CASE NO: SC100791

IN THE SUPREME COURT
OF THE STATE OF MISSOURI

In Re: Terrell Robinson,

Petitioner,

v.

RICHARD ADAMS, in his Capacity as Warden,
Eastern Reception, Diagnostic and Correctional Center,

Respondent.

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner Terrell Robinson and, pursuant to RSMo. § 532.010, *et seq*., and Missouri Supreme Court Rule 91, respectfully petitions this court for a writ of *habeas corpus*. In support of this petition, Mr. Robinson states as follows:

* * *

> Revocation of parole may deprive the parolee of only conditional liberty, but it nevertheless "inflicts a 'grievous loss' on the parolee and often on others." Simply put, revocation proceedings determine whether the parolee will be free or in prison, a matter of obvious great moment to him.[1]

* * *

Terrell Robinson has been unconstitutionally incarcerated for over 14 years on alleged parole condition violations. When Mr. Robinson had his parole revoked in early 2010, he was denied nearly all of the due process rights guaranteed to him by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. The process to which he was subjected was confusing, opaque, coercive, and devoid of critical due process protections; and he was unconstitutionally left to navigate it without the assistance of counsel.

It is undisputed that Mr. Robinson was denied his constitutional right to be screened for and/or provided state-funded counsel, to be provided notice, as well as evidence, of the alleged parole violations for which he was being revoked, and a written statement by the Parole Board regarding the reasons for revoking parole, and the evidence relied upon. Each

[1] *Wolff v. McDonnell*, 418 U.S. 539, 560 (1974) (citation omitted; emphasis added) (quoting *Morrissey v. Brewer*, 408 U.S. at 482).

of these undisputed constitutional violations are an independent basis for habeas relief. When considered cumulatively with the additional myriad due process violations detailed below, it is clear that Mr. Robinson's revocation process was irredeemably tainted from start to finish, and his resulting and ongoing incarceration is unconstitutional.

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction over this petition for habeas corpus pursuant to Missouri Supreme Court Rule 91.02(a) and Section 532.030, RSMo. This is the proper venue for this matter because Mr. Robinson is currently incarcerated at the Eastern Reception, Diagnostic and Correctional Center (ERDCC) located in Bonne Terre, St. Francois County, Missouri. Respondent Richard Adams is the Warden of ERDCC, where Mr. Robinson is currently incarcerated. *See* Rule 91.04(a)(1), (2).

II. PROCEDURAL HISTORY

On March 29, 2022, undersigned counsel filed a Petition for Writ of Habeas Corpus in the 24th Judicial Circuit Court of St. Francois County, Cause No. 22SF-CC00053. The Circuit Court issued a show cause summons, and MoDOC filed a response to the habeas petition on July 21, 2022. Mr. Robinson in turn filed a reply on August 25, 2022. An evidentiary hearing was conducted in the Circuit Court on May 12, 2023. The transcript of that evidentiary hearing is attached hereto as **Exhibit A**.

At the 2023 evidentiary hearing, Circuit Court judge Hon. Patrick L. King heard testimony from Petitioner Terrell Robinson, his wife Lawanda Robinson, community witness Glen Cobbins, Petitioner's expert David Muhammad, and Probation and Parole Unit Supervisor Derrick Vaughn. The Court also took judicial notice of *Gasca* v. *Precythe*,

2:17-cv-04149 (W.D. Mo Jan. 28, 2018), which included the *Gasca* plaintiffs' motion for summary judgment, defendants' response to summary judgment in which they conceded to constitutional violations with their parole revocation process, and the subsequent court orders. After the robust evidentiary hearing, Mr. Robinson's petition was denied, *not for lack of evidence demonstrating due process violations*, but on the basis of laches on October 2, 2023. *See* Oct. 2, 2023 Order and Judgment, attached hereto as **Exhibit B**. On August 29, 2023, undersigned counsel filed a Petition for Writ of Habeas Corpus in the Court of Appeals for the Eastern District of Missouri, which summarily denied the petition on September 5, 2024. *See* September 5, 2024 Order, attached hereto as **Exhibit C**.

III. STANDARD OF REVIEW

Upon denial of habeas relief by a circuit court, habeas petitioners file a new petition before this court. *See In re Ferguson v. Dormire*, 413 S.W.3d 40, 50-51 (Mo. App. W.D. 2013). This Court is then "required to independently consider [the] Petition as an original writ filed pursuant to the authority of Rule 91 and Rule 84.22, and subject to the procedure set forth in Rule 84.24." *Id*. By offering a petition for "independent consideration," this Court does not conduct[] appellate review of the judgment entered in Cole County." *Id*. at 51-52.

IV. HABEAS CORPUS IS PROPER VEHICLE

"[A] writ of habeas corpus may be issued when a person is restrained of his or her liberty in violation of the constitution or laws of the state or federal government." *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 545 (Mo. banc 2003). Missouri law clearly states that habeas corpus is the proper avenue for a petitioner to challenge their illegal

incarceration, including if they are incarcerated on an alleged parole violation. *See, e.g.*, *State ex rel. Mack v. Purkett*, 825 S.W.2d 851, 852 (Mo. banc 1992) (ordering that the petitioner be released from prison and restored to parole status); *Reiter v. Camp*, 518 S.W.2d 82, 84 (Mo. App. KC 1974) ("Habeas corpus is the proper remedy to test the legality of his present incarceration…If petitioner is correct in his position, he is entitled to immediate release and restoration of his prior status as probationer."); *cf. State v. Burnett*, 72 S.W.3d 212 (Mo. App. W.D. 2002) (dismissing appeal because proper venue for review of legality of probation revocation was by writ, not direct appeal).

A petitioner may be entitled to habeas corpus relief even if they are not entitled to absolute release. *See Purkett*, 825 S.W.2d 851 (citing *McIntosh v. Haynes*, 545 S.W.2d 647, 652 (Mo. banc 1977)). Indeed, many Missouri courts have issued writs of habeas corpus releasing petitioners from prison or jail back onto parole or probation (and thus still under supervision of the Missouri Department of Corrections) following proof of the State's failure to meet due process requirements. In those cases, courts generally order the petitioner to be released back onto parole or probation, without prejudice to the State conducting proper, constitutionally-compliant revocation proceedings. Some of these cases are discussed below in Section VI regarding remedy.[2]

[2] Much of the case law entails *probation* revocation, as opposed to *parole* revocation proceedings, but that is a distinction without a difference for this purpose. We can speculate as to why this is (likely because probation revocation proceedings are conducted in court, while parole revocation proceedings are conducted behind closed doors in front of a fraction of the Parole Board), but legally it makes no difference. The due process requirements set forth in *Gagnon* and *Morrissey* apply equally to probation and parole, and both probationers and parolees are subject to supervision of MoDOC. *See Black v. Romano*, 471 U.S. 606, 611 (1985) ("*Gagnon* concluded that the procedures outlined in *Morrissey*

V. STATEMENT OF FACTS

Terrell Robinson was incarcerated in the Missouri Department of Corrections ("MoDOC") for nearly twenty years before earning parole supervision in September 2007, proving to the Parole Board that he was ready to be safely released and successful on reentry. Prior to his release in 2007, Mr. Robinson was serving time for crimes he and two young friends committed when he was only 17 years old—a juvenile in the eyes of the law and developmentally more prone to take risks, especially when with his peers. In the fall of 2009, Mr. Robinson was arrested on alleged parole violations. His parole was revoked, and he has remained incarcerated ever since. At the time, Mr. Robinson was not informed why his parole was being revoked and he has been trying to learn the reasons ever since.

A. Terrell Robinson's Parole Supervision

In September 2007, Terrell Robinson was released from his original prison sentence to Columbia Reality House halfway house in Columbia, Missouri. He then moved to Kansas City and St. Louis, both with approval from his parole officer, due to a family health emergency. Exh. A at 26-28. While on parole, Mr. Robinson attended all his parole appointments and paid all his parole intervention fees. Exh. A at 31-32. At the May 2023 evidentiary hearing, multiple witnesses testified to Mr. Robinson's positive adjustment after he was released on parole supervision. For example, Lawanda Robinson, Petitioner's wife, testified to Petitioner's diverse efforts to build a positive life after his release, to

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for parole revocation should also apply to probation proceedings."); *Chilembwe v. Wyrick*, 574 F.2d 985, 987 (8th Cir. 1978) ("[T]here are no differences relevant to due process between parole revocation and probation revocation."); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972).

improve himself, and to give back to his community, much of which is detailed below. Exh. A at 190-194.

Mr. Robinson also testified that he was committed to not going back to prison and he focused on work, community service, prayer, and meditation to keep him on track. Exh. A at 26-36, 206. While on parole, Mr. Robinson obtained employment, engaged in volunteer work, and participated in other pro-social activities to improve himself and to give back to his community. For example, he worked for the nonprofit Reintegration Advocacy Project, as a personal trainer at a boxing gym, at IHOP, and in landscaping. Exh. A at 26-27, 30, 192. He also partnered with James Clark at Better Family Life Employment Program to identify other employment opportunities. Exh. A at 36. Mr. Robinson also spent his time on parole volunteering in both Columbia and St. Louis. In St. Louis, he started a boxing team for neighborhood youth and volunteered at a local church. Exh. A at 30, 192. He also pursued education, including attending heating, cooling & refrigerating classes at Vatterott College. Exh. A at 32.

While out on parole supervision, Mr. Robinson was finally able to spend time with his family and loved ones. This family time was particularly important to him. He got to attend family dinners at Lawanda Robinson's home and make memories with his daughter and granddaughter. He babysat his granddaughter and fondly recalls getting to take her to Build-a-Bear. Exh. A at 30-31, 191. Mr. Robinson also became a live-in caretaker for his mother when she was diagnosed with cancer and had to undergo chemotherapy. When he learned of his mother's diagnosis, he picked up his life and moved from Columbia to St.

Louis to live with his mother in their family home. Exh. A at 28-30, 34. Mr. Robinson's parole officer approved of his plans to live with his mother and his brother Derek Robinson, who also lived with their mother at the time. Exh. A at 29.

Taking care of his ailing mother was especially hard on Mr. Robinson, who cared deeply for his mother and had already missed many years with her as he grew up in prison. Exh. A at 28, 34. As a result, he started experiencing anxiety and panic attacks. He used exercise to relieve some stress, but he also occasionally turned to substances to self-medicate, including marijuana and beer. Exh. A at 34-35, 105, 193. Terrell tested positive for marijuana and alcohol while on parole supervision, and discussed his marijuana and beer use with his parole officer. Exh. A at 35, 105.

Mr. Robinson consistently worked with his parole officer to address any supervision issues that arose. For example, after discussing his marijuana and beer use with his parole officer, the officer ordered Mr. Robinson to enroll in a substance abuse program and electronic monitoring. Mr. Robinson complied: he was referred to and attended a substance abuse education program at the Gateway Free and Clean Foundation. Exh. A at 35-36. At the time revocation proceedings were initiated against Mr. Robinson in November 2009, he was in the process of getting an ankle monitor set up, was scheduled to see a psychologist about his mental health issues, and had enrolled in substance abuse programs. Exh. A at 35-36.

While Mr. Robinson was arrested a handful of times while out on parole supervision, the arrests all prove unfounded. When his parole was revoked, there were no

charges pending against him and he not been convicted of any crimes. Exh. A at 128, 160, 270.

B. Prior Experience with Revocation Process

Before his 2009 revocation, Mr. Robinson experienced one prior revocation proceeding. Those proceedings relied on criminal charges of which Mr. Robinson was ultimately acquitted, and the Parole Board found no probable cause that he had violated any conditions of his parole supervision. The events leading up to and Mr. Robinson's experience of the 2008 revocation process will be briefly described here, only because those events informed Mr. Robinson's lack of knowledge, and at times misinformed understanding, of the process and any rights he may or may not have in the process in 2009.[3]

The only charge filed against Mr. Robinson while on parole was for the unlawful use of a gun, but he was acquitted and he was not revoked on the basis of this charge. Attorney Joel Schwartz represented Mr. Robinson on the criminal matter and at the trial where he was ultimately acquitted. (Mr. Robinson credibly has always maintained his innocence of these charges, and denies ever carrying a gun while on parole.) In 2008 and after the acquittal, MoDOC processed Mr. Robinson for parole revocation. A preliminary

[3] Mr. Robinson was arrested two other times while on parole, once when he was mistaken for his brother, and a second time when he was allegedly involved in a robbery. Mr. Robinson denied involvement in the robbery, the police report indicates one of the officers did not think Mr. Robinson had anything to do with the crime, and charges were never filed in connection with either arrest. To be clear, neither of these mistaken arrests resulted in charges, much less prosecution or revocation. Neither thus were a valid basis for his ultimate revocation at issue here.

revocation hearing was scheduled automatically at the time since he was accused solely of "laws" violations; Mr. Robinson did not need to request a hearing. Exh. A at 132, 247. (Note that this is relevant to Mr. Robinson's subsequent confusion in 2009 about his right or waiver of a preliminary hearing. *See* section VI.C., *infra*.) Mr. Robinson's defense attorney informed him that, based on information received from MoDOC, he would not be permitted to attend Mr. Robinson's revocation proceeding. Exh. A at 44, 94, 132. At the time, MoDOC's Red Book[4] explicitly stated that attorneys are not allowed at preliminary hearings. Exh. A at 156, 158.

No one explained a parolee's rights to Mr. Robinson during these 2008 parole revocation proceedings. As a result, Mr. Robinson did not understand that he had a right to be screened for state-funded counsel, that he may qualify for representation by state-funded counsel, or even that attorney Schwartz could have represented him at his revocation hearings. In fact, he understood the opposite to be true based on Attorney Schwartz informing him that he was not allowed to participate in the process—a statement supported by express language in the Red Book. Exh. A at 44-45, 47-48, 93, 96, 132. Even if Mr. Robinson had known about his right to have an attorney present during revocation proceedings, he could not have afforded to retain private counsel. Exh. A at 131. His sister had paid for Schwartz to represent him at trial, and that retainer was limited to representing Mr. Robinson against federal criminal charges only. Exh. A at 135-136. Mr. Robinson was

[4] The Red Book was a resource previously used by MoDOC to explain the revocation process and parolees' rights during that process. Exh. A at 156-159. It's adequacy and accessibility was successfully challenged in *Gasca v. Precythe*, and MoDOC no longer uses it. *Id*.

continued on parole after the hearing officer failed to find probable cause that he violated one or more conditions of his parole. Exh. A at 90, 92.

C. Terrell's 2009 Parole Revocation Process

MoDOC issued a parole violation warrant on November 10, 2009, and on or about November 13, 2009, Terrell Robinson was arrested by Jennings Police while visiting his Parole Officer, James Fannon. At the time, Mr. Robinson thought he was reporting for his regular check-in with PO Fannon, and he understood himself to be in compliance with all of PO Fannon's directives, including the ankle monitor and substance abuse programming. In fact, Mr. Robinson had an appointment to have his electronic alcohol monitor installed just days later, on November 15. Instead, he was taken to the county jail. He has not left state custody since that day. Exh. A at 39-40. At the time of his arrest and booking, Mr. Robinson was not told what conditions of parole he was accused of violating. Exh. A at 40.

D. Terrell Robinson's Parole was Revoked without Explanation, in Violation of *Morrissey*

The Parole Board revoked Terrell Robinson's parole on or about February 8, 2010—without a hearing and without adequate explanation. Exh. A at 51. Although Mr. Robinson received a one-page notice of the decision, the Notice was a barebones boilerplate notice that did not provide the conditions he was found to have violated, any explanation for his

AKU032A-OVN Missouri Department of Corrections Page - 1
Time - 17:20:17 BOARD OF PROBATION AND PAROLE Date - 2/08/10

DOC ID: 162841 Cycle: 19871217
DOC Name: ROBINSON, TERRELL

Name TERRELL ROBINSON Number 162841
Institution/Housing Unit ERDCC/009
Minimum Mandatory Release Date N/A

RELATING TO PAROLE/CONDITIONAL RELEASE VIOLATION

Following your violation hearing on ____ or your waiver of violation hearing, signed by you on 01/13/10 :

X 1. You have been revoked. Your copy of the order of Revocation is attached.

___ 2. Because you were returned with a concurrent or consecutive sentence, you are not eligible for further parole consideration.

___ 3. Your New Maximum Release Date will be .

___ 4. You have been scheduled for release from confinement on .

Special Conditions of release are:

X 5. You have been scheduled for a Parole Hearing 07/00/2010.

The reason for the actions taken are:

**THIS DECISION IS SUBJECT TO APPEAL.

revocation, the violations he was revoked on the basis of, or the evidence the Board relied upon. *See* Feb. 8, 2010 Decision Notice, attached hereto as **Exhibit D**; Exh. A at 280.

Mr. Robinson never received the Order of Revocation referenced in this Notice. Exh. A at 51. Even assuming that the Order of Revocation was disclosed, that Order did

nothing more than list the parole conditions that Mr. Robinson was found to have violated, without explaining why those supposed violations warranted revocation of his parole and without any description of the evidence it relied on in coming to its revocation decision. The Order simply indicated that Mr. Robinson was found to be in violation of the following conditions of parole: #1-Laws; #2-Travel; #5-Association; #6-Drugs; #7-Weapons; and #11-Special Conditions. *See* Order of Revocation, attached hereto as **Exhibit E**. Even IPO Vaughn, who testified at the evidentiary hearing, conceded that the Order did not provide an explanation for the Board's decision or explain the evidence the Board relied on in coming to its decision. Exh. A at 273-74.

Petitioner did not receive an appeal form with decision notice. Exh. A at 51-53. No one ever explained to him the process for appealing an order of revocation. Exh. A at 53.

E. *Gasca* Litigation and MoDOC's Admission of Guilt

This court should take judicial notice, as the Circuit Court did, of admissions made by MoDOC in *Gasca* v. *Precythe*, 2:17-cv-04149 (W.D. Mo Jan. 28, 2018).[5] *Gasca v. Precythe* is a separate federal class action lawsuit that established the unconstitutionality of MoDOC's parole revocation policies and practice.

There, the U.S. District Court for the Western District of Missouri held that MoDOC's parole revocation procedures and practices routinely and systemically violated *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973),

[5] *See State v. Weber*, 814 S.W.2d 298, 303 (Mo. App. E.D. 1991) (In Missouri, judicial notice may be taken of a fact which is common knowledge of people of ordinary intelligence, and it may be taken of a fact, not commonly known, but which can be reliably determined by resort to a readily available, accurate and credible source.").

and ordered changes to the process. *See* MoDOC Summary Judgment Order in *Gasca v. Precythe*, 2:17-cv-04149 (W.D. Mo. Feb. 27, 2019). These court-ordered changes were largely upheld on MoDOC's appeal to the Eighth Circuit. *Gasca v. Precythe*, 83 F.4th 705 (8th Cir. 2023). In *Gasca,* the plaintiffs successfully challenged the following MoDOC policies and practices as unconstitutional:

- MoDOC's failure to provide adequate notice of alleged parole violations and the basis for the Board's revocation decisions.
- MoDOC's failure to advise individuals on parole of their rights during revocation proceedings.
- MoDOC's practice of securing waivers of preliminary hearings and final revocation hearings from individuals facing parole revocations that are not knowing, voluntary and intelligent.
- MoDOC's refusal to disclose to individuals facing parole revocation the evidence against them and denying them of the opportunity to present witnesses or confront adverse witnesses at both the preliminary hearing and revocation hearing.
- MoDOC's failure to screen or provide state-funded counsel to individuals facing parole revocation in compliance with *Gagnon.*

MoDOC admitted that "the policies that existed at the time Plaintiffs filed their Amended Class Action complaint [in October 2017] did not satisfy the requirements of *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and *Morrissey v. Brewer*, 408 U.S. 471 (1972)." *See* MoDOC Summary Judgment Response and Order in *Gasca v. Precythe*, 2:17-cv-04149 (W.D. Mo Feb. 27, 2019). The *Gasca* court ultimately granted the plaintiffs' Motion for Summary Judgment, concluding that MoDOC's parole revocation policies and procedures as a whole, even after being amended by MoDOC, violated parolees' due process rights under the Fourteenth Amendment to the United States Constitution. *Id*.; *see also Gasca v.*

Precythe, 500 F. Supp. 3d 830 (W.D. Mo. 2020), *aff'd in part, rev'd in part and remanded*, 83 F.4th 705 (8th Cir. 2023).

Indeed, it was not until the *Gasca* lawsuit was filed in August 2017 that Mr. Robinson learned that he had due process rights in the revocation process, and that they had been violated when his parole was revoked in 2010. Exh. A at 53, 83. As soon as Mr. Robinson understood what his constitutional rights were, he took steps to address the violations that occurred during his parole revocation process. Exh. A at 53. This included requesting copies of his field violation reports, which he received in 2012—two years after his parole had been revoked. This was the first time he had ever seen these reports. Mr. Robinson found the reports to be confusing, and still did not understand why his parole was revoked. Exh. A at 48-49, 72-73. Mr. Robinson also reached out directly to the MacArthur Justice Center (class counsel in *Gasca*), asking how he might be impacted by the *Gasca* case. *See* Affidavit of Mary Claire Sorensen, attached hereto as **Exhibit F**.

F. <u>Expert Testimony Regarding Systemic Due Process Deficiencies – in Terrell Robinson's case, as in thousands of others.</u>

Probation and parole expert David Muhammad presented expert testimony in *Gasca* and also testified at the 2023 evidentiary hearing in Mr. Robinson's case. Mr. Muhammad concluded that MoDOC parole revocation procedures were not in compliance with constitutional requirements and standard practice. Mr. Muhummad observed that parolees were very rarely provided the notice of violations of which they were accused, that the state was not screening for state-funded counsel at all, that hearing waiver forms and the information about rights (whether in Red Book or subsequently developed Notice of Rights

form) were confusing, and that parolees were often being pressured to waive preliminary and revocation hearings. Exh. A at 142-145, 151-152. In fact, he noted that the records in *Gasca* evidenced that only two percent (2%) of alleged parole violators were ever given hearings. Exh. A at 150. In habeas proceedings before the Circuit Court, Mr. Muhammad concluded that many of the same deficiencies existed in Mr. Robinson's case. Exh. A 146-163, at 152-156.

Mr. Muhammad reviewed the Red Book and concluded that the Red Book did not adequately inform parolees of their right to state-funded counsel. Exh. A at 159. Mr. Muhammad further testified that the Red Book was inaccessible because of its confusing language. He observed that it would be difficult for an average reader to get through. The inaccessibility of the language meant that it would take several days of reviewing the Red Book in detail to come to understand a parolee's rights during revocation proceedings. Exh. A at 157, 161, 183.

Given its inaccessibility, Mr. Muhammad testified that he would not be shocked if Mr. Robinson never read the Red Book. Mr. Muhammad concluded that reviewing the Red Book on its own, because of its inaccessibility and lack of critical information, would not have been enough for an accused parole violator to understand their panoply of rights during the parole revocation process. Exh. A at 157, 161, 176.

Expert Muhammad concluded, based on his review of records in this case, that Mr. Robinson was not screened for counsel and that MoDOC parole staff did not adeqautely inform Mr. Robinson of his right to be screened for state-funded counsel. Exh. A at 156.

Counsel during revocation hearings is important, he explained, not only because of the liberty interest at stake, but also because of the complexity of the parole revocation process and the complexity of allegations brought against alleged parole violators. Exh. A at 162. Mr. Muhammad testified that counsel at the preliminary hearing stage is especially critical because this is the parolee's opportunity to understand the allegations being made against them, the rights they are entitled to, and the significance of waiving a hearing. Exh. A at 163.

Perhaps most critically, in Mr. Muhammad's expert opinion, Mr. Robinson would have qualified for state-funded counsel because of his claims of innocence and the complex mitigating factors in his case. Exh. A at 160-161. Mr. Muhammad further concluded that counsel in Mr. Robinson's case would have been critical in navigating the preliminary hearing phase, revocation phase, and appeal process. Exh. A at 162-163.

Mr. Muhammad also concluded that the parole revocation hearing waiver form signed by Mr. Robinson was inadequate because it was confusing and inaccessible, did not describe the alleged parole violations, did not detail the rights of an alleged parole violator during the revocation process, and did not explain the consequences of waiving a hearing. Exh. A at 148-49, 153, 175. Mr. Muhammad also opined that the revocation decision notice provided to Mr. Robinson was inadequate. Exh. A at 153-154.

VI. ARGUMENT

Terrell Robinson is entitled to habeas relief because he was reincarcerated via a parole revocation process that violated his due process rights. Mr. Robinson's liberty, like that of anyone on parole, is "valuable and its termination inflicts a 'grievous loss' on the

parolee and often on others." *Morrissey*, 408 U.S. at 482 (internal quotation omitted). Longstanding U.S. Supreme Court precedent governs what kind of process is owed to individuals like Mr. Robinson, who face parole revocation and reincarceration. *Morrissey*, 408 U.S. 471 and *Gagnon*, 411 U.S. 778. That process must at least include:

> (a) written notice of the claimed violations of parole;
>
> (b) disclosure to the parolee of evidence against him;
>
> (c) opportunity to be heard in person and to present witnesses and documentary evidence;
>
> (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
>
> (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and ;
>
> (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey, 408 U.S. at 485-89.

Due process also requires that a parolee like Mr. Robinson be informed of his right to counsel, and, if appropriate, provided with a state-funded attorney. *Gagnon*, 411 U.S. at 790. When Mr. Robinson had his parole revoked in early 2010, he was denied nearly all of the due process rights guaranteed to him by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. Indeed, the process he was subjected to was confusing, opaque, and unfair—and he was left to navigate it without the assistance of counsel. Because the process was tainted by a myriad of due process violations, detailed below, his resulting, ongoing incarceration is unconstitutional.

A. Mr. Robinson's procedural due process rights were violated when MoDOC revoked his parole without disclosing evidence as required by *Morrissey*.

As a matter of due process, MoDOC was required to disclose to Terrell Robinson all the evidence the Parole Board relied on in making its decision to revoke his parole. *Morrissey*, 408 U.S. at 489; *Belk v. Purkett*, 15 F.3d 803, 812 (8th Cir. 1994).[6] In Mr. Robinson's case, such evidence would have included all field violation reports, as well as police reports and any urinalysis toxicology reports relating to the alleged violations discussed in the field violation reports. *Id.* MoDOC's failure to provide this evidence to Petitioner constitutes a clear violation of Petitioner's due process rights. *See Gasca*, 500 F. Supp. 3d at 852; *Belk*, 15 F.3d at 812.

The right to review such evidence is critical to a fair and reliable revocation process. Without it, a parolee cannot "effectively prepare an explanation of the reasons for his actions and of any extenuating circumstances." *State ex rel. Beaird v. Del Muro*, 98 S.W.3d 902, 907 (Mo. App. W.D. 2003) (quoting *Abel v. Wyrick,* 574 S.W. 2d 411, 417 (Mo. banc 1978)). That is precisely what happened here – without notice of the alleged parole violations, or the alleged evidence, Mr. Robinson was entirely unable to dispute and/or explain and mitigate the allegations.

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[6] *Belk* is applicable here, even though it was about a person on probation rather than parole, as "[t]here are no differences relevant to due process between parole and probation revocation." *Chilembwe v. Wyrick*, 574 F.2d 985, 987 (8th Cir. 1978) (citing *Gagnon,* 411 U.S. at 782).

Mr. Robinson testified that he did not receive the field violation reports, police reports, urinalysis or any evidence during the revocation process. Exh. A at 51-53, 281. It was not until several years after his parole was revoked that he was finally able to review the field violations reports—and even then, only after requesting them. Exh. A at 48-49. Mr. Robinson only knew to request the reports after learning of a class action lawsuit filed against MoDOC alleging systemic due process violations in the parole revocation process. When he finally received the reports, he was able to confirm with certainty that he had never laid eyes on them before. Furthermore, at the evidentiary hearing, Mr. Vaughn, the institutional parole officer ("IPO") who interviewed Terrell Robinson in January 2010, admitted he could not say with certainty whether he provided Mr. Robinson with copies of all the relevant field violation reports, let alone the field violation reports that supported the two alleged violations. *See* Exh. A at 255.

Even assuming *arguendo* that MoDOC provided Mr. Robinson with each field violation report that formed the basis of the revocation, the uncontroverted evidence makes clear that he did not receive the underlying police reports or urinalysis on which the field violation reports relied. Exh. A at 41, 46, 128, 182, 249, 256. This violates due process. IPO Vaughn conceded that police reports, toxicology reports, witness statements, photographs, and video footage were all records that could have been referenced in the field violation reports that Vaughn used to process Mr. Robinson for revocation. Exh. A at 256, 266. But simply providing field violation reports is not an adequate substitute for disclosing evidence of alleged violations. The Eighth Circuit rejected that exact argument

in *Belk.* There, the court held that a "violation report is not a police report," and that disclosing a violation report with a synopsis of the police report rather than the police report itself does not conform with the due process. *Belk*, 15 F.3d at 806.

Here, as in *Belk,* parole staff did not provide Mr. Robinson with any police reports relating to the October and November arrests, even though field violation reports relied on by the Parole Board cited to and summarized or quoted from those police reports. This was especially problematic here because Mr. Robinson maintained his innocence of the Laws conditions he was accused of violating (corroborated by the reality that he was never charged), and contested other statements he was accused of making. The fact that Mr. Robinson was denied the opportunity to review all evidence material to his parole revocation is undisputed, and is independently a violation of his basic due process rights.

B. Terrell Robinson was denied his right to counsel in contravention of longstanding Supreme Court precedent.

Following *Morrissey*, the U.S. Supreme Court announced that people accused of violating their conditions of parole are entitled to the assistance of counsel when fundamental fairness so requires. *Gagnon*, 411 U.S. at 790 ("there will remain certain cases in which fundamental fairness—the touchstone of due process—will require that the State provide at its expense counsel for indigent probationers or parolees"). Fundamental fairness requires counsel where: (a) the parolee has a timely and colorable claim of innocence as to the alleged violations, or (b) where substantial and complex reasons exist which justify or mitigate the violation, making revocation inappropriate. *Id*. The Court also directed parole staff to consider whether the alleged parole violator appears to be capable

of speaking effectively for themselves when considering a request for appointment of counsel. *Id*. Providing counsel in such circumstances is critical to a fair and reliable revocation process in part because "the effectiveness of the rights guaranteed by *Morrissey* may in some circumstances depend on the use of skills which the probationer or parolee is unlikely to possess." *Gagnon*, 411 U.S. at 786. So critical is the right to counsel at revocation hearings that the Supreme Court required that, whenever someone is denied state-funded counsel at a revocation hearing, "the grounds for refusal should be stated succinctly in the record." *Id.* at 791.

Parole authorities must take three steps to satisfy this right to state-funded counsel during revocation. **First**, they must notify parolees of their right to counsel. **Second**, they must screen the individual to determine whether they qualify for counsel under *Gagnon*. **Third**, if the parolee qualifies for counsel, the State must provide state-funded counsel. *Gagnon*, 411 U.S. at 790. Not only would Mr. Robinson have qualified for counsel, in his case, counsel would have been crucial to both (1) rebutting the factual allegations that were being used to justify revocation, and (2) to presenting mitigating evidence that would have counseled in support of alternatives to incarceration and against parole revocation. However, Respondent unconstitutionally failed to notify, screen, or provide Mr. Robinson with a state-funded attorney. This foundational due process violation alone warrants habeas relief.

1. Mr. Robinson was not notified of his constitutional right to counsel.

It is undisputed that MoDOC did not inform Terrell Robinson that he might have a right to state-funded counsel prior to revoking his parole in early 2010. Exh. A at 45, 155-

156, 159-160, 162, 258-259, 271. Mr. Robinson testified he was never told about this right. *Id*. And IPO Vaughn admitted he would not have informed Mr. Robinson of his right to be screened for counsel per his practice and because he did not believe this to be a right. Exh. A at 249-250, 267, 273.

The booklet used by MoDOC to inform people about the parole revocation process, called the "Red Book," also did not inform Mr. Robinson of his right to counsel. In fact, the Red Book said the opposite, telling parolees that attorneys were prohibited at preliminary hearings, in direct contravention of *Gagnon*. Exh. A at 156-158; *see also Gasca v. Precythe*, 500 F. Supp. 3d 830, 842 (W.D. Mo. 2020) (MoDOC conceding that, at the time *Gasca* was filed, it was not screening any parolees for counsel). Mr. Robinson testified that had he been informed of his right to counsel, he unequivocally would have asked to be screened for an attorney:

> Q. If you had known about your right to counsel at the time you went through the process, just to clarify, would you have requested counsel?
>
> A. No question. I would have requested counsel.

Exh. A at 53.

2. Mr. Robinson was not screened to determine whether he qualified for state-funded counsel.

It is also undisputed that Respondent never screened Mr. Robinson for state-funded counsel. IPO Vaughn testified at the evidentiary hearing that his routine practice, at the time he met with Mr. Robinson, was to only consider providing counsel to parolees who were incompetent. Exh. A at 250. Mr. Robinson presented no competency issues, and so

IPO Vaughn never raised the issue of the right to state-funded counsel. This was the case even though Mr. Robinson contested some of the alleged violations. IPO Vaughn admitted under oath that he never inquired as to Mr. Robinson's indigency status and never reached out to the public defender on his behalf. Exh. A at 254.

Parole expert David Muhammad, after having reviewed Mr. Robinson's file, saw zero evidence that Mr. Robinson had been screened for eligibility for counsel. Exh. A at 156. IPO Vaughn conceded Mr. Robinson was not screened. Exh. A at 259 (Vaughn testifying that a field violation report contains no indication Vaughn screened Mr. Robinson for counsel), Exh. A at 271 (same). Indeed, at the time Mr. Robinson's parole was revoked, MoDOC did not even have a tool for screening parolees for eligibility for counsel. Exh. A at 273.

3. Mr. Robinson qualified for counsel under *Gagnon*, but was denied that right.

Had Mr. Robinson been properly screened for state-funded counsel, he would have qualified under *Gagnon* because: (1) he asserted innocence of multiple alleged parole violations, included laws violations; and (2) he presented compelling and complex mitigating evidence for violations to which he admitted guilt.

First, Mr. Robinson credibly maintains his innocence of any alleged Laws violations. He was never charged, must less convicted, of offenses relating to either of the arrests preceding his detention for the alleged parole violations. For example, the alleged violations include felony charges for deceptive practices, crimes for which he was mistakenly arrested. Shortly after that arrest, Mr. Robinson was released after officers

realized they were not looking for him and were actually looking for his brother. Exh. A at 103. The alleged violations also referred to a time Mr. Robinson was arrested for riding in a car with other men who allegedly committed a robbery Mr. Robinson had no involvement with or knowledge of. *Id*. at 107-109. Yet these Laws violations were relied upon by the Parole Board when they revoked Mr. Robinson's parole because they were included in IPO Vaughn's January 22, 2010 report, despite the fact that charges were never filed and Mr. Robinson consistently maintained his innocence.

To be clear, when Mr. Robinson's parole was revoked, he was not facing any criminal charges. Exh. A at 270. The allegations of criminal behavior forming the basis for the alleged Laws violations, although they did not lead to charges being filed, were complex and required the skill of counsel to properly rebut. Rebutting the allegations required presenting disputed facts included the kind of "dissection" of "complex documentary evidence" considered in *Gagnon*, 411 U.S. at 778.[7]

Second, the technical violations to which Mr. Robinson admitted guilt involved complex mitigating factors relating to his own physical and mental health, and extenuating circumstances in his life. For example, Mr. Robinson admitted to violating the Drugs and Special Conditions parole conditions by self-medicating with marijuana and alcohol. This mitigating evidence qualified Mr. Robinson for counsel, and also warranted keeping him in the community rather than sending him back to prison. The law is clear that parole should

[7] Rebuttal also required knowing the alleged violations, which Mr. Robinson did not at the time of revocation (and not until years later). *See* Section IV(E)(2), *infra*.

not be revoked simply because a parolee admits to or is found guilty of a parole violation. "A violation of parole or probation conditions does not automatically result in imprisonment without reflection on alternatives." *Sincup v. Blackwell*, 608 S.W.2d 389, 392 (Mo. banc 1980) (citing to *Abel v. Wyrick,* 574 S.W. 2d 411, 417 (Mo. banc 1978)). This is especially true where the violation did not involve the commission of another serious crime, as in this case. In such cases, counsel would be necessary "to explain the circumstances of the violations if they are shown to be complex, or to suggest alternative treatments." *Abel*, 574 S.W.2d at 417. There existed substantial mitigating evidence that justified considering alternatives to incarcerating Mr. Robinson, yet this evidence was not considered by MoDOC.

At the 2023 evidentiary hearing, Mr. Robinson presented some of that mitigating evidence for the first time. He testified how the anxiety and panic attacks he suffered from, in part as a result of taking care of his ailing mother, contributed to his use of alcohol and marijuana. He also testified that he was focused on and working to address his mental health needs. Shortly before his parole was revoked, Mr. Robinson had already begun seeing a psychologist to help with his anxiety issues and was attending a substance abuse program. His parole officer helped set him up with both the substance abuse program and the psychologist after Mr. Robinson was open with him about his mental health and substance use struggles. Mr. Robinson was also willing and ready to enter alcohol monitoring, and he was working with his parole officer to implement that plan, with an appointment already scheduled at the time he was arrested on a parole warrant. Mr.

Robinson's behavior was not that of someone in denial regarding alcohol or drug use. His keen willingness to engage in treatment, had he been given the opportunity to present evidence, would have counseled against revocation. *Compare Sincup*, 608 S.W.2d at 393 (determining after full and fair revocation hearing with counsel, that alternative to incarceration wasn't appropriate where petitioner never admitted having a drinking problem).

But this mitigating evidence was not considered by parole staff. Exh. A at 270–71. During revocation interviews, parole staff did not ask Mr. Robinson if he had a job, or whether he was seeking treatment. They were not aware that Mr. Robinson had enrolled in a substance use treatment program, Gateway Free and Clean, at the suggestion of his parole officer. They were not aware that he was supporting his mother through cancer treatments. Mr. Robinson's field violation reports did not mention this mitigating evidence. Nor did they mention that he was attending classes at Vatterott College and working as a personal trainer at a boxing gym at the time his parole was revoked. Exh. A at 258–59.

Had Mr. Robinson been provided state-funded counsel as required by *Gagnon*, he would have had necessary assistance in identifying, developing, and presenting this mitigating evidence. For example, counsel could have contacted witnesses to present at a revocation hearing, presented employment or school records, presented evidence of his participation in substance use programming. An attorney could have presented evidence of the community support Mr. Robinson had at the time, aiding his rehabilitation and compliance with conditions of parole. These are complex mitigating factors that would

have been appropriate to consider at a revocation hearing, *see Abel,* 574 S.W. 2d at 417, and entitled Mr. Robinson to state-funded counsel throughout the entire revocation process, including before the preliminary hearing. *Gagnon*, 411 U.S. 778; *Gasca*, 500 F. Supp. 3d at 843 ("it is imperative that after being informed of the right to be screened for state-funded counsel and the qualifications for state-funded counsel, parolees be allowed to make a determination as to whether or not they request to be screened for counsel (and subsequently screened for counsel if applicable) *before* requesting or waiving a preliminary or revocation hearing").[8]

C. Mr. Robinson's procedural due process rights were violated when his parole was revoked without written notice or an opportunity to be heard.

1. MoDOC failed to provide Mr. Robinson with written notice of the claimed violations of parole, in violation of the constitution.

Mr. Robinson did not receive written notice of the alleged violations at any time during the revocation process. He never received the Field Violation Reports or any other documentation detailing the basis for the alleged violations. The U.S. Supreme Court set forth that the minimal requirements of due process for parole revocation proceedings

[8] While Mr. Robinson had a criminal defense attorney in 2008, attorney Schwartz did not represent Mr. Robinson at any revocation proceedings. Mr. Robinson was told that attorneys were not permitted at preliminary parole revocation hearings. Exh. A at 56-57. Even if Mr. Robinson had been told he was permitted to have an attorney present at his preliminary hearing, he could not personally afford to retain one. *Id*. at 168. And "fundamental fairness—the touchstone of due process—… require[d] that the State provide **at its expense** counsel for indigent probationers or parolees." *Gagnon*, 411 U.S. at 790 (emphasis added;) *see also State ex rel. Fam. Support Div.-Child Support Enf't v. Lane*, 313 S.W.3d 182, 187 (Mo. App. W.D. 2010) (due process was violated where Respondent did not inform Petitioner that the court would appoint an attorney for him if he could not afford one).

includes "written notice of the claimed violations of parole." *Morrissey*, 408 U.S. at 485-89; *see also Abel,* 574 S.W.2d at 417. *Morrissey* requires that such written notice be provided in advance of any preliminary hearing. *Belk,* 15 F.3d at 806 ("With only a few moments notice of the alleged violations, the other rights set forth by the Supreme Court for the preliminary hearing may be of little benefit."). The Missouri Court of Appeals, Western District explained the import of this notice in *State ex rel. Beaird v. Del Muro*:

> The purpose of requiring notice is not only to provide the probationer with adequate time to prepare a defense on the issue of whether probation violations were committed, but also on the issue of whether probation should be revoked because of the violations or "whether some other less drastic alternative should be invoked...**Without notice, both of the nature of the charges and of the evidence to be presented against him, [probationer] could not effectively prepare an explanation of the reasons for his actions and of any extenuating circumstances."**[9]

98 S.W.3d 902, 907 (Mo. App. W.D. 2003) (quoting *Abel*, 574 S.W.3d at 417) (emphasis added).

In Mr. Robinson's case, written notice was critical for two reasons. First, it would have provided him time to prepare an adequate defense to the accusations he was facing. Second, depending on the alleged violation, it would have permitted Mr. Robinson to effectively identify and explain mitigating factors that would have supported less drastic alternatives to incarceration. *Abel*, 574 S.W.2d at 417 (explaining the importance of notice in preparing a defense to revocation).

[9] Due Process is applicable to probation revocation proceedings just as in parole revocation proceedings, which includes satisfying certain minimum requirements pursuant to *Gagnon* and *Morrissey*. *Moore v. Stamps*, 507 S.W.2d 939, 947 (Mo. App. 1974).

But Mr. Robinson was not provided copies of the field violation reports upon which the Parole Board relied in revoking his parole. Exh. A at 41, 46, 48. In fact, he did not receive copies of the field violation reports until 2012, after he had been incarcerated for years, and only after he proactively requested them from institutional parole staff. Exh. A at 48-49, 72. At the 2023 evidentiary hearing, IPO Vaughn testified he had no independent recollection of giving Mr. Robinson the field violation reports that were relied on in the parole board's revocation decision, and the records maintained by MoDOC could not confirm this either. Exh. A at 255-56, 261.

Without notice of these alleged violations and the supposed evidence supporting them, including police and urinalysis reports described above, Mr. Robinson was prevented from preparing a defense to allegations he vehemently denied. Nor could he have "effectively prepare[d] an explanation of the reasons for his actions and of any extenuating circumstances" that counseled against revocation *State ex rel. Beaird v. Del Muro*, 98 S.W.3d 902, 907 (Mo. App. W.D. 2003) (quoting *Abel v. Wyrick*, 574 S.W.3d at 417). Had he received proper notice (and the assistance of state-funded counsel), Mr. Robinson could have brought in evidence or witnesses who could speak to his innocence. Or he could have called witnesses who could testify as to the circumstances of his alcohol use, community support, his commitment to attending treatment programs, and his efforts at rehabilitation. He also could have explained factors mitigating his consumption of alcohol. "Fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness." *Morrissey*, 408 U.S. at 481-84. This lack of notice was just one

of many due process violations he experienced. *See Morrissey*, 408 U.S. at 485-89; *Belk*, 15 F.3d at 806 (noting that *Morrissey* would be violated if petitioner did not receive violation reports in advance of his preliminary hearing).

2. MoDOC unconstitutionally failed to provide Mr. Robinson a fair opportunity to be heard when it secured hearing waivers without informing Mr. Robinson of his rights.

Mr. Robinson signed forms waiving his right to a preliminary hearing and revocation hearing without being fully informed of his rights in the process, rendering those waivers legally ineffective. Due Process requires that a parolee like Mr. Robinson receive "an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation." *Morrissey*, 408 U.S. at 488. It is critical to fundamental fairness and due process that parolees be adequately informed of their rights during the revocation process. *See Morrissey*, 408 U.S. at 481 ("due process is flexible and calls for such procedural protections as the particular situation demands"), 484 (discussing society's interest in treating parolee with basic fairness); *Schroeder v. City of New York*, 371 U.S. 208, 212 (1962) ("the requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corolary [*sic*] to one of the most fundamental requisites of due process—the right to be heard"); *United States v. Taylor*, 747 F.3d 516, 519 (8th Cir. 2014) (waivers must be knowingly and voluntarily made); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (quoting *Edwards v. Arizona*, 451 U.S. 477, 482 (1981)) (same). This constitutional right to be heard is denied when parole staff secure

a hearing waiver without adequately informing a parolee of their rights. That is exactly what happened in Terrell Robinson's case.

Any waivers of a preliminary hearing or revocation hearing must be knowing and voluntary. *United States v. Taylor*, 747 F.3d 516, 519 (8th Cir. 2014) (waivers must be knowingly and voluntarily made); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (quoting *Edwards v. Arizona*, 451 U.S. 477, 482 (1981)) (same). An inquiry into whether a waiver is effective requires an especially probing examination when, as here, constitutional rights are implicated. *Wilkins v. Bowersox*, 145 F.3d 1006, 1012 (8th Cir. 1998); *United States v. Jones*, 770 F.3d 710, 712 (8th Cir. 2014); *Brookhart v. Janis*, 384 U.S. 1, 4 (1966) ("[F]or a waiver to be effective it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege.'") (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); *see also Brady v. United States*, 397 U.S. 742, 748 (1970). The Eighth Circuit has specifically held that "the mental health of [an individual] is . . . a relevant consideration in assessing whether a waiver of counsel was knowing, intelligent, and voluntary." *Wilkins*, 145 F.3d at 1012 (internal citation omitted).

Not only was Mr. Robinson unaware of his rights in the revocation process, which would have informed his decisions regarding waiver, he was pressured into the waiver. At the time Mr. Robinson signed the revocation hearing waiver form, no one had ever explained his rights in the revocation process to him—including his critical right to state-funded counsel. Exh. A at 45-48. The revocation hearing waiver form itself did not explain

the panoply of rights to which parolees are entitled during the revocation process. Exh. A at 50; Resp. Exh. C at pp. 87-90.

Mr. Robinson's experience is consistent with thousands of other people in Missouri who had their parole revoked without being adequately informed of their rights, or who were pressured to waive their revocation hearings. Exh. A 146-163. At the time, MoDOC relied upon its Red Book to apprise parolees of their rights during revocation. Mr. Robinson does not recall receiving the Red Book. Yet, even if that had been provided to Mr. Robinson, it would not have adequately informed him of his constitutional rights for all the reasons testified to by parole expert David Muhammad. *See* Section IV(F), *supra*. Given its inaccessibility, Mr. Muhammad testified that he would not be shocked if Mr. Robinson never read the Red Book. Mr. Muhammad concluded that reviewing the Red Book on its own, because of its inaccessibility and lack of critical information, would not have been enough for an accused parole violator to understand their panoply of rights during the parole revocation process. Exh. A at 157, 161, 176, 183.

Furthermore, Mr. Robinson did not know the violations he was alleged of, so he did not realize that he was factually innocent of many of them, and had signficiant mitigation for the others, which the Board would only be aware of if, and only if, he insisted on his right to a hearing. Without the aid of counsel, Mr. Robinson was left to rely on advice from his parole officer. PO Fannon advised Mr. Robinson that waiving the hearing would be to his benefit. Exh. A at 43. And so, without knowledge of his rights and in reliance on the trust he had built with his PO while on supervision, Mr. Robinson followed his PO's

advice.

Although Mr. Robinson signed forms waiving his preliminary hearing and revocation hearing, those waivers were not knowing and intentional. Terrell Robinson was therefore denied a fair opportunity to be heard, in contravention of *Morrissey*. *See Gasca*, 500 F.Supp.3d at 851 ("A waiver that is the result of inaccurate or incomplete information or that is coerced or encouraged is unknowing and involuntary, and denying parolees the hearings to which they are constitutionally entitled under *Morrissey* is a violation of due process."), *aff'd in part and rev'd in part*, *Gasca*, 83 F.4th 705.[10]

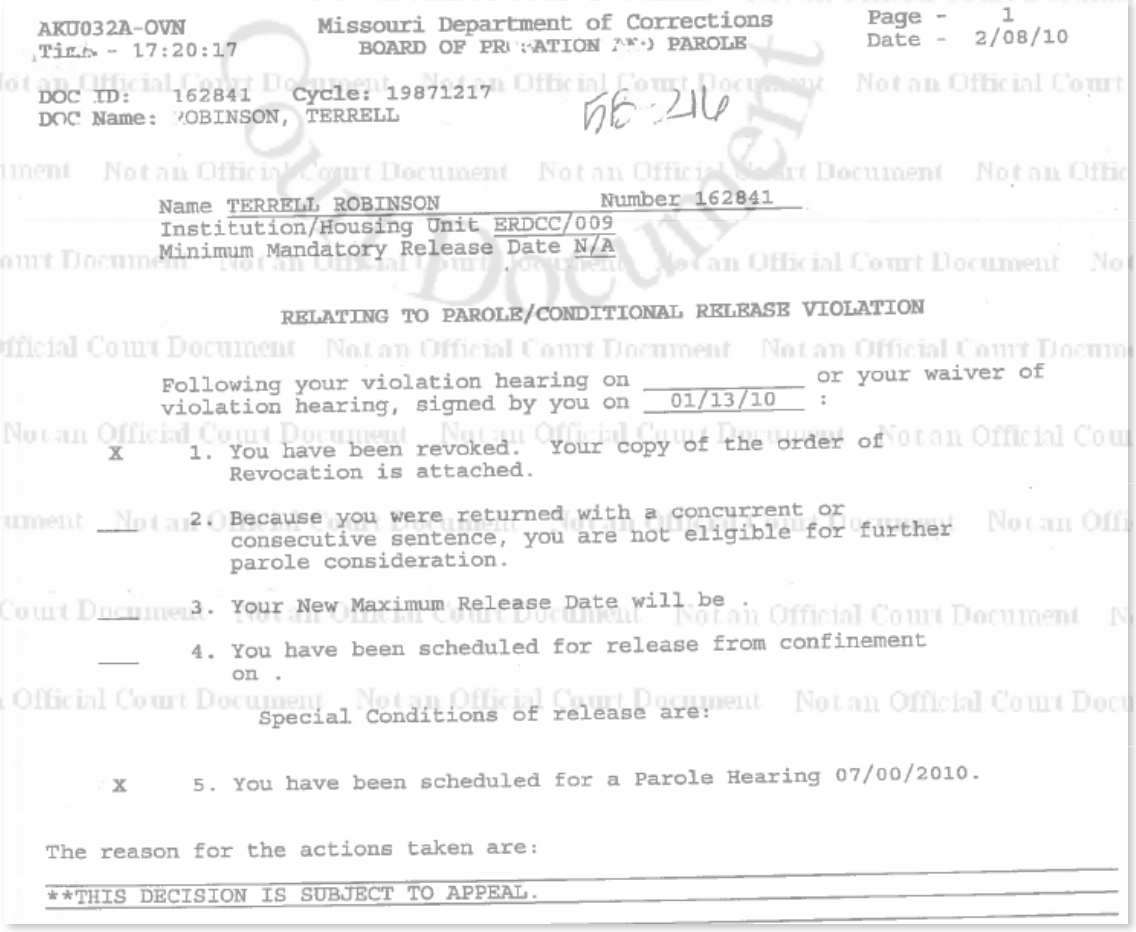
D. MoDOC violated Mr. Robinson's due process rights when it failed to provide Mr. Robinson with the specific reason for parole revocation or with the evidence it relied on in deciding to revoke his parole.

MoDOC violated Mr. Robinson's due process rights yet again when it failed to provide him with a written explanation for its finding that he violated his conditions of parole and reincarcerating him. A decision to revoke parole involves two distinct analyses: "(1) a retrospective factual question whether the probationer has violated a condition of probation; and (2) a discretionary determination by the sentencing authority whether violation of a condition warrants revocation of probation." *Black v. Romano,* 471 U.S. 606, 609 (1985); *see Belk*, 15 F.3d at 814 (decision and evidence relied upon must be stated so

[10] The federal court in *Gasca* also found that parole staff have a practice of pressuring parolees to waive preliminary hearings and revocation hearings, sometimes based on false and misleading information. The court also noted that, "[t]he issue is exacerbated by evidence that some parolees waive their right to hearings before receiving their violation reports and without an adequate explanation of their rights in the process. Pressuring parolees to waive their hearings strips parolees of their right to challenge allegations that they contend are untrue or for which mitigating circumstances may render revocation unwarranted." 500 F.Supp.3d at 851.

as "to provide an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence"). Minimal due process requires a parole authority to provide individuals with a written statement of the evidence it relied on and the reasons supporting its decision to revoke parole. *Morrissey*, at 408 U.S. at 471-72; *Belk*, 15 F.3d at 814.

The Parole Board revoked Mr. Robinson's parole on or about February 8, 2010—without a hearing and without adequate explanation. Exh. A at 51. Although Mr. Robinson received a one-page notice of the decision, the Notice was a barebones boilerplate notice that did not provide the conditions he was found to have violated, any explanation for his



AKU032A-OVN Missouri Department of Corrections Page - 1
Time - 17:20:17 BOARD OF PROBATION AND PAROLE Date - 2/08/10

DOC ID: 162841 Cycle: 19871217
DOC Name: ROBINSON, TERRELL

RE: 216

Name TERRELL ROBINSON Number 162841
Institution/Housing Unit ERDCC/009
Minimum Mandatory Release Date N/A

RELATING TO PAROLE/CONDITIONAL RELEASE VIOLATION

Following your violation hearing on _____ or your waiver of violation hearing, signed by you on 01/13/10 :

X 1. You have been revoked. Your copy of the order of Revocation is attached.

___ 2. Because you were returned with a concurrent or consecutive sentence, you are not eligible for further parole consideration.

___ 3. Your New Maximum Release Date will be .

___ 4. You have been scheduled for release from confinement on .

Special Conditions of release are:

X 5. You have been scheduled for a Parole Hearing 07/00/2010.

The reason for the actions taken are:

**THIS DECISION IS SUBJECT TO APPEAL.

revocation, the violations he was revoked on the basis of, or the evidence the Board relied upon. *See* Exh. C; Exh. A at 280.

Mr. Robinson never received the Order of Revocation purportedly attached to this Notice. Exh. A at 51. Even assuming that the Order of Revocation was disclosed to Mr. Robinson, that Order did nothing more than list the parole conditions that Mr. Robinson was found to have violated, without explaining why those supposed violations warranted revocation of his parole and without any description of the evidence it relied on in coming to its revocation decision. The Order simply indicated that Mr. Robinson was found to be in violation of the following conditions of parole: #1-Laws; #2-Travel; #5-Association; #6-Drugs; #7-Weapons; and #11-Special Conditions. Exh. D. Even IPO Vaughn conceded that the Order did not provide an explanation for the Board's decision or explain the evidence the Board relied on in coming to its decision. Exh. A at 279-280. As the Court in *Belk* found, "The broad statement that petitioner violated the condition that he 'not break any laws' is not sufficient." *Belk*, 15 F.3d at 814; *see also Black v. Romano*, 471 U.S. 606, 609 (1985). Thus, even if Mr. Robinson received the Order of Revocation, it was not enough to satisfy *Morrissey*'s requirement that Mr. Robinson be provided a written statement from the factfinder. This failure constitutes another independent due process violation.

E. Mr. Robinson's claims are not barred by MoDOC's asserted equitable defenses.

MoDOC could not dispute many of the proven due process deficiencies. They instead relied in Circuit Court proceedings upon equitable defenses. But these defenses do not save the day; they only operate to perpetuate a grave injustice.

1. The balancing of equities favors Mr. Robinson.

Any equitable defenses MoDOC might raise fail because equity favors considering Mr. Robinson's claims. Revoking a person's parole supervision entails a deprivation of liberty, a fundamental civil and human right. *See Morrissey*, 408 U.S. at 482 (termination of parole "inflicts a 'grievous loss' on the parolee and often on others."). Now a 54-year-old man, Terrell Robinson has been separated from his family for over 14 years as a result of a constitutionally-deficient revocation process.

During the time that Mr. Robinson has been reincarcerated, he has missed countless life events and milestones, including but not limited to: the death of his mother, the death of his brother-in-law, the recent death of his mother-in-law, the birth of his youngest grandchild, the high school graduation of his first grandchild, twenty-five birthday celebrations for his grandchildren, thirteen years of birthdays celebrations for his daughter, countless wedding and relationship anniversaries, and the opportunity to pursue his education and passions. These are all moments he will never get back. His continued incarceration is fundamentally unfair and inequitable. Equity favors considering Terrell Robinson's claims on its merits.

2. MoDOC cannot demonstrate particularized prejudice from any alleged unreasonable delay, and laches does not defeat Mr. Robinson's claims.

"Laches…may not be invoked to defeat justice but only to prevent injustice." *Higgins v. McElwee*, 680 S.W.2d 335, 341 (Mo. App. E.D. 1984). Here justice requires that this Court consider and grant Terrell Robinson's petition. "Mere delay does not of itself constitute laches… [and] [e]quity does not encourage laches." *Trokey v. R.D.P. Dev.*

Grp., L.L.C., 401 S.W.3d 516, 531 (Mo. App. S.D. 2013) (quoting *Higgins v. McElwee*, 680 S.W.2d 335 (Mo. App. E.D. 1984)). Laches imposes on the defendant the ultimate burden of proving "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States,* 365 U.S. 265, 282 (1961) (discussing the federal analogue of laches); *see also Metro. St. Louis Sewer Dist. v. Zykan*, 495 S.W.2d 643, 656 (Mo. 1973) ("The burden of proof as to laches rests on the party asserting it"). Laches is not intended to function as a statute of limitations, instead the Court must use its discretion in weighing the equities involved. *Cotton v. Mabry*, 674 F.2d 701, 704 (8th Cir. 1982) (discussing the Rule 9(a), the federal codification of *laches*).

In order to apply, MoDOC must demonstrate with evidence that Mr. Robinson's allegedly unreasonable delay **operates to its prejudice**. *See Lyman v. Walls*, 660 S.W.2d 759, 761 (Mo. App. E.D. 1983); *see also Scott v. Pub. Sch. Ret. Sys. of Missouri*, 764 F. Supp. 2d 1151, 1166 (W.D. Mo. 2011). Here the evidence in the record, and the actual hearing, demonstrates that Mr. Robinson's delay most certainly did not prejudice MoDOC.

First, Mr. Robinson's delay in bringing this habeas petition was not unreasonable. Because MoDOC never informed Mr. Robinson of his rights, he was not aware they had been violated until 2017, when he read an article discussing the newly-filed *Gasca* lawsuit. Exh. A at 53, 84. As soon as Mr. Robinson learned what his rights were and that they might have been violated, he took steps to address those issues—including reaching out to undersigned counsel. Exh. A at 53; Exh. E. With the assistance of counsel, Mr. Robinson

filed a habeas petition in Circuit Court in March 2022—less than five years after learning about *Gasca v. Precythe*, and even less time from when judgment was entered in that federal case. A five-year delay is not unreasonable, especially when Mr. Robinson could not afford to retain counsel to pursue such a case. Exh. A at 53-54, 131. Mr. Robinson was able to afford retaining attorneys for the very limited purpose of writing to the parole board on his behalf in connection with his 2014 and 2016 parole review hearings. Exh. A at 79-84. However, Mr. Robinson's 2010 revocation fell outside the scope of their representation and therefore was not addressed in these letters to the parole board. Moreover, at the time Mr. Robinson still had not been informed of his rights during the revocation process. In light of this, Mr. Robinson exercised reasonable diligence in pursuing his rights.

Second, MoDOC cannot demonstrate that it is prejudiced by the delay. Indeed, key facts relating to violations of Petitioner's due process rights were adduced at the May 12, 2023 hearing that MoDOC could not rebut, regardless of the passage of time. What's more, no supposedly deleted records previously in MoDOC's possession or witness testimony would have been able to rebut those key findings, namely: that Mr. Robinson was not notified of his right to state-funded counsel, that he was not screened for or provided state-funded counsel, that he was not given the underlying police reports and urinalysis reports relied on by the Parole Board in coming to its revocation decision, and that he was pressured into waiving his hearings by being told that the process would move quicker – a practice common at MoDOC at the time. These are all independent violations of Petitioner's due process rights supported by IPO Vaughn's testimony, admissions from

MoDOC, and court findings in *Gasca*. No potential evidence could materially change these facts, undermining any assertion by MoDOC of prejudice by the delay – the touchstone of a laches finding. *See e.g. Metro. St. Louis Sewer Dist. v. Zykan*, 495 S.W.2d 643, 656 (Mo. 1973) (laches does not apply where "no one has been misled to his harm in any legal sense by the delay, and the situation has not materially changed.").

Although state authority regarding laches in habeas proceedings is lacking, federal courts in Missouri have found prejudice to be demonstrated where evidence has eroded or been destroyed such that the respondent is unable to rebut allegations—for example because they cannot obtain pertinent documents or locate reliable witnesses. *See, e.g., Wise v. Armontrout*, 952 F.2d 221, 224 (8th Cir. 1991); *Cotton v. Mabry*, 674 F.2d 701, 705 (8th Cir. 1982). However, a court does not presume prejudice merely from the absence of transcripts or witnesses. *Cotton*, 674 F.2d at 705 (citing *Mayola v. Alabama*, 623 F.2d 992, 1000 (5th Cir. 1980), *cert. denied*, 451 U.S. 913, (1981)); *see also Davis v. Adult Parole Auth.*, 610 F.2d 410, 416 (6th Cir. 1979) (the destruction of a transcript alone is not sufficient to demonstrate *prejudice*, because the petitioner was not in a position to "induce or prevent such prejudice.")

In *Cotton*, for example, the Eighth Circuit found that, due to a ten-year delay by the petitioner, the state had no ability to rebut the petitioner's claim attacking his guilty plea because it had no transcript or witnesses available who could recollect events of a 1969 trial. *Id*. Here, on the other hand, MoDOC retained Mr. Robinson's parole file. That file contained documentation regarding revocation of Mr. Robinson's parole, including field

violation reports, waiver forms, and other relevant records. Further, MoDOC was able to present a witness who was personally involved in Mr. Robinson's revocation, and who was able to testify as to his general practices at the time as well as the authenticity and contents of MoDOC records. This is a far cry from the circumstances in *Cotton* justifying denial of the petitioner's writ. Those same reasons – the availability of witness testimony and preservation of critical records – also make *Brim v. Solem* inapplicable here. 693 F.2d 44, 45 (8th Cir. 1982) (finding claims were barred by laches where there was a 21-year delay in filing, the trial judge had died, and the trial transcript had been destroyed). As the *Cotton* court noted, "lapse of time alone may not warrant denial of the writ." *Cotton v. Mabry*, 674 F.2d at 407 (citing *Paprskar v. Estelle*, 612 F.2d 1003, 1007 (5th Cir.)), *cert. denied*, 449 U.S. 885 (1980)); *see also Wise*, 952 F.2d at 223 (17-year delay is not presumptively prejudicial).

As explained above, these due process violations critically prejudiced Mr. Robinson in the parole revocation proceedings that led to his deprivation of liberty over 14 years ago. If applied in this case, laches would operate as a sword instead of a shield. Had MoDOC informed Mr. Robinson that he had due process rights in the revocation process or provided with Mr. Robinson with state-funded counsel to protect his due process rights, perhaps Mr. Robinson would have known sooner that his rights had been violated and that he may have a lawsuit to file. But the fault for any delay in this litigation lays only with MoDOC, not Terrell Robinson. "Laches…may not be invoked to defeat justice but only to prevent

injustice." *Higgins,* 680 S.W.2d at 341. Justice requires that this Court consider and grant Terrell Robinson's petition.

3. Terrell Robinson does not have unclean hands.

To the extent MoDOC may argue Terrell Robinson has unclean hands, there is no evidence to support this argument. "The doctrine of unclean hands requires that a party coming into a court of equity must have acted in good faith as to the subject matter of the lawsuit." *Nelson v. Emmert*, 105 S.W.3d 563, 568 (Mo. App. S.D. 2003). There is simply no evidence that Mr. Robinson filed this present case with anything other than good faith. The fact that Mr. Robinson has pursued release on parole supervision, when he was eligible for parole, does not indicate that he has anything other than good faith in these proceedings. Nor does any such argument regarding "unclean hands" make any sense. Terrell Robinson is seeking release from his unconstitutional confinement and brought this present challenge as soon as he understood that his rights during the revocation process had been violated.

What's more, MoDOC's actions in withholding key information from Mr. Robinson heavily outweighs any insinuation that Mr. Robinson acted strategically or in bad faith. As with laches, the doctrine of unclean hands is not one of absolutes and should be applied "when it promotes right and justice by considering all of the facts and circumstances of a particular case." *Id.* at 568 (citing *Durwood v. Dubinsky,* 361 S.W.2d 779, 791 (Mo. 1962)). Here, justice demands that Mr. Robinson's petition be considered on its merits, and justice demands that his petition be granted.

VII. REMEDY

This Court has the authority to order Mr. Robinson's release on parole supervision because Respondents indisputably violated his right to due process. Indeed, release on parole supervision is the proper and appropriate remedy here. Missouri and federal law clearly establish release on parole or probation supervision as the appropriate remedy for due process violations in the parole or revocation supervision. This law is long-standing; much of Missouri's relevant law dates back to the 1970s, soon after the Supreme Court issues its landmark decisions *Gagnon* and *Morrissey*.

In *Moore v. Stamps*, 507 S.W.2d 939 (Mo. App. St. Louis 1974), for example, the petitioner Michael Moore filed a pro se petition for writ of habeas corpus after having his probation revoked in circuit court. The court of appeals affirmed a ruling in favor of Mr. Moore, concluding that he was denied due process in violation of *Gagnon* and *Morrissey*:

> Petitioner contends he was not afforded a written statement as to the reasons for revoking probation, and hence was denied due process. There is nothing in the record to indicate that he received a written notice of the probation violations alleged either prior to the preliminary hearing or before the final hearing. The State in argument admitted this was a requirement, but that the record did not reflect such notice. Furthermore, there was no written statement by the trial court as to the evidence relied upon or the reasons for revoking petitioner's probation.

507 S.W.2d at 951. The court of appeals thus discharged Mr. Moore from imprisonment and restored him to probation without prejudice to the institution of proper revocation proceedings. *Id*.

Similar due process deficiencies were addressed, and similar relief granted, in *Brandt v. Percich*, 507 S.W.2d 951 (Mo. App. St. Louis 1974). There, Mr. Brandt was not given notice of the reasons their probation revocation proceedings were moving forward. Nor did the record reflect that the trial court made written findings as to evidence relied on and reasons for revoking Mr. Brandt's probation. Issued the same day as the *Moore v. Stamps* decision, the court granted habeas corpus relief without prejudice to proper proceedings compliant with *Stamps*. Later that same year, the Kansas City district court of appeals reached the same conclusion: if the probationer-petitioner's claimed due process deficiencies were correct, "he is entitled to immediate release and restoration of his prior status as probationer." *Reiter v. Camp*, 518 S.W.2d 82, 84 (Mo. App. KC 1974); *see also State ex rel. Beaird v. Del Muro*, 98 S.W.3d 902, 907 (Mo. App. W.D. 2003) (affirming grant of writ of habeas corpus directing probationer be released from custody after finding that petitioner did not receive adequate notice of the alleged violations of probation).

Both *Stamps* and *Brandt* are factually similar to the case at hand, and the same remedy is required for the same reasons. Like Mr. Robinson, Petitioner Stamps never received notice of his alleged violations, and he was not provided written reasons for his ultimate revocation, in violation of due process. Like Mr. Robinson, Petitioner Brandt was never provided notice of the alleged violations, and the court did not indicate the evidence relied upon or the reasons for his ultimate revocation, in violation of due process. Mr. Robinson is entitled to release on parole supervision, just like Stamps and Brandt. *See Black*, 471 U.S. at 611 () ("*Gagnon* concluded that the procedures outlined in *Morrissey*

for parole revocation should also apply to probation proceedings."); *Chilembwe*, 574 F.2d at 987 ("[T]here are no differences relevant to due process between parole revocation and probation revocation.").

The Missouri Supreme Court (en banc) also addressed the proper remedy for a State's failure to comply with due process when revoking someone's probation or parole in *Abel v. Wyrick*, 574 S.W.2d 411, 419 (Mo. banc 1978) (ordering release or for a new, due process-compliant hearing). There, the Court found three impermissible errors with Mr. Abel's probation revocation proceedings: (1) the judge failed to consider "less drastic alternatives" to revoking Mr. Abel's parole and reincarcerating him; (2) the judge failed to consider Mr. Abel's evidence; and (3) the trial court erroneously failed to consider whether Mr. Abel was entitled to state-funded counsel or screen him for representation, thus denying him his right to counsel. 574 S.W. 2d at 417-20. The Court reminded the parties that "[t]he mere fact of violation of parole or probation conditions alone should not automatically lead to revocation, without consideration of alternative remedies." *Id.* at 418. The Court ordered the petitioner released from custody, restored to his status as a probationer "pending a hearing or other disposition of the allegations that he has violated the conditions of his probation agreement, any such hearing to be conducted upon notice and in accord with the foregoing opinion." *Id*. at 421.

Likewise, in *State ex rel. Mack v. Purkett*, the Missouri Supreme Court en banc discharged the petitioner from revocation of his parole, and restored him to his status as a parolee, due to due process deficiencies in his revocation process. 825 S.W.2d at 858. The

Court found that the petitioner was denied his right to cross-examine witnesses when the Parole Board relied exclusively on written violation reports in reaching its conclusions, noting that the petitioner challenged the accuracy of the reports. *Id*. at 857. Because the Parole Board violated the petitioner's right to confrontation, "petitioner's due process rights were violated under the *Morrissey* standards," and the Court granted his petition for writ of habeas corpus. *Id*. at 858.

Federal courts considering the State's compliance with due process in parole revocation proceedings have likewise affirmed that releasing a petitioner back onto parole or probation supervision is the proper remedy in habeas cases such as the instant matter. At the time the Eighth Circuit issued its decision in *Belk v. Purkett*, 15 F.3d 803, 806 (8th Cir. 1994), the petitioner had been imprisoned for almost two years based upon revocation proceedings which did not approach the most minimal requirements of due process or reliability (e.g., failure to provide notice of alleged violations, failure to disclose evidence underlying the alleged violations, failure to consider alternatives to incarceration). The Eighth Circuit in *Belk* thus remanded the case to the district court with instructions to grant Mr. Belk's petition for writ of habeas corpus unless the State initiated a new final revocation hearing within 30 days. 15 F.3d at 815.

VIII. PRAYER FOR RELIEF

Petitioner Terrell Robinson was reincarcerated through an unconstitutional parole revocation process. His continued incarceration due to this revocation is unlawful and unjust. For all the above reasons, Terrell Robinson respectfully requests that this Honorable Court grant him the following relief:

A. Issue a writ of *habeas corpus* granting Petitioner Terrell Robinson relief from his unconstitutional incarceration and ordering him released from Respondent's custody, onto parole supervision, following approval of his home plan;

B. Or, in the alternative and at a minimum, afford him a new revocation process that complies with due process; and

C. Permit Petitioner an opportunity to brief and argue the issues presented in this petition;

D. Afford Petitioner an opportunity to reply to any responsive pleading filed by Respondent; and

E. Grant such further relief as may be just and proper under the circumstances.

Dated: October 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document and any attachments were emailed to attorneys of record for Respondents this 1st day of October, 2024.

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CERTIFICATE OF COMPLIANCE

There undersigned hereby certifies that the foregoing brief:

1. The original signed filing is being maintained by the Petitioner pursuant to Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Has 13,524 words in the brief.

/s/ Megan G. Crane