEES HAVE THE SAME ACCESS TO THEIR COUNSEL AS ALL OTHER OFFENDERS**

All offenders housed at the NRC, including parolees awaiting their King hearing, have access to their counsel through the same procedures. Plaintiffs' complaint that the parolees do

not have adequate time to meet with their counsel prior to the King hearing is immaterial. This time frame is set forth in the Decree and cannot be changed by the Defendants.

**XI. PAROLEES ARE ALLOW TO REQUEST THAT THE CHAIRMAN OF THE PAROLE BOARD WITHDRAW THEIR PAROLE HOLD**

The Hearing Officer will testify that parolees can request withdrawal of the parole warrant pending their final revocation hearing before the Prisoner Review Board (“PRB”). The parolees must petition the Chairman of the PRB to make that decision. The Hearing Officer provides a recommendation to the Chairman in the form of the Report of Findings.

**XII. THE HEARING OFFICER’S REPORT OF FINDINGS DOCUMENTS THE RESULTS OF THE HEARING AS REQUIRED BY THE DECREE**

The Hearing Officer makes a Report of Findings for each parolee and gives a copy of the Report to the parolee after the hearing. The Report contains the Hearing Officer’s decision, the evidence upon which it was based, and the reasoning behind the decision. No further documentation is necessary under the Decree.

**XIII. CONCLUSION**

In essence, the Plaintiffs’ Amended Rule to Show Cause does not argue that the Defendants failed to implement or follow the procedures required by the Decree. Instead, the Plaintiffs seek to modify the Decree by changin the requirements that the parties bargained for, and the Court approved, seven years ago. The evidence in this matter will show that the Defendants are not violating the requirements of the Decree, and the Rule to Show Cause is not supported by the evidence. Accordingly, the Rule should be denied.

Respectfully Submitted,

/s/ Kevin Lovellette  
KEVIN LOVELLETTE  
Assistant Attorney General  
General Law Bureau  
100 W. Randolph, 13<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-3720

**CERTIFICATE OF SERVICE**

The undersigned attorney deposes and states upon oath that a copy of the attached Defendants' Outline of the Case was served upon all counsel of record who have filed their appearances in this matter by the Court's CM/ECF electronic system on the 22<sup>nd</sup> day of October, 2013.

s/ Kevin Lovellette