UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY HILL, JEMAL TIPTON, DAMION TODD, BOBBY HINES, KEVIN BOYD, BOSIE SMITH, JENNIFER PRUITT, MATTHEW BENTLEY, KEITH MAXEY, GIOVANNI CASPER, JEAN CARLOS CINTRON, NICOLE DUPURE and DONTEZ TILLMAN,

Plaintiffs,

v.

RICK SNYDER, in his Official Capacity as Governor of the State of Michigan, DANIEL H. HEYNS, in his Official Capacity as Director, Michigan Department of Corrections, and TOMAS COMBS, in his Official Capacity as Chair, Michigan Parole Board, jointly and severally,

Defendants.

File No. 10-cv-14568

HON. JOHN CORBETT O'MEARA
MAG. JUDGE R. STEVEN WHELAN

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PLAINTIFFS' BRIEFING IN COMPLIANCE WITH THIS COURT'S ORDER OF JANUARY 30, 2013

NOW COME Plaintiffs, by and through their counsel, and submit the following briefing pursuant to this Court's January 30, 2013 Order and Opinion Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment and Denying Defendants' Cross-Motion for Summary Judgment. (Dkt. 62)

INTRODUCTION

This Court's order granting in part Plaintiffs' Motion for Summary Judgment declared that M.C.L. §791.234(6), which deprives the Parole Board of jurisdiction over youth convicted of first-degree homicide crimes, violates the Eighth Amendment as applied to such youth. (Dkt. 62.) As a result, youth currently serving mandatory life sentences must be made eligible for Parole Board consideration.

Graham and *Miller* stand for more than just the proposition that mandatory life without *any* possibility of parole violates the Eighth Amendment. They also require the opportunity to obtain release from prison during the youth's lifetime to be "meaningful," *Graham v. Florida*, 130 S. Ct. 2011, 2016, 2030, 2032 (2010), and "realistic," *id.* at 2034. *See also Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012). Thus, this Court further ruled that compliance with *Miller* and *Graham* requires providing a "fair and meaningful possibility of parole to each and every Michigan prisoner who was sentenced to life for a crime committed as a juvenile." (Dkt. 62, at 6.) Addressing Plaintiffs' request for equitable relief, the Court directed Plaintiffs to articulate more clearly what changes in the parole system are required to make the *Miller* and *Graham* requirements a reality. Specifically, the Court directed the parties to "provide further briefing on the issue of the procedures that the Court may equitably put in place to ensure that

Plaintiffs receive a fair and meaningful opportunity to demonstrate that they are appropriate candidates for parole." *Id.*

Miller prohibits any child from being imprisoned for the rest of his or her life for a homicide crime without individualized consideration of at least the following mitigating factors:

1) the youth's "chronological age and its hallmark features—among them, immaturity, impetuosity, and the failure to appreciate risks and consequences";

2) "the family and home environment that surrounds [the child], and from which he cannot usually extricate himself—no matter how brutal or dysfunctional";

3) "the circumstances of the homicide offense, including the extent of [the youth's] participation in the conduct and the way familial and peer pressures may have affected him"; and

4) the possibility that the child might have been "charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, [the] inability to deal with police officers or prosecutors (including on a plea agreement) or [the] incapacity to assist his [or her] own attorneys."

Miller, 132 S. Ct. at 2468. Further, a child's life sentence may not be enforced in a manner that "disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.* at 2468. To provide Plaintiffs a meaningful and realistic opportunity for release as required by the Eighth Amendment, Defendants must implement a system of parole consideration for youth that gives meaningful weight to the factors listed above and provides a realistic opportunity for youth who are capable of demonstrating maturity and rehabilitation to obtain release.

There are 362 individuals currently serving a life sentence in Michigan for a first-degree homicide offense committed as a youth. As explained in this brief and the attached affidavits, simply dumping them into the existing parole review system will fail to provide the individualized consideration required by *Miller* and will deprive them of the meaningful and

realistic opportunity for release mandated by *Graham*. Currently, the Parole Board has unreviewable discretion to deny a lifer an opportunity for a parole hearing without explanation, by simply stamping "no interest" on a file. If a hearing is recommended by the Parole Board to allow an opportunity for parole, the parole statute allows a judge or successor judge to veto the hearing, without considering the *Miller* and *Graham* requirements, and without appellate review. Even if a hearing is granted, there is no requirement that the Parole Board consider factors connected to the individual's youth at the time of the offense, or that it credit maturation and rehabilitation in determining whether the youth is an appropriate candidate for parole. No reason need be given to deny parole and no review or appeal of the denial is permitted. These statutory barriers and the Parole Board's manner of implementing them will result in a de facto "life means life" policy that makes little distinction between lifers who are statutorily eligible for parole and those who are not. Whatever the merits of such a parole system as applied to adults, it is clear that the current parole system in Michigan does not comply with *Graham* and *Miller* as applied to children.

Consequently, this Court should order Defendants to implement changes to the parole system for juveniles that will provide the meaningful individualized consideration the Constitution requires and thus provide those juveniles who are capable of demonstrating maturity and rehabilitation with a realistic opportunity to obtain release.

ARGUMENT

I. Michigan's existing parole system as it currently functions does not provide Plaintiffs with the meaningful and realistic opportunity for release required by the Eighth Amendment.

There are several reasons why the parole system as it currently functions in Michigan does not comply with the *Miller*/*Graham* standard. First, youth face a number of unjustified

barriers created by the parole statute itself that result in youth having no meaningful opportunity for parole. These include an unreviewable judicial veto, the unreviewable ability of the Parole Board to prevent any opportunity for parole by refusing to schedule the necessary hearing, and the lack of any requirement that the Parole Board consider factors related to the individual's age and youth-related circumstances at the time of the offense or that it consider maturation and rehabilitation for purposes of release. Second, in actual practice the Parole Board's implementation of the statute results in a "life means life" policy, making the "opportunity" for parole virtually meaningless for juvenile lifers and rendering parole exceedingly unrealistic even for youth capable of demonstrating maturity and rehabilitation.

A. Michigan's parole statute creates unconstitutional barriers to a meaningful opportunity for parole for children serving life sentences in Michigan.

In addition to M.C.L. §791.234(6), which this Court has already held invalid as applied to juveniles, several other provisions of Michigan's parole statute arbitrarily deprive youth of any individualized consideration or meaningful opportunity to demonstrate maturity and rehabilitation as required by *Graham* and *Miller*. M.C.L. §791.234(8)(c) allows a judge or the Parole Board to prevent youth from even having the benefit of a parole hearing. And M.C.L. §791.233e does not require the Parole Board to give individualized consideration to the youth-relevant factors required by *Graham* and *Miller*.

1) M.C.L. §791.234(8)(c) allows a juvenile to be arbitrarily denied any opportunity for parole by a judge or by the Parole Board for any reason or for no reason at all.

M.C.L. §791.234(8)(c) provides that a decision to grant or deny parole to a prisoner shall not be made until after a public hearing is held. However, prior to the public hearing, a sentencing judge or the judge's successor in office has the absolute and unreviewable power to prevent a public hearing, and thus even the opportunity for parole, by simply filing an objection.

A judge or successor judge may veto an opportunity for parole for any reason, or for no reason at all. The judge may veto parole out of ignorance of *Miller* and *Graham*, or even because the judge disagrees with *Miller* and *Graham*. No consideration of the youthful status and the lesser culpability of the individual as compared to an adult are required. Nor is the judge required to consider a youth's maturation, unique capacity for rehabilitation or, indeed, any consideration of the individual, his or her circumstances, or current lack of danger to public safety. The veto cannot be appealed. Thus, the parole statute allows a judge to do precisely what *Miller* and *Graham* forbid—condemn a child to life without parole absent meaningful consideration of their youthful status and its attendant circumstances.

The Parole Board must first agree to schedule a public hearing in order for an inmate to be considered for a parole. M.C.L. §791.234(8)(c). There are no criteria that the Parole Board is required to follow in determining whether an individual is entitled to a hearing. A denial of a hearing, like a judicial veto, is not subject to any review or appeal. The Parole Board need not give any reason for the denial of a parole and routinely states that it has "no interest." Thus, like the judge or successor judge, the Parole Board may simply deny a hearing because they do not believe that youth convicted of first-degree homicide should ever be given an opportunity for parole, or for any other undisclosed reason. While it is unknown what criteria are considered, it is clear that none of the *Graham* or *Miller* factors are *required* to be taken into consideration in determining whether a youth is given an opportunity for parole. As of December 31, 2012, there were 137 individuals serving parolable life sentences for offenses committed prior to the age of 18 who were eligible for parole based on having served their minimum term of years in prison.

See Ubillus Aff., Ex. 1. Only 16% received a hearing.[1] Thus, 84% have never had the opportunity to even demonstrate that they are appropriate candidates for parole.

The sentencing judge's and the Parole Board's unfettered ability to deny a hearing deprives a juvenile of a meaningful opportunity to demonstrate that release would be appropriate. This does not meet the constitutional standards for juveniles as established in *Miller* and *Graham*.

2) M.C.L. §791.233e does not require the Parole Board to give individualized consideration to the youth-relevant factors required by *Graham* and *Miller*.

In addition to giving judges and the Parole Board unfettered and unreviewable power to deny a parole hearing arbitrarily, the parole statute does not require the Parole Board to apply the core factors set forth in *Graham* and *Miller* in considering whether to grant or deny parole. Under the current parole statute a child who received a mandatory life sentence will remain in prison with no requirement that individualized consideration be given to the mitigating factors associated with youth—consideration that *Miller* requires before a youth is condemned to prison for the rest of his or her natural life.

Under the existing statutory criteria there are four factors that the department is required to consider in developing its parole guidelines. M.C.L. §791.233e.[2] None of these statutory factors addresses the unique circumstances of youthful offenders as required by *Miller* and

[1] From 2005 through 2012, thirty-three (33) youth who were serving parolable life sentences were actually recommended to receive a public hearing, the necessary precursor to being considered for parole. Ten (10) of these youth had their opportunity for parole vetoed by a successor judge. *Id.*

[2] These criteria are not used in deciding whether to grant a parole hearing in the first place. It is also unclear to what extent the Parole Board even applies these criteria once a public hearing takes place for lifers. *See* Stapleton Aff., Ex. 3.

Graham. To the contrary, they may act to the detriment of a child when seeking parole opportunities on a first-degree homicide.

The first factor is "the offense for which the prisoner is incarcerated at the time of parole consideration." M.C.L. §791.233e(2)(a). In order to make parole a realistic opportunity for youth convicted of first-degree murder, the *Miller* factors as they relate to the youth's commission of the offense must be considered. Specifically, *Miller* requires the consideration of the lesser culpability of youth; the level of involvement of the youth; peer pressure; the youth's immaturity and impetuosity; a child's failure to appreciate risks and consequences; a child's diminished decision-making abilities stemming from family and home environment; and a child's inability to deal with police officers or prosecutors and to assist their attorneys, and the consequent disadvantage in plea bargaining. *Miller*, 132 S. Ct. at 2468. All of these must be weighed as mitigating factors in considering the offense for which the child is convicted; yet, the parole statute does not provide for such consideration.

The second factor that must be considered is "the prisoner's institutional program performance." Mich. Comp. Laws Ann. §791.233e(2)(b). For those serving a non-parolable life sentence, the ability to participate in programming is extremely limited. Per the Michigan Department of Corrections' policy and guidelines, participation in programs is for those individuals who are closest to their release date. *See* REPORT TO THE LEGISLATURE PURSUANT TO PA 188 OF 2010, MICH. DEPT. OF CORRECTIONS (2011), available at http://www.michigan.gov/documents/corrections/01-15-11_-_Section_907_343876_7.pdf (individuals serving life sentences are listed as the lowest priority for enrollment in academic programming). Plaintiffs have been viewed as never having an opportunity for release and were routinely denied participation in programming. Absent recognition of this disadvantage, this

factor will work to the detriment of youth despite it having no relationship to a youth's willingness to participate in rehabilitative programming. *See* Caruso Aff., Ex. 2.

The third factor that must be considered is "the prisoner's institutional conduct." M.C.L. §791.233e(2)(c). While institutional conduct is a relevant consideration, the statute makes no requirement that youth be counted as a mitigating factor in assessing institutional conduct. Consequently, consideration of a child's conduct in the initial years in an adult prison will disadvantage these youth in violation of *Miller* and *Graham*. It is widely recognized that youth between the ages of 14 and 17 who are thrown into adult prisons are at grave risk for sexual and physical abuse and assault. 42 U.S.C. §15601(4) ("Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult facilities rather than juvenile facilities – often within the first 48 hours of incarceration."). In order to survive the gauntlet during their adolescence, many youth accumulate tickets in the early years of their incarceration. *See* Caruso Aff., Ex. 2. *Miller* and *Graham* require that these circumstances mitigate the institutional conduct that occurs prior to the age of 18, but the parole statute fails to satisfy this mandate.

The fourth factor is "the prisoner's prior criminal record," which includes juvenile adjudications. M.C.L. §791.233e(2)(d). Because *Graham* and *Miller* emphasize that adolescents are less culpable than adults and that their misconduct likely to be transient, juvenile adjudications should not be considered by the Parole Board absent the application of *Graham* and *Miller* to these offenses.

In addition to the four factors listed above, the statute permits (but does not require) consideration of two additional factors: the "prisoner's statistical risk screening," M.C.L. §791.233e(3)(a), and the "prisoner's age," *id.* §791.233e(3)(b). By policy, statistical risk

screening is not used for lifers. MDOC Policy Directive 06.05.100(c). As for the prisoner's age, this is not interpreted to include age at the time of the offense, and it is implemented to give older prisoners parole priority over younger prisoners. These factors do not properly account for the recognition in *Graham* and *Miller* that individuals who commit offenses as juveniles are less likely to represent threats as adults. In Michigan, a prisoner who is 50 and has served 20 years will be given priority over a prisoner who is 35 and has served the same amount of time, yet under *Graham* and *Miller* the exact opposite may be appropriate. *See* Stapleton Aff., Ex. 3.

Together, these statutory provisions fail to make provisions for the Parole Board to properly consider the mitigating factors of youth. Instead, they virtually assure that Plaintiffs' youthful status will constitute a barrier to release, as the criteria disadvantage those who have been serving a non-parolable life sentence, and who committed their crime and were incarcerated in an adult prison while still a child.

B. In actual practice, the current Michigan parole system does not provide a meaningful and realistic opportunity for release to prisoners serving a life sentence.

By statute, the Parole Board may grant parole to individuals upon reasonable assurance that the individual will not be a menace to society. M.C.L. §791.233(a) ("a prisoner shall not be given his liberty on parole until the board has reasonable assurances, after consideration of all the facts and circumstances, including the prisoner's mental and social attitude that the prisoner will not became a menace to society or to the public safety.")

However, the parole system, by statute and as currently implemented, will not provide Plaintiffs with a meaningful and realistic opportunity for release as required by *Miller* and *Graham*. Although Michigan's statute recognizes a difference between life-sentenced prisoners who are parolable, M.C.L. §791.234(7), and those who are not, *id.* §791.234(6), the Parole Board's implementation of these provisions has resulted in little distinction. The procedures and

policies of the Parole Board have instead resulted in a de facto "life means life" for adults that will be exacerbated for youthful offenders absent procedures that comply with *Graham* and *Miller*'s constitutional mandates for youth.

Federal and state courts have noted that the Michigan Parole Board has adopted a de facto "life means life" policy, meaning that the chance of parole for *any* prisoner serving a life sentence is extremely remote. *See Foster v. Booker*, 595 F.3d 353 (6th Cir. 2010); *Foster-Bey v. Rubitschun*, No. 05-71318, 2007 WL 7705668 (E.D. Mich. Oct. 23, 2007); *People v. Scott*, 480 Mich. 1019 (2008); *People v. Hill*, 267 Mich. App. 345 (2005); *see also* CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING, NO WAY OUT: MICHIGAN'S PAROLE BOARD REDEFINES THE MEANING OF "LIFE" 10 (2004) *available at* http://capps-mi.org/pdfdocs/No%20Way%20Out%20Michigan%27s%20parole%20board%20redefines%20the%20meaning%20of%20life.pdf, (describing the parole board's "life means life" policy regarding prisoners who are sentenced to life but are eligible for parole).

Although legal challenges to this system by adult lifers have been rejected by the courts, these decisions have been based on the legal status of parole-eligible *adults*, who have no constitutional right to a meaningful opportunity for release. As applied to *juveniles*, by contrast, the "life means life" policy is unconstitutional in light of *Graham* and *Miller*.

Five years ago in *Foster-Bey*, *supra*, U.S. District Judge Marianne O. Battani held extensive hearings on the operation of the Michigan Parole Board as it relates to those individuals serving parolable life sentences. While there was a dispute over the legal claims at issue, there was no dispute over the fact that parole opportunities for lifers were extremely limited. The district court's ruling, although reversed on its legal conclusion that the "life means life" policy was an *ex post facto* law, was based on extensive evidence regarding the Parole

Board's practice and direct testimony from Parole Board members who testified to the prevalence of the "no interest" designation for lifers and that "it was very rare that anyone got through." *Id*., 2007 WL 7705668 at *15. Other members testified that the focus was really on the crime that was committed; maturation and rehabilitation were not a focus. On appeal, there was little dispute with regard to the small numbers of individuals who were paroled or that the procedures and process for those serving a parolable life sentence in Michigan did not provide a meaningful or realistic opportunity for release. *See Foster v. Booker*, *supra*.

Here, Plaintiffs do not seek a guarantee of release, nor do they challenge the Parole Board's overall politics or philosophy, particularly as applied to adults. However, under *Graham* and *Miller* youth are entitled to a meaningful opportunity to present the mitigating factors of their case for individualized consideration, and to demonstrate their maturity and rehabilitation and thus suitability for release. If the facts and circumstances presented at a fair hearing demonstrate that Plaintiffs will not constitute a "menace to society" if released, Plaintiffs are entitled to a realistic possibility of obtaining parole.

According to accepted scientific and medical experts, 90% of youth who commit antisocial acts in their adolescence grow out of this behavior upon maturity. *See* Steinberg Aff., Ex. 4, ¶¶ 25-26. And yet, the Parole Board has allowed only 16% of youth an opportunity for parole. Moreover, those small percentages of youth who were provided an opportunity had served, on average, over 35 years before being considered. *See* Ubillus Aff., Ex. 1. Even erring on the side of caution, it is clear that the existing statutory restrictions and de facto policies of the Parole Board will not be adequate to protect Plaintiffs' Eighth Amendment right to a meaningful and realistic opportunity for release upon maturation and rehabilitation.

C. The recent example of a non-parolable juvenile whose status was changed to parole-eligible illustrates the barriers Plaintiffs would face in the current parole system.

A cautionary tale of how youth will be treated in the wake of this Court's ruling, absent the implementation of appropriate procedures and standards, is the case of Anthony Jones. Anthony is the only individual in Michigan whose sentence was vacated based on *Graham*. Anthony was 17 in 1979 when he went with another youth to rob a store. The other youth had a gun, and during the robbery a struggle began. After Anthony ran from the scene, he heard the gun go off. He was arrested, tried, and convicted of aiding and abetting a first-degree felony murder. Because Anthony's trial took place before *People v. Aaron*, 409 Mich. 672 (1980), there was no requirement that the state prove that he acted with the mental state associated with any level of homicide. In fact, at the sentencing hearing the trial judge made note of the fact that Anthony clearly did not kill or intend to kill anyone. But because Anthony was convicted of a first-degree offense his life sentence was mandatory, and he was not eligible for parole.

After *Graham* was decided, Anthony filed a motion to vacate his life-without-parole sentence, arguing that it was unconstitutional because he "did not kill or intend to kill." *See Graham*, 130 S. Ct. at 2027; *see also Miller*, 132 S. Ct. at 2475 (Breyer, J., concurring) (stating that *Graham* prohibits life without parole for any juvenile who did not "kill or intend to kill" even if convicted of felony murder). In 2011, Circuit Court Judge Gary C. Giguere, Jr. granted the motion based on *Graham* and, after a new sentencing hearing, ordered Anthony's status to be changed to life *with* eligibility for parole. *See* Order Granting Motion for Relief from Judgment, Ex. 5. However, the judge did not specify what changes in the parole process were necessary to provide Anthony with a meaningful opportunity for release.

On June 14, 2012, Anthony was interviewed by one member of the Parole Board, who noted that Anthony had substantial community support, was remorseful and there was no

evidence that he presented a threat to public safety. A COMPAS ReEntry Narrative Assessment Summary prepared by the MDOC that assessed Anthony's risk probability upon release concluded that his risks of violence and recidivism were low. *See* Ex. 6. No objection to his parole was interposed by the prosecutor's office, by a judge or successor judge, or by the victim's family. Yet, despite having served 33 years in prison for an offense committed when he was 17 in which he did not kill or intend to kill anyone, Anthony was advised that the Parole Board simply had "no interest" in providing an opportunity for parole or release. *See* Ex. 7. No further explanation was given, and Anthony never received a hearing.[3]

There can be little doubt that the parole process used for Anthony and all other parolable lifers is simply inadequate to provide Plaintiffs with the meaningful and realistic opportunity for release that *Graham* and *Miller* require.

II. Defendants must implement new procedures in order to provide juveniles with a meaningful and realistic opportunity for release as required by the Eighth Amendment.

As previously stated, where *Miller* and *Graham* have prohibited life without parole, they have held that the opportunity for release from prison during an individual's lifetime must be "meaningful," *Graham*, 130 S. Ct. at 2030, 2032, and "realistic," *id*. at 2034. *See also Miller*, 132 S. Ct. at 2469. To be "meaningful," a review process must use fair procedures, entail faithful consideration of all relevant factors, and not be subject to arbitrary roadblocks. And to be "realistic," there must be a non-negligible possibility of eventual release. Plaintiffs therefore

[3] Meanwhile, Anthony's 1979 co-defendant—the youth who actually fired the gun—was convicted of second-degree murder and received a parolable life sentence. *See* M.C.L. §§750.317, 791.234(7). This co-defendant was scheduled for a parole hearing in 2010 after serving nearly 30 years in prison, yet he remains incarcerated because a successor judge filed an objection and vetoed any opportunity for parole. *See* M.C.L. §791.234(8)(c). Anthony's attempt to ascertain the reason and/or challenge this objection was rejected. *See* Ex. 8.

specify the following reforms as necessary to ensure juvenile lifers receive a meaningful and realistic opportunity to demonstrate appropriateness for parole.

1. A full, in-person public hearing, not subject to judicial veto or a "no interest" designation by the Parole Board.

As detailed previously, the judicial and Parole Board vetoes are incompatible with the decision in *Miller*. At a minimum, a public hearing is required to provide a meaningful opportunity for parole.

2. The youth shall receive a public hearing before the parole board after ten years of incarceration and every three years thereafter. The Parole Board shall issue a decision to grant or deny parole after the initial hearing and each subsequent review hearing.

The Supreme Court has stated that a child is entitled to an opportunity for release with demonstration of maturation. The brain science that has developed over the years supports the finding that maturation continues until the mid-twenties. *See* Steinberg Aff., Ex. 4. Thus, the first opportunity for those youth sentenced as adults should be after they have served ten years of incarceration. This of course does not mean necessarily that individuals will be released at this time; however, they are entitled to Parole Board jurisdiction to demonstrate their maturation and provide reasonable assurances that they do not constitute a "menace to society or public safety."[4]

3. The Parole Board and all individuals involved in preparing guidelines determinations and risk assessment documents for consideration by the Parole Board shall

[4] M.C.L. §791.234(7)(a) currently allows Parole Board jurisdiction after 10 years for adult lifers that committed a homicide before October 1, 1992 and after 15 years for those who committed a homicide after that date. It should be noted that the majority of adults charged with first-degree homicide crimes pled to a second-degree offense. Those adults who have been released served an average of 12.2 years in prison. *See Basic Decency: Protecting the Human Rights of Children* (available at http://www.aclumich.org/sites/default/files/file/BasicDecencyReport2012.pdf; A ten-year review is also consistent with the recommendations proposed by the Model Penal Code: Sentencing, of the American Law Institute, §6.11; §611.A(h), March 25, 2011, Draft.

receive training in brain science and adolescent development so that they may understand and apply the *Miller* factors with regard to the lesser culpability of youth in their offense.

4. Subject to this Court's approval, the Parole Board shall develop criteria and/or guidelines that incorporate the *Miller* factors for considering the offense, issues of remorse, relative culpability and review of any juvenile adjudication. The criteria and guidelines shall also address the unreliability of misconducts and institutional behavior for youth prior to maturation, the lack of programming opportunities for youth with life sentences, and the heightened vulnerability of youth as recognized by *Graham* and *Miller*. The criteria shall not disadvantage those who were juveniles at the time of conviction and shall provide for consideration of growth, maturity and rehabilitation of youth.

5. Appropriate assessments shall be developed for the Parole Board's consideration by individuals knowledgeable of the *Miller* factors and the impact of youth and attendant characteristics on institutional behavior programs, background, rehabilitation and reentry.

6. The Parole Board shall give specific evidence-based reasons, related to the criteria, upon any denial of parole, together with a detailed list of expectations that the individual shall complete prior to the next parole review hearing.

7. The Parole Board's decision denying parole shall be subject to a review process.

Requiring that Defendants develop and implement these necessary procedures to address existing barriers to a meaningful opportunity for parole is well within this Court's authority. It is also highly feasible. In fact, many of these procedures existed either in the past and/or are existing procedures for different classes of prisoners. *See* Stapleton Aff., Ex. 3.

CONCLUSION

Because Plaintiffs received a mandatory life sentence for an offense that took place before they turned 18, *Miller* and *Graham* require that they be given a meaningful and realistic opportunity for release. Michigan's parole system as it currently operates does not satisfy the *Miller*/*Graham* Eighth Amendment standard. Therefore, this Court should order Defendants to implement reforms to the parole process as it applies to juveniles convicted of life offenses in order to provide Plaintiffs the relief to which they are constitutionally entitled.

Respectfully submitted,

DATED: March 1, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via U.S. Mail to all non-ECF participants.

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