APL 2022-00063

Court of Appeals

State of New York

In the Matter of Appellate Advocates,

Appellant,

-against-

New York State Department of
Corrections and Community Supervision,

Respondent.

BRIEF OF AMICI CURIAE
The Parole Preparation Project & the Office of the Appellate Defender
IN SUPPORT OF APPELLANT

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DISCLOSURE STATEMENT

Pursuant to 22 N.Y.C.R.R. Part 500.1(f), both the Parole Preparation Project and the Office of the Appellate Defender are nonprofit organizations organized under Section 501(c)(3) of Title 26 of the United States Code, and they do not have any corporate parents, subsidiaries, or affiliates.

STATEMENT OF INTEREST

The Parole Preparation Project is a legal non-profit that provides critical advocacy and direct support to currently and formerly incarcerated people serving life sentences and seeks to transform the parole release process in New York State. The Parole Preparation Project is composed of formerly incarcerated people and their allies who know intimately the harsh realities of the New York state's parole practices and advocate for the return of people serving lengthy sentences to their communities. The Parole Preparation Project has a strong interest in ensuring that the Board of Parole conducts fair, lawful parole interviews.

The Office of the Appellate Defender ("OAD") is one of New York City's oldest providers of appellate representation in New York City. Our clients have been convicted of felony offenses in Manhattan and the Bronx and have been sentenced to terms of imprisonment. OAD is a national model of effective, innovative and holistic defense representation. OAD routinely litigates appeals before the First Department and this Court. In addition, OAD regularly advocates for parole on behalf of its clients and has provided direct support in over 100 parole hearings in the last five years.

In this appeal, the government seeks to limit access under New York's Freedom of Information Law (FOIL) to training materials created by the Department of Corrections and Community Supervision (DOCCS) for the commissioners of the New York State Board of Parole. Specifically, the government argues that, despite the presumption that government documents are open for public inspection, the undisclosed training materials are exempt under an expansive interpretation of the "attorney-client privilege," N.Y. C.P.L.R. § 4503(a), and the "intra-agency materials" exemption to the FOIL statute, N.Y. Public Officers Law § 87. Because the government's position raises public policy concerns, the Parole Preparation Project, and OAD have a direct interest in the case. Amici request that this Court reverse the decision of the Third Department.

STATEMENT OF THE CASE

Each year, thousands of people appear before the Board in an attempt to secure their discretionary release from incarceration. The most recent statistics published by DOCCS show that the New York State Parole Board ("the Board") conducted 6,665 interviews in the 2022 Calendar year. DOCCS, Parole Board and Presumptive Release Dispositions, Calendar Year 2022, at Table 1, https://doccs.ny.gov/system/files/documents/2023/01/2022-the-parole-board-and-presumptive-releases-dispositions.pdf. Less than 30% of first-time applicants are granted parole, and the overall approval rate is around 35%. As these numbers demonstrate, the Board holds considerable power through its discretionary decision-making, and its function is a central element of New York's sentencing structure.

Yet the Board operates with a lack of transparency that makes it all but impossible for incarcerated people serving indeterminate sentences to prepare for parole interviews, understand parole decisions, or appeal parole denials. While the Board is statutorily required to consider enumerated factors when deciding whether to release an applicant from prison, boilerplate decisions often point to vague considerations of public safety and the nature of the crime of conviction. Furthermore, the Board provides little publicly available data about their decisions or policies. Without greater insight into how the Board is trained and guided in making its decisions, including instructions on the consideration of extralegal factors, applicants have no meaningful ability to prepare for parole interviews or appeal what may be illegal

decisions.

In 2019, the Prison Policy Initiative issued a report on the different parole systems across the country, giving New York a "D-" grade, in part because of the Board's lack of transparency and the subjectivity of parole denials. Prison Policy Initiative, *Grading the parole release systems of all 50 states* (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html. Two years later, a detailed study in 2021 by the Vera Institute of Justice also found that the "near-complete discretion" of the Board to deny parole was exacerbated by the lack of transparency around the decisions of the commissioners. Benjamin Heller, et al., Vera Institute of Justice, *Toward a Fairer Parole Process*, at 1–2 (Dec. 2021), https://www.vera.org/downloads/publications/toward-a-fairer-parole-process-report.pdf. In particular, the report found that 40% of parole denials referenced "public safety concerns with no real specificity." *Id.* at 6.

Both parole applicants and their advocates rely on Freedom of Information Law (FOIL) requests to obtain critical details about the parole process and the guidelines parole commissioners use when making release determinations. Without this information, parole applicants are left to guess whether their denial was premised on anything other than the facts underlying their original conviction. The case before this Court demonstrates just one example of the obstacles that face applicants and advocates alike in their attempts to prepare for their all-important parole hearing.

One of the primary reasons provided by the State for their non-disclosure is that

the Board's training materials are confidential communications covered by the attorney-client privilege. As Appellant's brief and the minority opinions in the Third Department's decision make clear, there are important questions regarding the scope of such privilege. Yet this Court has also held that "even where the technical requirements of the privilege are satisfied, it may, nonetheless, yield in a proper case, where strong public policy requires disclosure." *In re Priest v. Hennessy*, 51 N.Y.2d 62, 69 (1980).

Little attention is given to the question of public policy interests in Respondent's brief. (*See* Resp. Br. at 28–30.) In particular, Respondent only addresses the interests of government lawyers in government agencies. But this Court's decision will implicate the lives of the thousands of incarcerated parole applicants that appear before the Board each year. Therefore, Amici seek to provide additional context regarding the functioning of the parole system in New York so this Court can consider the public policy factors supporting disclosure. Given the strong liberty interests at stake and the importance of a fair and transparent Parole Board, this Court should find that the training materials at issue are not exempted from FOIL disclosure.

ARGUMENT

THE NON-DISCLOSURE OF THE PAROLE BOARD'S TRAINING MATERIALS AND DECISION-MAKING PROCESSES RESTRICTS APPLICANTS' ABILITY TO PREPARE FOR A PAROLE INTERVIEW, UNDERSTAND PAROLE DECISIONS, OR APPEAL PAROLE DENIALS.

A. The Impact of Discretionary Parole Denials in New York State

In New York, parole is the system whereby people serving indeterminate sentences obtain release from custody. The New York State Board of Parole, an administrative body of the Department of Corrections and Community Supervision ("DOCCS"), determines which people serving indeterminate sentences in New York state prisons should be released on parole, as well as the conditions of their supervision. N.Y. Exec. Law § 259-c. In January 2021, over 12,000 people, or 36 percent of New York's prison population, were serving indeterminate sentences, and over 7,000 people were serving life sentences, meaning they will never be released from prison unless granted release by parole or commutation. *See* DOCCS, *Under Custody Report: Profile of Under Custody Populations as of January 1, 2021*, at 19, 27 (2022), https://doccs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2021.pdf.

Most parole applicants will not receive any substantive assistance or guidance as they prepare to go before the Board. According to recent data from DOCCS, in 2022

only about a third of people appearing before the Board were granted release.[1] DOCCS, *Parole Board and Presumptive Release Dispositions, Calendar Year 2022*, at Tables 3, 4 (2023), https://doccs.ny.gov/system/files/documents/2023/01/2022-the-parole-board-and-presumptive-releases-dispositions.pdf. Even more alarming is the incredibly low release rate for parole-eligible individuals convicted of a violent offense. A New York Times analysis found the Board denied ninety percent of applicants convicted of a violent felony at their initial interview. Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. Times, Dec. 4, 2016, https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html. This extremely high denial rate suggests the Board often predetermines the outcome solely based on the crime of conviction, a factor that was previously considered by the sentencing court – and therefore already reflected in the minimum sentence – and a reality that the applicant can never change. *See e.g.*, Alejo Rodriguez, *The Obscure Legacy of Mass Incarceration: Parole Board Abuses of People Serving Parole Eligible Life Sentences*, 22 CUNY L. Rev. 33, 36, 39, 43 (2019) (suggesting high denial rate demonstrates "a different, unwritten standard for people who committed what would be considered a violent crime" even though "New York State does not have different parole laws for different categories of offenses.").

[1] Due largely to the work by advocates such as Amici, this rate has increased from its pre-2017 rate of about 26 percent. *See* DOCCS, *Parole Board and Presumptive Release Dispositions, Calendar Year 2017*, (2019), https://doccs.ny.gov/system/files/documents/2019/09/Parole_Board_Dispositions_2017.pdf.

Significantly, there is also an overall disparity in release rates on the basis of race. The 2016 New York Times analysis found "a pattern of racial inequity" after analyzing 13,876 parole decisions for male applicants appearing for the first time before the board. *See* Winerib, s*upra.* The data showed that white men had a 25 percent overall release rate while Black men had a 15 percent overall release rate. *Id.* Unfortunately, this disparity has only increased in the last decade. According to a just-published report from the NYU School of Law Center on Race, Inequality, and the Law (CRIL), "people of color were 30% less likely to be released in 2022 and 2023 than their white counterparts." CRIL, *The Problem with Parole: New York State's Failing System of Release: 2023 Addendum*, at 3 (2023), https://www.law.nyu.edu/sites/default/files/Parole%20Board%20Decisions%20Report_508.pdf.[2] While parole decisions are certainly not the only aspect of our legal system infected with shameful racial bias, its impact in this context goes unchecked because of the discretionary framework under which the Board operates.

People serving indefinite sentences face the very real risk of dying in prison. From 2010 to 2020, over 1,200 people died in New York State prisons. Columbia University Center for Justice, *New York State's New Death Penalty: The Death Toll of Mass Incarceration in a Post Execution Era*, at 4 (October 2021)

[2] The 2023 report is a supplement to a longer 2021 study that found persistent disparities over a 5-year period based on race and geography. CRIL, *The Problem with Parole* (2021) https://www.law.nyu.edu/sites/default/files/PPP_NYU_ParoleReport_02.pdf.

https://centerforjustice.columbia.edu/research-projects/new-yorks-new-death-penalty-death-toll-mass-incarceration-post-execution-era. 56 percent of those individuals were 55 or older, and nearly a third had served a sentence of 15 or more years. *Id.* This is true even though incarcerated adults aged 55 and older are the least likely among all age groups to commit a new crime following release. Vera Institute of Justice, *Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations*, at 3 (2017), https://www.vera.org/publications/compassionate-release-aging-infirm-prison-populations. During the COVID-19 pandemic, the rate at which individuals have died in New York State Prisons has only increased. In 2020, the rate of deaths in New York facilities increased from 25 to 32 people per 10,000 people in 2019. Jennifer Valentino-DeVries & Allie Pitchon, *As the Pandemic Swept America, Deaths in Prisons Rose Nearly 50 Percent*, N.Y. Times (February 19, 2023), https://www.nytimes.com/2023/02/19/us/covid-prison-deaths.html. And in 2021, the mortality rate was 42 deaths per 10,000 people – a 72% increase in only two years. DOCCS, *Annual Mortality Report – 2021*, at 9 & Figure 3 (July 2022), https://doccs.ny.gov/system/files/documents/2022/07/2021-annual-mortality-report-final.pdf.

B. The Current State of Parole Interviews in New York State

The Board is currently comprised of seventeen commissioners, who interview each parole applicant in panels consisting of two or three members, primarily via video. DOCCS, New York State Community Supervision Handbook: Questions and Answers

Concerning Release & Community Supervision ["Parole Handbook"], at 2 (May 2019), https://doccs.ny.gov/system/files/documents/2019/05/Community_Supervion_Handbook.pdf. Commissioners conduct dozens of interviews in one day, sometimes upwards of eighty to one hundred, each lasting only a few minutes. Former Commissioner Carol Shapiro, who joined the board in 2017 and left in 2019, explained that "[t]here is a numbing repetition of the interview process." Jennifer Gonnerman, Prepping for Parole, New Yorker (November 25, 2019), https://www.newyorker.com/magazine/2019/12/02/prepping-for-parole. Commissioner Shapiro explained that the board members regularly receive the case file for an applicant on the actual day of the interview, forcing them to often review paperwork during the interviews of other applicants. *Id.*

Further, the legal standard governing parole release – and the way courts throughout the state have interpreted it – is highly discretionary, creating little accountability for the Board. In reaching a determination on whether someone should be released, the Board is tasked with applying the following standard:

> Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such [applicant] is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.

N.Y. Exec. Law § 259-i(2)(c)(A).

In applying this standard, the Board is required to consider specific factors, including consideration of the applicant's institutional record, release plans, recommendations of the district attorney and sentencing judge, any victim impact statements, the seriousness of the offense, as well as a "risk and needs assessment." *Id.*; 9 N.Y.C.R.R. 8002.2(d). Yet even within this admittedly deferential framework, courts reviewing such determinations are overly accommodating and frequently grant the Board wide latitude. While commissioners are required to consider every factor, courts have held that the Board is not required to give each factor equal weight or even create a record – either in the oral interview or the written decision – regarding the relevancy of each factor. *See e.g.*, *In re LeGeros v. N.Y. State Bd. of Parole* (2d Dep't 2016); *In re Vigliotti v. New York Exec. Div. of Parole*, 98 A.D.3d 789, 790 (3d Dep't 2012).

Unsurprisingly then, individual commissioners may choose to give more weight to some factors than others, or to focus on one factor almost exclusively. As former Commissioner Shapiro stated, "[f]or some, the offense is it, no matter what. . . . For some, it's the victim impact [statement]. Everyone has their own values and draws different lines in the sand." Gonnerman, *supra*. Another former commissioner, Robert Dennison, echoed this perception: "It's certainly not a science. It's very subjective, and sometimes we make mistakes." *Id.*

In fact, even the caselaw draws an untenable rule on this question. Legally, the Board cannot deny someone parole based solely on any one factor, including the type of the offense. *See, e.g.*, *In re King v. N.Y. State Div. of Parole*, 190 A.D.2d 423, 433 (1st

Dep't 1993); *In re Johnson v. N.Y. State Div. of Parole*, 65 A.D.3d 838, 839 (4th Dept 2009). However, courts like the Third Department have also repeatedly held that the Board is permitted to place greater weight on the seriousness of the offense than any other factor. *In re Hamilton v. N.Y. State Div. of Parole*, 119 A.D.3d 1268, 1271 (3d Dep't 2014); *see also In re Comfort v. N.Y. State Div. of Parole*, 68 A.D.3d 1295, 1296 (3d Dep't 2009) (noting that, under current parole procedures, courts cannot "effectively review the Board's weighing process"). Thus, the Board's decisions are not reviewed under an abuse of discretion standard; instead, they are only reversed "when there is a showing of irrationality bordering on impropriety." *In re Peralta v. N.Y. State Bd. of Parole*, 157 A.D.3d 1151, 1151 (3d Dep't 2018) (internal citations and quotation marks omitted).

C. Non-Disclosure of Training Materials Presents a Challenge When Preparing for a Parole Interview.

It is in this context of unchecked arbitrariness that Respondent seeks to maintain its lack of transparency. Despite clear indications that the Board's decisions now rely primarily on only boilerplate language in their decisions,[3] Respondent refuses to disclose critical information about its training materials under the FOIL law. Gonnerman, *supra* (recounting story of Richard Dennis who was denied twelve times, often "with the same language [the board] had used many times before: 'Your release at this time is

[3] Courts have made special note of the inappropriate use of boilerplate language when reversing parole denials. *See, e.g.*, *In re Perfetto v. Evans*, 112 A.D.3d 640, 641 (2d Dep't 2013) (finding Parole Board's explanation was "set forth in conclusory terms, which is contrary to law"); *In re Rossakis v. N.Y. State Bd. of Parole*, 146 A.D.3d 22, 28 (1st Dep't 2016) (same).

incompatible with the welfare of society.'"). As a result, it is extremely difficult for parole applicants to properly prepare for their interviews, regardless of whether they are appearing before the Board for the first time or the tenth. Given the standard language in every decision, when the parole board gives greater weight to the crime – an event that cannot be changed, its decisions then provide no "recommendations to the incarcerated person about what to do in order to change the outcome," even when that person has shown clear rehabilitation and do not pose a safety risk. Kathy Boudin, *Hope, Illusion and Imagination: The Politics of Parole and Reentry in the Era of Mass Incarceration*, 38 N.Y.U. Rev. L. & Soc. Change 563, 568, 570 (2014).

The process of undergoing a parole interview is an immensely stressful and challenging experience. For many incarcerated individuals appearing for an initial parole interview, the last time they discussed their crime was during the original trial or plea negotiation process. At that point, the defense attorney's role was to create a narrative that downplayed the defendant's culpability and minimized the harm they caused, or to deny their guilt altogether. Given the context of a trial or a plea, the defense attorney's strategy often precluded a defendant from discussing the incident in detail, describing their remorse or culpability, or even processing the emotions and motivations that led to their crime.

Similarly, after a trial conviction or guilty plea, parole applicants often spend decades in prison without getting an opportunity to appropriately discuss the circumstances that underlay or precipitated their case. Given that prison is a space

often lacking in therapeutic resources, people are often encouraged to keep their stories to themselves and are prevented from processing their emotions in a healthy, constructive fashion. Then, when applicants finally appear before the Board, they are judged based on their ability to express feelings of remorse and accountability.

This process is made even more difficult for parole applicants because most will not receive any substantive assistance as they prepare to go before the Board.[4] Unlike virtually every other hearing where a person's liberty is at stake, counsel, advocates, or witnesses are not allowed to be present or called during the interview. Parole Handbook, *supra*, at 13. Without available support, the need for clarity and transparency is heightened as applicants prepare for their parole hearings.

Specifically, applicants often rely on the FOIL process and other administrative procedures to gain access to available records, both general and specific. DOCCS Directive Nos. 2010 (FOIL/Access to Departmental Records) & 2014 (Access to Records for Parole Interviews, Hearings, or Appeals). For an individual applicant, being able to access materials such as sentencing minutes, pre-sentence reports, rap sheets, and DOCCS records of completed programs, and disciplinary records are crucial to their ability to prepare for a hearing. The commissioner's questions at a hearing are

[4] Except for organizations like Amici, little assistance exists to help applicants prepare for the parole process. The Parole Preparation Project currently has a waitlist of over 700 people who have written and asked for assistance. And the Office of the Appellate Defender is limited to working with its current and past clients.

often quite specific and any inconsistency between an applicant's statements and the documents before the commissioners can lead directly to a denial of parole.

In particular, Directive No. 2014 provides access to records outside of the FOIL process. However, the universe of documents that can be disclosed under this directive is defined only by a general statement regarding records that are "available to, or considered by" the Board. DOCCS Directive No. 2014 (Mar. 11, 2022), https://doccs.ny.gov/system/files/documents/2022/03/2014.pdf; *see also* 9 N.Y.C.R.R. 8000.5. The directive in fact carves out many types of documents that will be precluded from the applicant. *Id.* at III(B) & (D). Records outside of this directive must still be obtained through the FOIL process, including transcripts of an applicant's own prior parole hearings. Therefore, this Court's decision regarding the scope of the Board's FOIL obligations and the public policy considerations surrounding such disclosure will impact each and every parole applicant's preparation.

Moreover, the preparation process for an applicant is not limited to their own case information. By restricting access to the Board's training materials and information pertinent to decision-making processes, the impact of the various factors used in determining readiness for release remains opaque. For example, several of the specific documents described in this case could meaningfully assist parole applicants in their initial interview or a reappearance:

- The "Board of Parole Interviews" handout, which both concurring justices below concluded should be disclosed, would assist applicants in

knowing "the factors that must be considered during the interviews" and the materials that are considered by commissioners. *Appellate Advocates v. N.Y. State Dep't of Corrections & Community Supervision*, 163 N.Y.S.3d 314, 318 (Lynch, J., concurring in part & dissenting in part); *id.* at 319 (Pritzker, J., concurring in part & dissenting in part) (finding handout describes "what should be discussed during the interview").

- The "Favorable Court Decisions" and "Unfavorable Court Decisions" documents, which do not contain "any legal advice or confidential information" would assist applicants in knowing the relevant caselaw regarding their hearings. *Id.* at 318 (Lynch, J., concurring in part & dissenting in part).
- The portions of the Powerpoint presentations that "recite regulatory and statutory guidelines" would do the same. *Id.*
- Given the above discussion of the Board's discretion, the "Sample Decision Language Concerning Departure from COMPAS"[5] and the "Hypothetical Board Decisions" would assist applicants in preparing ways

[5] The COMPAS Risk Assessment tool is particularly opaque when used to deny parole, but Respondent has referred to it as a "trade secret" in FOIL responses. *See* Martha Rayner, *Commentary: This algorithm is used to deny inmates parole. We're not allowed to know anything about it*, Albany Times-Union (May 5, 2023), https://www.timesunion.com/opinion/article/commentary-proprietary-algorithm-deny-inmate-18001304.php. Further, commissioners often deny parole based on ill-defined concerns of public safety, even in contradiction to the findings of the COMPAS assessment, while giving little if any guidance as to how the individual can better prepare for their release. Vera Institute, *Toward a Fairer Parole Process*, *supra*, at 2.

to distinguish their individual circumstances from the "template paragraphs for denying release." *Id.* at 320 (Pritzker, J., concurring in part & dissenting in part).

This non-exhaustive list of materials further demonstrates that the restrictive position taken by Respondent infringes on an incarcerated person's right to access courts, which includes the adequacy of law libraries and assistance to provide tools that "inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Lewis v. Casey*, 518 U.S. 343, 355 (1996). To the extent that Respondent's materials do not contain actual and specific legal advice, public policy dictates that applicants also be provided access to the information regarding the structure and substance of their parole hearing. This is particularly necessary given the lack of any other transparency regarding the training and guidance that parole commissioners receive regarding their decision-making authority. *See* Section B, *supra.* Without more information, it is difficult for applicants to review or consider how the Board makes determinations about public safety, prison accomplishments, criminal history, remorse, among the other factors.

D. Non-Disclosure of Training Materials Presents a Challenge When Appealing Parole Decisions

Finally, parole applicants have the right to appeal the Board's decisions, though in practice the process is made extremely challenging by various procedural and informational barriers. Because appealing a parole denial is quite distinct from the

procedures of a direct appeal or even that of an Article 78 conditions claim, the materials at issue in this case are important for parole applicants in their initial decision on whether or not to pursue a claim.

Since the Parole Board is an administrative agency, individuals denied parole must file an administrative appeal to the Parole Board's Appeals Unit before seeking judicial review. 9 N.Y.C.R.R. 8006.1. Applicants have four months to perfect their appeal, and the Appeals Unit has four months to issue a decision. 9 N.Y.C.R.R. 8006.2; 9 N.Y.C.R.R. 8006.4 An applicant may only file an Article 78 petition, and thus secure review by a neutral judge, once their internal appeal is administratively denied by the Board's Appeals Unit.

However, while this administrative process is occurring, the applicant might also be nearing a date for reappearing before the Board. 9 N.Y.C.R.R. 8002.3(b) (reappearance must be scheduled "not more than 24 months" from earlier interview). If an applicant appears before the Board for a new interview while an appeal of a prior decision is outstanding, New York courts regularly conclude that the prior appeal is moot, regardless of any potential error in that determination. *See, e.g.*, *In re Letizia v. Fitzpatrick*, 192 A.D.3d 1283 (3d Dep't 2021) (refusing to apply exception to mootness doctrine). Thus, in order to obtain a court decision, the applicant may have to forego one or more opportunities to reappear before the Board for new interviews. In other words, because the Article 78 process takes time, incarcerated people must often choose between attending a new hearing with no guarantee of a different result or litigating any

errors that happened at their prior hearing. Given this dilemma, many applicants will not take their decisions to a court, and the timeline will often result in the conclusion of parole litigation before any appellate court review or relief can be sought.

Understanding the legal landscape is pivotal to a parole applicant making the decision whether or not to postpone a reappearance hearing. This dilemma is magnified because only about 11 percent of parole denials are overturned on appeal, with the remedy being nothing more than a *de novo* parole interview. Parole Preparation Project et al., *Appealing Denials of Parole Release in New York State: A Guide to Filing Administrative Appeals and Article 78s*, at 14 (2019), https://ir.lawnet.fordham.edu/pp/1/. Nevertheless, the decision of whether to proceed with an Article 78 case is one that the applicant must decide, and their ability to evaluate the strength of any legal claim depends on access to the case and statutory law surrounding parole determinations.

CONCLUSION

New York's parole process is prohibitively opaque, restricting applicants and their advocates from accessing the information which guides the Board's decision making processes. Without access to records regarding the Board's training and determination process, those with indeterminate sentences in New York are unable to meaningfully prepare for their interview, understand the written decision from the Board, or appeal their denials. This Court should reverse the Appellate Division's decision.

Dated: September 28, 2023

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CERTIFICATE OF COMPLIANCE

I certify pursuant to 500.13(c)(1) of the Rules of Practice of the Court of Appeals that this Brief was prepared on a computer; that Garamond, a 14-point proportionally spaced serifed typeface, was used; that the body of the brief is double-spaced; and that, according to the Microsoft Word processing system, the total word count for all printed text in the body of the brief, exclusive of the statement of the status of related litigation; the corporate disclosure statement; the certificate of compliance; and the table of contents, the table of authorities, and the statement of questions is 4,461 words.

Dated: September 28, 2023
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