

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MARYLAND RESTORATIVE
JUSTICE INITIATIVE, *et al.*,

Plaintiffs,

v.

GOVERNOR LARRY HOGAN, *et al.*,

Defendants.

* * * * *

ANSWER TO COMPLAINT

Defendants Governor of Maryland Lawrence J. Hogan, Jr.; Secretary of Public Safety and Correctional Services Stephen T. Moyer; Chairman of the Maryland Parole Commission David R. Blumberg; and Commissioner of Correction Dayena M. Corcoran, through counsel, answer the Complaint, and state:

1. Defendants admit the allegations in the first sentence of ¶ 1, with the exception of the allegation that Plaintiffs were sentenced without appropriate consideration of their youth, which is denied. Defendants deny the allegations in the second sentence of ¶ 1.

2. Defendants admit the allegations in ¶ 2, except that Defendants deny the Plaintiffs’ allegations regarding the holding of *Montgomery*, inasmuch as the Court there held only that the *Miller* prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that must be give retroactive effect on state collateral review.

3. Defendants admit the allegations in ¶ 3.

4. With regard to the allegations in ¶ 4, Defendants admit that the language quoted in that paragraph is a basis for the Court's holdings in *Miller* and *Montgomery*.

5. Defendants admit the allegations in the first two sentences of ¶ 5. Defendants admit the allegation in the last sentence of ¶ 5, to the extent that it refers to criminal sentencing schemes that mandate life in prison without the possibility of parole for defendants convicted of homicide crimes committed as juveniles. Otherwise, Defendants deny that allegation.

6. Defendants admit the allegation in the first sentence of ¶ 6 to the extent that it refers to mandatory sentences of life in prison without the possibility of parole for defendants convicted of homicide crimes committed as juveniles. Otherwise, Defendants deny that allegation. Defendants admit the allegation in the second sentence of that paragraph, to the extent Plaintiffs refer to a system in which prisoners serving mandatory life sentences for crimes committed as juveniles are ineligible for parole and that relies solely on executive clemency. Otherwise, Defendants deny that allegation.

7. Defendants admit the allegations in the first sentence ¶ 7, to the extent that Plaintiffs refer to a statutory scheme that imposes mandatory life sentences without the possibility of parole for defendants convicted of homicide crimes committed as juveniles. Defendants deny the allegations in the second sentence of ¶ 7.

8. Defendants admit the allegation in the first sentence of ¶ 8. Defendants deny the allegations in the second and third sentences of ¶ 8. The allegation in the last sentence of ¶ 8 is admitted, except that defendants deny that the individuals referred to who are serving life sentences are only "theoretically parole-eligible."

9. The allegation in the first sentence of ¶ 9, that many of the individuals have served 30 or 40 years of their sentences, is admitted. Defendants also admit that some prisoners serving life sentences for crimes committed as juveniles have made progress toward demonstrating maturity and rehabilitation; the remaining allegations in ¶ 9 are denied.

10. The allegations in ¶ 10 are denied.

11. The allegations in ¶ 11 are denied.

12. The allegations in ¶ 12 are denied.

13. With regard to the allegations in ¶ 13, Defendants admit that the Maryland Restorative Justice Initiative (MRJI) is a plaintiff in this lawsuit and that it sues on behalf of its members, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations regarding MRJI in ¶ 13. Defendants admit that Plaintiffs Calvin McNeill, Nathaniel Foster, and Kenneth Tucker are serving life sentences for the crime of murder committed as juveniles and that each has been incarcerated for more than 20 years, and deny the remaining allegations in ¶ 13.

14. Defendants admit the allegation in ¶ 14 that Defendants are state officials, and deny the remaining allegations in ¶ 14.

15. With regard to the allegations in ¶ 15, Defendants admit that Plaintiffs seek relief as stated in that paragraph, deny that Plaintiffs are entitled to any relief, and deny each allegation of unconstitutional conduct set forth in ¶ 15.

16. Defendants admit the allegations in the first sentence in ¶ 16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the

allegations in the second, third, and fourth sentences of ¶ 16. With regard to the fifth sentence in ¶ 16, Defendants admit that MRJI sues for declaratory and injunctive relief, and deny the remaining allegations in that sentence. Defendants deny the allegations in the sixth sentence of ¶ 16.

17. With regard to the allegations in ¶ 17, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Calvin McNeill is a member of the MRJI. Defendants admit that Mr. McNeill is serving a mandatory life sentence and note that the court possessed the authority to suspend part or all of that sentence. Defendants deny that the court imposed the life sentence “without appropriate consideration of his youth status.” Defendants deny the allegation that the offenses for which Mr. McNeill is currently incarcerated occurred on his 17th birthday. Defendants are without sufficient knowledge to admit or to deny the allegation that McNeill has matured into a responsible leader among prisoners at the Division of Correction (DOC). Defendants deny that Mr. McNeill has committed only one minor institutional infraction in over 25 years. Defendants admit that Mr. McNeill has served as a volunteer for numerous prison programs and that he has earned commendations from prison officials for his accomplishments. Defendants admit that Mr. McNeill is currently incarcerated at the Jessup Correctional Institution. Defendants deny that McNeill has been injured by the acts and policies of the defendants.

18. Defendants admit the allegations in the first sentence of ¶ 18. With regard to the allegations in the second sentence, Defendants admit that Mr. Foster received a mandatory life sentence and note that the court possessed the authority to suspend part or

all of that sentence, and deny the remaining allegations in that sentence. Defendants deny the allegations in the third sentence and note that Mr. Foster is 51 years of age. With regard to the allegations in the fourth sentence, Defendants admit that Mr. Foster has never had a violent infraction, admit that he has served as a mentor and volunteer, and deny the remaining allegations in that sentence. Defendants deny the allegations in the fifth sentence, and note that Mr. Foster is incarcerated at the Eastern Correctional Institution. Defendants deny the allegations in the sixth sentence of ¶ 18.

19. With regard to the allegations in ¶ 19, Defendants admit that Mr. Tucker received a mandatory life sentence and note that the court possessed the authority to suspend part or all of that sentence, and deny the remaining allegations in the first sentence. Defendants admit the allegations in the second and third sentences, and deny the allegations in the fourth sentence of ¶ 19.

20. Defendants admit the allegations in the first sentence of ¶ 20. Defendants admit the allegation in the second sentence that Governor Hogan appoints the members of the Maryland Parole Commission and decides whether any individual will receive a grant of executive clemency, and deny the remaining allegations in that sentence. Defendants deny the allegations in the third sentence, and admit the allegations in the fourth sentence of ¶ 20.

21. Defendants admit the allegations in ¶ 21.

22. Defendants admit the allegation in the first sentence of ¶ 22. With regard to the allegations in the second sentence, Defendants admit that in his capacity as Secretary of the Department of Public Safety and Correctional Services (DPSCS), Mr. Moyer

exercises authority over the policies and practices of the DOC, a unit of the DPSCS, and deny that the DOC is the “parent organization for the Maryland Parole Commission.” Defendants admit the allegations in the third sentence of ¶ 22.

23. Defendants deny the allegation in the first sentence of ¶ 23, note that Dayena Corcoran is the Commissioner of Correction and has been substituted as defendant in the place of former Commissioner Webb, and shall construe the remainder of the paragraph as applicable to Commissioner Corcoran. Defendants admit the allegations in the second and third sentences. With regard to the allegations in the fourth sentence, Defendants admit that the Commissioner has such decision-making authority within the DOC, but deny that the Commissioner has such decision-making authority within the Department, inasmuch as the Commissioner’s authority is subject to that of the Secretary of DPSCS. Defendants admit the allegation in the fifth sentence of ¶ 23.

24. Defendants admit the allegations in ¶ 24.

25. Defendants admit the allegations in ¶ 25.

26. Defendants admit the allegations in ¶¶ 26 through 55, which simply recite the holdings of various Supreme Court cases. Defendants deny any inference that Maryland’s system of release violates the pronouncements of the Supreme Court in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 132 S.Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

27. The allegations in ¶ 56 are denied.

28. Defendants admit the allegations in the first sentence of ¶ 57. The remaining allegations in ¶ 57 are denied.

29. The allegations in ¶ 58 are denied.

30. The allegations in ¶ 59 are denied.

31. With regard to the allegations in ¶ 60, Defendants admit that under Md. Code Ann., Corr. Servs., § 7-301(d)(4), “an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor,” but that under Corr. Servs. § 7-301(d)(5), “[i]f the Governor does not disapprove the decision [of the Commission to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits] within 180 days after receipt, the decision becomes effective.” Defendants deny the remaining allegations in ¶ 60.

32. The allegations in ¶ 61 are denied.

33. The allegations in ¶ 62 are denied.

34. The allegations in ¶ 63 are denied.

35. The allegations in ¶ 64 are denied.

36. With regard to the allegations in ¶ 65, Defendants admit that judges are required to impose a life sentence on juveniles who are tried as adults and who are convicted of first-degree murder, and note that judges are permitted to suspend all or a portion of the life sentence. Defendants also admit that subject to the holdings in *Miller* and *Graham*, the court may sentence a juvenile defendant to life without parole.

37. The allegations in ¶ 66 are admitted, except that under *Graham*, a judge may not sentence a juvenile to life without parole for a non-homicide offense.

38. The allegations in ¶ 67 are admitted.

39. The allegations in ¶ 68 are admitted.

40. The allegations in ¶ 69 are denied.

41. With regard to the allegations in ¶ 70, Defendants admit that under Md. Code Ann., Corr. Servs., § 7-301(d)(4), “an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor,” but that under Corr. Servs. § 7-301(d)(5), “[i]f the Governor does not disapprove the decision [of the Commission to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits] within 180 days after receipt, the decision becomes effective.”

42. The allegations in ¶ 71 are admitted.

43. With regard to the allegations in ¶ 72, Defendants admit that under Md. Code Ann., Corr. Servs., § 7-301(d)(4), “an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor,” but that under Corr. Servs. § 7-301(d)(5), “[i]f the Governor does not disapprove the decision [of the Commission to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits] within 180 days after receipt, the decision becomes effective.” Defendants admit that the Parole Commission may make recommendations to the Governor regarding commutations.

44. The allegations in ¶ 73 are admitted.

45. With regard to the allegations in ¶ 74, Defendants admit that no statute or regulation requires the Governor to consider an individual’s age at time of offense in exercising his discretion concerning parole. The remaining allegations in ¶ 74 are denied.

46. The allegations in ¶ 75 are denied.

47. The allegations in ¶ 76 are admitted.

48. The allegations in ¶ 77 are denied, inasmuch as the Governor may issue an executive order, which has the force and effect of law.

49. The allegations in ¶ 78 are admitted.

50. The allegation in ¶ 79 is denied.

51. The allegations in ¶ 80 are admitted.

52. The allegations in ¶ 81 are denied.

53. The allegations in ¶ 82 are denied.

54. The allegations in ¶ 83 are denied.

55. The allegation in the first sentence of ¶ 84 is admitted. The allegation that “parole commissioners receive no training in pertaining to adolescent psychological development or any other training that would assist commissioners in contextualizing offenses committed by youth in accordance with the findings of *Roper*, *Graham*, *Miller* and *Montgomery*,” is denied.

56. Defendants admit the allegation in ¶ 85 that Maryland does not provide counsel free of charge to juvenile lifers who are being considered for parole. Defendants deny that privately retained attorneys are not permitted to attend or to participate in parole proceedings. Defendants admit that if counsel for the prisoner is permitted to attend a parole hearing that has been opened to the public by the victim, the attorney for the prisoner may attend the hearing but is not permitted to speak during the hearing. Defendants admit that inmates are usually not permitted to see judicial, prosecutorial, or DOC case management recommendations concerning parole, parole commissioners’

notes, or victim statements that were obtained by the Commission after a promise of confidentiality. Under Code of Maryland Regulation 12.08.01.17.C.5.d, “[i]f a risk assessment prepared for the Commission contains diagnostic opinions, that assessment may not be available for examination, only a summary that does not contain the diagnostic opinions may be prepared and made available, upon request, to the inmate or the inmate’s representative.” Defendants deny the remaining allegations in ¶ 85.

57. The allegations in ¶ 86 are denied with respect to Plaintiffs McNeill, Foster, and Tucker. Defendants are without sufficient knowledge to admit or to deny the allegations with respect to the unnamed members of the MRJI.

58. The allegations in ¶ 87 are denied.

59. With regard to the allegations in ¶ 88, Defendants admit that one former parole commissioner was skeptical of, and raised concerns about, the validity of the assessment tools used by Patuxent Institution to assess a prisoner’s risk of re-offending if released; defendants admit that this former commissioner may have expressed his concerns during parole hearings. Defendants deny that any other commissioners currently serving on the Commission share this former commissioner’s concerns.

60. Defendants deny the allegation in ¶ 89 that the Commission takes the position that its decision to approve an inmate serving a life sentence for parole is confidential; rather, such a decision is available for public inspection. Defendants admit that a recommendation made by the Commission to the Governor to commute a life sentence is confidential and that such a recommendation is protected from disclosure to

anyone, including the subject of the recommendation, by the common law doctrine of executive privilege.

61. With regard to the allegations in ¶ 90, Defendants admit that on rare occasions, the Commission has been asked to refrain from sending a recommendation for executive clemency or a parole approval for a period of one month. Defendants deny any implication that in the past two decades the Commission has ever been directed not to send parole approvals or commutation recommendations for an indefinite or extended period of time.

62. With regard to the allegations in the first sentence ¶ 91, Defendants admit that in 1994, the DOC adopted a policy that at the time precluded inmates serving life sentences from moving below medium security status, and that in 1997, the DOC adopted a policy that at the time precluded inmates serving life sentences from participation in work release and family leave programs, but deny that those policies are currently in effect. Defendants deny the allegations in the third sentence of ¶ 91.

63. Defendants deny the allegations in the first sentence of ¶ 92. With regard to the allegations in the second sentence, Defendants admit that an individual's security classification "determines in which institutions he or she may be housed" and "the level of restriction upon his or her freedom of movement" to the extent that it is dependent on the institution in which the prisoner is housed, and deny the remaining allegations in ¶ 92.

64. Defendants deny the allegations in the first sentence of ¶ 93 and note that the DOC's security classification levels are prerelease, minimum, medium, maximum, and maximum II. Defendants admit the remaining allegations in ¶ 93.

65. Defendants deny the allegations in ¶ 94.

66. Defendants deny the allegations in ¶ 95.

67. Defendants deny the allegations in ¶ 96.

68. Defendants deny the allegations in ¶ 97.

69. Defendants deny the allegations in ¶ 98.

70. Defendants deny the allegations in ¶ 99.

71. Defendants deny the allegations in ¶ 100.

72. Defendants admit the allegations in ¶ 101, with the exception of the allegation that inmates currently serving parole-eligible life sentences for crimes committed as juveniles are ineligible to receive the opportunities described in that paragraph, which is denied.

73. Defendants admit the allegation in ¶ 102 that, during the time period referenced in ¶ 101, lifers' success in work release and family leave was an important factor in the assessment of their readiness for parole by the Parole Commission, but deny that such success was a "crucial" factor. Defendants admit the allegations in the second sentence of ¶ 102.

74. The allegations in ¶103 are denied.

75. The allegations in ¶104 are denied.

76. The allegations in ¶ 105 are denied.

77. The allegations in ¶ 106 are admitted.

78. The allegations in ¶ 107 are denied.

79. The allegations in ¶ 108 are admitted.

80. The allegations in ¶ 109 are denied.

81. The allegations in ¶ 110 are admitted.

82. The allegations in ¶ 111 are denied.

83. The allegations in ¶ 112 are denied.

84. The allegation in the first sentence of ¶ 113 is denied. The allegation in the second sentence of ¶ 113 is admitted, except that the characterization of the number of cases recommended to the Governor for commutation as “a handful of cases” is denied.

85. With regard to the allegations in ¶ 114, Defendants admit that Governor O’Malley took office in 2007. Defendants deny the allegation in the second sentence of ¶ 114. Defendants admit that the Commission recommended Mr. McNeill for a commutation of sentence; the remaining allegations in the third sentence of ¶ 114 are denied. The allegation in the fourth sentence of ¶ 114 is denied. Defendants admit that in 2011, the legislature amended § 7-301 of the Correctional Services Article to provide that “[i]f the Governor does not disapprove the decision [of the Commission to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits] within 180 days after receipt, the decision becomes effective.” Defendants deny that the statute was amended “[l]argely in response to the unfairness of the lifers in this situation.” The allegation in the last sentence of ¶ 114 is admitted.

86. The allegations in ¶ 115 are admitted.

87. The allegations ¶ 116 are denied.

88. The allegations in ¶ 117 are denied.

89. With regard to the allegations in ¶ 118, at this time: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that 181 lifers were paroled between 1969 and 1994, and are unable to verify the accuracy of the data for Governor Mandel from 1969 to 1979; Defendants admit that the data for Governor Hughes from 1979 to 1987 and Governor Schaefer from 1987 to 1991 appear to be accurate; and Defendants deny that the data for Governor Schaefer from 1991 to 1995 is accurate.

90. With the exception of the allegation that “MRJI members...have begun to regard parole proceedings as futile and the promise of parole as completely illusory,” the allegations in ¶ 119 are denied. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that “MRJI members...have begun to regard parole proceedings as futile and the promise of parole as completely illusory.”

91. With regard to the allegations in ¶ 120, Defendants admit that Mr. McNeill was sentenced to life with the possibility of parole under Maryland’s mandatory sentencing scheme because in 1981, he committed a murder during a robbery at a dice game. Defendants deny the remainder of the allegations in ¶ 120 that the court sentenced him without adequate consideration of his youth status and that he committed the murder and robbery on the day he turned 17 years old.

92. With regard to the allegations in ¶ 121, Defendants deny that Mr. McNeill is now 51 years old, and note that he is now 52 years old. Defendants admit that he has spent over 35 years in prison, which is over two-thirds of his life.

93. With regard to the allegations in ¶ 122, Defendants admit that Mr. McNeill was sentenced to life with the possibility of parole under Maryland's mandatory sentencing scheme but note that the sentencing court possessed the authority to suspend part or all of Mr. McNeill's life sentence. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 122.

94. Defendants deny the allegations in the first sentence of ¶ 123. At this time, Defendants are unable to verify the truth of the allegation in the second sentence of ¶ 123 that "nearly 100 lifers had been paroled in the preceding ten years."

95. Defendants admit the allegations in ¶ 124 with the exception of the allegation that Mr. McNeill has had only one "exceedingly minor" infraction in the past 25 years, which is denied.

96. Defendants admit the allegation in ¶ 125 that the Commission recommended Mr. McNeill for a commutation of sentence but deny that the recommendation was made in 2008.

97. Defendants admit the allegation in ¶ 126 that in 2011, Governor O'Malley declined to commute Mr. McNeill's life sentence, but deny that he acted three years after the Commission recommended commuting the life sentence. The remaining allegations in ¶ 126 of the Complaint are admitted.

98. Defendants admit the allegation in ¶ 127 that in 2011, the Commission decided to rehear Mr. McNeill for parole in 2015. Defendants deny the remaining allegations in ¶ 127.

99. Defendants admit the allegation in ¶ 128 that in 2015, the commissioners who conducted Mr. McNeill's parole hearing told him that they would be referring him for a risk assessment. Defendants deny that inmates are currently referred to Patuxent for risk assessments, and they deny that Mr. McNeill's risk assessment has not been completed. Defendants admit that Mr. McNeill's risk assessment had not been completed when the Complaint in this case was filed.

100. Defendants admit the allegation in ¶ 129 that the Governor can deny the parole of an inmate serving a life sentence, and Defendants admit that the Governor can deny the Commission's recommendation to commute a life sentence, for any lawful reason, without explanation. Defendants deny that there is no opportunity for review of the Governor's decision.

101. Defendants deny the allegation in ¶ 130 that Mr. McNeill committed only one offense as a juvenile. Defendants admit that after the court sentenced him to life in prison, that he was classified to maximum security, and that he was initially housed at the Maryland Penitentiary.

102. Defendants admit that "Year after year, DOC classification counselors assessing Mr. McNeill's readiness for parole have noted his 'excellent' record," and admit that "For nearly 20 years, Mr. McNeill has been identified as a strong candidate for progression to lesser security." The remainder of the allegations in ¶ 131 are denied. Defendants further deny any inference that Mr. McNeill was or is entitled to be paroled.

103. Defendants admit the allegation in ¶ 132 that in 1997 and 2000, DOC classification counselors wrote the statements attributed to them in ¶ 132.

104. The allegations in ¶ 133 are admitted with respect to past classification decisions only.

105. The allegations in ¶ 134 are denied.

106. The allegations in ¶ 135 are denied.

107. With regard to the allegations in ¶ 136, Defendants admit that Mr. Tucker was sentenced to life with the possibility of parole in 1974 at age 17 for participating in a robbery-murder with another teenager during which the victim was killed; that Mr. Tucker has been incarcerated for approximately 42 years; and that he is 60 years old. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that during the robbery Mr. Tucker's co-defendant killed the victim, and deny the remaining allegations in ¶ 136.

108. Defendants admit the allegations in ¶ 137, with the exception of the allegation that Mr. Tucker "faced a mandatory penalty of life in prison," which is denied, inasmuch as the sentencing court possessed the authority to suspend part or all of Mr. Tucker's sentence.

109. With regard to the allegations in ¶ 138, Defendants admit that Mr. Tucker pled guilty, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in that paragraph.

110. With regard to the allegations in ¶ 139, Defendants admit that Mr. Tucker earned his high school equivalency in 1975, an associate's degree in 1989, and a bachelor's degree in psychology in 1994; that he has obtained certification or training in metal and wood work apprenticeships, clerical work, and food service sanitation; that he

is currently an observation aide; and that he participates in the JCI Scholars program. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 139.

111. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of ¶ 140. Defendants admit the remaining allegations in that paragraph, with the exception of the allegation that as of 1987, Mr. Tucker had an “infraction-free record,” which is denied.

112. Defendants admit the allegations in ¶ 141.

113. Defendants deny the allegations in the first sentence of ¶ 142. Defendants admit that Mr. Tucker declined his parole hearing in 1996, and did not have a parole hearing again until 2014, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 142.

114. Defendants admit the allegations in the first sentence of ¶ 143, deny the allegations that the commissioners “denied parole,” and admit that the commissioners elected to re-hear the case in 2017. Defendants admit the remainder of the allegations in ¶ 143, except that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that Mr. Tucker “received no reply to a letter requesting an explanation,” and state that a letter was sent to Mr. Tucker in reply to his letter on April 9, 2015.

115. Defendants deny the allegation in the first sentence of ¶ 144. Defendants admit the remaining allegations in ¶ 144, except that Defendants deny that the use of the tests penalized Mr. Foster.

116. Defendants deny the allegations in ¶ 145.

117. With respect to the allegations in the first sentence of ¶ 146, Defendants deny Plaintiffs' characterization of the crime and state that Mr. Foster shot and killed the victim during the course of an attempted robbery of the victim. Defendants admit the allegation in the first sentence that the crime occurred in 1983, when Mr. Foster was 17 years old, and admit the allegations in the second and third sentences of that paragraph.

118. Defendants admit the allegation in ¶ 147 that Mr. Foster's case involved a homicide that occurred during a robbery and that he was charged with first-degree murder, and deny the remaining allegations in ¶ 147.

119. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of ¶ 148 that "there is nothing in Mr. Foster's record to suggest, nor was any finding ever made, that he was among those rare juveniles whose crimes reflect irreparable corruption," although Defendants admit that neither the DOC nor the Parole Commission has made a finding that his crime reflects irreparable corruption. Defendants admit that Mr. Foster had graduated from Southwestern High School and was working as a janitor at the time of his offense and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 148.

120. Defendants admit the allegation in ¶ 149.

121. Defendants deny the allegation in the first sentence of ¶ 150. Defendants admit the allegations in the second and third sentences of ¶ 150.

122. With regard to the allegations in ¶ 151, Defendants admit that Mr. Foster completed coursework through Coppin State College and earned placement on the Dean's List during his incarceration, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 151.

123. The allegation in the first sentence in ¶ 152 is admitted. The allegations in the second and third sentences of ¶ 152 are denied, although Defendants admit that Mr. Foster was formerly employed as lead clerk at Maryland Correctional Enterprises in the sheet metal shop.

124. The allegations in ¶ 153 are admitted.

125. The allegation in ¶ 154 is admitted.

126. The allegation in ¶ 155 is admitted. Defendants also state that Mr. Foster had a parole hearing in March 2016.

127. With regard to the allegations in ¶ 156, Defendants admit that Mr. Foster has remained at medium security since 1994, and also admit that the Maryland Parole Commission recommended in 1995 that Mr. Foster progress to lesser security, "if possible." The remaining allegations in ¶ 156 are denied.

128. The allegations in ¶ 157 are admitted, with the exception of the allegation that "[t]he only notation made by the parole commissioners who heard his case was to check a box under 'Re-Hearing Recommendations' that was marked 'Progress to Lesser Security' with a handwritten annotation 'If possible,'" which is denied, inasmuch as the parole commissioners also made a notation that Mr. Tucker's offense was his "1st M.A.I.," *i.e.*, first major adult incarceration.

129. The allegations in ¶ 158 are admitted.

130. The allegations in the first and third sentences of ¶ 159 are admitted. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of ¶ 159.

131. The allegations in ¶ 160 are admitted.

132. The allegations in the first sentence of ¶ 161 are admitted, with the exception of the allegation that the parole commissioners “denied parole,” which Defendants deny, inasmuch as the parole commissioners elected to re-hear the case in 2011. The allegations in the second sentence are admitted, with the exception of the allegation that the parole commissioners “reject[ed] parole,” which Defendants deny for the same reason as their denial in the first sentence of this paragraph. Defendants admit the allegations in the last sentence of ¶ 161.

133. The allegations in ¶ 162 are admitted.

134. The allegations in the first sentence of ¶ 163 are admitted. The allegations in the second sentence are denied for the reasons stated in the first sentence of ¶ 132 of this answer. Defendants admit the allegations in the third sentence of ¶ 163.

135. Defendants admit the allegations in ¶ 164.

136. With regard to the first sentence of ¶ 165, Defendants admit the allegation that Mr. Foster declined his parole hearing in 2015, deny the allegation that the Parole Commission has not considered his “juvenile status” at the time of the offense, and are without knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of that sentence. With regard to the allegations in the second

sentence of ¶ 165, Defendants admit that Mr. Foster reinstated his participation, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in that sentence. Defendants admit the allegation in the third sentence of ¶ 165.

137. The allegations in ¶ 166 are denied.

138. With regard to the allegations in ¶ 167, Defendants incorporate their responses to the allegations in ¶¶ 1 through 137 as if fully set forth herein.

139. Defendants deny the allegations in the first sentence of ¶ 168 and state that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders convicted of homicide offenses or for juveniles in non-homicide cases without adequate regard for their status as minors, and denies them a meaningful opportunity for release upon demonstrated rehabilitation. Defendants further state that Maryland's system of early release provides offenders serving life sentences for crimes committed as juveniles with a meaningful opportunity for release upon demonstrated rehabilitation.

140. The allegations in ¶ 169 are denied.

141. The allegations in ¶ 170 are denied.

142. The allegations in ¶ 171 are denied.

143. The allegations in ¶ 172 are denied.

144. The allegations in ¶ 173 are denied.

145. With regard to the allegations in ¶ 174, Defendants incorporate the responses to ¶¶ 1 through 137 as if fully set forth herein.

146. Defendants deny the allegations in the first sentence of ¶ 175 and state that Article 25 of the Maryland Declaration of Rights forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders convicted of homicide offenses or for juveniles in non-homicide cases without adequate regard for their status as minors, and denies them a meaningful opportunity for release upon demonstrated rehabilitation. Defendants further state that Maryland's system of early release provides offenders serving life sentences for crimes committed as juveniles with a meaningful opportunity for release upon demonstrated rehabilitation.

147. The allegations in ¶ 176 are denied.

148. The allegations in ¶ 177 are denied.

149. The allegations in ¶ 178 are denied.

150. The allegations in ¶ 179 are denied.

151. The allegations in ¶ 180 are denied.

152. The allegations in Count 3 in ¶¶ 181 through 185 do not require a response from the Defendants because Count 3 was dismissed by this Court's order of February 3, 2017 (ECF 66).

153. Defendants respectfully request that the Court deny Plaintiffs' requests for declaratory and injunctive relief set forth at pp. 59-61 of the Complaint.

154. With regard to the arguments set forth in the bolded and unnumbered headings in the Complaint, Defendants admit that the allegations in I.A on p. 13 and I.B on p. 15 accurately summarize the holdings of the Supreme Court; deny the allegations in I.C on p. 17; deny the allegations in II. and II.A on p. 20, II.B on p. 22, II.C. and II.C.1 on

p. 23, II.C.2 on p. 26, and II.C.3 on p. 29; deny the allegations in III on p. 33, and IV on p. 39; and further deny the allegations contained in the headings under “Causes of Action” on pp. 54, 56, and 57.

Affirmative Defenses

1. The Complaint fails to state a claim upon which relief may be granted for the reasons stated in Defendants’ motion to dismiss and memorandum in support (ECF Nos. 23 and 23-1).

2. Plaintiffs’ claims are barred by the Eleventh Amendment.

3. Plaintiffs’ claims are barred by the applicable statute of limitations.

4. Plaintiffs Calvin McNeill, Nathaniel Foster, and Kenneth Tucker failed to exhaust their administrative remedies as required by the Prison Litigation Act, 42 U.S.C. § 1997e.

Respectfully submitted,

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