APPENDIX A

151 F.4th 795
United States Court of Appeals, Fifth Circuit.

Samuel GALBRAITH, Petitioner—Appellee,

v.

Tim HOOPER, Warden, Louisiana State Penitentiary, Respondent —Appellant.

No. 22-30159
FILED August 20, 2025

Synopsis

Background: State prisoner filed application for writ of habeas corpus seeking to have his parole reinstated on ground that its rescission just prior to its effective date violated his due process rights. The United States District Court for the Middle District of Louisiana, John W. deGravelles, J., 2022 WL 907142, granted the application for the reasons set forth in the report and recommendation of Erin Wilder-Doomes, United States Magistrate Judge, 2022 WL 943144. State appealed.

Holdings: On petition for rehearing, the Court of Appeals, Southwick, Circuit Judge, held that:
1 proper procedure for prisoner to assert his claim was an application for writ of habeas corpus, rather than a § 1983 action;
2 prisoner's habeas application was subject to one-year statute of limitations for habeas applications filed by prisoners in custody pursuant to judgment of state court;
3 one-year limitations period for prisoner's habeas application began to run at time he received letter notifying him that Louisiana Board of Pardons and Parole had rescinded his parole and stating reason for the rescission; and
4 prisoner could have filed a state habeas application to challenge Parole Board's decision, and thus he failed to exhaust his state-court remedies prior to filing federal application.

Petition for rehearing granted; reversed and rendered.

Dennis, Circuit Judge, filed dissenting opinion.

Opinion, 85 F.4th 273, withdrawn, 2024 WL 1170026.
Appellate ReviewPost-Conviction Review

West Headnotes (14)

Change View

1 **Habeas Corpus** Review de novo
Habeas Corpus Clear error
In habeas corpus appeal, Court of Appeals reviews district court's findings of fact for clear error and its conclusions of law de novo. 28

U.S.C.A. §§ 2241, 2254.

2 **Civil Rights** Parole
Habeas Corpus Revocation
Proper procedure for state prisoner to seek to have his parole reinstated, on ground that its rescission just prior to its effective date violated his due process rights, was an application for writ of habeas corpus, rather than a § 1983 action; prisoner brought a direct and immediate claim about the duration of his confinement and was not seeking a new parole hearing. U.S. Const. Amend. 14; 28 U.S.C.A. §§ 2241, 2254; 42 U.S.C.A. § 1983.

3 **Habeas Corpus** Limitations applicable
Habeas Corpus Characterization; treatment as habeas corpus petition
Application for writ of habeas corpus filed by state prisoner, seeking to have his parole reinstated on ground that its rescission just prior to its effective date violated his due process rights, was to be viewed under both § 2241 and § 2254, rather than only § 2241, and thus the application was subject to one-year statute of limitations for habeas applications filed by prisoners in custody pursuant to judgment of state court; prisoner was requesting that parole be reinstated and that he immediately be released from prison, and outcome in prisoner's favor would affect the time he would serve. U.S. Const. Amend. 14; 28 U.S.C.A. §§ 2241, 2244(d)(1), 2254.

4 **Habeas Corpus** Petitions by state or territorial prisoners in general
Habeas Corpus Characterization; treatment as habeas corpus petition
Section 2241, which is the general statute authorizing federal courts to grant writs of habeas corpus in their respective jurisdictions, and § 2254, which sets forth requirements for grant of habeas relief to a petitioner held in custody pursuant to state-court judgment, do not represent an either/or dichotomy. 28 U.S.C.A. §§ 2241, 2254.

5 **Habeas Corpus** Federal Courts
Authority of federal courts to grant writs of habeas corpus in their respective jurisdictions applies to persons in custody regardless of whether a final judgment exists. 28 U.S.C.A. § 2241(a).

6 **Habeas Corpus** Petitions by state or territorial prisoners in general
Section 2254, which relates to habeas petitions filed by petitioners in custody pursuant to state-court judgment, is not an independent avenue through which petitioners may pursue habeas relief; instead, all habeas petitions are brought under § 2241, and § 2254 places additional limits on a federal court's ability to grant habeas

relief if the petitioner is being held in custody pursuant to the judgment of a state court. 28 U.S.C.A. §§ 2241, 2254.

7 **Habeas Corpus** ⚿ Accrual

State prisoner who was serving sentence for manslaughter knew factual premise of his habeas claim, namely that Louisiana Board of Pardons and Parole had rescinded his parole for a reason other than violating terms of work release or engaging in misconduct prior to release, at time he received letter notifying him that Parole Board had rescinded his parole because of technical irregularities in notifying victim's family of original parole hearing, and thus one-year limitations period for filing habeas application began to run at that time, although prisoner did not have access to parole file for purposes of showing that Parole Board's asserted reason was false; letter clearly stated grounds for Parole Board's decision, which was neither of reasons authorized by state's administrative code. 28 U.S.C.A. §§ 2241, 2244(d)(1)(D), 2254; La. Admin. Code tit. 22, pt. XI, § 504(K) (2017).

8 **Habeas Corpus** ⚿ Delayed discovery of claim

One-year statute of limitations for person in custody pursuant to a state-court judgment to file application for a writ of habeas corpus, which can run from the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence, does not convey a statutory right to an extended delay while a habeas petitioner gathers every possible scrap of evidence that might support his claim. 28 U.S.C.A. §§ 2244(d)(1)(D), 2254.

9 **Habeas Corpus** ⚿ Sentence and punishment

State prisoner could have filed a state habeas application to challenge decision of Louisiana Board of Pardons and Parole that rescinded his parole just prior to its effective date, and thus prisoner failed to exhaust his state-court remedies prior to filing application for federal writ of habeas corpus; prisoner was not challenging validity of his original sentence or seeking to have sentence set aside, but was instead asserting that his lawful sentence had now become unlawful because Parole Board had no authority to rescind his certificate of parole. 28 U.S.C.A. §§ 2254(b)(1), 2254(c); La. Code Crim. Proc. Ann. art. 362(2).

10 **Habeas Corpus** ⚿ Review de novo

Whether federal habeas petitioner has exhausted state remedies is question of law reviewed de novo. 28 U.S.C.A. § 2254(b)(1).

11 **Habeas Corpus** ⚿ Comity or jurisdiction

The requirement for petitioner in custody pursuant to state-court judgment to exhaust state-court remedies, prior to bringing petition for writ of habeas corpus, is not jurisdictional, but reflects a policy

of federal-state comity designed to give the State an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights. 28 U.S.C.A. § 2254(b)(1).

12 Pardon and Parole ⚿ Review
Under Louisiana law, a prisoner has no right to appeal a decision by the Louisiana Board of Pardons and Parole unless his parole was revoked without a revocation hearing. La. Rev. Stat. Ann. §§ 15:574.9, 15:574.11(A).

13 Habeas Corpus ⚿ Pending proceedings; pretrial or prejudgment petitions
Habeas Corpus ⚿ Post-Conviction Motions or Proceedings
Under Louisiana law, a writ of habeas corpus generally is not the proper procedural device for petitioners seeking post-conviction relief because habeas deals with preconviction complaints concerning custody; an application for post-conviction relief is a petition seeking to have the conviction and sentence set aside. La. Code Crim. Proc. Ann. arts. 362(2), 924.

14 Habeas Corpus ⚿ Improper restraint or detention in general
Under Louisiana law, state habeas applies in a post-conviction setting when applicant is not seeking to set aside his original sentence, but instead alleges that the original custody, which was lawful, has become unlawful due to some act, omission, or event which has since occurred. La. Code Crim. Proc. Ann. arts. 362(2), 924.

Appeal from the United States District Court for the Middle District of Louisiana, USDC No. 3:19-CV-181, John W. deGravelles, U.S. District Judge

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Before Stewart, Dennis, and Southwick, Circuit Judges.

ON PETITION FOR REHEARING

Leslie H. Southwick, Circuit Judge:

***797** An earlier opinion in this appeal was issued on October 23, 2023. *See* ***798** *Galbraith v. Hooper*, 85 F.4th 273 (5th Cir. 2023). The opinion was later withdrawn. *Galbraith v. Hooper*, No. 22-30159, 2024 WL 1170026 (5th

Cir. Mar. 19, 2024). The petition for rehearing is GRANTED.

Samuel Galbraith, a Louisiana prisoner, sued the Louisiana Board of Pardons and Parole ("Parole Board") and sought reinstatement of his parole on the grounds that its rescission just prior to its effective date violated his due process rights. The district court agreed with Galbraith and ordered his release on parole within 30 days, subject to the original conditions of his parole. On appeal, the State argues that Galbraith's claim is barred by 28 U.S.C. § 2244's one-year statute of limitations and that Galbraith did not fully exhaust his state court remedies. We agree and REVERSE.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2000, Samuel K. Galbraith pled guilty to the 1988 manslaughter and attempted aggravated rape of Karen Hill. He was sentenced to 71 years of hard labor. The victim's surviving husband, James Hill, completed a "Louisiana Department of Public Safety and Corrections Victim/Witness Notification Request Form" in November 2000. The form required the Parole Board to notify the named person when a parole hearing was granted for a specified inmate. The record does not contain a similar form from any other person requesting notice of Galbraith's potential parole.

In the spring of 2016,[1] Galbraith filed an Application for Parole. His first possible parole eligibility date was April 23, 2017. The Parole Board set Galbraith's hearing for October 13, 2016, and sent notification letters on July 7, 2016, to Hill and Jessie McWilliams, Karen Hill's mother, advising them of their right to appear and present testimony at the parole hearing. McWilliams's letter was erroneously addressed to a post office box in Albany, New York, instead of to the same-numbered post office box in Albany, Illinois. On September 14, 2016, Galbraith's attorney requested a continuance of the October hearing until November 3, 2016, which was granted. The Parole Board sent notification letters with the new hearing date to Hill and McWilliams on September 28, 2016, this time to their correct addresses. At that time, the Louisiana Administrative Code required notification to be sent to "[t]he victim, spouse, or next of kin of a deceased victim" 30 days before the parole hearing. LA. ADMIN. CODE tit. 22, pt. XI, § 510(B) (eff. Aug. 2013 to Mar. 2018).[2] Thus, the Parole Board was required to give notice only to Hill as the surviving husband. The Parole Board did so.

A pre-parole investigation report was prepared. The report contained statements from Hill, McWilliams, the Vernon Parish District Attorney's Office, the Vernon Parish Sheriff's Office, and the Vernon Parish sentencing judge. They all opposed parole. At Galbraith's parole hearing, a three-member panel of the Parole Board heard testimony and statements from those opposed to his early release. The panel also ***799** heard from Galbraith's family members, who supported his parole. Galbraith was represented by counsel at the hearing. The panel unanimously voted to grant parole to Galbraith with a scheduled release date of April 23, 2017, and with a list of specific conditions during his parole term. The Certificate of Parole showed that Galbraith would reside in Aransas Pass, Texas, and would be subject to the authority of a parole office in Corpus Christi, Texas.

Neither Hill nor McWilliams attended the hearing, but each provided a written statement. Both were contacted directly by someone from the

Department of Corrections after the hearing and were notified of the decision.

After parole was granted, Vernon Parish District Attorney Asa Skinner filed requests for reconsideration of the Parole Board's decision on November 15, 2016, November 30, 2016,[3] and January 9, 2017. In February 2017, the Parole Board denied Skinner's request for reconsideration, explaining that "[t]he panel voted unanimously to grant parole ... after serious and thorough consideration" and "[t]he board's policy provides for a reconsideration review only in [limited] circumstances," none of which were applicable in Galbraith's case. Skinner and McWilliams aired their displeasure to the press, leading to negative reporting regarding Galbraith's imminent parole.

In early April 2017, the Parole Board and the Department of Corrections made final preparations for Galbraith's release. On April 10, 2017, Parole Board member Mary Fuentes sent an email to Louisiana Governor John Bel Edwards's Deputy Executive Counsel. Fuentes referred to a news story about Galbraith's release that would air on April 13. Her concern was that the story could impact criminal justice legislation that was desired by the Governor. Two days later, a single Parole Board member, Sheryl Ranatza, added electronic monitoring as a condition of Galbraith's parole. On April 20, 2017, the Parole Board received notice from Texas that the new condition of parole was accepted, and Ranatza signed and issued a Certificate of Parole with a release date of April 23, 2017.

On April 21, 2017, the Special Counsel of the Louisiana Governor's Legislative Staff exchanged emails with a lobbyist from Top Drawer Strategies, LLC. Both expressed concern about the negative media reports about Galbraith's release and their potential impact on the success of the pending criminal justice reform legislation. The referenced news report included details about interviews with McWilliams, who stated her victim notification letter was sent to the wrong mailing address, and with Skinner, who claimed Galbraith was responsible for two other cold-case murders in Vernon Parish.

On April 21, the same day as the email exchange we just discussed, Galbraith's parole hearing docket record stated: "Rescind Pending Per Mary F," *i.e.*, Parole Board member Mary Fuentes. That day, one Parole Board member, Jim Wise, filled in a "Parole Board Action Sheet" that rescinded Galbraith's parole based on this reason: "Other [—] There may have been tech[n]ical irregularity to victim notice."

Galbraith was not released. In a letter dated May 1, the Parole Board officially notified him of the rescission and repeated the phrasing of the Parole Board Action Sheet:

> ***800** This correspondence is to advise you that the Parole Board has voted to rescind the parole granted at your original parole hearing.
>
> This action was taken due to the following:
>
> We have been advised that Other. There may have been technical irregularities notifying the victim's family.

You will be scheduled for another hearing on 08/03/2017.

There is no evidence that the Parole Board took any action to rescind parole beyond the one Parole Board member's signing the rescission form. The Parole Board later issued a press release announcing the decision to rescind. It explained that, even though McWilliams received notice of the November 2016 hearing and provided a statement for its consideration, the Parole Board was rescheduling the parole hearing "because of the apparent procedural error which occurred with the initial victim notification."[4]

In May 2017, Galbraith filed an administrative grievance, which was rejected because the Parole Board's decision was discretionary and could not be challenged. In June 2017, Galbraith's counsel sent a letter (1) contesting the decision to rescind for failure to adhere to Parole Board policy, (2) contesting the factual basis of the alleged technicality that occurred with the victim notice, and (3) advising the Parole Board that neither of the two permissible reasons for rescission of parole applied in his case. In July 2017, Galbraith, through counsel, withdrew from parole consideration for the reasons stated in his attorney's June letter.

On July 26, 2017, Galbraith's attorney filed a 42 U.S.C. § 1983 complaint in the Middle District of Louisiana challenging the Parole Board's rescission of his parole. Galbraith sought reinstatement of his parole and immediate release from prison. A year and a half later, the Parole Board filed a motion for summary judgment, arguing Galbraith's exclusive remedy to seek release from custody was through a writ of *habeas corpus.*

Galbraith's attorney then filed a 28 U.S.C. § 2241 application on March 27, 2019, naming the prison's warden as the defendant. We will refer to the defendant as the State because the warden was sued in his official capacity. After concluding the two cases had common legal issues, the district court stayed and administratively closed the Section 1983 proceedings pending resolution of the Section 2241 application. In its answer to Galbraith's Section 2241 application, the State argued Galbraith failed to exhaust his available state court remedies, his application was time-barred, and his claim lacked merit because the Parole Board's rescission did not infringe any constitutionally protected liberty interest.

In a March 9, 2022, Report and Recommendation, the magistrate judge determined:

(1) Galbraith was not required to exhaust his claims because Louisiana's statutory scheme did not permit him to challenge the Parole Board's rescission under these circumstances;

(2) It was not clear if Galbraith's Section 2241 application was subject to a limitations period;

(3) Even if a one-year limitations period was applicable, Galbraith filed a Section 1983 complaint within that ***801** time period seeking *habeas corpus* relief;

(4) Although Galbraith did not have a liberty interest in the granting of parole, there was a state-created liberty interest at issue here because the Parole Board regulations in effect at the time permitted rescission of

a parole grant only in two circumstances, neither of which was applicable to Galbraith's situation;

(5) Galbraith was therefore entitled to notice and a meaningful opportunity to be heard prior to rescission of his parole grant, but he received neither; and

(6) A remand to the Parole Board to conduct a rescission hearing would be futile because neither permissible basis for rescission was applicable.

The magistrate judge recommended granting Galbraith's *habeas* application and ordering his release on parole within 30 days, subject to the original conditions of his parole as granted on November 3, 2016. The State filed objections. On March 28, 2022, the district court granted Galbraith's *habeas* application "for the reasons set forth in the Magistrate Judge's Report." The State filed a timely notice of appeal. We granted an unopposed motion to stay the district court's judgment and release order pending appeal.

The State now argues that the district court erred in holding (1) Galbraith was not required to exhaust state remedies, (2) Galbraith's application was not time-barred, and (3) Galbraith had a protected liberty interest in his parole grant prior to release.

DISCUSSION

1 "In a *habeas corpus* appeal, we review the district court's findings of fact for clear error and its conclusions of law *de novo*." *Reeder v. Vannoy*, 978 F.3d 272, 276 (5th Cir. 2020) (quoting *Jenkins v. Hall*, 910 F.3d 828, 832 (5th Cir. 2018)).

We first review the district court's legal conclusion about the often-difficult question of which statutory vehicle is proper for a prisoner's claim. Different procedural hurdles apply depending on that answer. We then turn to the State's three arguments about reversible error in the district court's rulings.

I. Habeas corpus *application or civil rights suit?*

Three possible statutory bases for Galbraith's claim have been proposed: a civil rights suit under Section 1983, a *habeas* application under Section 2241, or a *habeas* application under Section 2254.

We start with Section 1983. A helpful precedent concerned a Section 1983 suit in which two state prisoners claimed that state authorities violated the *Ex Post Facto* and Due Process Clauses of the United States Constitution. *See Wilkinson v. Dotson*, 544 U.S. 74, 76–77, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005). The alleged violations occurred when officials applied new, harsher guidelines to determine the parole of prisoners whose crimes had been committed when less-demanding guidelines were used. *Id.* When considered for parole under the more stringent guidelines, the two prisoners were denied and deemed ineligible to seek parole again for five years. *Id.* The prisoners then filed a Section 1983 suit and sought immediate parole hearings under the prior guidelines. *Id.* at 77, 125 S.Ct. 1242. The Court held that the constitutional claims were properly brought using Section 1983, and it rejected the argument that "the prisoners' lawsuits, in effect, collaterally attack the *duration* of their confinement; hence, such a claim may only be brought through a *habeas corpus* action." ***802** *Id.* at 76, 78, 125 S.Ct. 1242. "A consideration of this Court's case law makes clear that

the connection between the constitutionality of the prisoners' parole proceedings and release from confinement is too tenuous here to achieve [the state's] legal door-closing objective." *Id.* at 78, 125 S.Ct. 1242.

2 Galbraith, though, is not seeking a new hearing. He insists that the parole he was actually granted was improperly rescinded and should be reinstated. He brings a direct and immediate claim about the duration of his confinement, without the contingency that existed in *Dotson* that a new hearing might not grant parole. *Habeas* is the proper procedure here.

We now examine the *habeas* application Galbraith eventually did file. Galbraith filed for *habeas* under Section 2241. He argued his claim was ripe for immediate *de novo* review by a federal court under Section 2254(b)(1)(B)(i) because there is no Louisiana state corrective process to challenge his parole rescission. The State asserted Galbraith's claims were time-barred because the one-year statute of limitations established by Section 2244(d)(1) applied and he did not file within one year of May 1, 2017, when he received notice of his parole rescission. The district court disagreed.

Quoting *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000), the district court held that Galbraith's challenge to the rescission of his parole was properly brought under Section 2241 (which has no statute of limitations) because it raised issues regarding "the manner in which a sentence [was] carried out." The district court concluded Section 2244(d)(1)'s one-year statute of limitations did not extend to Section 2241 *habeas* applications, meaning Galbraith's application could not conclusively be deemed untimely. The court further determined Galbraith sufficiently established his claim was not subject to Section 2254's exhaustion requirement. *See* 28 U.S.C. § 2254(b)(1)(B)(i). According to the court, "[w]ithout a mechanism to exhaust, there can be no failure to exhaust," allowing Galbraith's claim to be reviewed by a federal court.

3 So, was Galbraith's application properly brought under Section 2241, which contains no statute of limitations? Do Section 2254 and the applicable one-year limitations period apply and bar Galbraith's claims? An explanation of the interaction between the two statutes will be useful.

4 5 These "two statutes do not represent an either/or dichotomy." *Topletz v. Skinner*, 7 F.4th 284, 293 (5th Cir. 2021). Section 2241 is the general statute authorizing federal courts to grant writs of *habeas corpus* in their respective jurisdictions. 28 U.S.C. § 2241(a). This authority "applies to persons in custody regardless of whether [a] final judgment" exists. *Hartfield v. Osborne*, 808 F.3d 1066, 1071 (5th Cir. 2015) (quoting *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987)); *see also* 28 U.S.C. § 2241(c). Once Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), federal courts' authority to grant *habeas* relief became more limited. *See* Pub. L. No. 104-132, 110 Stat. 1214; *Shoop v. Twyford*, 596 U.S. 811, 818, 142 S.Ct. 2037, 213 L.Ed.2d 318 (2022). As part of AEDPA, Congress enacted Section 2254, which governs writs to which Section 2241(c)(3) applies. *Topletz*, 7 F.4th at 293.

6 Importantly, Section "2254 is not an independent avenue through which petitioners may pursue *habeas* relief." *Hartfield*, 808 F.3d at 1073. "Instead, all *habeas* petitions ... are brought under [Section] 2241, and [Section] 2254 places additional limits on a federal court's ability to grant

[*habeas*] relief if the petitioner is being ***803** held in custody 'pursuant to the judgment of a State court.' " *Topletz*, 7 F.4th at 294 (quoting 28 U.S.C. § 2254(a)). Galbraith is in custody because of a state court judgment; his *habeas* application must be viewed under both Sections 2241 and 2254.

With Galbraith's *habeas* application being subject to both statutes, the question remains whether it is also subject to a statute of limitations. The Supreme Court explained that AEDPA "changed the standards governing our consideration of *habeas* petitions by imposing new requirements for the granting of relief to state prisoners." *Felker v. Turpin*, 518 U.S. 651, 662, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996). Because federal courts' *habeas* authority is now limited by Section 2254, AEDPA's additional "new requirements" for granting relief to state prisoners also apply to writs governed by Section 2254. *Id.* These include Section 2244's limitations. *See* AEDPA § 101, 110 Stat. at 1217. Among those limitations is that the *habeas* application "by a person in custody pursuant to the judgment of a State court" must be filed within one year of various events; relevant here is "the date on which the factual predicate of the claim" was or could have been discovered. 28 U.S.C. § 2244(d)(1)(D).

The district court concluded that, because Galbraith challenged the Parole Board's refusal to hold a hearing prior to the rescission of his parole grant, he is challenging "the manner in which [his] sentence is carried out or the prison authorities' determination of its duration." *Pack*, 218 F.3d at 451. Citing a pre-AEDPA, unpublished Fifth Circuit opinion, the district court further determined that Section 2254 did not apply to Galbraith. *See Richie v. Scott*, 70 F.3d 1269 (5th Cir. 1995) (unpublished table opinion that is precedential under 5th Cir. R. 47.5.3). In *Richie*, we rejected the district court's determination that the prisoner had to bring his claim under Section 2254, finding that a challenge to the revocation of parole should be brought under Section 2241 only. *Id.* at *1 (citing *Rome v. Kyle*, 42 F.3d 640 (5th Cir. 1994) (unpublished); *Johnson v. Scott*, 56 F.3d 1385 (5th Cir. 1995) (unpublished)). We concluded that if the party is not contesting the legality or validity of the sentence, Section 2254 is inapplicable. *Id.*

In a later decision, the court concluded that this precedent did not survive AEDPA. *Kimbrell v. Cockrell*, 311 F.3d 361, 362 (5th Cir. 2002). The court considered whether AEDPA's one-year limitation period applied to Section 2254 *habeas* applications "contesting the outcome of prison disciplinary proceedings." *Id.* We held that "when prison disciplinary proceedings result in a change in good-time earning status that extends the prisoner's release date," Section 2254 applies. *Id.* The court refused to treat prison disciplinary proceedings in such a distinct way as to give them "unusual procedural recognition" that would render Section 2244(d)(1)'s one-year limitation period inapplicable. *Id.* at 362–63. Instead, the court concluded that Section 2244(d)(1) "is ... easily applied" to applications "attacking the prisoner's conviction" and also to those attacking "the calculation of time served." *Id.* at 363. Both applications are seeking "a shorter confinement pursuant to the original judgment," thus "any [Section] 2254 writ application by a 'person in custody pursuant to the judgment of a State court' " is limited by Section 2244(d)(1). *Id.* In other words, when a favorable outcome would affect the amount of time a state prisoner served, "Section 2244(d)(1) literally applies." *Id.*

Galbraith's claim is based on the Parole Board's allegedly improper rescission of his parole. He is requesting that it be reinstated and that he immediately be released from prison. An outcome in Galbraith's ***804*** favor would affect the time he will serve; indeed, it would end his confinement almost instantly. Section 2244(d)(1) therefore applies.

II. Timeliness

Because we conclude Galbraith's claim is properly viewed under both Sections 2241 and 2254 and is challenging the duration of time he will serve, we now address the State's argument that the one-year limitations period in Section 2244(d)(1) bars Galbraith's *habeas* application.

7 Under Section 2241(d)(1), the one-year period begins to run on one of four dates. 28 U.S.C. § 2244(d)(1)(A)–(D). The latest date that could begin this period for Galbraith's claim is "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." § 2244(d)(1)(D). The factual predicate that is alleged to support Galbraith's claims is the Parole Board's rescission of "his Certificate of Parole based upon facts the Board knew to be false and a reason not enumerated in the [Louisiana] law that allows for rescission." We must determine on what date Galbraith could have discovered this factual premise.

Galbraith argues that he could not have discovered or verified the facts underlying his claim until after he received complete discovery in his Section 1983 action. Therefore, Section 2244(d)(1)'s one-year statute of limitations allegedly would not apply. Galbraith's parole file was confidential and unable to be released to him except through discovery. *See* La. R.S. § 15:574.12(A); LA. ADMIN. CODE tit. 22, pt. I, § 101(K)(6)(c) (2023). Once Galbraith received full disclosure of the file, he learned that the "technical irregularit[ies]" the Parole Board cited as its reason for rescinding his parole were false because the victim's family had been properly notified of his parole hearing. Discovery was complete by June 13, 2018, and Galbraith filed his *habeas* application based on these undisputed facts on March 27, 2019. Because Galbraith could not access his parole file except through discovery, he argues he could not have uncovered the Parole Board's true rationale until June 2018. He therefore exercised the required due diligence and timely filed his application. Further, even if the one-year limitations period applied, Galbraith filed his *habeas* application in March 2019, which was within one year of receiving his parole file.

Galbraith's claim is premised on the fact that the Parole Board could only rescind its decision to grant him parole if he "violated the terms of work release" or "engaged in misconduct prior to [his] release." LA. ADMIN. CODE tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019). [5] In its notification to Galbraith of its decision to rescind his parole, the Parole Board advised Galbraith that "[t]here may have been technical irregularities notifying the victim's ***805*** family" of his original parole hearing and explained that was the reason for the rescission. The Parole Board clearly stated the grounds for its decision, which was neither of the reasons authorized by the Louisiana Administration Code. *See id.*

8 The May 1, 2017 letter notified Galbraith that the Parole Board had rescinded his parole and informed him of its reason for doing so. Neither of

Section 504(K)'s reasons were listed in the letter, so Galbraith would have known, upon receipt of the letter, of the argument that the rescission was not statutorily authorized. The possibility that the Parole Board's actual rationale was "false" and that evidence establishing falsity was in Galbraith's parole file is irrelevant to his claim. Galbraith "is confusing his knowledge of the factual predicate of his claim with the time permitted for gathering evidence to support that claim." *Flanagan v. Johnson*, 154 F.3d 196, 199 (5th Cir. 1998). "Section 2244(d)(1)(D) does not convey a statutory right to an extended delay ... while a *habeas* petitioner gathers every possible scrap of evidence that might ... support his claim." *Id.*

For Galbraith to file for *habeas* relief, all that was required under Section 2244(d)(1)(D) was that he know the factual premise of the claim. Here, that premise is the Parole Board's rescinding Galbraith's parole for a reason other than that he "violated the terms of work release" or "engaged in misconduct prior to [his] release." LA. ADMIN. CODE tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019). Galbraith knew that premise upon receipt of the May 1, 2017 letter; thus, Section 2244(d)(1)'s one-year limitations period began to run on that date. He therefore was required to file his *habeas* application by May 2018. Galbraith filed his application on March 27, 2019, roughly 10 months after the one-year limitations period ended. Galbraith's *habeas* application is thus time-barred absent tolling.

Galbraith argues, and the district court determined, that even if Galbraith's *habeas* claim was subject to a one-year limitations period, it was tolled when he filed his Section 1983 complaint on July 26, 2017, because that complaint was a *de facto habeas* application. We need not decide this issue because of our holding in the following section.

III. Exhaustion of state remedies

9 "An application for a writ of *habeas corpus* on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—(A) the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1). On appeal, the State repeats the arguments it made to the district court that Galbraith could have raised his challenge in a state *habeas corpus* application and has thus failed to exhaust his state court remedies. It relies heavily on *Sinclair v. Stalder*, 867 So. 2d 743 (La. Ct. App. 1st Cir. 2003), and *Sneed v. Hooper*, 328 So. 3d 1164 (La. 2021). The district court rejected the argument that Galbraith could have filed a state *habeas* application, because it concluded Louisiana's statutory scheme does not permit a challenge to the Parole Board's rescission on *any* ground *except* for the denial of a revocation hearing. Because of the perceived lack of any available state corrective process, the district court held there was no state mechanism for Galbraith to exhaust, so his claim was reviewable in federal court under Section 2254(b)(1)(B)(i).

10 11 "Whether a federal *habeas* petitioner has exhausted state remedies is a question of law reviewed *de novo*." *Anderson v. Johnson*, 338 F.3d 382, 386 (5th Cir. 2003). The "exhaustion requirement is not jurisdictional, but 'reflects a policy of federal-state comity ... designed ****806*** to give the State an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights.' " *Id.* (alteration in original) (quoting *Wilder v. Cockrell*, 274 F.3d 255, 260 (5th Cir. 2001)).

An applicant has not exhausted his available remedies "if he has the right under the law of the State to raise, by any available procedure, the question presented." § 2254(c). The district court relied on the fact that "Louisiana's parole statutes allow for appeal of parole board actions in only one circumstance." *See* La. R.S. § 15:574.11. Even if that is so, exhaustion is still required if there is some other state procedure available. The pertinent language in the parole statute is this:

> Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the committee on parole. *No prisoner or parolee shall have a right of appeal from a decision of the committee* regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, *except for the denial of a revocation hearing under R.S. 15:574.9.*

La. R.S. § 15:574.11(A) (emphasis added).

Another relevant parole statute provides:

> The committee may order revocation of parole upon a determination that:
>
> (1) The parolee has failed, without a satisfactory excuse, to comply with a condition of his parole; and
>
> (2) The violation of condition involves the commission of another felony, or misconduct including a substantial risk that the parolee will commit another felony, or misconduct indicating that the parolee is unwilling to comply with proper conditions of parole.

§ 15:574.9(B).

12 Based on this statutory language, a prisoner has no right to appeal a decision by the Parole Board unless his parole was revoked under Revised Statute 15:574.9 without a revocation hearing. *See Leach v. La. Parole Bd.*, 991 So. 2d 1120, 1124 (La. Ct. App. 1st Cir. 2008). This explains why Galbraith's attempt at filing an administrative grievance to challenge the Parole Board's decision was rejected. The stated reason was the Parole Board's policy that "decisions of these boards are d[i]scretionary and may not be challenged," which follows Louisiana's parole statutes.

13 14 Even so, we must consider whether there was any other available state court remedy that Galbraith could have used. One possibility, seeking a writ of *habeas corpus*, generally is "not the proper procedural device for petitioners" in Louisiana seeking "post-conviction relief" because *habeas* "deals with *preconviction* complaints concerning custody." *State ex rel. Bartie v. State*, 501 So. 2d 260, 263 (La. Ct. App. 1st Cir. 1986). "An application for post-conviction relief is a petition ... seeking to have the conviction and sentence set aside." *Id.* (emphasis removed); *see also* LA. CODE CRIM. PROC. art. 924. There are instances, however, when state

habeas does apply in a post-conviction setting in Louisiana when the applicant is not seeking to set aside his original sentence. *See Sinclair v. Kennedy*, 701 So. 2d 457, 460 (La. Ct. App. 1st Cir. 1997). Louisiana Code of Criminal Procedure Article 362(2) governs these cases, and it states *habeas* "relief shall be granted" if "[t]he original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful." *Id.*

A Louisiana intermediate court held that a state *habeas* application "is the proper ***807** mechanism" when "an inmate ... claims his initially lawful custody became unlawful due to the parole board's actions in denying him release on parole." *Sinclair v. Stalder*, 867 So. 2d at 744. That is similar to Galbraith's claim, though in *Sinclair* the prisoner's parole was denied while here the parole, already granted, was rescinded. That opinion is the most closely relevant authority cited to us. Although Galbraith is contesting the duration of his sentence and seeking a shorter confinement, he is neither challenging the validity of his original sentence nor seeking to have the sentence set aside. Instead, he is asserting that a lawful sentence has now become unlawful because the Parole Board had no authority to rescind his Certificate of Parole and then deny him release.

Galbraith did not pursue *habeas* relief, and the State argues he has failed to satisfy the need to exhaust state remedies before seeking relief in federal court. Galbraith argues he did not need to begin in state court because *Sinclair v. Stalder* held that even though state *habeas* is the proper procedure for a claim such as this, no relief can be granted. That court said "the fact that an action may be properly maintained as a petition for a writ of *habeas corpus* does not end the inquiry into whether a cause of action has been stated." *Id.* Because the parole statute provides only two bases to contest a parole board decision, the court held, any "[p]leadings challenging actions of the parole board other than [the two statutory reasons] should be dismissed." *Id.* The opinion also explains that the inmate failed to state a cause of action. As a result, Galbraith in essence is arguing that there were no "remedies available in the courts of the State." § 2254 (b)(1).

At times this court, and other circuit courts, have discussed availability in terms of futility. In one decision, we held that "exhaustion is not required if it would plainly be futile." *Morris v. Dretke*, 413 F.3d 484, 492 (5th Cir. 2005). We found futility when the state's highest court had recently decided the same legal issue adversely to the *habeas* applicant. *Fisher v. Texas*, 169 F.3d 295, 303 (5th Cir. 1999). Such a standard mirrors the level of clarity sister circuits require. *See* BRIAN R. MEANS, FEDERAL HABEAS MANUAL § 9C:53 (collecting cases).

Regardless of whether "futility" is the best terminology, Galbraith has failed to show there is no available state procedural remedy. We have already identified one distinction with *Sinclair*, namely, that the inmate there was denied parole — which the court said was entirely discretionary — while Galbraith's parole was first granted but then rescinded before he was released. Consequently, even if *Sinclair* expresses the manner in which all Louisiana courts would resolve a similar case, we do not see that reasoning to be clearly applicable here. In addition, Galbraith's one state intermediate court opinion does not suffice. In *Fisher*, we held there was clarity about the relevant state law because of a recent state supreme court opinion. No such

clarity exists here. Importantly, we agree with the observation by another panel of this court that if the uncertainty concerns a matter of state procedure and not the merits of an applicant's claims, even more respect is potentially due to the requirement to exhaust. *Berkley v. Quarterman*, 310 F. App'x 665, 671–72 (5th Cir. 2009).

Because Galbraith is "claiming he is entitled to *immediate release* under [Article] 362," he should have raised his challenge in a state *habeas* application in the appropriate state district court. *Madison v. Ward*, 825 So. 2d 1245, 1254 (La. Ct. App. 1st Cir. 2002) (*en banc*), *superseded by statute on other grounds*, Act No. 460, 2005 La. Acts 2174. Had he sought relief ***808** using Article 362(2), state courts would have resolved the legal issues he now raises with us. Under AEDPA, Galbraith was required to give state courts a chance before applying for federal *habeas* relief. Galbraith did not exhaust his available state court remedies and therefore is not entitled to federal *habeas* relief.

The petition for rehearing is GRANTED. The judgment of the district court is REVERSED and RENDER judgment for Respondent Hooper.

James L. Dennis, Circuit Judge, dissenting:
The majority says Galbraith did not exhaust his state remedies because, at least in theory, he could have filed a state *habeas* petition under Article 362(2) of the Louisiana Code of Criminal Procedure to challenge the Parole Committee's decision to rescind his parole grant. But whether Louisiana law permits such a challenge is an unresolved and contested question. The Louisiana Supreme Court has never addressed the scope of the state district courts' *habeas* jurisdiction in this precise context, and the state's intermediate appellate courts have reached conflicting results. In the absence of clear controlling authority, I would not undertake an *Erie* guess to settle this open question of state law as the majority does—particularly not in a way that forecloses federal *habeas* review. Moreover, even assuming Louisiana courts might entertain such a petition under their original jurisdiction, the district court below lacked the opportunity to address whether pursuing that remedy would have been futile under the circumstances of this case in the first instance. As an appellate court, we are bound to review questions decided below, not to decide in the first instance questions that were never passed upon.

I would therefore either certify the question to the Louisiana Supreme Court, or, in the alternative, vacate the district court's judgment and remand for consideration of the availability, adequacy, and futility of any state corrective process in the first instance. Because the majority concludes otherwise, I respectfully dissent.

* * *

The majority's exhaustion analysis turns on the interaction of Article 362(2) of the Louisiana Code of Criminal Procedure and Section 15:574.11(A) of the Louisiana Revised Statutes. Article 362(2)—a general provision about *habeas corpus*—provides a mechanism for relief to prisoners who file a writ of *habeas corpus* in state court challenging an order of custody when the original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful. Louisiana Revised Statute § 15:574.11(A)—a specific statute about the finality of parole committee

decisions—provides that "[p]arole ... rest[s] in the discretion of the committee on parole." To that end:

> No prisoner or parolee shall have a right of appeal from a decision of the committee regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole.

Id. Section 15:574.11(A) carves out one exception: a prisoner or parolee *does* have a right to appeal the parole committee's "denial of a revocation hearing under R.S. 15:574.9."[1] It is undisputed that this exception is inapplicable here.

***809** An "appeal" under § 15:574.11(A) refers to the state district court's "review of an administrative tribunal's action" and "is considered functionally to be an exercise of its appellate review jurisdiction." *Madison v. Ward*, 2000-2842 (La. App. 1 Cir. 7/3/02), 825 So. 2d 1245, 1250 n.7 (en banc) (citing *Loop, Inc. v. Collector of Revenue*, 523 So. 2d 201, 203 (La. 1987)), *superseded by statute on other grounds*, 2005 La. Acts, No. 460, § 1. The Louisiana Constitution confines the state district courts' exercise of appellate jurisdiction to that which is specifically authorized by statute. LA. CONST. ANN. art. V, § 16(B); *Loop, Inc.*, 523 So. 2d at 203. As such, "[a] litigant seeking judicial review of administrative action in a district court must establish that there is a statute which gives subject matter jurisdiction to that court." *Loop, Inc.*, 523 So. 2d at 203. And where the governing statute prescribes a particular procedure for obtaining judicial review, that procedure must be followed; jurisdiction cannot be invoked "unless there can be found within the act a genuine legislative intent to authorize judicial review by other means." *Id.* (citing *Corbello v. Sutton*, 446 So. 2d 301, 302 (La. 1984)). Section 15:574.11(A) expressly limits appellate jurisdiction over decisions of the parole committee to those arising from the denial of a revocation hearing under LA. R.S. § 15:574.9. This suggests that state district courts lack subject matter jurisdiction to consider any challenge to parole committee decisions other than those concerning the "denial of a revocation hearing under R.S. 15:574.9." LA. R.S. § 15:574.11(A); *see also Madison*, 825 So. 2d at 1250 n.7.

The district court below concluded that Galbraith could not obtain redress in state court because § 15:574.11(A) "effectively deprived [Galbraith] of a procedure to challenge the actions of the Parole [Committee] in rescinding his parole." The majority agrees that § 15:574.11(A) bars appellate review of parole committee decisions but nevertheless holds that Galbraith could have pursued his claim through a state *habeas* petition under Article 362(2). *Ante*, at 806-07. This conclusion necessarily assumes that state district courts possess original jurisdiction to hear *habeas* petitions challenging any parole committee decision. Yet, the Louisiana Supreme Court has never resolved this jurisdictional question and, contrary to the majority's analysis, state intermediate appellate courts are divided on whether Article 362(2) provides a viable means of relief in this context.

The majority's holding turns on one line of cases that permits state *habeas* petitions challenging parole committee decisions but dismiss those failing to allege the denial of a revocation hearing under § 15:574.9 (again, the sole exception to § 15:574.11(A)'s general prohibition) as failing to state a cause of action. *Ante*, at 805-07. For example, in *Sinclair v. Kennedy*, 96-1510 (La. App. 1st Cir. 9/19/97), 701 So. 2d 457, 461–62, the Louisiana First Circuit Court of Appeal considered a prisoner's *habeas* petition claiming he was wrongfully denied parole despite satisfying all eligibility criteria and, thus, was entitled to immediate release. Because the prisoner did not contest the validity of his underlying conviction or sentence, but instead "claim[ed] his initially lawful custody became unlawful due to the parole [committee]'s actions in denying him release on parole," *habeas* was an available remedy. *Id.* at 462. Nevertheless, *Kennedy* ruled that the prisoner failed to state a cause of action allowing for *habeas* relief because ****810*** merely qualifying for parole did not entitle him to immediate release. [2] *Id.*

Later, in *Sinclair v. Stalder*, 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So. 2d 743, the First Circuit again considered a prisoner's *habeas* petition seeking review of the parole committee's decision denying him parole. Citing *Kennedy*, the court agreed that a *habeas* petition "is the proper mechanism for an inmate who claims his initially lawful custody became unlawful due to the parole [committee]'s actions in denying him release on parole." *Id.* at 744. However, the court ruled that the prisoner's petition failed to state a cause of action because the "parole statutes do not create an expectancy of release or liberty interest." *Id.* (citing *Bosworth v. Whitley*, 627 So.2d 629, 633 (La. 1993)). [3]

A more recent line of cases, however, suggest the specific limitations of § 15:574.11(A) broadly prohibits state district courts from considering any challenge to a parole committee decision—via *habeas* or otherwise—unless the prisoner or parolee alleges they were denied a revocation hearing under § 15:574.9. In other words, § 15:574.11(A) is a specific statutory exception to general state *habeas* relief. Beginning with *Madison v. Ward*, 825 So. 2d at 1250 n.7, the Louisiana First Circuit Court of Appeal sitting en banc revisited its approach to reviewing parole decisions in light of a growing number of prior First Circuit rulings that had permitted post-conviction *habeas* relief in such cases. The court explained that Louisiana "jurisprudence has not satisfactorily addressed the appropriate procedure for challenges to actions of the Board of Parole." *Id.* The threshold question *Madison* considered was *what* parole committee actions may be challenged:

> We find the clear meaning of La. R.S. 15:574.11(A) is that there shall be no appeal of decisions of the [committee] unless the procedural due process protections specifically afforded by the hearing provisions of La. R.S. 15:574.9 are violated. *See Smith v. Dunn*, 263 La. 599, 268 So.2d 670, 671 (1972). Thus, for example, challenges to the [committee]'s denial of parole, revocation of parole, refusal to consider an inmate for parole, or imposition of parole conditions would not be subject to appeal. This statement is consistent with *Bosworth v. Whitley*, 627 So.2d 629, 633 (La. 1993), which cites United States Supreme Court decisions holding that the existence of a parole system does not by itself give rise to a constitutionally protected liberty interest and that laws or regulations providing that a parole [committee] "may" release an inmate on parole

have not been found to give rise to that interest; *Bosworth* goes on to say that "the Parole [Committee] has full discretion ***811** when passing on applications for early release." *Bosworth*, 627 So.2d at 633.

Id. It follows, *Madison* observed, that "[o]nly where it is alleged that the hearing provisions of La. R.S. 15:574.9 were violated is appeal allowed." *Id.*

Madison then turned to the question of "*how* such appeal is to be accomplished" under § 15:574.11. *Id.* (emphasis added). For example, it reaffirmed that parole decisions are not subject to review under the Louisiana Administrative Procedure Act. *Id.* (citing *Smith v. Dunn*, 263 La. 599, 268 So. 2d 670, 671–72 (1972) ("[T]he special provisions in Title 15 creating the Board of Parole and setting out its powers and duties are not complementary or supplementary to the general administrative rules of procedure.")). The court then sharply limited the scope of all other possible procedural avenues, holding that "pleadings challenging actions of the parole [committee] other than failure to act in accordance with La. R.S. 15:574.9, *whether styled as writs of habeas corpus or captioned in some other fashion*, should be dismissed by the district court." *Id.* (emphasis added). By contrast, only "[p]leadings alleging a denial of a revocation hearing under La. R.S. 15:574.9, however styled," were to be "reviewed on the merits by the district court." *Id.* In adopting this restrictive procedural rule, the *Madison* court abrogated all prior First Circuit jurisprudence "considering challenges to parole [committee] actions in a manner other than that outlined" in its opinion, noting that such decisions "are without precedential effect to the extent [they are] inconsistent with the procedure we adopt today." *Id.* This broad repudiation of earlier authority reasonably extends to the portions of *Kennedy*, 701 So. 2d at 462, upon which *Stalder*, 867 So. 2d at 744, and now the majority relies upon to support the availability of state *habeas* review. In substance, *Madison*'s procedural holding did not merely define the method of review—it functionally eliminated state *habeas* petitions as a viable remedy for challenging parole committee actions outside the narrow confines of § 15:574.9.

More recent, albeit unpublished, decisions from the Louisiana First Circuit Court of Appeal reflect a consistent trend of dismissing state *habeas* petitions that challenge parole committee decisions unrelated to the denial of a revocation hearing, citing a lack of jurisdiction. In *Boston v. Jones*, 2009-1778 (La. App. 1 Cir. 6/4/10), 2010 WL 2844344, the court rejected a *habeas* petition filed by a parolee alleging procedural violations during the revocation process. The court explained that "[t]o properly assert [a] right of review of the [committee]'s decision, a parolee is required to file a petition for judicial review in a district court, alleging that his right to a revocation hearing was denied ...." *Id.* at *1 (citing *Leach v. La. Parole Bd.*, 2007-0848 (La. App. 1 Cir. 6/6/08), 991 So. 2d 1120). Because the parolee had instead filed a *habeas* petition claiming his confinement was unlawful, the court was "unable to consider the propriety of the [committee]'s decision or the validity of the inmate's waiver of the final parole revocation hearing."[4] *Id.* Similarly, in *Gatson v. La. Dep't of Pub. Safety & Corr.*, 2014-1127 (La. App. 1 Cir. 3/6/15), 2015 WL 997222, the court dismissed a *habeas* petition challenging the revocation of parole where the petitioner conceded that a revocation hearing had been held. Because the claim did ***812** not concern the denial of a hearing, the court held it "was not

properly a claim for *habeas corpus* relief under Article 362," and affirmed the district court's conclusion that it "lacked subject matter jurisdiction over appellant's challenge of the Parole [Committee]'s decision to revoke his parole." *Id.* at *2–3. These cases cast further doubt on the viability of state *habeas* petitions as an accepted means of challenging parole committee decisions under *Kennedy*, 701 So. 2d at 462 and *Stalder*, 867 So. 2d at 744.

At most, then, Louisiana intermediate appellate courts offer uncertain and inconsistent support for the majority's conclusion that Galbraith could have pursued his challenge through a state *habeas* petition. And the Louisiana Supreme Court has not weighed in at all. True enough, Galbraith's claim tracks the language of Article 362(2) in a general sense: he alleges his "original custody was lawful" but contends that the parole committee's subsequent "act" of rescinding his parole rendered his continued confinement "unlawful." LA. CODE CRIM. PRO. art. 362(2); *Kennedy*, 701 So. 2d at 462; *Stalder*, 867 So. 2d at 744. But a growing body of Louisiana caselaw casts serious doubt on whether state district courts may entertain *habeas* petitions (or any other pleadings) challenging parole committee decisions outside the narrow confines of La. R.S. 15:574.9 under either their original or appellate jurisdiction. *See, e.g., Madison*, 825 So. 2d at 1250 n.7; *accord Leach*, 991 So. 2d at 1125; *Gatson*, 2015 WL 997222 at *2–3. To speak authoritatively on the availability of a state *habeas* remedy here would be, at best, a jurisprudential gamble. *Compare Galbraith v. Hooper*, 85 F.4th 273, 284 (5th Cir. 2023) (finding no available state *habeas* remedy because Galbraith's claim did not fall within the jurisdictional bounds of § 15:574.11), *op. withdrawn*, No. 22-30159, 2024 WL 1170026 (5th Cir. Mar. 19, 2024), *with ante*, at 807-08 (holding that Galbraith could have brought his claim in a state *habeas* application).

Even more troubling, the majority makes its *Erie* guess without the benefit of a considered judgment from the district court. The district court did not analyze whether Louisiana state district courts possess original jurisdiction to hear a *habeas* petition under Article 362 in this context. And understandably so: neither party raised it below, nor has either meaningfully briefed it on appeal. "[M]indful that we are a court of review, not of first view," judicial humility cautions against "seek[ing] out alternative grounds" to deny relief—especially where those grounds were neither addressed by the district court nor developed by the parties. *Rutila v. Dep't of Transp.*, 12 F.4th 509, 511 n.3 (5th Cir. 2021) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005)). "[R]ather than decide these heady questions ourselves without the benefit of any considered judgment below," our well-established practice is to vacate and remand to allow the district court to consider the issue in the first instance. *See, e.g., Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 957 (5th Cir. 2024); *Arnesen v. Raimondo*, 115 F.4th 410, 414 (5th Cir. 2024); *Montano v. Texas*, 867 F.3d 540, 546 (5th Cir. 2017).

The majority nevertheless forges ahead with a significant departure from our prior opinion's exhaustion analysis—despite the serious due process violation we recognized there—without the benefit of a district court ruling and relying on nothing more than an *Erie* guess. Instead of guessing, I would either certify the question to the Louisiana Supreme Court or, in the alternative, remand for our capable district court colleague to weigh in

first. [5]

***813** Because the majority provides no answer to the concerns I have raised, I respectfully dissent.

All Citations

151 F.4th 795

Footnotes

1 Galbraith's Application for Parole is undated, but other documents in the application reflect dates of early-to-mid 2016.

2 The statute was amended in March 2018 to require 90-days' notice and to require notice to any person who has filed a victim notice and registration form. *See* LA. ADMIN. CODE tit. 22, pt. XI, § 510(B) (eff. Mar. 2018 to Dec. 2018). Victim notification errors were not a permissible basis, at least explicitly, for rescission of parole until the code was amended in August 2019. *Compare* LA. ADMIN. CODE tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019), *with* LA. ADMIN. CODE tit. 22, pt. XI, § 504(K) (eff. Aug. 2019 to Jan. 2020).

3 In one of the November 30 letters, Skinner attached a report by retired chief detective, Martin Hilton, who relayed his opinion that Galbraith may be responsible for two cold-case murders in Vernon Parish. Galbraith was never charged with either of these murders, and there is no evidence in the record connecting him to the two victims.

4 As we have already explained, the Parole Board was required to provide 30 days' notice of the hearing, and timely notice was given for the November 2016 hearing. There is no suggestion or record that McWilliams requested notification, and she was not required to be notified under the statute in effect at the time. *See supra* n.2.

5 Galbraith's argument relies on a prior version of Louisiana's Administration Code that was effective until August 2019. *See* LA. ADMIN. CODE tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019). The relevant section has been amended five times since Galbraith's proceedings began. *See* La. Admin. Code tit. 22, pt. XI, § 504 (historical notes). Under the prior version, the Parole Board did not have explicit statutory authority to rescind Galbraith's parole grant for errors regarding victim notification. At the time, the only permissible bases for rescission were (1) violation of the terms of work release, and (2) misconduct prior to release, and upon rescission, the parolee would promptly receive a new parole hearing. LA. ADMIN. CODE tit. 22, pt. XI § 504(K) (eff. Jan. 2015 to Aug. 2019). Victim notification errors were not a permissible basis for parole rescission until August 2019. LA. ADMIN. CODE tit. 22, pt. XI, § 504(K)(2) (eff. Aug. 2019 to Jan. 2020). We will use the law that was in effect at the time of Galbraith's filings.

1 Section 15:574.9(A) entitles a parolee, upon his return to the custody of the Department of Public Safety and Corrections, to a hearing before the parole committee "to determine whether his parole should be revoked, unless said hearing is expressly waived in writing by the parolee." Section 15:574.9(B)–(H) sets forth, *inter alia*, the hearing procedure and the standard by which the parole committee may revoke parole.

2 *Kennedy*'s holding relied heavily on *State ex rel. Bartie v. State*, 501 So. 2d 260 (La. Ct. App. 1986), a case involving a prisoner's *habeas* claim that the Louisiana Department of Public Safety and Corrections had miscalculated his time served and that, upon proper calculation, he was entitled to immediate release. *Bartie* found that such an action should be categorized as a post-conviction *habeas corpus* action because the prisoner did not "contest the validity of his conviction or sentence[.]" *Id.* at 263. Critically, *Bartie* did not squarely address whether *habeas* relief was available when challenging a decision of the parole committee. *See Madison*, 825 So. 2d 1245, 1250 n.7.

3 *Stalder* seemed to observe the tension between § 15:574.11(A) and Article 362(2) but made no effort to resolve it. Because the petitioner sought review of a parole committee decision beyond the scope of § 15:574.9, the court found "no statutory basis for [the petitioner] to seek review" of that decision. *Id.* Despite this, the court evaluated the merits of the *habeas* petition by applying *Kennedy*'s reasoning that a *habeas* petition is permissible to challenge the parole committee's actions in denying release on parole. *Id.*

4 Like *Boston*, some First Circuit decisions have suggested that a petition for judicial review is the exclusive avenue to challenge parole committee decisions. *See, e.g., Moore v. La. Parole Bd.*, 2022-1278 (La. App. 1 Cir. 6/2/23), 369 So. 3d 415, 418 (citation omitted); *Williams v. La. Dep't of Pub. Safety & Corr.*, 2023-1235 (La. App. 1 Cir. 6/27/24), 2024 WL 3198974 at *2–3.

5 I do not view the majority opinion to conclude that Galbraith's petition was untimely because it acknowledges but does not resolve the district court's timeliness ruling. *Ante*, at ---- ("We need not decide this issue because of our holding in the following section."). Lest there be any doubt, I would find Galbraith's petition timely for the reasons stated by the district court.

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APPENDIX B

2024 WL 1170026
Only the Westlaw citation is currently available.
United States Court of Appeals, Fifth Circuit,
OFFICE OF THE CLERK.

Galbraith
v.
Hooper

No. 22-30159
Filed: 03/19/2024

USDC No. 3:19-CV-181

Opinion

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MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

The court has taken the following action in this case:

The published opinion filed on October 23, 2023, is hereby WITHDRAWN. A new opinion will be substituted at a later date.

Sincerely,

LYLE W. CAYCE, Clerk

By:

Whitney M. Jett, Deputy Clerk

504-310-7772

Mr. John Taylor Gray

Mr. Michael L. McConnell

Mr. Nicholas Joseph Trenticosta

Mr. Christopher Neal Walters

Mr. Grant Lloyd Willis

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APPENDIX C

85 F.4th 273
United States Court of Appeals, Fifth Circuit.

Samuel GALBRAITH, Petitioner—Appellee,

v.

Tim HOOPER, Warden, Louisiana State Penitentiary, Respondent —Appellant.

No. 22-30159
FILED October 23, 2023

Synopsis

Background: State prisoner filed petition for writ of habeas corpus seeking to have his parole reinstated on ground that its rescission just prior to its effective date violated his due process rights. The United States District Court for the Middle District of Louisiana, John W. deGravelles, J., 2022 WL 907142, adopted report and recommendation of Erin Wilder-Doomes, United States Magistrate Judge, 2022 WL 943144, and granted petition, and Board appealed.

Holdings: The Court of Appeals, Southwick, Circuit Judge, held that:
1 prisoner's challenge to revocation of his parole was properly brought as § 2241 habeas petition;
2 prisoner was not required to exhaust his state remedies before seeking federal habeas relief; and
3 parole board violated prisoner's procedural due process rights when it rescinded his parole because of alleged problem with notice to victim.

Affirmed.
Appellate ReviewPost-Conviction Review

West Headnotes (12)

Change View

1 **Habeas Corpus** Review de novo
Habeas Corpus Clear error
In habeas corpus appeal, Court of Appeals reviews district court's findings of fact for clear error and its conclusions of law de novo.

2 **Habeas Corpus** Purpose and Use of Writ
Habeas Corpus Other objectives; damages, etc
When state prisoners contest their custody and seek to obtain release, appropriate procedure is to file § 2254 habeas application, but if prisoner instead is contesting execution of his sentence, § 2241 is relevant statute. 28 U.S.C.A. §§ 2241, 2254.

3 **Habeas Corpus** ⚿ Revocation

State prisoner's challenge to revocation of his parole was properly brought as habeas petition under § 2241, rather than as § 1983 action or § 2254 habeas petition. 28 U.S.C.A. §§ 2241, 2254; 42 U.S.C.A. § 1983.

5 Cases that cite this headnote

4 **Habeas Corpus** ⚿ Review de novo

Whether federal habeas petitioner has exhausted state remedies is question of law reviewed de novo. 28 U.S.C.A. § 2241.

5 **Habeas Corpus** ⚿ Comity or jurisdiction

Requirement that federal habeas petitioner exhaust state remedies is not jurisdictional, but reflects policy of federal-state comity designed to give state initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights. 28 U.S.C.A. § 2241.

6 **Habeas Corpus** ⚿ Availability and Effectiveness of State Remedies

For purposes of federal habeas statute's exhaustion requirement, prisoner's state remedy must be adequate and available. 28 U.S.C.A. § 2254(b).

7 **Habeas Corpus** ⚿ Availability and Effectiveness of State Remedies

Louisiana prisoner did not have adequate and available state remedy or corrective process that would have allowed him to assert in state court claim that state parole board's rescission of his parole two days before his release date violated due process, and thus prisoner was not required to exhaust his state remedies before seeking federal habeas relief; Louisiana's parole statutes did not allow for appeal of parole board actions except for denial of revocation hearing, prisoner's administrative grievance was rejected on ground that Board's decisions "are d[i]scretionary and may not be challenged," and passage of release date was necessary event for invoking state court jurisdiction. U.S. Const. Amend. 14; 28 U.S.C.A. §§ 2241, 2254(b); La. Rev. Stat. Ann. § 15:574.11(A).

2 Cases that cite this headnote

8 **Constitutional Law** ⚿ Rights, Interests, Benefits, or Privileges Involved in General

Those seeking to invoke Fourteenth Amendment's procedural protection must establish that life, liberty, or property is at stake. U.S. Const. Amend. 14.

9 **Constitutional Law** ⚿ Liberties and liberty interests

Liberty interest protected by Due Process Clause may arise from Constitution itself, by reason of guarantees implicit in word "liberty," or it may arise from expectation or interest created by state laws or policies. U.S. Const. Amend. 14.

10 Constitutional Law Arbitrariness

Purpose of due process protection is to shield person against arbitrary action of government. U.S. Const. Amend. 14.

11 Constitutional Law Parole

Pardon and Parole Parole as right or privilege

There is no constitutional or inherent right to parole, but once state grants prisoner conditional liberty properly dependent on observance of special parole restrictions, due process protections attach to decision to revoke parole. U.S. Const. Amend. 14.

12 Constitutional Law Parole

Pardon and Parole Grounds for Revocation; Defenses

Pardon and Parole Procedure for Revocation

Louisiana law created liberty interest protecting prisoner from rescission of his parole once granted for any reason other than for violation of terms of work release or for misconduct, even though Louisiana's parole statutes did not create liberty interest in granting of parole, and thus Louisiana parole board violated prisoner's procedural due process rights when it rescinded his parole because of alleged problem with notice to victim. U.S. Const. Amend. 14; La. Rev. Stat. Ann. § 15:574.11(A); La. Admin. Code tit. 22, pt. XI, § 504(K).

2 Cases that cite this headnote

***275** Appeal from the United States District Court for the Middle District of Louisiana, USDC No. 3:19-CV-181, John W. deGravelles, U.S. District Judge

Attorneys and Law Firms

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Before Stewart, Dennis, and Southwick, Circuit Judges.

Opinion

Leslie H. Southwick, Circuit Judge:

Samuel Galbraith, a Louisiana prisoner, sued the Louisiana Board of Pardons and Parole ("Parole Board"), seeking to have his parole reinstated on the grounds that its rescission just prior to its effective date violated his due

process rights. The district court agreed with Galbraith and ordered his release on parole within 30 days, subject to the original conditions of his parole. On appeal, the Parole Board's arguments include that there is no constitutionally protected liberty interest in parole. Based on Louisiana's parole statutes, we hold that, on the facts of this case, a liberty interest did arise. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2000, Samuel K. Galbraith pled guilty to the manslaughter and attempted aggravated rape of Karen Hill in November 1988. He was sentenced to 71 years at hard labor. In November 2000, James Hill, who is the victim's surviving husband, completed a "Louisiana Department of Public Safety and Corrections Victim/Witness Notification Request Form." The form required the Parole Board to notify the named person when a parole hearing was granted for a specified inmate. The record does not contain a similar form from anyone else that requested notice regarding Galbraith's potential parole.

In the spring of 2016, [1] Galbraith filed an Application for Parole. His first possible parole eligibility date was April 23, 2017. The Parole Board set Galbraith's hearing for October 13, 2016, and sent notification ***276** letters on July 7, 2016, to Hill and Jessie McWilliams, Karen Hill's mother, advising them of their right to appear and present testimony at the parole hearing. McWilliams's letter was erroneously addressed to a post office box in Albany, New York, instead of to the same-numbered post office box in Albany, Illinois. On September 14, 2016, Galbraith's attorney requested a continuance of the October hearing until November 3, 2016, which was granted. The Parole Board sent notification letters to Hill and McWilliams on September 28, 2016, this time to their correct addresses, reflecting the new November hearing date. At this time, the Louisiana Administrative Code required notification 30 days prior to the parole hearing to be sent to "[t]he victim, spouse, or next of kin of a deceased victim." LA. ADMIN. CODE, tit. 22, Pt XI, § 510(B) (eff. Aug. 2013 to Mar. 2018). [2] Thus, the Parole Board was required to give notice only to Hill as the surviving husband. The Parole Board did so.

A pre-parole investigation report was prepared. The report contained statements from Hill, McWilliams, the Vernon Parish District Attorney's Office, the Vernon Parish Sheriff's Office, and the Vernon Parish sentencing judge. They all opposed parole. At Galbraith's parole hearing, a three-member panel of the Parole Board heard testimony or statements from those opposed to his early release. That Board also heard from Galbraith's family members, who supported his parole. Galbraith was represented by counsel at the hearing. The Parole Board panel unanimously voted to grant parole to Galbraith with a scheduled release date of April 23, 2017, and with a list of specific conditions during his parole term. The Certificate of Parole showed that Galbraith would reside in Aransas Pass, Texas, and would be subject to the authority of a parole office in Corpus Christi, Texas.

Neither Hill nor McWilliams attended the hearing, but each provided a written statement or testimony. Both were contacted directly by someone from the Department of Corrections after the hearing and were notified of the decision.

After parole was granted, Vernon Parish District Attorney Asa Skinner filed a request for reconsideration of the parole board's decision. He sent request letters on November 15, 2016, November 30, 2016,[3] and January 9, 2017. In February 2017, the Parole Board denied Skinner's request for reconsideration, explaining that "[t]he panel voted unanimously to grant parole ... after serious and thorough consideration" and "[t]he board's policy provides for a reconsideration review only in [limited] circumstances," none of which were applicable in Galbraith's case. Skinner and McWilliams aired their displeasure to the press, leading to negative reports that appeared in the news regarding Galbraith's imminent parole.

In early April 2017, the Parole Board and the Department of Corrections made final preparations for Galbraith's release. ***277** On April 10, 2017, Parole Board member Mary Fuentes sent an email to the Deputy Executive Counsel to Louisiana Governor John Bel Edwards. She referred to a news story regarding Galbraith's release that would air on April 13. Her concern was that the story could impact criminal justice legislation that was desired by the governor. Two days later, a single Parole Board member, Sheryl Ranatza, added electronic monitoring as a condition of Galbraith's parole. On April 20, 2017, the Parole Board received notice from Texas that the new condition of parole was accepted, and Ranatza signed and issued a Certificate of Parole with a release date of April 23, 2017.

On April 21, 2017, an email exchange occurred between Special Counsel of the Louisiana Governor's Legislative Staff and a lobbyist with Top Drawer Strategies, LLC. Both expressed concern about the negative media reports regarding Galbraith's release and potential impact on the success of the pending criminal justice reform legislation. The news report referenced in that email exchange included details about interviews with McWilliams, who stated her victim notification letter was sent to the wrong mailing address, and with Skinner, who claimed Galbraith was responsible for two other cold-case murders in Vernon Parish.

On April 21, the same day as this email exchange, Galbraith's parole hearing docket record stated: "Rescind Pending Per Mary F," *i.e.*, board member Mary Fuentes. That day, a single Parole Board member, Jim Wise, filled in a "Parole Board Action Sheet" that rescinded Galbraith's parole based on this reason: "Other [-] There may have been tech[n]ical irregularity to victim notice."

Galbraith was not released. In a letter dated May 1, the Parole Board officially notified him of the rescission, awkwardly repeating the phrasing of the Parole Board Action Sheet:

> This correspondence is to advise you that the Parole Board has voted to rescind the parole granted at your original parole hearing.
>
> This action was taken due to the following:
>
> We have been advised that Other.
>
> There may have been technical irregularities notifying the victim's family.
>
> You will be scheduled for another hearing on 08/03/2017.

There is no evidence that the Parole Board took any action to rescind parole

beyond the single board member's signature on the rescission form. The Parole Board later issued a press release announcing the decision to rescind. It explained that, even though McWilliams received notice of the November hearing and provided a statement for its consideration, the Board was rescheduling the parole hearing "because of the apparent procedural error which occurred with the initial victim notification."[4]

In May 2017, Galbraith filed an administrative grievance, which was rejected on the ground that the Parole Board's decision was discretionary and could not be challenged. In June 2017, Galbraith's counsel sent a letter (1) contesting the decision to rescind for failure to adhere to Parole Board policy, (2) contesting the factual basis of the alleged technicality that occurred with the victim notice, and (3) advising the ***278** Parole Board that neither of the two permissible reasons for rescission of parole applied in his case. In July 2017, Galbraith, through counsel, withdrew from parole consideration for the reasons stated in his attorney's June letter.

On July 26, 2017, counsel for Galbraith filed a 42 U.S.C. § 1983 complaint in the Middle District of Louisiana challenging the Parole Board's rescission of his parole. He sought reinstatement of his parole and immediate release from prison. A year and a half later, the Parole Board filed a motion for summary judgment in which it argued Galbraith's exclusive remedy to seek release from custody was through a writ of *habeas corpus.*

On March 27, 2019, counsel for Galbraith filed a 28 U.S.C. § 2241 application, naming the warden of the prison as the defendant. We will refer to the defendant as the State since the warden was sued in his official capacity. Stating that it was due to the common legal issues, the district court stayed and administratively closed the Section 1983 proceedings pending resolution of the Section 2241 application. In its answer to Galbraith's Section 2241 application, the State argued Galbraith failed to exhaust his available state court remedies, his application was time-barred, and his claim lacked merit because the Parole Board's rescission did not infringe any constitutionally protected liberty interest.

In a March 9, 2022, Report and Recommendation, the magistrate judge determined:

(1) Galbraith was not required to exhaust his claims because Louisiana's statutory scheme did not permit him to challenge the Parole Board's rescission under these circumstances;

(2) It was not clear if Galbraith's Section 2241 petition was subject to a limitations period;

(3) Even if a one-year limitations period was applicable, Galbraith filed a Section 1983 complaint within that time period seeking *habeas corpus* relief;

(4) Although Galbraith did not have a liberty interest in the granting of parole, there was a state-created liberty interest at issue here because the Parole Board regulations in effect at the time permitted rescission of a parole grant only in two circumstances, neither of which was applicable to Galbraith's situation;

(5) Galbraith was therefore entitled to notice and a meaningful opportunity to be heard prior to rescission of his parole grant, but he received neither; and

(6) A remand to the Parole Board to conduct a rescission hearing would be futile because neither permissible basis for rescission was applicable.

The magistrate judge recommended granting Galbraith's *habeas* application and ordering his release on parole within 30 days, subject to the original conditions of his parole as granted on November 3, 2016. The State filed objections. On March 28, 2022, the district court granted Galbraith's *habeas corpus* application "for the reasons set forth in the Magistrate Judge's Report." The State filed a timely notice of appeal. We granted an unopposed motion to stay the district court's judgment and release order, pending appeal.

On appeal, the State argues the district court erred in its holding that (1) Galbraith was not required to exhaust state remedies, (2) Galbraith's application was not time-barred, and (3) Galbraith had a protected liberty interest in his parole grant prior to release.

***279** DISCUSSION

1 "In a *habeas corpus* appeal, we review the district court's findings of fact for clear error and its conclusions of law *de novo*." *Reeder v. Vannoy*, 978 F.3d 272, 276 (5th Cir. 2020) (citation omitted).

We first review the district court's legal conclusion about the often-difficult issue of the proper statutory vehicle for a prisoner's claim. Different procedural hurdles apply depending on that decision. We then turn to the State's three arguments about reversible error in the district court's rulings.

I. Habeas corpus application or Civil Rights suit?

2 Section 2241 is a general statute permitting district courts to grant writs of *habeas corpus* to individuals who are in custody under the authority of either federal law or a state court judgment, while Section 2254 limits district courts' authority when considering *habeas* relief for state prisoners. *See Hartfield v. Osborne*, 808 F.3d 1066, 1071–73 (5th Cir. 2015). When state prisoners contest their custody and seek to obtain release, the appropriate procedure is to file a Section 2254 application. *Id.* Significant limitations apply to the right to relief under that section. *See* 28 U.S.C. § 2254(a)–(i). If the prisoner instead is contesting the "execution" of his sentence, Section 2241 is the relevant statute. *See Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000). Another expression of Section 2241's applicability is that it is for challenges to "the manner in which a sentence is carried out or the prison authorities' determination of its duration." *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000).

"[Section] 2254 is not an independent avenue through which petitioners may pursue *habeas* relief." *Hartfield*, 808 F.3d at 1073. "Instead, all *habeas* petitions ... are brought under [Section] 2241, and [Section] 2254 places additional limits on a federal court's ability to grant relief if the petitioner is being held in custody 'pursuant to the judgment of a State court.' " *Topletz v. Skinner*, 7 F.4th 284, 294 (5th Cir. 2021) (quoting § 2254(a)). Among those limitations is that the application "by a person in custody pursuant to the judgment of a State court" must be filed within one year of different

events; relevant here is "the date on which the factual predicate of the claim" was or could have been discovered. 28 U.S.C. § 2244(d)(1)(D).

Galbraith is in custody due to a state court judgment and seeks his release by requesting the court to reinstate his parole grant. He argues the one-year limitation period is inapplicable. That is because his rights allegedly were violated when the Parole Board did not hold a hearing prior to the rescission of his parole grant, and that means he is challenging "the manner in which [his] sentence is carried out or the prison authorities' determination of its duration." *Pack*, 218 F.3d at 451.

Three possible vehicles for Galbraith's claim have been proposed: a civil rights suit under Section 1983, or a *habeas* application under either Section 2241 or Section 2254.

We start with Section 1983. A helpful precedent concerned a Section 1983 suit in which two state prisoners claimed that state authorities had violated the *Ex Post Facto* and Due Process Clauses of the Constitution. *See Wilkinson v. Dotson*, 544 U.S. 74, 76–77, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005). The violation allegedly arose when officials applied new, harsher guidelines for determining parole to prisoners whose crimes had been committed when less-demanding guidelines were used. *Id.* The plaintiff prisoners had been considered for parole under the harsher guidelines, were denied parole, and then deemed ***280** ineligible to seek parole again for five years. *Id.* The plaintiffs wanted immediate parole hearings under the prior guidelines. *Id.* at 77, 125 S.Ct. 1242. The Court held that the constitutional claims were properly brought using Section 1983. *Id.* at 76, 125 S.Ct. 1242. The Court rejected the argument that "the prisoners' lawsuits, in effect, collaterally attack the *duration* of their confinement; hence, such a claim may only be brought through a *habeas corpus* action." *Id.* at 78, 125 S.Ct. 1242 (emphasis in original). "A consideration of this Court's case law makes clear that the connection between the constitutionality of the prisoners' parole proceedings and release from confinement is too tenuous here to achieve Ohio's legal door-closing objective." *Id.*

Galbraith, though, is not seeking a new hearing. He insists the parole he earlier received was improperly rescinded and should again be reinstated. He brings a direct and immediate claim about the duration of his confinement, without the contingency that existed in *Dotson* that a new hearing might not grant parole. *Habeas* is the proper procedure here.

We now examine the *habeas* application Galbraith eventually did file under Section 2241. The State argues that the one-year statute of limitations that is set out in 28 U.S.C. § 2244(d) applies. The district court disagreed, holding that Galbraith's challenge to the rescission of his parole was properly brought under Section 2241 (which has no statute of limitations) because it raised issues of "the manner in which a sentence [was] carried out," quoting *Pack*, 218 F.3d 448. Parole was not involved in *Pack*, though, so it does not directly answer whether parole fits within the category of "carrying out" a sentence.

So, how do we categorize this claim? Does Section 2254 apply to a challenge to the validity or length of the original sentence but not to disputes about whether the sentence has ended or been shortened by

subsequent events? In other words, is Section 2254 inapplicable to challenges like Galbraith's to the execution of a sentence? A treatise on federal *habeas* procedures supports our characterization of Galbraith's claim as one that is about the "execution" of his sentence. *See Tolliver*, 211 F.3d at 877. The treatise concluded that challenges to the denial of federal parole are properly brought under Section 2241. BRIAN R. MEANS, FED. HABEAS MANUAL § 1:29, at 47 (2023) (quoting *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001)). That treatise accepts that denial of parole is an act relating to the execution of the sentence.

The treatise continues:

> All courts agree that [Section] 2241 is an appropriate vehicle to challenge government action that inevitably affects the duration of the petitioner's custody, such as challenges to administrative orders revoking good-time credits, computation of a prisoner's sentence by prison officials, a right to release on parole, or other equivalent sentence-shortening devices.

Id. at 48.

While Galbraith is a state prisoner and the above treatise concerns federal prisoners, our circuit has extended the same reasoning that challenges to parole revocations sound under Section 2241 to state prisoners. Generally unpublished opinions offer no precedential weight, but, in this circuit, unpublished opinions issued prior to January 1, 1996, are precedential. 5th Cir. R. 47.5.3. The district court cited one such opinion. *See Richie v. Scott*, 70 F.3d 1269 (5th Cir. 1995) (unpublished but precedential under Fifth Cir. Local R. 47.5.3). In *Richie*, we rejected the district court's determination that the prisoner had to bring his claim under Section 2254, finding ****281*** that a challenge to the revocation of parole should be brought under Section 2241. *Id.* at *1 (citing *Rome v. Kyle*, 42 F.3d 640 (5th Cir. 1994) (unpublished); *Johnson v. Scott*, 56 F.3d 1385 (5th Cir. 1995) (unpublished)). If the party is not contesting the legality or validity of the sentence, Section 2254 is inapplicable. *Id.*

In another case, the *Johnson* panel rejected the state's invitation to allow parole revocation challenges under either Section 2241 or 2254. *Johnson*, 56 F.3d at *1. Rather, it acknowledged that "[o]n numerous occasion ... this court has construed a habeas petition challenging the revocation of parole as one arising exclusively under" Section 2241, and it ruled accordingly. *Id.* (citations omitted). Another panel found that the district court "improperly characterized [the defendant's] petition as arising under Section 2254" when it was not contesting the legality or validity of the sentence. *Rome*, 42 F.3d at *2. It concluded that a petition must be construed under Section 2241 when it "is contesting the manner in which [the] sentence is being executed." *Id.*

3 Based on this precedent, we conclude that such a claim as Galbraith's should indeed be defined as a dispute about how a "sentence is carried out." *See Pack*, 218 F.3d at 451. Galbraith's challenge to the revocation of his parole was properly brought under Section 2241. *Richie*, 70 F.3d at *1.

A prisoner must exhaust state remedies prior to seeking relief under Section 2241. *Id.* Thus, we begin with the exhaustion requirement, discuss timeliness briefly, then conclude with examining the merits of the claim.

II. Exhaustion of state remedies

4 5 "Whether a federal *habeas* petitioner has exhausted state remedies is a question of law reviewed *de novo*." *Anderson v. Johnson*, 338 F.3d 382, 386 (5th Cir. 2003). The "exhaustion requirement is not jurisdictional, but reflects a policy of federal-state comity ... designed to give the State an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights." *Id.* (alteration in original) (quotation marks and citations omitted).

On appeal, the State repeats its arguments that it made to the district court that Galbraith could have raised his challenge in a state *habeas corpus* application and has failed to exhaust his state court remedies. It relies heavily on *Sinclair v. Stalder*, 867 So. 2d 743 (La. Ct. App. 2003) and *Sneed v. Hooper*, 328 So. 3d 1164 (La. 2021). The district court rejected the argument that Galbraith could have filed a state *habeas* application. That is because Louisiana's statutory scheme does not permit a challenge to the Parole Board's rescission on *any* ground, *except* for the denial of a revocation hearing. Due to the perceived lack of any available state corrective process, the district court held that Galbraith was not required to exhaust his *habeas* application and met the exception in Section 2254(b)(1)(B)(i). First, we examine those conclusions.

Federal *habeas* relief for state prisoners is limited to those applicants who have "exhausted the remedies available in the courts of the State," unless "there is an absence of available State corrective process" or "circumstances exist that render such process ineffective to protect the rights of the applicant." § 2254(b)(1). An applicant has not exhausted his available remedies "if he has the right under the law of the State to raise, by any available procedure, the question presented." § 2254(c).

The district court relied on the fact that "Louisiana's parole statutes allow for appeal ***282** of parole board actions in only one circumstance." The pertinent language in the statute is this:

> Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the committee on parole. *No prisoner or parolee shall have a right of appeal from a decision of the committee* regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, *except for the denial of a revocation hearing under R.S. 15:574.9.*

La. R.S. § 15:574.11(A) (emphases added).

Another relevant statute provides that

> The committee may order revocation of parole upon a determination that:
>
> (1) The parolee has failed, without a satisfactory excuse, to comply with a condition of his parole; and
>
> (2) The violation of condition involves the commission of another felony, or misconduct including a substantial risk that the parolee will commit another felony, or misconduct indicating that the parolee is unwilling to comply with proper conditions of parole.

La. R.S. § 15:574.9(B).

Based on the Louisiana statutory language, a prisoner cannot contest a decision by the Parole Board unless he has not been afforded a revocation hearing and his parole revocation meets the requirements set forth in Section 15:574.9. Otherwise, as the district court held, there is no statutory recourse to challenge a decision by the Parole Board. Making this clear, when Galbraith attempted to file an administrative grievance to challenge the Parole Board's decision, his grievance was rejected. The stated reason was the Parole Board's policy that "decisions of these boards are d[i]scretionary and may not be challenged."

6 7 For purposes of Section 2254(b)'s exhaustion requirement, "a prisoner's state remedy must be adequate and available." *Preiser v. Rodriguez*, 411 U.S. 475, 493, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). Based on the statutory scheme alone, Galbraith did not have an adequate and available state remedy or corrective process that would have allowed him to bring this claim in state court.

Next, we look at the Louisiana caselaw cited by the parties and the district court. The district court discussed *Sinclair v. Stalder* and determined that "[h]ad [Galbraith] attempted to challenge rescission of his parole through the state court system, his pleadings would have been dismissed as directed in *Sinclair* because he was not denied a parole revocation hearing, which is the only permissible basis to obtain review of a Parole Board decision." The State insists the district court "conflated its own perceived likelihood of success on the merits of Galbraith's challenge with whether state review procedures were 'available' for Galbraith to pursue." We examine *Sinclair.*

In that case, a Louisiana prisoner sought review of the Parole Board's decision to deny him early release on parole. *Sinclair*, 867 So. 2d at 743–44. The court held that a state *habeas corpus* application was "the proper mechanism for an inmate who claims his initially lawful custody became unlawful due to the parole board's actions in *denying* him release on parole." *Id.* at 744 (emphasis added). The court explained that Section 15:574.11(A) has been interpreted to mean "there is no appeal of decisions of the board unless the ***283** procedural due process protections specifically afforded by the hearing provisions of 15:574.9 are violated." *Id.*; *see also Bosworth v. Whitley*, 627 So. 2d 629, 631 (La. 1993) (outlining Louisiana's system of parole and discussing that the Parole Board's decisions "generally cannot be appealed" as per Section 15:574.11). Accordingly, any challenge to actions of the Parole Board not "in accordance with 15:574.9 should be dismissed by the district court." *Sinclair*, 867 So. 2d at 744. Because Louisiana's parole statutes did not "create an expectancy of release or liberty interest," the court held Sinclair's application failed to state a cause

of action. *Id.* In that case, Sinclair challenged the parole board's decision to deny his initial application for parole, but the "parole board has full discretion when passing on applications for early release." *Id.*

Galbraith's case significantly differs from Sinclair's — most clearly in the fact that his petition for parole was granted, not denied. Galbraith had a parole hearing and was granted a Certificate of Parole. The Parole Board set his release date and arranged with the State of Texas to have Galbraith serve his parole there. Galbraith's parole grant was rescinded two days prior to his release for a reason that appears unauthorized by statute at the time. [5]

Thus, under *Sinclair*, if Galbraith would have filed a state *habeas corpus* application challenging the Parole Board's rescission, his application would have been dismissed because the claim was not based on the Parole Board's failure to provide a parole *revocation* hearing. *See id.* This supports the district court's conclusion that Galbraith was not required to meet the exhaustion requirement because there were no available state procedures to exhaust.

The State also discusses a recent Louisiana Supreme Court opinion in which the court analyzed a *habeas corpus* application that involved a prisoner's challenge to the rescission of his parole. *Sneed*, 328 So. 3d 1164. There, a prisoner was granted parole; four days prior to his scheduled release, he collapsed and was hospitalized. *Id.* at 1164. Upon his release from the hospital, and after his parole release date had passed, he returned to prison and was issued a disciplinary report for possessing contraband that was related to his collapse. *Id.* Although he was later found "not guilty" of possessing the contraband, a single Parole Board member rescinded his parole grant a few days after that finding. *Id.*

When presented with Sneed's state *habeas corpus* application, the Louisiana Supreme Court held: (1) Sneed's limited liberty interest attached once his release date passed; (2) rescission of his parole was not available for that reason; (3) Sneed "was entitled to a revocation hearing rather than a rescission of parole"; and (4) the denial of a revocation hearing was appealable under Section 15:574.11. *Id.* at 1165. In an opinion issued a few days later, the Louisiana Supreme Court further held the district court erred by ordering Sneed to ***284** be released on parole because that was "not an available remedy" under Section 15:574.11(C) for his due process violation. *Sneed v. Hooper*, 328 So. 3d 1165, 1166 (La. 2021). The Louisiana Supreme Court remanded the case to the district court with instructions to remand the matter to the Parole Board to conduct a parole revocation hearing pursuant to Louisiana law. *Id.*

The district court distinguished *Sneed* on the ground that Sneed's parole was rescinded *after* his release date passed; thus, he came within the statutory exception to appeal the denial of what should have been a revocation hearing. The district court was correct that *Sneed*'s emphasis on the timing of the Parole Board's rescission means it does not apply here. *Sneed*, 328 So. 3d at 1166.; *see also Sneed*, 328 So. 3d at 1164–65. The Louisiana Supreme Court construed Sneed's challenge as a revocation, rather than a rescission, because he was kept in prison beyond his release date that was scheduled before the purported rescission decision. *Sneed*, 328 So. 3d at 1164–65.

discusses "expectancy of release," while the question here is whether there are limits on the Parole Board to rescind parole *after* its formal grant but *before* the effective date of release.

The State also relies on a Louisiana Supreme Court decision that addressed parole eligibility for inmates sentenced to life and the commutation of those sentences. *See Bosworth*, 627 So. 2d at 630. In *Bosworth*, the state court held that state prisoners who were statutorily ineligible for parole had no protected liberty interest in parole eligibility because the Louisiana legislature set those parameters. *See id.* at 633–34. Because the analysis was limited to non-grantees, it is not instructive of whether a parole grantee — such as Galbraith — has a protected liberty interest.

Finally, the State argues a United States Supreme Court decision is dispositive. *See Jago v. Van Curen*, 454 U.S. 14, 102 S.Ct. 31, 70 L.Ed.2d 13 (1981). As the State puts it, that case "explicitly held that a prisoner has no protected liberty interest in parole until the prisoner is actually released on parole, even where an initial decision to grant parole is made and later rescinded." The State's summary of the Supreme Court's holding is overly broad, and the Court's analysis and holding is distinguishable from this case.

Jago is factually similar to this case, but there are notable differences that impacted that outcome. The *Jago* Court reversed the Sixth Circuit's decision that the Ohio Parole Board violated the prisoner's procedural due process rights when it rescinded his parole grant prior to its effective date without a hearing, a rescission based on the discovery that Jago had falsified information in his parole interview. *Id.* at 15–17, 102 S.Ct. 31. The Court held that the Sixth Circuit "erred in finding a constitutionally protected liberty interest by rel[ying] upon the 'mutually explicit understandings' language of *Perry v. Sindermann*," 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). *Id.* at 17, 102 S.Ct. 31. That was because the Court's "decision in *Sindermann* was concerned only with the Fourteenth Amendment's protection of 'property' interests, and its language, relied upon by the Court of Appeals, was expressly so limited." *Id.*

The Court reiterated that " '[t]he ground for a constitutional claim, if any, must be found in statutes or other rules defining the obligations of the authority charged with exercising clemency.' " *Id.* at 20, 102 S.Ct. 31 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 465, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981)). In ***286** Ohio, parole for prisoners lay entirely within the discretion of the Ohio Adult Parole Authority. *Id.* at 16, 102 S.Ct. 31. The Court did not discuss any statutory limits on withdrawing a grant. Instead, the argument as to why process was due was based on quasi-contract. *Id.* at 17–18, 102 S.Ct. 31. The Court rejected the Sixth Circuit's approach that relied on both the general law of contracts and common law to give rise to a protected liberty interest in that particular parole context. *Id.* at 18–20, 102 S.Ct. 31.

Thus, the Ohio statutes providing for parole did not create a protected liberty interest. Jago was therefore not entitled to a hearing prior to the rescission of his parole. *Id.* at 21–22, 102 S.Ct. 31. We need to examine the Louisiana statutory framework, but we first give background on liberty interests.

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procedural protection must establish that life, liberty, or property is at stake. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005). "A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Id.* (citations omitted). The Supreme Court has recognized a liberty interest subject to due process protection even when that interest was not created by the Constitution. *See Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). The *Wolff* case dealt with the Nebraska statutory right to good-time credit, which — according to the statute's limiting language — could only be lost due to serious misconduct:

> But here the State itself has not only provided a statutory right to good time but also specifies that it is to be forfeited only for serious misbehavior. Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior, and it is true that the Due Process Clause does not require a hearing in every conceivable case of government impairment of private interest. But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

Id. (quotation marks and citation omitted). Thus, "a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State." *Id.* at 558, 94 S.Ct. 2963. The purpose of due process protection is to shield a person "against arbitrary action of government." *Id. Wolff* is directly applicable in that it states that a liberty interest arose because of the specific, exclusive reasons a state statute gave for losing good-time credits.

11 Similarly, the Supreme Court has stated that "[t]here is no constitutional or inherent right to parole, but once a State grants a prisoner the conditional liberty properly dependent on the observance of special parole restrictions, due process protections attach to the decision to revoke parole." *Vitek v. Jones*, 445 U.S. 480, 488, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) (quotation marks and citation omitted). Though *Vitek* discussed parole revocation, implying that the parole had commenced, we find it instructive for our purposes. Once a "State grants a prisoner a right or expectation that adverse action will not be taken against him except upon the occurrence ***287*** of specified behavior, the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed." *Id.* at 490–91, 100 S.Ct. 1254 (quotation marks and citation omitted).

We have applied these principles from *Wolff* and *Vitek* to reverse a grant of summary judgment that dismissed a prisoner's claim that his good-time

credits were revoked without due process. *See Jackson v. Cain*, 864 F.2d 1235, 1250–51 (5th Cir. 1989).

We must look at Louisiana law to determine whether a liberty interest has been created so as to invoke due process protection.

Louisiana's parole system is codified in Louisiana Revised Statutes § 15:574.2, *et seq.* "[T]he granting, conditions, or revocation of parole rest in the discretion of the committee on parole." La. R.S. § 15:574.11(A). At the time of Galbraith's parole rescission in April 2017, the Louisiana Administrative Code provided grounds for rescinding parole once it had been granted:

> Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under § 311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

LA. ADMIN. CODE, tit. 22, Pt XI, § 504(K) (eff. Jan. 2015 to Aug. 2019).

Thus, unlike *Jago*, the Louisiana parole authorities did not have unlimited discretion. Certainly, a liberty interest was subject to rescission in *only* two circumstances: (1) if the parolee violated terms of work release, or (2) if the prospective parolee engaged in misconduct prior to his release. The first possibility — violating terms of work-release — certainly seems relevant only after parole has been granted, but regardless, that and misconduct before parole begins were the only statutory reasons for rescinding parole prior to an inmate's release.

12 We agree with the magistrate judge's conclusion that these statutory provisions created a liberty interest protecting Galbraith from rescission:

> While it is true that Louisiana's parole statutes do not create a liberty interest in the granting of parole, once parole has been granted, the Parole Board's discretion to rescind that parole was statutorily limited to an objective, fact-based finding that Petitioner had either: (1) violated the terms of his work release, or (2) engaged in misconduct. Neither statutory basis was even argued, much less established in April 2017. Under the Fourteenth Amendment, Petitioner was entitled to notice and a meaningful opportunity to be heard before rescinding his parole, which did not occur.

Galbraith's parole was ostensibly rescinded because of an alleged problem with notice to a victim. He was notified of this reason on May 1, 2017, 10 days after his parole was rescinded. At the time, that was not a permissible reason to rescind his grant of parole.

Therefore, Galbraith's parole was improperly rescinded.

We AFFIRM and REMAND for the district court to release Galbraith, subject

to the parole conditions set forth by the Parole Board in its original decision on November 3, 2016.

All Citations

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Footnotes

1 Galbraith's Application for Parole is undated; however, other documents in the application reflect dates of early-to-mid 2016.

2 The statute was amended in March 2018 to require 90-days' notice and to require notice to any person who has filed a victim notice and registration form. *See* LA. ADMIN. CODE, tit. 22, pt. XI, § 510(B) (eff. Mar. 2018 to Dec. 2018). Victim notification errors were not a permissible basis, at least explicitly, for rescission of parole until the statute was amended in August 2019. *Compare* LA. ADMIN. CODE, tit. 22, pt. XI, § 504(K) (eff. Jan. 2015 to Aug. 2019), *with* LA. ADMIN. CODE, tit. 22, pt. XI, § 504(K) (eff. Aug. 2019 to Jan. 2020).

3 In one of the November 30 letters, Skinner attached a report by retired chief detective, Martin Hilton, who relayed his opinion that Galbraith may be responsible for two cold-case murders in Vernon Parish. Galbraith, however, was never charged with either of these murders, and there is no evidence in the record connecting him to those two victims.

4 As we have already explained, the Parole Board was required to provide 30 days' notice of the hearing, and timely notice was given for the November hearing. There is no suggestion or record that McWilliams requested notification, and she was not required to be notified under the statute in effect at the time. *See supra* n.2.

5 This argument tends toward the merits review, but importantly, the Parole Board did not have the statutory authority to rescind Galbraith's parole grant for errors regarding victim notification. The relevant statute was not amended until August of 2019, at which time victim notification error was added as a permissible basis for parole rescission. LA. ADMIN. CODE, tit. 22, pt. XI, § 504(K) (eff. Aug. 2019 to Jan. 2020). At the time of Galbraith's rescission, the only permissible bases for rescission were (1) violation of the terms of work release, and (2) misconduct prior to release, and upon rescission, the parolee would promptly receive a new parole hearing. LA. ADMIN. CODE, tit. 22, pt. XI § 504(K) (eff. Jan. 2015 to Aug. 2019).

6 The magistrate judge did not reach the question of whether there was a substantive due process violation. Because we agree with the magistrate judge that Galbraith's procedural due process rights were violated, we too do not reach the substantive due process question.

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APPENDIX D

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH

VERSUS

TIMOTHY HOOPER, ET AL.

CIVIL ACTION NO.

19-181-JWD-EWD

JUDGMENT

For written reasons assigned,

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered, granting Petitioner's application for writ of habeas corpus, (Doc. 1).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner is released on parole within thirty (30) days, subject to the original conditions of his parole granted on November 3, 2016 found in R. Doc. 15-2, p. 177, including: "approval of residence," "low static 99 score," "approval of out of state plan," "no contact with victims or family," "no travel to Louisiana without approval of the parole office," and "perform community service speaking to at risk youth twice per year."

Signed in Baton Rouge, Louisiana, on March 28, 2022.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

APPENDIX E

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH **CIVIL ACTION NO.**

VERSUS **19-181-JWD-EWD**

TIMOTHY HOOPER, ET AL.

NOTICE

Please take notice that the attached Magistrate Judge's Report and Recommendation has been filed with the Clerk of the U. S. District Court.

In accordance with 28 U.S.C. § 636(b)(1), you have 14 days after being served with the attached report to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. Failure to file written objections to the proposed findings, conclusions and recommendations within 14 days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Signed in Baton Rouge, Louisiana, on March 9, 2022.

Erin Wilder-Doomes

ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH — CIVIL ACTION NO.

VERSUS — 19-181-JWD-EWD

TIMOTHY HOOPER, ET AL.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before this Court is the application of Petitioner Samuel Galbraith ("Petitioner") for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. There is no need for oral argument or for an evidentiary hearing. As the Louisiana Board of Pardons and Parole violated Petitioner's due process rights when it arbitrarily and without notice rescinded his parole in violation of Louisiana's statutory and administrative rules, it is recommended that Petitioner's habeas application be granted. Additionally, because the facts are clear that the Parole Board did not rescind Petitioner's parole for a reason permitted under the applicable statutes, it is recommended that Petitioner be released within thirty (30) days, subject to the parole conditions set forth by Parole Board in its original decision on November 3, 2016.

I. PROCEDURAL HISTORY

On February 1, 2000, Petitioner was charged in the Thirtieth Judicial District Court for the Parish of Vernon with first degree murder and attempted aggravated rape of Karen Hill, perpetrated on November 21, 1988.[1] On February 3, 2000, Petitioner pled guilty to manslaughter and attempted aggravated rape, receiving a total sentence of seventy-one (71) years.[2] The sentences were to run consecutively and were subject to diminution for good behavior. On November 16,

[1] R. Doc. 15-1, pp. 104-05.

[2] R. Doc. 15-1, p. 106. Specifically, Petitioner received a sentence of twenty-one (21) years for manslaughter and fifty (50) years for attempted aggravated rape.

2000, James Hill ("Hill"), the surviving spouse of the victim, completed a *Louisiana Department of Public Safety and Corrections Victim/Witness Notification Request Form*, asking for notification by the Louisiana Board of Pardons and Parole ("Parole Board") when a hearing is granted.[3] The record does not contain a similar form from any other individuals.

Sometime in the spring of 2016 Petitioner filed an Application for Parole.[4] On July 7, 2016, the Parole Board sent two notification letters regarding Petitioner's upcoming October 13, 2016 parole hearing. The first letter went to Hill at the Texas address provided on his Notification Request Form.[5] The second letter went to Jessie McWilliams ("McWilliams"), the victim's mother, at an incorrect address in Albany, New York.[6] The October 13, 2016 parole hearing never occurred because Petitioner's attorney requested a continuance, which was granted.[7] The hearing was reset to November 3, 2016.[8]

New notification letters were sent to Hill and McWilliams advising of the hearing on November 3, 2016.[9] This time, the letter to McWilliams went to her correct address in Albany, Illinois.[10] Hill and McWilliams were also asked to provide a statement for the pre-parole investigation report.[11] The pre-parole investigation report, dated October 17, 2016, contains statements from Hill and McWilliams opposing parole.[12] The pre-parole investigation report also contains statements from the Vernon Parish District Attorney's Office, the Vernon Parish Sheriff's

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[3] R. Doc. 15-2, p. 213.
[4] R. Doc. 15-1, pp. 226-296. Petitioner's parole application is undated.
[5] R. Doc. 15-1, p. 222.
[6] R. Doc. 15-1, p. 219.
[7] R. Doc. 15-2, p. 198. The request to continue the October 13, 2016 hearing was due to Petitioner's attorney's scheduling issues, not any issue related to notification.
[8] *Id.*
[9] R. Doc. 15-1, pp. 213-18.
[10] R. Doc. 15-1, pp. 213-15. The letter to Hill went to the Texas address provided on his Notification Request Form.
[11] R. Doc. 15-1. pp. 217, 214.
[12] R. Doc. 15-1, pp. 34-49.

Office, and the Vernon Parish sentencing judge opposing parole.[13] The Parole Board also received a letter from the Vernon Parish District Attorney's Office advising that it "strongly object[ed]" to parole,[14] and a detailed letter from Hill about the impact of his wife's murder and his objection to parole.[15]

At the November 3, 2016 parole hearing, Chairperson Cheryl Renatza ("Renatza"), Jim Wise, and Pearl Wise unanimously voted to grant Petitioner parole. Among the reasons noted were, "good support," "good plan," "good conduct," "good programs," "has emp[loyment] plan," "taken all programs," and "will be a tax-payer and not a tax burden."[16] According to the Pardon Board Decision Form, dated November 3, 2016, Petitioner's release was conditioned upon approval of residence, a low Static99 Score, and approval of out-of-state plan.[17] Neither Hill nor McWilliams attended the November 3, 2016 hearing, but each was contacted by someone from the Department of Corrections and notified of the decision.[18]

Shortly after parole was granted, the District Attorney of Vernon Parish, Asa Skinner ("Skinner"), began contacting the Parole Board to express his outrage at the decision to grant parole. Skinner sent a letter on November 15, 2016,[19] two letters on November 30, 2016,[20] and a letter on January 9, 2017.[21] Skinner requested the Parole Board reconsider its decision. On February 2, 2017, Renatza responded to Skinner's correspondence and advised that the Parole

[13] R. Doc. 15-1, p. 36.
[14] R. Doc. 15-1, p. 49.
[15] R. Doc. 15-1, p. 39.
[16] R. Doc. 15-2, p. 178.
[17] R. Doc. 15-2, p. 177.
[18] R. Doc. 15-1, p. 225.
[19] R. Doc. 15-2, p. 190.
[20] R. Doc. 15-1, pp. 28-29; R. Doc. 15-2, pp. 186-189. One of Skinner's November 30, 2016 letters contains an "investigative summary" from retried chief detective, Marvin Hilton, who provides his opinion that Galbraith was responsible for two unsolved murders in Vernon Parish. Galbraith was never charged with either of these murders. R. Doc. 15-2, pp. 186-189.
[21] R. Doc. 15-2, p. 191.

Board unanimously voted to grant parole based on suitability for release and could not reconsider its decision to grant parole because the information Skinner provided did not meet the criteria for rehearing based on Parole Board policy.[22]

McWilliams wrote to Skinner on November 18, 2016. In that letter McWilliams states that she was contacted by phone to provide a statement in anticipation of the parole hearing because her "paperwork had been sent to New York so there would not be enough time for me to be at the hearing....".[23] McWilliams also contacted the Parole Board requesting they reconsider their decision.[24] Skinner and McWilliams also gave interviews to the press expressing disagreement with the Parole Board's decision to grant Petitioner's parole.[25]

In early April 2017, Parole Board and Department of Corrections personnel made the final preparations for Petitioner's release.[26] On April 10, 2017, Mary Fuentes of the Parole Board sent an email to Deputy Executive Counsel to Louisiana Governor John Bel Edwards expressing her concern regarding a news story that was set to air on April 13, 2017 regarding Galbraith's parole.[27] On April 11, 2017, Renatza executed a "Single Member Action Sheet," unilaterally adding electronic monitoring as a condition of Petitioner's parole.[28]

On April 20, 2017, three days before Petitioner's scheduled release date, the Parole Board received notice that Texas accepted the electronic monitoring conditions and issued a certificate of parole signed by Renatza with a release date of April 23, 2017.[29] On April 21, 2017, two days

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[22] R. Doc. 15-1, pp. 32-33.
[23] R. Doc. 15-1, pp. 185-186.
[24] R. Doc. 15-1, p. 184.
[25] R. Doc. 15-2, pp. 125-126.
[26] *See, e.g,* R. Doc. 15-2, pp. 130, 163-72, 253-54. Petitioner's release date was calculated as April 11, 2017 at one point. *See,* R. Doc. 15-2, pp. 168; 261.
[27] R. Doc. 7, p. 57.
[28] R. Doc. 15-2, p. 170. Petitioner's final release date was calculated as April 23, 2017. R. Doc. 15-2, pp. 192-93.
[29] R. Doc. 15-2, pp. 166-167.

before Petitioner was set to be released, Mary-Patricia Wray, a lobbyist with Top Drawer Strategies, sent an email at 7:59 a.m. to Governor Edwards' Special Counsel, Erin Monroe Wesley:

> ...I will have several background interviews on the crim justice reform bills today and so I will have a unique opportunity to (on background) deal with the story about Samuel Galbraith
>
> http://www.wbrz.com/news/investigative-unit-suspected-serial-killer-rapist-to-be-released-from-prison-sunday
>
> It looks like the Gov is not responding- is there a way to frame this story up that is helpful? Is there info reporters are missing? In my ignorance I truly do not know if there is a way to prevent re scheduled release on Sunday? I believe this is about to become a very problematic narrative, especially in the bulls [sic] dealing with parole eligibility- even though this is for a violent offense. Obviously I can separate it from the details of the bills but thought you might have some input on how to prevent the story from impacting the success of the legislation...[30]

The news story referred to in Wray's email aired on April 20, 2017 and included an interview with Skinner, who stated that Petitioner was responsible for the murders of two additional women in Vernon Parish, though Petitioner was never charged with either murder.[31] The news story showed the pictures of the three parole board members who voted to grant Galbraith parole and included interviews with Hill and with McWilliams, who stated her victim notification went to Albany, New York instead of Albany, Illinois.[32]

Following the airing of the news story on April 20, 2021, Petitioner's records show a notation on the "Hearing Docket Record" at 11:30 a.m. on April 21, 2017, "Rescind pending per Mary F[uentes]."[33] A "Parole Board Action Sheet," signed only by Board member, Jim Wise, on April 21, 2017, states "there may have been a techical [sic] irregularity to victim notice."[34]

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[30] R. Doc. 1-12, p. 2.
[31] https://www.wbrz.com/news/investigative-unit-suspected-serial-killer-rapist-to-be-released-from-prison-sunday (last checked 3/6/2022).
[32] *Id.*
[33] R. Doc. 15-2, p. 155.
[34] R. Doc. 15-2, p. 158.

Petitioner was not released from prison on his scheduled release date of April 23, 2017. He was provided with a letter from the Parole Board dated May 1, 2017, which stated:

> This correspondence is to advise you that the Parole Board has voted[35] to rescind the parole granted at your original parole hearing.
> This action was taken due to the following:
> We have been advised that Other.
> There may have been technical irregularities notifying the victim's family.
> You will be scheduled for another hearing on 08/03/2017.[36]

The Parole Board also issued the following press release:

> FOR IMMEDIATE RELEASE
> The Parole Board announced its decision this afternoon to rescind the parole of Samuel Galbraith, previously granted in November. In spite of numerous inconsistencies reported by Channel 2, the victim's mother did state during the interview that her parole hearing notification letter was mailed to an address in Albany, New York rather than Albany, Illinois
>
> Although Mrs. McWilliams did receive the required notice for the November parole hearing, because of the apparent procedural error which occurred with the initial victim notification, the Board will reschedule a subsequent parole hearing for Samuel so that Mrs. McWilliams and the District Attorney has the opportunity to fully participate in the process.[37]

After Galbraith's parole was rescinded, the news story was re-aired on April 21, 2017.[38] The reporter credited Governor Edwards with the decision and stated that the reason for the rescission was because McWilliams' notification was sent to Albany, New York.[39]

On June 16, 2017 Petitioner's counsel sent a letter to counsel for the Parole Board contesting the rescission as contrary to Parole Board policy and contesting the factual basis of the alleged technical irregularity; namely that McWilliams had, in fact, received notification of the

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[35] There is no record of a "vote" to rescind Petitioner's parole. The only evidence in the record indicates that the rescission was done through the signature of Jim Wise only. R. Doc. 15-2, p. 158.
[36] R. Doc. 15-1, p. 65.
[37] R. Doc. 15-2, p. 124.
[38] http://www.wbrz.com/news/investigative-unit-suspected-serial-killer-rapist-to-be-released-from-prison-sunday (last checked 3/6/2022).
[39] *Id.*

hearing.[40] The letter also advised the Parole Board that neither of the two permissible reasons for rescission of parole were applicable: the offender had not violated the terms of his work release nor engaged in misconduct prior to release. The letter requested a discussion about these issues.[41] On July 7, 2017, Petitioner's counsel wrote a letter to Renatza advising that Petitioner was withdrawing from the upcoming August 3, 2017 hearing due to reasons stated in his June correspondence regarding the Parole Board's improper rescission and the failure of counsel for the Parole Board to respond to his correspondence or his phone calls.[42] As a result of the representations of Petitioner's counsel, the August 3, 2017 hearing was canceled.[43]

Petitioner filed a civil suit on July 26, 2017 in this Court, *Galbraith v. LeBlanc, et al.*, No. 17-cv-486, against James LeBlanc, Secretary of the Department of Public Safety and Corrections, and Sheryl Renatza, Chairperson of the Board of Pardons, in which he alleged violations of his Fourteenth Amendment rights to substantive and procedural due process.[44] Petitioner's civil suit alleges a cause of action under 42 U.S.C. § 1983 but challenges the legality of his confinement and seeks relief in the form reinstatement of the grant of parole and immediate release from prison.[45] The claims against LeBlanc were dismissed in the civil suit,[46] and Renatza filed a motion for summary judgment, in part alleging that this Court lacked jurisdiction to grant restoration of parole and release from custody because such relief is only properly sought in a writ of habeas corpus.[47] Shortly thereafter, on March 27, 2019, Petitioner filed the instant petition for habeas

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[40] R. Doc. 15-1, pp. 25-26.
[41] *Id.*
[42] R. Doc. 15-1, p. 22.
[43] R. Doc. 15-1, p. 24.
[44] *Galbraith v. LeBlanc, et al.*, Civil Action No. 17-486 (M.D. La.), R. Doc. 1.
[45] *Id.* at p. 10.
[46] *Galbraith*, 17-486, R. Doc. 27.
[47] *Galbraith*, 17-486, R. Doc. 42-1, pp. 5-6. Renatza's Motion for Summary Judgment was denied without prejudice. R. Doc. 53. Renatza's reurged Motion for Summary Judgment also raises the argument that "plaintiff's exclusive remedy to seek release from custody is through a writ of *habeas corpus*, which he has now filed and which petition is

corpus relief, alleging substantially the same facts as those alleged in the civil suit, and seeking release based on violations of his due process rights.[48] On September 30, 2020, this Court stayed Galbraith's civil suit, finding that the habeas petition involved the same legal issues.[49]

II. ARGUMENTS OF THE PARTIES

Petitioner contends that his claim is ripe for *de novo* review by this Court because the State of Louisiana lacks a procedural mechanism to challenge his parole rescission. Particularly, the only parole board action that is appealable under Louisiana's statutory scheme is the denial of a *revocation* hearing under La. R. S. 15:574.9. Because Louisiana lacks any form of a corrective process for parole recission, Petitioner argues that this Court may review his claim immediately under 28 U.S.C. § 2254(b)(1)(B)(i). Respondent, on the other hand, contends Petitioner's claim is unexhausted because he should have filed a petition for habeas corpus relief at the state level pursuant to La. C.Cr.P. Art. 351, citing *Sinclair v. Stalder*.[50] Respondent also asserts that Petitioner's claim is untimely because it was not filed within one year of the May 1, 2017 letter advising Petitioner that his parole had been rescinded.

On the merits, Petitioner argues that his Fourteenth Amendment due process rights have been violated because the Parole Board rescinded his parole based on an admittedly false reason—lack of proper notification of the hearing to the victim's family. Additionally, Petitioner contends that he had a liberty interest in parole based on Louisiana's statutory scheme because there are only two circumstances under which a parole grantee may have his parole properly rescinded: (1) violation of the terms of work release, or (2) misconduct prior to release. Because neither of these

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pending before the Court in *Galbraith v. Hooper, et al.*, No. 19-181-JWD-EWD." *Galbraith*, 17-486, R. Doc. 63, p. 1.

[48] R. Doc. 1.

[49] *Galbraith*, 17-486, R. Doc. 65.

[50] 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So.2d 743.

circumstances applied to him, Petitioner claims a legitimate expectation of release, but the Parole Board never gave him notice or an opportunity to be heard before it rescinded his parole. Respondent contends that state and federal law establish that Petitioner had no protected liberty interest in the expectation of release on parole and the Parole Board had the authority to rescind Petitioner's parole without any due process at any time for any reason prior to his release.

Turning first to the procedural arguments, whether appropriately brought under § 2241 or under § 2254,[51] because there is no available state corrective process to challenge rescission of parole, exhaustion is not applicable to Petitioner's claims. Additionally, because Petitioner timely filed a § 1983 suit asserting the same facts and requesting the same relief requested here, the application is timely.

III. EXHAUSTION

Although Title 28 U.S.C. § 2241 contains no statutory exhaustion requirement,[52] courts have imposed an exhaustion requirement if the claims asserted in a petition may be resolved on the merits in the state courts or by some other state procedure available to the petitioner.[53] "The exhaustion doctrine is applied to Section 2241(c) as a matter of comity and is based on federalism grounds to protect the state courts' important independent jurisdictional opportunity to address and initially resolve any constitutional issues arising within their jurisdiction and to limit federal interference in the state adjudicatory process."[54] Exhaustion under § 2241 or § 2254 requires that a petitioner "fairly present all of [her] claims" through the proper channels before pursing federal

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[51] Petitioner asserts that his habeas application is brought under 28 U.S.C. § 2241 (R. Doc. 1, pp. 1 & 2), however, Petitioner also argues that exhaustion of his claims cannot occur because of the absence of a state corrective process under 28 U.S.C. § 2254(b)(1)(B)(i). R.Doc. 1, p. 2.

[52] *See* 28 U.S.C. § 2241(c)(3). For cases under § 2254, an applicant must exhaust remedies available in the courts of the State, unless "there is an absence of available State corrective process; or circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B).

[53] *Marshall v. Dep't of Corr.*, No. 18-6577, 2018 WL 6072246, at *7 (E.D. La. Oct. 26, 2018) (citations omitted).

[54] *Marshall*, 2018 WL 6072246, at *7, citing *Johnson v. Cain*, No. 15-310, 2015 WL 10438640, at *5 (E.D. La. June 4, 2015) (citing *Dickerson v. Louisiana*, 816 F.2d 220, 225 (5th Cir. 1987)).

habeas relief.[55] Exceptions to the exhaustion requirement apply only in "extraordinary circumstances" when remedies "are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action," and "[the petitioner] bears the burden of demonstrating the futility of administrative review."[56]

To meet his burden, Petitioner argues that there is an absence of state corrective process because "Louisiana law prohibits challenges to decisions of the Parole Board, except in cases of a parole revocation," citing La. R.S. 15:574.11 and *Sinclair v. Stalder*.[57] Petitioner also states that he attempted to exhaust his remedies by filing a grievance under the prison administrative remedy procedure, but his grievance was rejected.[58] Respondent argues that *Sinclair* does not preclude a petitioner from challenging a Parole Board recission via a state habeas application under La. Code of Criminal Procedure art. 351, notwithstanding that the cases, including *Sinclair*, would find such a challenge fails to state a cause of action.[59]

Louisiana's parole statutes allow for appeal of parole board actions in only one circumstance. La. Stat. Ann. § 15:574.11 provides (in pertinent part):

> A. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the committee on parole. **No prisoner or parolee shall have a right of appeal from a decision of the committee** regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, **except for the denial of a revocation hearing under R.S. 15:574.9.**[60]

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[55] *Dickerson*, 816 F.2d at 228 (§ 2241); *Rose v. Lundy*, 455 U.S. 509, 519-20 (1982) (§ 2254).
[56] *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (*per curiam*).
[57] 2003-1568 (La.App. 1 Cir. 10/17/03), 867 So.2d 743, 744, writ denied, 2003-3177 (La. 1/14/05), 889 So.2d 253. R. Doc. 1, p. 2.
[58] R. Doc. 1, p. 2.
[59] R. Doc. 6, pp. 3-4.
[60] (emphasis added).

The Louisiana First Circuit Court of Appeal in *Sinclair v. Stalder,*[61] relied on by both parties, explains that § 15.574.11(A) has been interpreted to mean that "there is no appeal of decisions of the [parole] board unless the procedural due process protections specifically afforded by the hearing provisions of 15:574.9 are violated. Pleadings challenging actions of the parole board other than failure to act in accordance with 15:574.9 should be dismissed by the district court. Louisiana Revised Statutes 15:574.9 deals with parole revocations, not with denials of release on parole. Therefore, there is no statutory basis for Sinclair to seek review of the parole board's decision denying him early release on parole."[62] In *Sinclair*, the petitioner's state habeas petition was dismissed for failure to state a cause of action.

Had Petitioner attempted to challenge recission of his parole through the state court system, his pleadings would have been dismissed as directed in *Sinclair* because he was not denied a parole revocation hearing, which is the only permissible basis to obtain review of a Parole Board decision under La. R.S. § 15:574.11. Louisiana's statutory scheme effectively deprived Petitioner of a procedure to challenge the actions of the Parole Board in rescinding his parole.[63] Without a mechanism to exhaust, there can be no failure to exhaust. Accordingly, Petitioner's claims are ripe for *de novo* review with this Court.[64]

IV. TIMELINESS

Petitioner has asserted his habeas claim under 28 U.S.C. § 2241. A petition for writ of habeas corpus that "attacks the manner in which a sentence is carried out or the prison authorities'

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[61] 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So.2d 743.
[62] *Id.* at 744.
[63] Although Respondent takes a different position now, the response to Petitioner's administrative grievance also seems to acknowledge the futility of Petitioner pursuing his claim in state court: "REJECTED: Your request has been rejected for the following reason(s): PARDON AND PAROLE BOARD DECISIONS UNDER LOUISIANA LAW, DECISIONS OF THESE BOARD ARE DESCRESIONARY [sic] AND MAY NOT BE CHALLENGED." R. Doc. 1-1, p. 2.
[64] *See Panetti v. Davis*, 863 F.3d 366, 374–75 (5th Cir. 2017) ("...where, as here, the state courts have not reached the merits of a petitioner's claims, federal courts will review *de novo.*").

determination of its duration," including parole issues, is properly considered under the general habeas authority of § 2241.[65] The one-year statute of limitations period has not been extended to Section 2241 petitions,[66] so it is not clear that Petitioner's application is untimely in the first instance.

Additionally, district courts may construe a Section 1983 complaint as a *de facto* habeas petition.[67] Petitioner filed his civil suit on July 26, 2017 against James LeBlanc, the Secretary of the Department of Public Safety and Corrections, and Sheryl Renatza, the Chairperson of the Louisiana Parole Board. The suit attacks the constitutional validity of the Parole Board's decision to rescind Petitioner's parole, seeks reinstatement of Petitioner's original parole decision, and requests Petitioner's immediate release from confinement.

Federal Rules of Civil Procedure, Rule 8(e) requires the Court to construe pleadings "so as to do justice." Here, the Parole Board has been on notice of the factual allegations, substance, and relief sought by Petitioner since suit was filed on July 26, 2017 and served on the Parole Board's Executive Director on August 1, 2017.[68] The Parole Board Chairperson entered an Answer and Affirmative defenses in that suit on October 17, 2017,[69] and filed a Motion for Summary Judgment on February 18, 2019 arguing that the Petitioner's claims sound in habeas corpus.[70] It is apparent

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[65] *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000); *Richie v. Scott*, 70 F.3d 1269 (5th Cir. 1995) ("Habeas petitions challenging the revocation of the petitioner's parole sound under § 2241.").

[66] *United States v. Pipkins*, No. 07-163, 2012 WL 1019118, at * 1 (E.D. La. Mar. 26, 2012). ("However, unlike § 2554 habeas petitions, which are governed by the [AEDPA], § 2241 petitions have no statute of limitations."); *Hartfield v. Quarterman*, 603 F.Supp.2d 943, 948 (S.D. Tex. 2009); *Williams v. Louisiana's A.G.'s Office*, No. 07-603, 2007 WL 2915078, at *3 (E.D. La. Oct. 4, 2007). Section 2241 has not been amended to include a limitations period for filing a petition under that section. *Homayun v. Cravener*, 39 F.Supp.2d 837 (S.D. Tex. 1999), citing *Sandoval v. Reno*, 166 F.3d 225, 234 (3rd Cir. 1999) and *Goncalves v. Reno*, 144 F.3d 110, 120 (1st Cir. 1998). *See also, Rogers v. Robinson*, No. 14-1527, 2015 WL 4168696, at *4 (E.D. La. July 2, 2015); *Marshall*, 2018 WL 6072246, at *6; *Rodriguez v. Dir., Texas Dep't of Crim. Just., Corr. Institutions Div.*, No. 17-236, 2020 WL 8340059, at *3 (N.D. Tex. Dec. 21, 2020).

[67] *Thompson v. Montgomery*, No. 15-1092, 2015 WL 6454563, at *3 (E.D. La. Oct. 26, 2015), citing *Martinez v. Texas Court of Criminal Appeals*, 292 F.3d 417, 420 (5th Cir. 2002) (abrogated on other grounds).

[68] R. Doc. 4 (17-cv-486).

[69] R. Doc. 14 (17-cv-486).

[70] R. Doc. 42-1, p. 5 (17-cv-486).

from the record that the Louisiana Department of Corrections[71] was fully aware that Petitioner was seeking habeas corpus relief since July 26, 2017. Even assuming a one-year statute of limitation applies to Petitioner's claims, Petitioner's civil suit should be construed as a timely filed application for habeas corpus relief because it was filed less than three months after Petitioner was notified of the parole recission on May 1, 2017.[72]

V. MERITS REVIEW

Here, Petitioner was granted parole by the Parole Board but not yet physically released from prison (parole grantee). Petitioner contends that the Parole Board violated his substantive[73] and procedural Fourteenth Amendment due process rights when it arbitrarily and without notice rescinded his parole in violation of Louisiana's statutory and administrative rules. Respondent contends the Louisiana Supreme Court opinion in *Bosworth v. Whitley*[74] and the United States Supreme Court opinion in *Jago v. Van Curen*,[75] should guide our analysis in concluding Petitioner did not have a protectible liberty interest. The *Bosworth* opinion found that Louisiana state prisoners who were statutorily ineligible for parole had no protectible liberty interest in parole eligibility. Limited in its analysis to non-grantees, *Bosworth* is not instructive of whether Petitioner, as a parole grantee, had a protectible liberty interest.[76]

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[71] The Parole Board is an arm of the Louisiana Department of Corrections. La. R.S. § 15:574.2.

[72] There is authority for the proposition that a § 1983 suit may be used to bring a due process claim challenging parole procedures. *See Wilkinson v. Dotson*, 544 U.S. 74 (2005) (concluding that state prisoners may bring actions challenging state parole procedures under § 1983, rather than exclusively under federal habeas corpus statutes).

[73] Because this report concludes that Petitioner's procedural due process rights were violated, whether there was a substantive violation is not reached. To find a substantive due process violation would require a finding of egregious behavior. *See Jordan v. Fisher*, 823 F.3d 805 (5th Cir. 2016) (substantive due process protection "comes into play when 'the behavior of the governmental officer is so egregious, so outrageous, that is may fairly be said to shock the contemporary conscience'...") (citation omitted).

[74] 627 So.2d 629 (La. 1993).

[75] 454 U.S. 14 (1981).

[76] *Id.* at 633 (internal citations omitted).

In *Jago,*[77] the United States Supreme Court reversed a decision from the Sixth Circuit Court of Appeals, which determined that the Ohio parole board improperly rescinded Jago's grant of "shock parole" without a hearing after discovering that he had falsified information in his parole interview.[78] In reversing the Sixth Circuit, the Supreme Court found that Ohio law unambiguously left any early release "wholly within the discretion of the" Ohio parole authorities and allowed that decision to be exercised at any time until release."[79] Because *Jago* does not deal with statutory limitations on the discretion of the parole board, it is likewise not instructive.

In *Wolff v. McDonnell,*[80] which was decided before *Jago*, the Supreme Court recognized that a liberty interest is protected even when that liberty interest is not created by the Constitution. Because Nebraska law provided that prisoners could only lose good time credits if they were guilty of serious misconduct, the Supreme Court found that a liberty interest attached so as to give rise to Due Process protections:

> It is true that the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison. But here the State itself has not only provided a statutory right to good time but also specifies that it is to be forfeited only for serious misbehavior. Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior, and it is true that the Due Process Clause does not require a hearing 'in every conceivable case of government impairment of private interest.' *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961). But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that

[77] 454 U.S. 14 (1981).
[78] *Van Curen v. Jago,* 641 F.2d 411, 415 (6th Cir. 1981).
[79] *Jago*, 454 U.S. at 20-21.
[80] 418 U.S. 539 (1974).

> the state-created right is not arbitrarily abrogated. This is the thrust of recent cases in the prison disciplinary context.[81]

The Fifth Circuit has applied *Wolff* to find a state-created liberty interest, for example, in the revocation of good-time credit.[82] In *Jackson v. Cain*,[83] the Fifth Circuit reversed a grant of summary judgment dismissing a prisoner's claim that he was deprived of good-time credits without due process. The court in *Jackson* recognized that the Supreme Court has determined that "a state can create a protected liberty interest by establishing sufficiently mandatory discretion-limiting standards or criteria to guide state decision makers"[84] and went on to quote *Vitek v. Jones*, *supra*:

> If the state grants a prisoner a right or expectation that adverse action will not be taken against him except on the occurrence of specific behavior, "the determination of whether such behavior has occurred becomes critical, and the minimal requirements of procedural due process appropriate for the circumstances must be observed."[85]

Finally, the court found "this Court has held that a prisoner challenging his change in classification and transfer to administrative segregation stated a due process claim if he could show that Texas Department of Corrections regulations 'authorized his transfer to administrative segregation only for specified reasons' and the reason he was transferred was not one so specified."[86]

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[81] *Wolff*, 418 U.S. at 557.
[82] *Keenan v. Bennett*, 613 F.2d 127, 129-30 (5th Cir. 1980), citing *Wolff*, 418 U.S. at 557 ("Revocation by state prison authorities of good-time credit must be measured against the requirements of the Fourteenth Amendment's Due Process Clause.")
[83] 864 F.2d 1235 (5th Cir. 1989)
[84] *Jackson*, 864 F.2d at 1250, citing *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983); *Hewitt v. Helms*, 459 U.S. 460, 470–71 (1983); *Vitek v. Jones*, 445 U.S. 480, 488–89 (1980); *Green v. McKaskle*, 788 F.2d 1116, 1125 (5th Cir. 1986); *Lewis v. Thigpen*, 767 F.2d 252, 261–62 (5th Cir. 1985); *Parker v. Cook*, 642 F.2d 865, 867, 876 (5th Cir. Unit B, April 1981).
[85] *Id.*, quoting *Vitek v. Jones*, 445 U.S. at 490–91. *See Hewitt v. Helms*, 459 U.S. at 470–71; *Dzana v. Foti*, 829 F.2d 558, 560. (5th Cir. 1987).
[86] *Id.*, citing *Green*, 788 F.2d at 1125.

Madison v. Parker,[87] related to Texas statutes authorizing good-time credit, is also instructive. In *Madison*, after noting that the Constitution does not guarantee good time credit, but that some states choose to create such a right, the Fifth Circuit stated:

> When a state creates a right to good time credit and recognizes that its revocation is an authorized sanction for misconduct, a prisoner's interest therein is embraced within the Fourteenth Amendment "liberty" concerns so as to entitle him to those minimum procedures appropriate under the circumstances and required by the due process clause to insure that this state-created right is not arbitrarily abrogated. *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974). In Texas, a prisoner may be awarded good conduct time based on his or her specific behavior in various vocations. Tex.Gov.Code Ann. § 498.003(a) (Vernon 1996). If an inmate commits an offense or violates an institutional rule during the course of his confinement, the Director of the Texas Department of Criminal Justice—Institutional Division ("TDCJ–ID") is empowered to forfeit all or any part of the inmate's accrued good time. Tex.Gov.Code Ann. § 498.004(a) (Vernon 1996). **Once an inmate acquires good time, the only way it can be revoked is if he or she commits an offense or violates an institutional rule.**[88]

While it is true that Louisiana has the discretion (as do all states) whether to authorize a parole system,[89] this case does not turn on that question. Instead, this case turns on the narrower question of whether, once a parole decision has been made, the Parole Board can change that decision without affording the parole grantee Due Process protections. Neither Petitioner nor Respondents have cited any case, state or federal, addressing whether *Louisiana's* parole statutes confer a parole grantee a protectible liberty interest under the circumstances. The issue appears to be one of first impression. Accordingly, we must examine Louisiana's parole statutes and

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[87] 104 F.3d 765 (5th Cir. 1997).

[88] *Madison*, 104 F.3d at 768 (emphasis added).

[89] *Trujillo v. United States*, 377 F.2d 266, 269 (5th Cir. 1967) (parole is ... a matter of legislative grace), citing *Smith v. United States*, 324 F.2d 436, 441(D.C. Cir. 1963); *see also, Stevenson v. Louisiana Bd. of Parole*, 265 F.3d 1060 (5th Cir. 2001) (the Louisiana statutes do not give rise to a constitutionally protected liberty interest in parole release) (citation omitted).

administrative rules to determine whether they create a liberty interest for a parole grantee that gives rise to due process protections in the context of recission.

Louisiana's system of parole is set out in La. R.S. 15:574.2, *et seq.* Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint.[90] A Board of Parole is established within the Department of Public Safety and Corrections (DPSC) and is vested with the authority to determine "the time and conditions of release on parole" for offenders sentenced to imprisonment and confinement in any correctional or penal institution in this state.[91] The granting, conditions, or revocation of parole rests in the discretion of the Parole Board.[92]

The version of La. Admin Code, tit. 22, Pt XI, § 504 ("General Procedures") in effect on April 21, 2017, read as follows (in pertinent part):

> K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under § 311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

Petitioner's parole was rescinded through "Single Member Action," which is authorized by La. Admin. Code Pt XI, §513. The version of this statute in effect on April 21, 2017, read as follows (in pertinent part):

> 3. The duty officer may rescind parole as provided in § 505.L, pending another parole hearing.[93]

[90] La. R.S. 15:574.11(A).
[91] La. R.S. 15:574.2(A) and (D)(1).
[92] La. R.S. 15:574.11(A).
[93] The Board retains authority to add or remove parole conditions under § 513.

Due to an apparent statutory drafting error, § 505.L did not exist on April 21, 2017.[94] It was repealed in 2015. The repealed version was identical to §504.K, above:

> L. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under § 311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.[95]

Louisiana's parole board regulations in effect on April 21, 2017, permitted the Parole Board to rescind parole only in the following two circumstances: (1) violation of the terms of work release, and (2) misconduct prior to release. When a Parole Board member unilaterally authorized the recission of Petitioner's parole on April 21, 2017, the stated reason was "Other" and "There may have been techical [sic] irregularity to victim notice."[96] This was also the reason provided to Petitioner in the May 1, 2017 correspondence advising him of the recission.[97] It is undisputed that neither of the two statutory reasons for rescission applied to Petitioner. Additionally, while the record is clear that McWilliams and Hill received timely notice of the November 3, 2016 parole hearing,[98] lack of victim notification was also not a permissible reason to rescind Petitioner's parole under the statutory scheme in effect on April 21, 2017. In August of 2019, the statute was amended to include victim notification errors as a permissible reason for recission.[99] This subsequent change in the law is an additional indication that the Parole Board did not have the authority on April 21, 2017, to rescind Petitioner's parole for a victim notification error, even if it had occurred.

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[94] The absence of §505.L on April 21, 2017 may have resulted in lack of authority to unilaterally rescind Petitioner's parole by "Single Member Action." This question need not be resolved as, even assuming the authority existed, the expressly permitted statutory reasons for recission were inapplicable to Petitioner.
[95] 2013 LA REG TEXT 307903 (NS).
[96] R. Doc. 15-2, p. 158.
[97] 15-1, p. 65.
[98] The version of La. Admin Code, tit. 22, Pt XI, § 510 in effect on November 3, 2016 only required the notification be sent to Hill, and only thirty days prior to the parole hearing.
[99] La. Admin Code, tit. 22, Pt XI, § 504 (eff. August 19, 2019 to January 20, 2020).

Like the conclusion of the Fifth Circuit in *Jackson v. Cain,*[100] and *Madison v. Parker,*[101] because the State of Louisiana created a parole system and limited the right to rescind parole to only two circumstances, a parole grantee, such a Petition, had a constitutional expectation that he would be released unless he committed one of the two violations for which his parole could be rescinded.[102] The cases located through independent research in which the district courts, or the Fifth Circuit, have found that there was no due process protection where the process of parole had not reached release, are distinguishable. In *Sexton v. Wise,*[103] the Fifth Circuit reversed the district court decision granting a writ of habeas corpus, unless a hearing with sufficient due process was held on the recission of Sexton's parole. While the *Sexton* opinion specifically states that, "Until a parole is finalized, no constitutional protections associated with a parole revocation embrace the intended parolee,"[104] the decision was based on the fact that, unlike the Louisiana statutes at issue in this case, the applicable regulations afforded the parole board discretionary power to rescind future parole.[105]

In *Reneau v. Dretke,*[106] the Southern District of Texas dismissed the petitioner's § 2254 habeas application as frivolous and for failure to state a claim upon which relief could be granted. There, the petitioner challenged the decision of the Texas Board of Pardons and Paroles to rescind his previously granted parole release without proper notice and a hearing. The court relied on

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[100] 864 F.2d 1235 (5th Cir. 1989)
[101] 104 F.3d 765 (5th Cir. 1997).
[102] *See also, Green v. McCall,* 822 F.2d 284 (2nd Cir. 1987) (holding that parole grantees had protectible liberty interest entitling them to due process where the parole commission had limited authority to rescind parole).
[103] 494 F.2d 1176 (5th Cir. 1974)
[104] *Sexton,* 494 F.2d at 1178.
[105] The applicable provision stated:

> § 2.20 Release; discretionary power of Board.
> When an effective date has been set by the board, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for his supervision. The Board may, on its own motion, reconsider any case prior to release and may reopen and advance, postpone, or deny a parole which has been granted. The Board may add to or modify the conditions of parole at any time.

[106] No. 05-3413, 2005 WL 2488421 (S.D. Tex. Oct. 6, 2005).

controlling precedent that established that Texas statutes do not create a liberty interest in parole release.[107] However, Tex. Gov't Code § 508.145, the statute at issue, did not contain the same limitations on parole recission as those at issue in this case. To the contrary, the statute in *Reneau* is silent as to the bases for recission. The *Reneau* court also relied on the language in *Sexton* that there are no constitutional protections for a parole grantee until release,[108] which is distinguishable, as explained above.

The court's decision in *Davis v. Johnson*[109] is likewise distinguishable. In that case, after noting the continuum of increasing liberty interests from one who only has a desire for parole (no liberty interest), to one who has actually been set free on parole (liberty interest), the Northern District of Mississippi noted that a parole grantee who has not been released falls in between these on the continuum.[110] Relying on the Supreme Court's decision in *Jago*, the court found that "parolees who have not yet been released do not have the right to a hearing on the rescission of parole." As discussed above, the Supreme Court's decision in *Jago* was based on the unfettered discretion given to the Ohio parole board under Ohio statutory regime. The *Davis* court did not analyze applicable Mississippi law to determine whether those statutes afford similar discretion; however, like Texas, the Mississippi parole statute does not include any specific limitations on recission.[111]

While it is true that Louisiana's parole statutes do not create a liberty interest in the granting of parole, once parole has been granted, the Parole Board's discretion to rescind that parole was statutorily limited to an objective, fact-based finding that Petitioner had either: (1) violated the

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[107] *Reneau*, 2005 WL 2488421, at * 1, citing *Johnson v. Rodriguez*, 110 F.3d 299, 305 (5th Cir. 1997).
[108] *Reneau*, 2005 WL 2488421, at * 1.
[109] 205 F.Supp.2d 616 (N.D. Miss. June 20, 2002).
[110] *Davis*, 205 F.Supp.2d at 619.
[111] Miss. Code Ann. § 47-7-17.

terms of his work release, or (2) engaged in misconduct. Neither statutory basis was even argued, much less established in April 2017. Under the Fourteenth Amendment, Petitioner was entitled to notice and a meaningful opportunity to be heard before rescinding his parole,[112] which did not occur.[113]

Petitioner asks the Court to remedy the constitutional violation through reinstatement of his original parole and release from confinement. In federal habeas cases, district courts have "broad discretion in conditioning a judgment granting habeas relief."[114] "Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of habeas corpus matters as law and justice require."[115] "[H]abeas corpus is, at its core, an equitable remedy."[116] "[R]emedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests."[117]

The competing interest at stake in this matter would be the Parole Board's right to conduct a recission hearing. However, the only statutory bases for recission at the relevant time were that the parolee violated the terms of his work release or engaged in misconduct. The facts are undisputed, and the record is clear--Petitioner's parole was not rescinded for either of these reasons. Because remand to the Parole Board for a decision on an undisputed fact would be an unwarranted exercise in futility, the appropriate remedy under the unique circumstances of this

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[112] Because it is not necessary to the resolution of this matter, this Report does not seek to define the contours of the process that would have been due at a pre-deprivation recission hearing. At a minimum, due process would require notice and a meaningful opportunity to be heard.

[113] It appears from the record that another parole hearing was conducted on May 27, 2020. R. Doc. 15-1, pp. 2-7. This is not sufficient to correct the procedural Due Process violation. *See Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972) ("If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented."). Additionally, a new parole hearing was not the appropriate remedy where, as here, none of the statutory bases for parole recission, as of April 21, 2017, existed.

[114] *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987).

[115] *Id.* (quotation omitted).

[116] *Schlup v. Delo*, 513 U.S. 298, 319 (1995).

[117] *United States v. Morrison*, 449 U.S. 361, 364 (1981).

case is release, subject to the parole conditions set forth by Parole Board in its original decision on November 3, 2016. Accordingly,

IT IS RECOMMENDED that Petitioner's application for writ of habeas corpus[118] be **GRANTED**.

IT IS FURTHER RECOMMENDED that Petitioner be released on parole within thirty (30) days, subject to the original conditions of his parole granted on November 3, 2016 found in R. Doc. 15-2, p. 177, including: "approval of residence," "low static 99 score," "approval of out of state plan," "no contact with victims or family," "no travel to Louisiana without approval of the parole office," and "perform community service speaking to at risk youth twice per year."

Signed in Baton Rouge, Louisiana, on March 9, 2022.

Erin Wilder-Doomes

ERIN WILDER-DOOMES
UNITED STATES MAGISTRATE JUDGE

[118] R. Doc. 1.

APPENDIX F

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*
Petitioner	*
VERSUS	*
TIMOTHY HOOPER, WARDEN	*
Respondent	*

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

Petitioner, Samuel Galbraith, pursuant to 28 U.S.C. 2241 respectfully requests that this Court issue the writ of habeas corpus for his immediate release from custody. He challenges his confinement following his grant of parole and subsequent rescission of parole by the Louisiana Board of Pardons and Paroles (hereinafter Board) demonstrating that the Board's sole reason for rescission was knowingly false, in violation of the Due Process Clause of the Fourteenth Amendment.

Petitioner is a prisoner in the custody of the Louisiana Department of Corrections and is being housed at the Elayn Hunt Correctional Center in St. Gabriel, Louisiana. His DOC number is 422350.

Warden Timothy Hooper is the warden of the Elayn Hunt Correctional Center in St. Gabriel, Louisiana. Warden Hooper is Petitioner's immediate custodian.

JURISDICTION AND VENUE

This Court has jurisdiction, pursuant to 28 U.S.C. § 2241, and venue is proper in this district as it is where both the Petitioner and the Board reside.

THIS PETITION IS RIPE FOR DE NOVO REVIEW ON THE MERITS

The claims alleged are properly before this Court for de novo review. "[T]here is an absence of available State corrective process," 28 U.S.C. § 2254 (b)(1)(B)(i), under Louisiana law, therefore exhaustion of the claims cannot occur. Louisiana law prohibits challenges to decisions of the Parole Board, except in cases of a parole revocation. La.R.S. 15:574.11 states in pertinent part:

> A. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the committee on parole. No prisoner or parolee shall have a right of appeal from a decision of the committee regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9.

Accord., Sinclair v. Stalder, 2003-1568 (La. App. 1 Cir. 10/17/03), 867 So. 2d 743, 744, *writ denied,* 2003-3177 (La. 1/14/05), 889 So. 2d 253 ("there is no statutory basis for Sinclair to seek review of the parole board's decision denying him early release on parole."); *Weaver v. LeBlanc*, 2009-0244 (La. App. 1 Cir. 9/14/09), 22 So. 3d 1014, 1016–17, *writ denied,* 2009-2290 (La. 10/1/10), 45 So. 3d 1090, ("This Court has no judicial oversight over the pre-release decisions of the Parole Board or the Pardon Board").[1]

[1] However, Petitioner attempted to exhaust his remedies in state court, but was informed that his administrative remedy "ha[d] been rejected for the following reason(s): Pardon and Parole Board decisions under Louisiana law, (sic) decisions of these Boards are descresionary (sic) and may not be challenged." Ex. 1.

The facts giving rise to demonstrating that Petitioner's due process rights have been violated have only recently come to light. The allegations made in this Petition have come from a variety of confidential documents and depositions that were previously unavailable to Petitioner.

CLAIMS FOR RELIEF

THE BOARD HAS VIOLATED PETITIONER'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION BY RESCINDING A VALID GRANT OF PAROLE BASED SOLELY UPON A FALSE REASON

Petitioner was eligible for parole, pursuant to La.R.S. 15:574.4, that was in effect at the time of his crime in 1988. That statute allowed for Petitioner to be parole eligible after serving twenty years and reaching the age of forty-five, often referred to as the 20/45 parole eligibility act.

Petitioner was granted a parole hearing by the Louisiana Board of Pardons and Paroles that was originally set for October 13, 2016. The October 13th hearing was rescheduled for November 3, 2016.

On that date, the parole hearing was held at the Elayn Hunt Correctional Center. The three-member panel of the Board, consisting of Sheryl Ranatza, Chairperson, Louisiana Board of Pardons and Paroles, Jim Wise and Pearl Wise, unanimously voted to grant Petitioner parole. The panel cited the following reasons for granting parole: Petitioner had been rehabilitated, he had a positive institutional record, he had taken all possible programs available to him, he had a low LARNA score, he had an employment plan, and he had a viable residence plan. Ex. 2. In short, in compliance with L.R.S. 15:574.4.1(B), the panel found that "there is reasonable

probability that the [Petitioner] is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself."

Petitioner was ordered to comply with various conditions of parole before being released; in particular he was required to live in Texas, was required to have an approved residence plan, was required to have an approved compact application with the state of Texas, and achieve a Static 99 score. Petitioner complied with all parole conditions. His release date was set for April 23, 2017. Exs. 2, 3.

On April 21, 2017, the Board rescinded the grant of parole. Petitioner was informed of the rescission by prison staff. In a letter written by Hall Morrison, a Board employee, dated May 1, 2017, Petitioner was informed of the reason for the rescission. The letter states, "This correspondence is to advise you that the Parole Board has voted to rescind the parole granted at your original parole hearing. This action was taken due to the following: We have been advised that Other. There may have been technical irregularities notifying the victim's family." Ex.4.

On July 27, 1017, Petitioner filed a Complaint for Declaratory and Injunctive Relief. *Galbraith v. LeBlanc, et al*, No. 3:17-cv-00486, United States Middle District Court for Louisiana, Judge Shelly Dick presiding. That action is pending. Petitioner is seeking the court to declare that the Board's use of a false reason to rescind a grant of parole is a violation of substantive and procedural due process. Through discovery in that case, Petitioner learned that the Board's sole reason to rescind his parole was false and the Board knew it was false.

In that action, the Board disclosed documents on April 5, 2018, May 11, 2018, July 1, 2018 and July 16, 2018 pursuant to Petitioner's discovery requests. The documents consist mainly of Petitioner's parole file which is confidential under Louisiana law. Other relevant documents were secured by subpoena. Additionally, depositions of members of the Board

revealed relevant and material evidence. These heretofore confidential documents and information form the factual basis of this petition.

As part of the parole process, the Board requires a Probation and Parole Officer to investigate and file a Pre-Parole Investigation Report. Lois LeBleu, a probation and parole officer, undertook that task. Part of her job was to contact various persons to inform them that Petitioner had been scheduled for a parole hearing and to elicit their opinions regarding whether each was in favor or not of parole.

On September 28, 2016, Ms. LeBleu sent properly addressed letters to Jessie McWilliams and James Hill, the mother and former husband of the victim in this case, notifying both that the Board had set Petitioner's parole hearing for November 3, 2016. Ex. 5.

On September 29, 2016, Lois LeBleu contacted Jessie McWilliams and conducted an interview via telephone with Ms. McWilliams for inclusion in the report. Upon being informed that Petitioner had an upcoming parole hearing, Ms. McWilliams stated, "I do not think he should be allowed parole." Ex. 6.

On October 4, 2016, Ms. LeBleu contacted Assistant District Attorney Terry Lambright, Office of the District Attorney for the 30th Judicial District, and conducted an interview via telephone for inclusion in the report. Upon being informed that Petitioner had an upcoming parole hearing, Mr. Lambright stated, "We are strongly opposed to any early release." Ex. 6. A letter in opposition was submitted by the District Attorney. Ex. 7.

On October 6, 2016, Ms. LeBleu interviewed Judge Vernon Clark, 30th Judicial District Court, and Sheriff Sam Craft, Vernon Parish Sheriff's Office, via telephone for inclusion in the report. Upon being informed that Petitioner had an upcoming parole hearing, Judge Clark stated, "I am opposed to any early release," and Sheriff Craft stated, "Opposed." Ex. 6.

On or about October 12, 2016, James Hill sent a letter to the Board in opposition to Petitioner's parole. Ex. 8.

On November 3, 2016, Petitioner's parole hearing was held. At the hearing, the panel acknowledged that there was considerable opposition to parole lodged by the victim's mother and husband, the district attorney, the sentencing judge and the sheriff. A portion of Mr. Hill's letter in opposition was read into the record. As stated, the three-member panel unanimously voted to grant parole.

On November 30, 2016, District Attorney Asa Skinner, 30th Judicial District, filed a request to the Board for a reconsideration of Petitioner's grant of parole. Ex. 9.

On February 2, 2017, Chairperson Ranatza rejected the reconsideration request. The letter to District Attorney Skinner states,

> The board's policy provides for a reconsideration review only in the following circumstances: 1. If there is allegation of misconduct by a Committee member that is substantiated by the record; 2. If there is a significant procedural error by a Committee member; or 3. If there is significant new evidence that was not available when the hearing was conducted. The information you provided in your letter does not meet the criteria for a rehearing. For these reasons, a rehearing for Samuel Galbraith is not warranted.

Ex. 10.

The Louisiana Justice Reinvestment Task Force, a body of stake-holders in the criminal justice system, made its report and recommendations on March 16, 2017. The report and recommendations were incorporated in a number of bills known as the Criminal Justice Reform Package. One of the recommendations was to relax parole eligibility for persons convicted of violent crimes.

Near the end of March, various news outlets reported stories regarding Petitioner's impending release. An on-line petition was widely-distributed calling for Petitioner's continued incarceration.

District Attorney Skinner was featured in television and newspaper articles calling the Board's decision to grant parole an injustice. "It was just unconscionable that this particular person would get out after serving less than one-third of his sentence for such a heinous murder and rape he committed," he stated.

Shortly before Petitioner's impending release, news stories reported that the Louisiana Sheriff's Association and the Louisiana District Attorney's Association were vehemently opposed to any measure that would assist prisoners convicted of violent offenses from being released. Petitioner's grant of parole factored large in their efforts to thwart the Governor's and Louisiana Justice Reinvestment Task Force's recommendations the provide release opportunities to violent offenders. For example, Pete Adams, the Executive Director to the District Attorney's Association commented that Petitioner's grant of parole "turned out to be an example of why we are concerned.... This is an example of one of those things in the [reform] package that would do that."

The Board became aware of a local television news story that highlighted the Board's grant of parole. On April 10, 2017, Mary Fuentes, Executive Director of the Board, informed Emalie Boyce, Deputy Executive Counsel to the Governor and the Governor's liaison with the Board, that "Due to the nature of [Petitioner's] offense the family of the victim and the DA have raised a lot of negative attention." Ex. 11. The Louisiana legislative session had just begun and Governor Edwards was pushing bills in the Criminal Justice Reform Package.

On April 20, 2017, Governor Edwards responded to media inquiries regarding Petitioner's impending release. He stated, "My staff has been in contact with the parole board today and we are looking at what options are available. We want to make sure that the process that was followed was complete and that they did everything they were supposed to."

On April 20, 2017, Mary Fuentes reviewed Petitioner's parole file. The file contained the letters from Lois LeBleu to Ms. McWilliams and Mr. Hill notifying each of the November 3, 2016 parole hearing. It also contained the Pre-Parole Investigation Report showing that Ms. McWilliams was interviewed by Lois LeBleu on September 29, 2016 via telephone and noted that Mr. Hill had submitted a letter in opposition. Ms. Fuentes reported her findings to Chairperson Sheryl Ranatza and Ms. Ranatza determined that Ms. McWilliams did indeed receive proper notification.

On April 21, 2017, emails with persons sheparding the Criminal Justice Reform Package in the Legislature, including Erin Monroe Wesley, Special Counsel of the Governor's Legislative Staff and Mary Patricia Wray, a lobbyist, show that Petitioner's impeding release became a cause for alarm. Debates on the bills were underway. Ms. Wray informed Ms. Wesley that "the story about Samuel Galbraith's impending release is causing a stir... In my ignorance I truly do not know if there is a way to prevent the scheduled release Sunday [April 23, 2017]? I believe this is about to become a very problematic narrative, especially in the bills dealing with parole eligibility." Ex. 12.

In the early morning of Friday, April 21, 2017, Ms. Ranatza was summoned to the Governor's Mansion to have a meeting with the Governor and his staff regarding Petitioner's impending release. Following the meeting, Ms. Ranatza stated that "Ms. McWilliams did

receive the required notice for the November parole hearing." On Friday afternoon, Petitioner was informed by prison staff that he would not be released on Sunday.

Clearly, the Board knew that both Ms. McWilliams and Mr. Hill received the required notice of that hearing – the evidence was in their files. Both family members received proper notification of the parole hearing. The Board made up a story to keep Petitioner locked up all the while knowing that there were no "technical irregularities notifying the victim's family." Thus, the sole reason relied upon by the Board for Petitioner's parole rescission was false.

The Louisiana Administrative Code, Title 22, Part XI section 504 provides two reasons that may be used by the Board in rescinding a grant of parole. It states in pertinent part:

> K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the [Board] may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

Similarly, Board Policy Number 05.505 (M)(1) states the same. In addition, the Board has created a policy wherein it may rescind a grant of parole based upon certain factors. Those factors, found on the Board's "Parole Board Action Sheet," include reasons that a parole grantee is not actually eligible for parole or based upon the offender having not fulfilled conditions of parole. They are:

> Subject was removed from generic Board ordered SAB-W/R [Substance Abuse Program-Work Release]
> Subject refused transfer to W/R and/or SAB
> Subject is ineligible for parole (See new MPR) [Master Prison Record]
> Subject has received DB Report [Disciplinary Report]
> Per inmate's request
> Subject was granted to OOS plans only, OOS plans were rejected [Out of State]
> Additional Sentence
> Time Recalculated, New PED Date [Parole Eligibility Date]
> Subject escaped from W/R and/or SAB
> Subject is inappropriate for SAB-W/R because of medical reasons
> Subject is ineligible for W/R because of previous escape charges
> Subject is not eligible for SAB-W/R due to pending charges

Subject has a detainer – Granted to OOS Plans
Subject had a detainer at his Parole Hearing; the detainer has been dropped
Subject has a detainer, ineligible for SAB-W/R
Subject's Parole Decision is over 6 months
Other

The Board failed to provide Galbraith with any notice or opportunity to challenge a possible rescission of parole or to challenge the false information.

The Board has discretion to rescind a grant of parole if the offender has not fulfilled the conditions of parole. For example, as shown above, if a condition of parole is to have an approved out of state living plan but the receiving state did not approve the plan, then the person did not fulfill a condition of parole and the grant of parole could be rescinded, or if a condition of parole was to complete a substance abuse program but the inmate escaped from the program, a grant of parole could be rescinded. The Board's policy does not define what "other" could be. Surely, "other" cannot, within the confines of fundamental fairness, be unauthorized or false information that creates an arbitrary and capricious denial of due process.

As demonstrated above, the Board knew the sole reason for rescission -- "There may have been technical irregularities notifying the victim's family" – was false. The Board knew that there was no "technical irregularities" regarding notification for the November 3, 2016 parole hearing. The Board knew that both Ms. McWilliams and Mr. Hill received the required notice of that hearing. Indeed, Chairperson Ranatza stated, "Ms. McWilliams did receive the required notice for the November parole hearing."

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 125 S. Ct. 2384, 2393 (2005). "A liberty interest ... may arise from an expectation or interest created by state laws or policies, see,

e.g., Wolff v. McDonnell, 94 S.Ct. 2963 (1974)." *Id.* See also *Sandin v. Conner*, 115 S. Ct. 2293, 2300 (1995) ("Following *Wolff,* we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause.")

In *Madison v. Parker*, 104 F.3d 765 (5th Cir. 1997), the Fifth Circuit, explained that "states may, under certain circumstances, create liberty interests which are protected by the Due Process Clause. [*Sandin*] held that these interests are generally limited to state created regulations or statutes which affect the *quantity* of time rather than the *quality* of time served by a prisoner." Id. 104 F.3d 765 at 767 (emphasis added). *Madison* examined whether a state's revocation of good time credits for release implicated the due process clause and found that the lower court was incorrect in failing to analyze the issue under *Wolff v. McDowell*, Id. *Madison* found that the *Sandin* Court "clearly left intact its holding in *Wolff*." *Id.*, at 769.

Here, Petitioner does not complain about the *quality* of confinement, rather he complains about the *quantity* of time he must be confined following a grant of parole and shows he was entitled to due process in the rescission process employed by the Board. He was on notice that his grant of parole may be jeopardized if he engaged in misconduct or if he failed to fulfill a condition of parole or any of the policy provisions. He had a legitimate expectation of being released based upon the fact that he did nothing improper to jeopardize his parole grant. None of the criteria listed in the Board's policy for rescission were involved.

The regulations and policies which guide the Board's decisions to rescind a grant of parole are clearly established and gives notice of when a proper, valid and non-arbitrary rescission may occur. The Louisiana Administrative Code, Title 22, Part XI section 504 provides two reasons that may be used to rescind a grant of parole. Neither are involved here. The Board's sound policy that allows for rescission of parole, namely the prisoner is *not eligible*

for parole even though a grant of parole was given, is not at issue here. Those regulations and policies create a liberty interest that inures to the Petitioner's benefit.

As demonstrated above, a liberty interest has been created by the regulations and policies of the Board concerning under what circumstances a rescission of a grant of parole may occur. Louisiana law grants sole discretion to the Board as to whether to grant or deny parole. State law and Board policy limits the Board's discretion to rescind a grant of parole. But, even if the Board has sole discretion to rescind parole, which is not the case, the Board may not engage in "flagrant or unauthorized action." *Thomas v. Sellers*, 691 F.2d 487, 489 (11th Cir. 1981) (parole statutes do not "authorize state officials to rely on knowing false information in their determinations," and if the board does so, due process is violated).

In *Monroe v. Thigpen*, 932 F.2d 1437 (11th Cir. 1991), the inmate was not granted parole, unlike this case, yet he argued that his due process rights were denied because the parole board knowingly relied upon false information to deny him parole. The court held that "by relying upon false information ... the Board exceeded its authority [under the statutes] and treated Monroe arbitrarily and capriciously in violation of due process." *Id.*, at 1142. Similarly, in *Victory v. Pataki*, 814 F.3d 47 (2nd Cir. 2016), the court held that fabricating a false basis for rescinding parole violates due process. *Cf. Napue v. Illinois*, 79 S.Ct. 1173 (1959) (a prosecutor's presentation of false evidence at a criminal trial violates due process).

The Board did not provide Petitioner with notice that his impending release was in jeopardy and did not provide him with an opportunity to be heard as to why his parole should not be rescinded. Louisiana law does not allow Petitioner to challenge the Board's decision and the Board failed to reveal that the sole reason for rescinding his parole was false.

CONCLUSION

Petitioner became a pawn in the world of politics. The Board, and perhaps the Governor, were willing to violate fundamental fairness by preventing Petitioner's release because his parole was "causing a stir" and had become "a very problematic narrative, especially in the bills dealing with parole eligibility." The Board concocted a false reason as the sole basis to rescind the grant of parole.

While a grant or denial of parole is an act of discretion by the Board, the Board is regulated by express provisions of law and policy that prescribe under what circumstances the grant of parole may be rescinded. Petitioner was on notice that his grant of parole could be rescinded only if he engaged in misconduct while in custody or was ineligible for release on parole. Petitioner had a state-created liberty interest that arose from state law and policy.

There is no law, regulation or policy that allows the Board to use unauthorized or false reasons to rescind a valid grant of parole. Petitioner's substantive and procedural due process rights have been violated; using false reasons to deny him liberty and forbidding a him from challenging such shocking and flagrant action is fundamentally unfair.

Mr. Galbraith is a model prisoner. He has maintained a stellar record while incarcerated. He has been a trusted inmate counsel for a number of years and is currently a writer for the "The Walk Talk," the prison's inmate magazine. The Board recognized his rehabilitation, his accomplishments and his low-risk of re-offending when the panel unanimously granted him parole. But for the view that his release had become a "very problematic narrative" for the Governor's Criminal Justice Reform Package, Petitioner would be free.

Prayer for Relief

Wherefore, Petitioner respectfully prays that this Court:

1) Issue the Writ of Habeas Corpus and order his immediate release;

2) Set an evidentiary hearing on Petitioner's claims;

3) Provide such relief as the Court deems just and proper.

Dated: March 27, 2019

Respectfully submitted,

/s/ Nicholas Trenticosta
Nicholas Trenticosta
LSBA #18475
7100 St. Charles Ave.
New Orleans, LA 70118
504-352-8019
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Counsel of Record for Samuel Galbraith

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served upon Louisiana Board of Pardons and Paroles, 504 Mayflower Street, Baton Rouge, LA 70802, and the Louisiana Attorney General's Office, Post Office Box 94005, Baton Rouge, LA 70804 by first class mail on the 27th of March 2019.

s/ Nicholas J. Trenticosta
Nicholas J. Trenticosta

EXHIBIT 1

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
CORRECTIONS SERVICES
OFFENDERS RELIEF REQUEST FORM

CASE NUMBER: EHCC-2017-301

TO: SAMUEL GALBRAITH 422350 F3B
Offender's Name and Number Living Quarters

04/23/2017
Date of Incident

ACCEPTED: This request comes to you from the Wardens Office. A response will be issued within 40 days of this date.

X REJECTED: Your request has been rejected for the following reason(s):
PARDON AND PAROLE BOARD DECISIONS UNDER LOUISIANA LAW, DECISIONS OF THESE BOARDS ARE DESCRESIONARY AND MAY NOT BE CHALLENGED.

05/11/2017
Date

Lt. Col. W. Matthews
Warden's Signature or Designee

EXHIBIT 2

COMMITTEE ON PAROLE ACTION SHEET

(HCC)

11/03/2016)

FENDER: GALBRAITH, SAMUEL K. DOC: # 422350

MEMBER INITIAL	VOTE	SPECIAL CONDITIONS		REASON FOR VOTE
RANATZA, SHERYL	G	Prior to Release: out of state re STATIC 99	After Release: no contact victim's family + community service 4 years	Grant: Good support, good plans Low risk, good programs good conduct Deny:
BRENNAN KELSEY		Prior to Release	After Release	Grant: Deny:
JAMES KUHN		Prior to Release	After Release	Grant: Deny:
KENNETH LOFTIN		Prior to Release	After Release	Grant: Deny:
ALVIN ROCHE, JR		Prior to Release	After Release	Grant: Deny:
WISE, JIM JW	G	Prior to Release: Approval of Res. Plan TX. only	After Release: NO CONTACT OF VICTIM - Travel	Grant: ~~Refer~~ REH All Programs Postive Inst. Low LARNA - 2 Rec. Has Empt Deny: Plan -
WISE, PEARL JW	G	Prior to Release: approved compact applicable to Texas	After Release: only return to Res. if Approved By Parole Officer Make Presentations to Victims Youth Programs - Twice a year	Grant: Low LARNA postive institutional record, Employt Deny: ~~-~~ Residence Plans Viable Will be a Tax Payer + NA a Tax Burden

POSITION: _____

COMMENTS:

LOUISIANA BOARD OF PARDONS, Committee on Parole

DECISION FORM

Galbraith, Samuel | 422350 | NCC

Name | DOC Number | Institution

The Louisiana Committee on Parole, after due consideration of all of the facts in your case, has made the decision that:

☑ You are GRANTED parole[1]

- ☐ Effective _____ with recommendation for Transitional Work Program (TWP)[1] until parole date
- ☐ Upon completion of High School Equivalency (HSE)
- ☐ Upon completion of DOC approved substance abuse education treatment program
- ☑ Upon completion of 100 hours pre-release programming
- ☐ Other: _____

☑ Your release is conditioned upon:

☑ Approval of residence ☐ No disciplinary infractions ☑ Approval of out-of-state plan ☐ Approval of Employment
☑ A Low Static99 Score (*applicable to sex offenders only*) ☐ Certification of compliance with R.S. 15:574.2 by releasing facility

You must comply with the following SPECIAL CONDITIONS OF PAROLE:

A. Pay restitution, victim reparation
B. Pay fines and/or costs of court
C. No contact with victim(s), or victim's family
D. No contact with codefendant(s)
E. HSE, Vo-Tech, or other education plan
F. Curfew 10pm-6am
G. Other Special Conditions Additional Information:

No travel to Louisiana without approval from LA parole officer
perform community service speaking to at risk
youth - twice per year

☐ Your parole hearing has been CONTINUED due to:

- ☐ Verification of disposition of pending charges
- ☐ The need for additional other information by the Committee on Parole

☐ You are DENIED parole for the following reason(s):

- ☐ Victim Opposition
- ☐ Prior Criminal History
- ☐ Probation/Parole Unsatisfactory/Violated
- ☐ Psychological and/or Psychiatric History
- ☐ Violation of TWP Agreement
- ☐ Failed to complete Rehabilitative Programming
- ☐ Institutional Disciplinary Reports
- ☐ History of Drug Alcohol Abuse
- ☐ History of Violence
- ☐ Escape History
- ☐ Law Enforcement and/or Judicial Objection
- ☐ Other: _____

11/3/2016
Date

Chairman, Parole Panel
Committee on Parole

BY MY SIGNATURE BELOW, I ACKNOWLEDGE THAT I RECEIVED A COPY OF THIS PAROLE DECISION.

WITNESSED BY:

OFFENDER SIGNATURE (DATE) | WITNESS PRINTED NAME | SIGNATURE | (DATE)

[1] TRANSITIONAL WORK PROGRAM (TWP) PARTICIPATION (15:1111):
An offender sentenced to any of the following crimes are eligible for TWP participation only during the last 6 months of incarceration, unless and except the offender has served a minimum of 15 years in the custody of DOC, in which case the offender is eligible for TWP during the last 12 months of incarceration:

- ☐ *aggravated arson (14:51)*
- ☐ *armed robbery (14:64)*
- ☐ *attempted armed robbery (14:27 and 64)*
- ☐ *attempted murder (14:27 and 29)*
- ☐ *forcible rape (14:42.1)*
- ☐ *habitual offenders (15:529.1)*[2]

An offender convicted of a sex offense as defined in 15:541 is not suitable for participation in a TWP.
[2] Habitual offenders with LOW RISK ASSESSMENT are eligible during last 12 months of term (15 year minimum DOC custody not required).
[3] All offenders who are granted parole are required to submit to HIV testing prior to release on parole in accordance with La.R.S. 15:504.2. The offender may not be released on parole until the Committee on Parole has received Form HC-07A from the releasing facility. Failure to comply with any special conditions of parole, follow-up care, treatment and counseling may result in the revocation of parole.

Revised 02-24-16

EXHIBIT 3

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS
BOARD OF PARDONS/COMMITTEE ON PAROLE

Certificate of Parole

Know All Men By These Presents: That Samuel K. Galbraith

DOC No. 422350 an offender in the Eloyn Hunt Correctional Center - VRN 52533, VRN 57369

is eligible to be released by parole, and that there is reasonable probability that said offender will remain at liberty without violating the laws, and it being the opinion of the Committee on Parole that the release of this offender is not incompatible with the welfare of society, it is ordered that the offender be paroled from said institution on April 23, 2017 and that said offender remain within the limits of TEXAS District Probation and Parole Office until March 26, 2068;

or until other action may be taken by the Committee on Parole.

Said offender shall report to:

Parole Specialist - Address	*Residence – Address*
Supervising Officer	Johnny Galbraith
Ricardo Carmona	6659 CR 1432
4 2 Sunbelt	Aransas Pass, TX 78336
Corp s Christi TX 78408	361-310-8600
361-888-5698 ext. 223	

Be It Also Known, that this parole is granted upon the condition that the said offender has agreed to observe and perform each and all of the conditions and directives shown below and on the back of this Certificate, all of which are hereby made and agreed to be conditions precedent to his/her release:

H

A. Pay restitution, victim reparation
B. Pay fines and/or costs of court
C. No contact with victim(s), or victim's family
D. No contact with codefendant(s)
E. GED, Vo-Tech, or other education plan
F. Curfew 10pm-6am for ____ months
G. Comply with conditions of R.S. 15:574.4.2 prior to release on parole
H. Other: Report in person to the above address within 24 hours of arrival in Texas. Report to Sasha Flores. Bring all Louisiana release paperwork to the Texas parole office., Offender will pay for electronic monitoring; Travel is restricted to San Patricio, Nueces, and Aransas counties in Texas. Speak to at-risk youth at least twice per year while under supervision,as directed by Texas authorities.

STATE OF LOUISIANA

LOUISIANA BOARD OF PARDONS & PAROLE

Chairman, COMMITTEE ON PAROLE

LA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS
CORRECTIONS SERVICES

The above offender was released on April 23, 2017

WARDEN

ORIGINAL - HEADQUARTERS PAROLE FILE

(R.S. 15:

EXHIBIT 4

JOHN BEL EDWARDS
Governor

State of Louisiana

Board of Pardons and Parole

05/01/2017

Samuel Galbraith
DOC# 422350
Elayn Hunt Correctional Center
Hwy. 74
St. Gabriel LA 70776

Dear Samuel Galbraith:

This correspondence is to advise you that the Parole Board has voted to rescind the parole granted at your original parole hearing.

This action was taken due to the following:

We have been advised that Other.
There may have been technical irregularities notifying the victim's family.

You will be scheduled for another hearing on 08/03/2017.

Respectfully,

Board of Parole

cc:

Pardon Parole

EXHIBIT 5

JOHN BEL EDWARDS
Governor

JAMES M. Le BLANC
Secretary

State of Louisiana
Department of Public Safety and Corrections
Division of Probation and Parole

09/28/2016

Addressee:

Jessie McWilliams
PO Box 402
Albany, IL 61230

RE: Samuel Galbrieth

DOC # 422350
Dear Jessie McWilliams:

Please be advised that the above named offender has been scheduled for a parole hearing at 8:30 a.m. on 11/03/2016 The parole panel will meet at DOC Headquarters, 504 Mayflower, Baton Rouge, LA 70802 The offender will not be physically present at the Baton Rouge hearing location, but will meet with the panel through a videoconferencing connection.

This parole hearing is a public hearing and you shall have the opportunity to present testimony to the parole panel. If you choose to appear before the parole panel to present testimony, you have the option to:

(1) appear at the parole panel site at 504 Mayflower Street, Baton Rouge, LA 70802; or
(2) participate via telephone call from your District Attorney's Victims' Services Office.

If the date or time of the hearing is changed, you will be advised in writing prior to the rescheduled hearing.

If you plan to attend the hearing at the DOC institution or the parole panel site in Baton Rouge, you should:

- At least 7 days prior to the parole hearing, notify the Board office of your plans to attend at 225-342-9191;
- Bring government-issued photo identification (i.e., driver's license, passport, etc.);
- Arrive 30 minutes prior to hearing time for processing through security;
- Dress appropriately;
- Be aware that children under the age of 12 should not attend;
- Be aware that all visitors are subject to search (cell phones, pagers, weapons and/or contraband are not permitted on premises).

If you choose to participate by telephone, you should notify the local district attorney at least one week prior to the scheduled hearing date. All telephone comments will be documented and will become a part of the record.

Please be advised that due to occupancy restrictions, seating is limited. Also, pursuant to the Public Meeting Law, the parole panel may go into Executive Session to discuss confidential information relative to this case. Please note that due to unforeseen circumstances a parole hearing may be cancelled without notice. To confirm that this offender is still on the docket as indicated herein, you are encouraged to contact the Board office at 225-342-9191 at least 2 days in advance of the scheduled hearing date. If you are unable to attend the parole hearing and wish to know the results, please contact the Committee on Parole office at 225-342-9191, after the date of the hearing.

FOR THE COMMITTEE ON PAROLE: _____

Lois LeBleu
Probation & Parole Officer

cc: Committee on Parole

JOHN BEL EDWARDS
Governor

JAMES M. Le BLANC
Secretary

State of Louisiana
Department of Public Safety and Corrections
Division of Probation and Parole

09/28/2016

Addressee:

James Hill
1417 Melropolitan Drive
Killeen, TX 76541

RE: Samuel Galbrieth

DOC # 422350
Dear James Hill:

Please be advised that the above named offender has been scheduled for a parole hearing at 8:30 a.m. on 11/03/2016 The parole panel will meet at DOC Headquarters, 504 Mayflower, Baton Rouge, LA 70802 The offender will not be physically present at the Baton Rouge hearing location, but will meet with the panel through a videoconferencing connection.

This parole hearing is a public hearing and you shall have the opportunity to present testimony to the parole panel. If you choose to appear before the parole panel to present testimony, you have the option to:

(1) appear at the parole panel site at 504 Mayflower Street, Baton Rouge, LA 70802; or
(2) participate via telephone call from your District Attorney's Victims' Services Office.

If the date or time of the hearing is changed, you will be advised in writing prior to the rescheduled hearing.

If you plan to attend the hearing at the DOC Institution or the parole panel site in Baton Rouge, you should:
- At least 7 days prior to the parole hearing, notify the Board office of your plans to attend at 225-342-9191;
- Bring government-issued photo identification (i.e., driver's license, passport, etc.);
- Arrive 30 minutes prior to hearing time for processing through security;
- Dress appropriately;
- Be aware that children under the age of 12 should not attend;
- Be aware that all visitors are subject to search (cell phones, pagers, weapons and/or contraband are not permitted on premises).

If you choose to participate by telephone, you should notify the local district attorney at least one week prior to the scheduled hearing date. All telephone comments will be documented and will become a part of the record.

Please be advised that due to occupancy restrictions, seating is limited. Also, pursuant to the Public Meeting Law, the parole panel may go into Executive Session to discuss confidential information relative to this case. Please note that due to unforeseen circumstances a parole hearing may be cancelled without notice. To confirm that this offender is still on the docket as indicated herein, you are encouraged to contact the Board office at 225-342-9191 at least 2 days in advance of the scheduled hearing date. If you are unable to attend the parole hearing and wish to know the results, please contact the Committee on Parole office at 225-342-9191, after the date of the hearing.

FOR THE COMMITTEE ON PAROLE:

Lois LeBleu
Probation & Parole Officer

cc: Committee on Parole

EXHIBIT 6

STATE OF LOUISIANA

ACC
11/3

DIVISION OF PROBATION & PAROLE
Pre-Parole Investigation
Leesville
REGION I

CONFIDENTIAL

DOCKET:	11/03/2016
RECORDED NAME:	Samuel Kenneth Galbraith
TRUE NAME:	Samuel Kenneth Galbraith
DOC NUMBER:	422350
SID NUMBER:	2019332
RACE & SEX:	White/Male
DOB & AGE:	07/04/1969; 47 YOA
OFFENDER CLASS:	First ✓
OFFENSE(S):	Manslaughter (F), Attempted Aggravated Rape (F)
SENTENCING DATE(S):	02/03/2003
SENTENCE:	21 years DOC 50 years DOC
PAROLE DATE:	04/23/2017 ✓
GOOD TIME DATE:	03/03/2032 ✓
FULL TERM DATE:	04/20/2068 ✓
DATE PREPARED:	10/17/2016

10/19/16

I. PRESENT OFFENSE(S):

Docket Number	Parish of Conviction	Offense Date	Arrest Date
VRN# 52533	Vernon	11/21/1988	04/23/1997
VRN# 57369	Vernon	11/21/1988	04/23/1997

Docket Number	Sentence Date	Sentence
VRN# 52533	02/03/2000	21 years
VRN# 57369	02/03/2000	CS 50 years CS

Docket Number - Offense
VRN# 52533 - Manslaughter
VRN# 57369 - Attempted Aggravated Rape

Probation/Parole Revocation: Yes ☒ No
Revocation Date:

Reason for Revocation: NA

Co-defendants: none

Synopsis of Arrest & Offense Report: On 11/21/1988, Karen Hill was working alone in the early morning hours at the Circle K store on Entrance Road in Vernon Parish, Louisiana. She spoke on the telephone with Tamara Netterfield until approximately 2:55 a.m. At approximately 4:25 a.m., the store was found to be empty, with no sign of Mrs. Hill. Additionally, the cash register was open and empty. At approximately 8:30 a.m., Mrs. Hill's body was located off of Highway 10 in Vernon Parish, Louisiana. She had been tied to a tree and shot to death. The autopsy revealed she had been sexually assaulted and shot through the eye with a small caliber bullet. On 12/04/1995, Leesville Police Department received a tip about a homicide that happened in 1988-1989. The caller stated he met up with some old Army buddies. They were talking about people they served with and one of the guys stated Galbraith messed up the most. The friend told the caller Galbraith killed a women while stationed at Fort Polk. The caller stated another person, John Higgins, was told about the murder by Galbraith. The caller stated Galbraith's first name was Samuel. On 12/14/1995, Detective Williams with the Vernon Parish Sheriff's Office, received a call from Eric Wiess. Mr. Wiess was roommates with Samuel Galbraith while stationed at Fort Polk, LA. Mr. Wiess stated he came home one morning and Galbraith told him he robbed a store, took the girl, and shot her in the head. On 02/01/1996, Galbraith was interviewed by Detective Smith and Hilton with the Vernon Parish Sheriff's Office. The detectives spoke with Galbraith for sometime before he remembered he might have been roommates with Eric Wiess, his having a 1987 GMC Jimmy, or his having a .22 caliber pistol. A DNA sample was obtained from Galbraith. Further investigation revealed that Samuel Galbraith was stationed at Fort Polk in Vernon Parish during the time the crime was committed. The investigation revealed Galbraith's blood was genetically consistent with semen found in the body of Mrs. Hill. Further, the investigation revealed Galbraith drove a vehicle which had tires consistent with the type of tire treads found at the crime scene where the victim's body was found. The investigation revealed Galbraith admitted he kidnapped and killed Mrs. Hill to at least two different people. On 04/23/1997, Galbraith was arrested by the Vernon Parish Sheriff's Office and was charged with First Degree Murder (F). Subject was later billed with the additional charges of Aggravated Kidnapping (F), Attempted Aggravated Rape (F) and Armed Robbery (F).

Arrest Report Attached

II. CRIMINAL RECORD:

A. Juvenile Record: ● None Indicated
Juvenile Record Attached

B. Adult Record:
None Indicated
● Adult Record Attached

1. Warrants/Detainers:
☒ None Indicated

2. Probation or Parole Record:
☒ None Indicated

III. COMMUNITY ATTITUDE:
Opposed
A. **Sentencing Judge:** Honorable Judge Vernon Clark, 30th JDC Leesville, LA.
Date Contacted: 10/06/2016
Comments: " I am opposed to any early release."
Fines and/or Court Costs: Yes ● No

Opposed
B. **District Attorney:** Assistant District Attorney Terry Lambright, 30th JDC District Attorney's Office, Leesville, LA.
Date Contacted: 10/04/2016
Comments: " We are strongly opposed to any early release."

Opposed
C. **Sheriff:** Sheriff Sam Craft, Vernon Parish Sheriff's Office, Leesville, LA.
Date Contacted: 10/06/2016
Comments: "Opposed"

Unopposed
E. **Offender's Family:** Johnny and Theresa Galbraith, father and step-mother, 6569 CR1432, Aransas, Pass, TX 361-318-8600.
Date Contacted: 10/04/2016
Comments: " I need him home to work. I am 72 years old and I have a ranching business. I also have an oil field business. He is a good worker and is educated. It is important he comes home."

Theresa Galbrarith
" We already sent a comment to the Parole Board and his attorney."

Unopposed
Offender's Family: Michelle Galbraith, wife, 225-436-0704
Date Contacted: 10/10/2016
Comments: Comment attached

Unopposed
Offender's Family: Janie Canino, mother, 108 Holly Drive, Portland, TX 713-376-9681
Date Contacted: 10/04/2016
Comments: " I am anxious for him to come home. Hopefully we can meet the criteria the Parole Board asks of us. He is remorseful and I know he will follow the rules if he is released. My ex-husband and myself will support him financially and emotionally."

Unopposed
Offender's Family: Jo Svihovec, aunt, 402 Hazeltime Drive, Portland, TX 78374 972-816-4044
Date Contacted: 10/04/2016
Comments: " Sam is my nephew so I have known him his whole life. He is very remorseful for the crime he committed. He has grown as an individual in his personal beliefs. God and the church is his core in life. He has kept himself mentally and physically fit while incarcerated. We will conform to his conditions and do whatever it takes to support him. We are ready for him to come home.

Unopposed
Offender's Family: Michael Sferra, father-in-law, 3821 Cambridge Drive, Garland, TX 972-977-2366
Date Contacted: 10/05/2016
Comments: " I am for his parole release. I have visited him and he has been a good inmate. I do not know of him causing any problems. He knows he made a mistake and he feels remorseful for what he has done. He has a life and family waiting for him. He is married to my daughter and he has family support. His father has a job ready for him with his business. We will make sure he does right if released."

Unopposed
Offender's Family: Tammy Schubert, sister, P.O. Box 150, Skidmore, TX 78389, 361-318-1945
Date Contacted: 10/05/2016
Comments: " I am really close with my brother. I am looking forward to him coming home. I will be here to help him adjust. He will have support from me and my husband. I think he had a lot of growing up to do and he will be an asset to the community. We are here to help him and he will do everything he can to follow the parole guidelines. He will have a job and transportation."

Opposed
F. Victim's Impact Statement: Jessie McWilliams, victim's mother, PO Box 402 Albany, IL 61230, 309-887-4036

Date Contacted: 09/29/2016
Comments: " He tied my daughter to a tree and shot her. I do not think he should be able to go on with a normal life if she can't. He did this right before Thanksgiving and I have spent every holiday since without her. It does not matter how good his behavior has been while incarcerated. I do not think he should be allowed to parole.

Restitution: No

Opposed
Victim's Impact Statement: James Hill, husband, 1417 Metropolitan Drive, Killeen, TX 76541, 254-630-8846
Date Contacted: 10/17/2016
Comments: Victim letter attached.
Restitution: No

IV. RESIDENCE PLAN: Out of State

Address: 6659 CR 1432, Aransas Pass, TX 78336
Contact Person: Johnny Galbraith
Date of Contact: 10/04/2016

Subject is not housed in our district. Therefore, compact paperwork has not been submitted by our office to Texas. Subject's father will allow Subject to live with him and he has employment opportunities for Subject.

V. EMPLOYMENT PLAN: Approved

Employer:
Johnny Galbraith
6659 CR 1432
Aransas, TX 78336
Date of Contact: 10/04/2016

Subject's father stated he will have a job working with him on his ranch. His father also owns Galbraith Contracting.

Summary: Samuel Kenneth Galbraith is a 47 year-old white male, classified as a first felony offender. Galbraith appears before the Board of Parole for early release for the convictions of Manslaughter (F) and Attempted Aggravated Rape (F). The sentencing Judge, the Vernon Parish Sheriff's Office and the District Attorney's Office is opposed to Subject's release. The victim's family is opposed to any release. Subject's family is unopposed to his early release.

Respectfully submitted,

Sandra Ortego
DISTRICT ADMINISTRATOR

Lois LeBleu
Probation & Parole Officer

Attachments: criminal history, letters from Subject's family

EXHIBIT 7

Office of
The District Attorney
30TH JUDICIAL DISTRICT
STATE OF LOUISIANA
PARISH OF VERNON

ASA SKINNER
DISTRICT ATTORNEY

P.O. BOX 1188
LEESVILLE, LOUISIANA 71496
(337) 239-2008
FAX: (337) 238-4008

October 6, 2016

The Board of Parole
P. O. Box 94304
Baton Rouge, LA 70804

Re: Samuel Galbraith
DOC #00422350

Dear Sir:

The Vernon Parish District Attorney strongly objects to any early release of this defendant. This defendant committed a horrible crime and should remain in prison.

Sincerely,

TERRY W. LAMBRIGHT
FIRST ASSISTANT DISTRICT ATTORNEY

TWL/dd

EXHIBIT 8

RE: Samuel Galbraith
DOC #: 422350
DKT: VRN#52533, VRN#57369

12 October 2016

To Whom it may concern,

This letter is in reference to the parole hearing for the murderer of my wife, Karen Hill. If he has expressed remorse and accepted responsibility for his crimes, I really don't care. He willfully took the love of my life, kidnapped her at gun point from her place of employment, took her to a secluded area, raped her, killed her, and then went about his normal routine in the US Army like nothing happened, including getting married himself, though I doubt he told his wife what a monster he really is. I strongly recommend he not be granted parole at this time or any time in the future.

There is not a day that goes by that I don't think about where we'd be if he hadn't killed Karen that day. That was the worst day of my life and still haunts me 28 years later and will for the rest of my life. The thought of him being freed is very troubling as I, along with any rational person, would find it hard to believe this was the first, or last serious crime he committed. It was just the one he got caught after committing.

I lived with not knowing 'who' for almost nine years before his apprehension, which was a fluke in the sense of how he was identified as a suspect. It wouldn't change my opinion much but had he turned himself in at any point prior to his apprehension, that would be one thing. But as he had no intention of doing that but rather intended to go about his life, which he deprived my wife of, I strongly believe he should stay in prison until his full sentence is served and hope that he dies there. The thought of him being free to live his life that he denied my wife is beyond comprehensible. Especially after only serving 20 years of a 71 year sentence for the heinous crimes he committed. It is my belief that if the DA's office had pursued full charges instead of offering a plea deal to close a cold case, he would have been convicted and sentenced to death, which is what I would have preferred.

In closing, no matter how much remorse he displays or responsibility he accepts for the rape and murder of my wife, Karen Hill, I do not want his parole approved at this time or at any time in the future. He pled guilty knowing what the sentence was, and knowing it was much lighter than had he went to trial and been convicted, and I believe he should serve that full sentence.

Sincerely,

James A. Hill

EXHIBIT 9

Office of
The District Attorney
30TH JUDICIAL DISTRICT
STATE OF LOUISIANA
PARISH OF VERNON

ASA SKINNER
DISTRICT ATTORNEY

P.O. BOX 1188
LEESVILLE, LOUISIANA 71496
(337) 239-2008
FAX: (337) 238-4008

November 30, 2016

Sheryl Ranatza, Chairman
Louisiana Board of Pardons and Parole
P.O. Box 94304
Baton Rouge, LA 70804

Re: Parole of Samuel Galbraith
Request for Reconsideration

Dear Ms. Ranatza:

The Office of the 30th Judicial District Attorney, through the undersigned, requests the Parole Board to reconsider their decision to grant parole to Samuel Galbraith.

Galbraith had on several occasions mentioned to his roommate, Eric Weiss, that he was going to a convenience store, taking a woman and killing her. He wanted to see what it felt like. In the early morning hours of November 21, 1988, Samuel Galbraith kidnapped Karen Hill, 21 years of age, from a convenience store, raped her, tied her to a tree and shot her in the eye as she looked at him. Upon returning to the barracks at Fort Polk, Louisiana, Galbraith showed no emotion at all, was cold and calculated.

This defendant did not get arrested until 9 years after these crimes – he had a measure of "freedom" most murderers do not receive. Galbraith pled to crimes with a sentence of 71 years – for two crimes of violence, a murder and rape – and yet the Parole Board grants parole after serving less than 1/3rd of his sentence.

Additionally, Samuel Galbraith came to Fort Polk, Vernon Parish, Louisiana, at the end of 1987 and was stationed here for approximately 30 months. The body of Karen Hill was discovered on November 21, 1988, on the Fort Polk military reservation after she was taken from a convenience store. On May 29, 1989, Pamela Miller, age 23, was last seen at a convenience store on the north side of Leesville. Her remains were discovered on November 24, 1989, in a remote wooded area of the military reservation used for

Re: Parole of Samuel Galbraith
Request for Reconsideration

training Fort Polk soldiers. On February 20, 1990, Tammy Call, a student at Leesville High School, disappeared near a convenience store on the North side of Leesville. Tammy's remains were discovered on November 18, 1997, in a wooded area on the Fort Polk military reservation. There were no such killings in Vernon Parish such as this before Samuel Galbraith arrived in Vernon Parish and none after he left Vernon Parish.

Larry Smith, the head detective in this case, died a few years ago. After Galbraith pled guilty and was sentenced, Larry went to talk to Galbraith about these other homicides. I remember the exact words from Detective Larry Smith "Galbraith broke out in a cold sweat and had cotton mouth just as he did when he first knocked on his door in Texas" when Larry first went to interview Galbraith. All the detectives who worked this case strongly believe Galbraith was responsible for the murders of Pamela Miller and Tammy Call.

Members of the family of Karen Hill, law enforcement and officials involved in this case, all feel this decision is appalling, inconceivable and unbelievable. Considering the heinous nature of this offense, the fact that less than 1/3rd of the sentence has been served for 2 violent crimes, the 9 years of freedom before apprehension and the circumstances of the other murders, in the interest of nothing more than justice, please reconsider your decision to grant parole to Samuel Galbraith.

With kind regards, I am,

Very truly yours,

ASA A. SKINNER
DISTRICT ATTORNEY

AAS/ts

EXHIBIT 10

JOHN BEL EDWARDS
Governor

State of Louisiana

Board of Pardons & Parole

February 2, 2017

The Honorable Asa Skinner
District Attorney, 30th Judicial District
Post Office Box 1188
Leesville, LA 71496

Re: Samuel Galbraith, DOC 442350

Dear Mr. Skinner,

This is in response to your letter dated November 30, 2016, in which you requested that the Committee on Parole reconsider its November 3, 2016 vote to grant parole in the above referenced matter.

Your office has previously been provided an audio of that proceeding. As shown by the audio record of the hearing, the panel's decision to grant parole was based on the assessment of the offender's current suitability for release. The panel voted unanimously to grant parole based on several factors. Each member of the panel was aware of and specifically recognized on the record the strong opposition from law enforcement, the judge, and the victim's family. Excerpts from the opposition letter received from the victim's husband was also read into the record. The record reflects that the panel members did not grant parole lightly, but only after serious and thorough consideration.

The board's policy provides for a reconsideration review only in the following circumstances:

1. If there is allegation of misconduct by a Committee member that is substantiated by the record;
2. If there is a significant procedural error by a Committee member; or
3. If there is significant new evidence that was not available when the hearing was conducted.

The information you provided in your letter does not meet the criteria for a rehearing. For these reasons, a rehearing for Samuel Galbraith is not warranted.

Respectfully,

Sheryl M. Ranatza
Board Chair

EXHIBIT 11

Tina Vanichchagorn

From: Emalie Boyce
Sent: Thursday, April 20, 2017 3:50 PM
To: Richard Carbo
Subject: FW: Samuel Galbraith DOC# 422350

Just in case we don't speak, I wanted to remind you that this case (which is the subject of the story airing tonight) is not a clemency case which came through our office. Rather, it is a parole case and that decision was made by the parole board.

-----Original Message-----
From: Emalie Boyce
Sent: Monday, April 10, 2017 4:36 PM
To: Matthew Block; Richard Carbo
Subject: FW: Samuel Galbraith DOC# 422350

-----Original Message-----
From: Mary Fuentes [mailto:MaryFuentes@corrections.state.la.us]
Sent: Monday, April 10, 2017 4:21 PM
To: Emalie Boyce
Subject: Samuel Galbraith DOC# 422350

Heads up...

This is a case that went before the Parole Board on Nov 03,2016. He was granted parole to release upon meeting certain conditions on his PED 4/23/2017.

Due to the nature of his offense the family of the victim and the DA have raised a lot of negative attention. With all the media attention, there has been reference that this is Pardon case. It's a matter of not knowing the difference between pardon and parole. Trust me we have tried to clarify. This is strictly Parole.

I received a call from WBRZ today that they will air on the topic on Thursday. If they make reference to Pardon it is a mistake on their part.

Let me know if you have any questions.

Sent from my iPad

EXHIBIT 12

Tina Vanichchagorn

From: Erin Monroe Wesley
Sent: Friday, April 21, 2017 11:35 AM
To: Mary-Patricia Wray
Cc: Liz Mangham; ryan@haynieandassociates.com; Richard Carbo
Subject: Re: HOUSE FLOOR TODAY!!!

We are very concerned about this story and are working to get further background information.

Erin Monroe Wesley

On Apr 21, 2017, at 7:59 AM, Mary-Patricia Wray <mpwray@topdrawerstrategies.com> wrote:

> Erin,
>
> I apologize if some information was sent around yesterday that I missed in the hustle and bustle of the LPA day at the capitol about this, but I have several background interviews on the crim justice reform bills today and so I will have a unique opportunity to (on background) deal with the story about Samuel Galbraith's impending release that is causing a stir.
>
> http://www.wbrz.com/news/investigative-unit-suspected-serial-killer-rapist-to-be-released-from-prison-sunday
>
> It looks the the Gov is not responding - is there some way to frame this story up that is helpful? Is there info reporters are missing? In my ignorance I truly do not know if there is a way to prevent re scheduled release Sunday? I believe this is about to become a very problematic narrative, especially in the bulls dealing with parole eligibility - even though this is for a violent offense. Obviously I can separate it from the details of the bills but thought you might have some input on how to prevent the story from impacting the success of the legislation?
>
> Thanks for all you have done and continue to do to pass this important legislation!
>
> MP
>
> Sent from my iPhone
>
> On Apr 21, 2017, at 7:43 AM, Erin Monroe Wesley <Erin.MonroeWesley@la.gov> wrote:
>
> > Here is the latest copy of the D.A.'s legislative report.
> >
> > Erin
> >
> > **From:** Terry Schuster [mailto:tschuster@pewtrusts.org]
> > **Sent:** Thursday, April 20, 2017 8:21 PM
> > **To:** Liz Mangham; Ryan Haynie
> > **Cc:** ty@louisianalobby.com; Burgin & Associates; Bud Courson; Adam Eitmann; Elain Ellerbe; danny@louisianalobby.com; Ryan Haynie; Adam Keyes; abby@ssgla.com;

APPENDIX G

NICHOLAS TRENTICOSTA
Attorney at Law
7100 St. Charles Avenue
New Orleans, Louisiana 70118
504-352-8019
nicktr@bellsouth.net

July 27, 2017

Sam Galbraith
DOC #422350
Hunt Correctional Center
6925 Highway 74
St. Gabriel, LA 70776

Sam:

Here's the complaint. It was filed on the 26th. The service of the summons should be done tomorrow or Monday. We got Judge Shelly Dick and Magistrate Erin Wilder-Doomes. Not bad at all.

Take care.

UNITED STATE DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH

VERSUS

JAMES LEBLANC, Secretary,
Louisiana Department of
Public Safety and Corrections,
and SHERYL RANATZA, Chair,
Louisiana Board of Pardons

NUMBER

3:17-cv-486

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The complaint of Samuel Galbraith, a resident of the State of Louisiana and domiciled at the Hunt Correctional Center, Parish of Iberville, respectfully represents:

JURISDICTION AND VENUE

1. Jurisdiction arises under 28 USC Section 1331 for this suit seeking declarative and injunctive relief for violation of civil rights pursuant to 42 USC Section 1983, the Fourteenth Amendment to the United States Constitution, 42 USC Section 1988 and supplemental jurisdiction under 28 USC Section 1367.

2. Venue is proper pursuant to 28 USC §1391 because the defendants are being sued in their official capacity and are domiciled in Baton Rouge, within the Middle District of Louisiana. A substantial part of the events giving rise to the claims herein occurred in this district.

PARTIES

4. Defendant James Leblanc is the Secretary of the Louisiana Department of Public Safety and Corrections (DOC) and is being sued in his official capacity.

5. Defendant Sheryl Ranatza is the Chair of the Louisiana Board of Pardons and Committee on Parole (Board) and is being sued in her official capacity.

6. Plaintiff Samuel Galbraith is a forty-eight-year-old prisoner in the custody of the Department of Corrections and is being housed at the Hunt Correctional Center (HCC) in St. Gabriel, Louisiana. His DOC number is 422350.

FACTS GIVING RISE TO THE CAUSES OF ACTION

7. On April 23, 1997, Galbraith turned himself into custody for the murder of Karen Hill. Following his plea of manslaughter and attempted aggravated rape on February 3, 2003, Galbraith was sentenced to seventy-one years at hard labor. The Department of Corrections assigned his parole eligibility date as April 23, 2017. Galbraith was 18 years old at the time of the offense; as of this filing, he is 48 years old.

8. Galbraith original parole hearing was set for October 13, 2017. That hearing was continued and rescheduled by the Board for November 3, 2016. Upon information and belief, the hearing was rescheduled because the October date was over 180 days before Galbraith's parole eligibility date and thus ran afoul of Board policy.

9. On November 3, 2016, Galbraith was brought before a three-member panel of the Committee on Parole represented by counsel. The panel unanimously voted to grant parole conditioned upon: approval of residence, an approved out-of-state plan, and a low Static- 99

score. On November 10, 2016, as required by the Board, Galbraith paid $150.00 to complete the offender's application for Interstate Compact Transfer as part of his conditional parole. After inspection by Texas Parole officers, a low Static- 99 score, approval of the residence plan and the approval of the application for Interstate Compact Transfer, the parole was granted. The out-of-state living plan was to rejoin his family in southern Texas where he would be employed by his family's construction company.

10. Special conditions were placed upon his parole: he was ordered to have no contact with the victim's family; he could not travel to Louisiana without approval from the Louisiana Parole Office; and he was to perform community service by speaking to at risk youth twice a year.

11. Galbraith was eligible for parole pursuant to La.R.S. 15:574.4, that was in effect at the time of his crime in 1988. It allowed for Galbraith to be parole eligible after serving twenty years and reaching the age of forty-five, often referred to as the 20/45 parole eligibility act. (That statute was amended in 1995 to restrict the 20/45 parole eligibility rule for persons convicted of a crime of violence.)

12. Galbraith was set to be released on April 23, 2017. However, on April 21, 2017, defendant Board of Pardons, Committee on Parole issued a press release stating that Galbraith's grant of parole was rescinded.

13. Galbraith received a letter dated May 1, 2017 from Hal Morrison of the Board. Morrison stated that parole was rescinded because "we have been advised that Other [sic]. There may have been technical irregularities notifying the victim's family."

14. Galbraith has exhausted his administrative remedies. His ARP was rejected, not denied, by Warden Hooper of HCC. See, 22 La. Admin. Code Pt XI, 325(F)(3)(a)(viii)

THE CRIMINAL JUSTICE REFORM AGENDA

15. Galbraith became a political football in the debates and discussions surrounding the criminal justice reforms the 2017 session of the Louisiana Legislature.

16. Gov. John Bel Edwards began a series of discussions with working groups after being elected. His stated purpose was to reduce Louisiana's incarceration rate. On March 15, 2017, Gov. Edwards announced that he would push legislation that would, among other things, change parole eligibility for persons convicted of violent offenses.

17. The Louisiana Justice Reinvestment Task Force, a body of stake-holders in the criminal justice system, made its report and recommendations on March 16, 2017. One of the recommendations was to relax parole eligibility for violent prisoners.

18. Many media outlets reported on these initiatives and proposals.

19. Near the end of March 2017, various news outlets reported stories regarding Galbraith's impending release. Galbraith's grant of parole became a major tool for the opponents of Gov. John Bel Edwards' criminal justice reform proposals.

20. Asa Skinner, District Attorney for Vernon Parish, was featured in television and newspaper articles calling the Committee's decision an injustice. District Attorney Skinner negotiated Galbraith's plea bargain which allowed for him to become parole eligible after serving twenty years, and had sent a letter of opposition to Galbraith's release to the Board.

Following the unanimous decision to grant parole, District Attorney Skinner a wrote letter to the Board requesting a rehearing.

21. Other reports focused on Jessie McWilliams, the mother of the murdered victim. There were allegations made that suggested the mother did not receive notification of the parole hearing. However, McWilliams has stated that she was notified of the parole hearing and had been interviewed via telephone by Board staff concerning her views on Galbraith's possible parole.

22. James Hill, the victim's husband, stated he was notified of the hearing and he sent a letter of opposition.

23. An on-line petition was widely-distributed calling for Galbraith's continued incarceration.

24. Just days before Galbraith's impending release, news stories reported that the Louisiana Sheriff's Association and the Louisiana District Attorney's Association were vehemently opposed to any measure that would assist prisoners convicted of violent offenses from being released. Galbraith's grant of parole factored large in their efforts to thwart the Governor's and Louisiana Justice Reinvestment Task Force's recommendations the provide release opportunities to violent offenders. For example, Pete Adams, the Executive Director to the District Attorney's Association, commented that Galbraith's grant of parole "turned out to be an example of why we are concerned.... This is an example of one of those things in the [reform] package that would do that."

25. Following numerous news accounts, on April 21, 2017, Gov. Edwards announced that his office had been "in contact with the parole board today and we are looking at what

options [to keep Galbraith in prison] are available," he said. "We want to make sure that the process that was followed was complete and that [the Committee on Parole] did everything they were supposed to."

26. Later that day, and after the Governor's staff met with the Parole Board, the Parole Board Chair, Sheryl Ranatza, issued a press statement announcing the rescission of Galbraith's parole citing news reports alleging that the mother of the victim did not receive notification of the parole hearing. She stated: "During recent interviews with various media outlets, the victim's mother did state that her parole hearing notification letter for the originally scheduled October hearing was mailed to an address in Albany, New York rather than her address in Albany, Illinois." She further stated, "Although Mrs. McWilliams did receive the required notice for the November parole hearing, because of the apparent procedural error which occurred with the initial victim notification, the Board will reschedule a subsequent parole hearing for Mr. Galbraith, so that Mrs. McWilliams and the District Attorney has the opportunity to fully participate in the process."

27. On information and belief, the Board did not investigate or find any irregularities or technicalities regarding notification to the victim's family before rescinding Galbraith's parole.

28. Upon information and belief, both the husband and mother of the victim received proper notification of the hearing and both had the opportunity to voice their opposition to a grant of parole and in fact did so. The notifications complied with established by law and policies.

29. Under La.R.S. 15:574.2(D)(9), only one family member of the victim must be notified. The Board has a duty "[t]o notify the victim, or the spouse or next of kin of a deceased victim, when the offender is scheduled for a parole hearing."

30. On information and belief, Hill and McWilliams were initially notified of the October 13, 2016 hearing on July 7, 2016.

31. On information and belief, Hill and McWilliams were notified on September 28, 2016 that the new hearing date was set for November 3, 2016.

32. The Board failed to provide Galbraith with any notice or opportunity to challenge a possible rescission of parole or to challenge the false information.

33. Galbraith became a pawn in the debates over whether persons convicted of violent offenses should be parole eligible.

34. At all times, the defendants were acting under color of state law.

CAUSE OF ACTION

Deprivation of substantive due process and procedural due process in violation of the 14th amendment to the United States Constitution and 42 Sec. 1983

35. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

36. Galbraith received notification from the Board that "[t]here may have been technical irregularities notifying the victim's family." This purported reason is not a valid reason to rescind parole, nor is it true.

37. A grant of parole is an act of discretion by the members of the Committee on Parole. The members are appointed by the governor. In Louisiana, there are many statutory rules in effect governing who may apply for parole, and at what time during their incarceration. Louisiana, unlike many states, does not provide a person a hearing on whether to rescind a grant of parole.

38. Louisiana does, however, have express provisions of law that address under what circumstances the grant of parole may be rescinded once granted. According to the Board's regulations, two reasons exist that may cause the Board to rescind a parole.

> Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

22 La. Admin. Code Pt XI, 504 (K). The same provisions are found in Board Policy Number 05.505 (M)(1), to wit:

> Upon notification by the Secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted by the board or has engaged in misconduct prior to the inmate's release, the board may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

39. Additionally, if the Board were to grant a conditional parole to an offender requiring successful completion of programs and the offender did not complete the program, rescission of the conditional parole may occur. 22 La. Admin. Code Pt XI, 711. That provision is not at issue here.

40. Galbraith was on notice that his grant of parole could be rescinded only if he engaged in misconduct while in custody. Galbraith had a liberty interest that arose from an expectation created by state law and policy.

41. Depriving Galbraith of release due fabricated, invalid and arbitrary reasons for rescission creates an atypical and severe hardship.

42. Galbraith is a model prisoner. As stated above, during his plea negotiations, District Attorney agreed allow Galbraith to plead to charges which would allow him parole eligibility after serving twenty years. He has maintained a stellar record while incarcerated; he has received only two infractions. He has been a trusted inmate counsel for a number of years and is currently a writer for the "The Walk Talk," HCC's inmate magazine. The Board recognized his accomplishments and his low-risk of re-offending when the panel unanimously granted him parole.

43. Galbraith was set to rejoin his family and work in the family's successful construction business. Following the grant of parole, Galbraith's mother retired and moved from Houston to southern Texas and his wife quit her job and moved from Dallas to southern Texas to be near him when he returned home. Galbraith purchased health insurance. Galbraith was hours away from being released via a valid grant of parole when he was denied release on false and invalid reasons.

44. Galbraith was on notice that his grant of parole could be in jeopardy if he engaged in misconduct before release. No allegation has been made that would suggest he did, in fact, he continues to be a model prisoner.

45. The Board did not provide Galbraith with notice that his impending release was in jeopardy and did not provide him with an opportunity to be heard as to why his parole should be rescinded. Additionally, the Board refused to allow Galbraith to challenge the Board's decision.

Prayer for Relief

Wherefore, plaintiff respectfully prays that this Court:

1. Issue a declaratory judgment and injunction in favor of plaintiff ordering that the November 2017 grant of parole be reinstated;

2. Order that the plaintiff be immediately released from DOC custody under the conditions of his parole grant;

3. Award plaintiff costs and attorney's fees;

4. Provide such relief as the Court deems just and proper.

Dated: July 26, 2017

/s/ Nicholas Trenticosta
Nicholas Trenticosta
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7100 St. Charles Ave.
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Counsel of Record for Samuel Galbraith

APPENDIX H

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*	
Plaintiff	*	**Case: 3:17-cv-00486-SSD-EWD**
VERSUS	*	
JAMES LEBLANC, Secretary, Louisiana Department of Public Safety and Corrections, and **SHERYL RANATZA**, Chair, Louisiana Board of Pardons	*	
Defendants	*	

AMENDED COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

The complaint of Samuel Galbraith, a resident of the State of Louisiana and domiciled at the Hunt Correctional Center, Parish of Iberville, respectfully represents:

JURISDICTION AND VENUE

1. Jurisdiction arises under 28 USC Section 1331 for this suit seeking declarative and injunctive relief for violation of civil rights pursuant to 42 USC Section 1983, the Fourteenth Amendment to the United States Constitution, 42 USC Section 1988 and supplemental jurisdiction under 28 USC Section 1367.

2. Venue is proper pursuant to 28 USC §1391 because the defendants are being sued in their official capacity and are domiciled in Baton Rouge, within the Middle District of Louisiana. A substantial part of the events giving rise to the claims herein occurred in this district.

PARTIES

4. Defendant James Leblanc is the Secretary of the Louisiana Department of Public Safety and Corrections (DOC) and is being sued in his official capacity.

5. Defendant Sheryl Ranatza is the Chair of the Louisiana Board of Pardons and Committee on Parole (Board) and is being sued in her official capacity.

6. Plaintiff Samuel Galbraith is a forty-eight-year-old prisoner in the custody of the Department of Corrections and is being housed at the Hunt Correctional Center (HCC) in St. Gabriel, Louisiana. His DOC number is 422350.

FACTS GIVING RISE TO THE CAUSES OF ACTION

7. On April 23, 1997, Galbraith turned himself into custody for the murder of Karen Hill. Following his plea of manslaughter and attempted aggravated rape on February 3, 2003, Galbraith was sentenced to seventy-one years at hard labor. The Department of Corrections assigned his parole eligibility date as April 23, 2017. Galbraith was 18 years old at the time of the offense; as of this filing, he is 49 years old.

8. Galbraith original parole hearing was set for October 13, 2017. That hearing was continued and rescheduled by the Board for November 3, 2016.

9. On November 3, 2016, Galbraith was brought before a three-member panel of the Committee on Parole represented by counsel. The panel unanimously voted to grant parole

conditioned upon: approval of residence, an approved out-of-state plan, and a low Static-99 score. On November 10, 2016, as required by the Board, Galbraith paid $150.00 to complete the offender's application for Interstate Compact Transfer as part of his conditional parole. After inspection by Texas Parole officers, a low Static- 99 score, approval of the residence plan and the approval of the application for Interstate Compact Transfer, the parole was granted. The out-of-state living plan was to rejoin his family in southern Texas where he would be employed by his family's construction company.

10. Special conditions were placed upon his parole: he was ordered to have no contact with the victim's family; he could not travel to Louisiana without approval from the Louisiana Parole Office; and he was to perform community service by speaking to at risk youth twice a year.

11. Galbraith was eligible for parole pursuant to La.R.S. 15:574.4, that was in effect at the time of his crime in 1988. It allowed for Galbraith to be parole eligible after serving twenty years and reaching the age of forty-five, often referred to as the 20/45 parole eligibility act. (That statute was amended in 1995 to restrict the 20/45 parole eligibility rule for persons convicted of a crime of violence.)

12. Galbraith was set to be released on April 23, 2017. However, on April 21, 2017, defendant Board of Pardons, Committee on Parole issued a press release stating that Galbraith's grant of parole was rescinded.

13. Galbraith received a letter dated May 1, 2017 from Hal Morrison of the Board. Morrison stated that parole was rescinded because "we have been advised that Other [sic]. There may have been technical irregularities notifying the victim's family."

14. Galbraith has exhausted his administrative remedies. His ARP was rejected, not denied, by Warden Hooper of HCC. See, 22 La. Admin. Code Pt XI, 325(F)(3)(a)(viii).

THE CRIMINAL JUSTICE REFORM AGENDA

15. Galbraith became a political football in the debates and discussions surrounding the criminal justice reforms the 2017 session of the Louisiana Legislature.

16. Gov. John Bel Edwards began a series of discussions with working groups after being elected. His stated purpose was to reduce Louisiana's incarceration rate. On March 15, 2017, Gov. Edwards announced that he would push legislation that would, among other things, change parole eligibility for persons convicted of violent offenses.

17. The Louisiana Justice Reinvestment Task Force, a body of stake-holders in the criminal justice system, made its report and recommendations on March 16, 2017. One of the recommendations was to relax parole eligibility for violent prisoners.

18. Many media outlets reported on these initiatives and proposals.

19. Near the end of March 2017, various news outlets reported stories regarding Galbraith's impending release. Galbraith's grant of parole became a major tool for the opponents of Gov. John Bel Edwards' criminal justice reform proposals.

20. Asa Skinner, District Attorney for Vernon Parish, was featured in television and newspaper articles calling the Committee's decision an injustice. District Attorney Skinner negotiated Galbraith's plea bargain which allowed for him to become parole eligible after serving twenty years, and had sent a letter of opposition to Galbraith's release to the Board.

Following the unanimous decision to grant parole, District Attorney Skinner a wrote letter to the Board requesting a rehearing.

21. Other reports focused on Jessie McWilliams, the mother of the murdered victim. There were allegations made that suggested the mother did not receive notification of the parole hearing. However, McWilliams has stated that she was notified of the parole hearing and had been interviewed via telephone by Board staff concerning her views on Galbraith's possible parole.

22. James Hill, the victim's former husband, stated he was notified of the hearing and he sent a letter of opposition.

23. An on-line petition was widely-distributed calling for Galbraith's continued incarceration.

24. Just days before Galbraith's impending release, news stories reported that the Louisiana Sheriff's Association and the Louisiana District Attorney's Association were vehemently opposed to any measure that would assist prisoners convicted of violent offenses from being released. Galbraith's grant of parole factored large in their efforts to thwart the Governor's and Louisiana Justice Reinvestment Task Force's recommendations the provide release opportunities to violent offenders. For example, Pete Adams, the Executive Director to the District Attorney's Association, commented that Galbraith's grant of parole "turned out to be an example of why we are concerned.... This is an example of one of those things in the [reform] package that would do that."

25. The media accounts of Mr. Galbraith's impending release caused members of the Governor's staff who were working to advance his criminal justice reform package to panic

believing that Mr. Galbraith's release would be a "problematic narrative" and would jeopardize the bills. An email between those members was sent early on April 21, 2016 reveals the following: "I have several background interviews on the crim justice reform bills today and so I will have a unique opportunity to (on background) deal with the story about Samuel Galbraith's impending release that is causing a stir.... In my ignorance I truly do not know if there is a way to prevent re scheduled release Sunday? I believe this is about to become a very problematic narrative, especially in the bills dealing with parole eligibility – even though this is for a violent offense."

26. Later that day, Gov. Edwards announced that his office had been "in contact with the parole board today and we are looking at what options [to keep Galbraith in prison] are available," he said. "We want to make sure that the process that was followed was complete and that [the Committee on Parole] did everything they were supposed to."

27. After the Governor's staff met with the Parole Board, the Parole Board Chair, Sheryl Ranatza, issued a press statement announcing the rescission of Galbraith's parole citing news reports alleging that the mother of the victim did not receive notification of the parole hearing. She stated: "During recent interviews with various media outlets, the victim's mother did state that her parole hearing notification letter for the originally scheduled October hearing was mailed to an address in Albany, New York rather than her address in Albany, Illinois." She further stated, "Although Mrs. McWilliams did receive the required notice for the November parole hearing, because of the apparent procedural error which occurred with the initial victim notification, the Board will reschedule a subsequent parole hearing for Mr. Galbraith, so that Mrs. McWilliams and the District Attorney has the opportunity to fully participate in the process."

28. The Board did not find any irregularities or technicalities regarding notification to the victim's family before rescinding Galbraith's parole. There was no "apparent procedural error" regarding the notification. The statement made by defendant is false and she knew or should have known that it was a fabrication of the truth.

29. Under La.R.S. 15:574.2(D)(9), only one family member of the victim must be notified. The Board has a duty "[t]o notify the victim, or the spouse or next of kin of a deceased victim, when the offender is scheduled for a parole hearing."

30. Notification was made and received by both the victim's mother and former husband. The victim's mother, Ms. McWilliams, was notified for the October 13, 2016 hearing (which was cancelled) by mail postmarked on July 7, 2016, and she was notified and interviewed by the Board's agents by telephone on September 29, 2016. Further, Ms. McWilliams was notified by mail postmarked on September 28, 2016 for the actual hearing that occurred on November 3, 2016. The notifications complied with established by law and policies.

31. Similarly, James Hill, the victim's former husband, was notified for the October 13, 2016 hearing (which was cancelled) by mail postmarked on July 7, 2016. He was again notified and interviewed by the Board's agents by telephone on October 17, 2016 and he sent a letter in opposition to the Board. Further, Mr. Hill was notified by mail postmarked on September 28, 2016 for the actual hearing that occurred on November 3, 2016. The notifications complied with established by law and policies.

32. The Board failed to provide Galbraith with any notice or opportunity to challenge a possible rescission of parole or to challenge the false information.

33. Galbraith became a pawn in the debates over whether persons convicted of violent offenses should be parole eligible.

34. At all times, the defendants were acting under color of state law.

CAUSE OF ACTION

Deprivation of substantive due process and procedural due process in violation of the 14th amendment to the United States Constitution and 42 Sec. 1983

35. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

36. Galbraith received notification from the Board that "[t]here may have been technical irregularities notifying the victim's family." This purported reason is not a valid reason to rescind parole, nor is it true.

37. A grant of parole is an act of discretion by the members of the Committee on Parole. The members are appointed by the governor. In Louisiana, there are many statutory rules in effect governing who may apply for parole, and at what time during their incarceration. Louisiana, unlike many states, does not provide a person a hearing on whether to rescind a grant of parole.

38. Louisiana does, however, have express provisions of law that address under what circumstances the grant of parole may be rescinded once granted. According to the Board's regulations, two reasons exist that may cause the Board to rescind a parole.

> Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee

may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

22 La. Admin. Code Pt XI, 504 (K). The same provisions are found in Board Policy Number 05.505 (M)(1), to wit:

> Upon notification by the Secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted by the board or has engaged in misconduct prior to the inmate's release, the board may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

39. Additionally, if the Board were to grant a conditional parole to an offender requiring successful completion of programs and the offender did not complete the program, rescission of the conditional parole may occur. 22 La. Admin. Code Pt XI, 711. That provision is not at issue here.

40. Galbraith was on notice that his grant of parole could be rescinded only if he engaged in misconduct while in custody. Galbraith had a liberty interest that arose from an expectation created by state law and policy.

41. Depriving Galbraith of release due fabricated, invalid and arbitrary reasons for rescission creates an atypical and severe hardship.

42. Galbraith is a model prisoner. As stated above, during his plea negotiations, District Attorney agreed allow Galbraith to plead to charges which would allow him parole eligibility after serving twenty years. He has maintained a stellar record while incarcerated; he has received only two infractions. He has been a trusted inmate counsel for a number of years and is currently a writer for the "The Walk Talk," HCC's inmate magazine. The Board recognized his accomplishments and his low-risk of re-offending when the panel unanimously granted him parole.

43. Galbraith was set to rejoin his family and work in the family's successful construction business. Following the grant of parole, Galbraith's mother retired and moved from Houston to southern Texas and his wife quit her job and moved from Dallas to southern Texas to be near him when he returned home. Galbraith purchased health insurance. Galbraith was hours away from being released via a valid grant of parole when he was denied release on false and invalid reasons.

44. Galbraith was on notice that his grant of parole could be in jeopardy if he engaged in misconduct before release, or if for some other reason he was not eligible for release.

45. The Board did not provide Galbraith with notice that his impending release was in jeopardy and did not provide him with an opportunity to be heard as to why his parole should be rescinded. Additionally, the Board refused to allow Galbraith to challenge the Board's decision.

Prayer for Relief

Wherefore, plaintiff respectfully prays that this Court:

1. Issue a declaratory judgment and injunction in favor of plaintiff ordering that the November 2017 grant of parole be reinstated;

2. Order that the plaintiff be immediately released from DOC custody under the conditions of his parole grant;

3. Award plaintiff costs and attorney's fees;

4. Provide such relief as the Court deems just and proper.

Dated: July 16, 2018

Respectfully submitted,

/s/ Nicholas Trenticosta
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504-352-8019
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Counsel of Record for Samuel Galbraith

CERTIFICATE OF SERVICE

I hereby certify that on the July 16, 2018, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/EFC system. Notice of this filing will be sent to Patricia Wilton, counsel for defendants, by operation of the court's electronic filing system.

s/ Nicholas J. Trenticosta
Nicholas J. Trenticosta

APPENDIX I

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*	
	*	**Case: 3:17-cv-00486-SSD-EWD**
Plaintiff	*	
VERSUS	*	
SHERYL RANATZA, Chair, Louisiana Board of Pardons and Parole, **JIM WISE**, Member, Louisiana Board of Pardons and Parole	*	
Defendants	*	

SECOND AMENDED COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

The complaint of Samuel Galbraith, a resident of the State of Louisiana and domiciled at the Hunt Correctional Center, Parish of Iberville, respectfully represents:

JURISDICTION AND VENUE

1. Jurisdiction arises under 28 USC Section 1331 for this suit seeking declarative and injunctive relief for violation of civil rights pursuant to 42 USC Section 1983, the Fourteenth Amendment to the United States Constitution, 42 USC Section 1988 and supplemental jurisdiction under 28 USC Section 1367.

2. Venue is proper pursuant to 28 USC §1391 because the defendants are being sued in their official capacity and are domiciled in Baton Rouge, within the Middle District of Louisiana. A substantial part of the events giving rise to the claims herein occurred in this district.

PARTIES

4. Defendant Sheryl Ranatza is the Chair of the Louisiana Board of Pardons and Parole (Board) and is being sued in her official capacity and individual capacity.

Defendant Jim Wise is a member of the Louisiana Board of Pardons and Parole and is being sued in his official and individual capacity.

5. Plaintiff Samuel Galbraith is a forty-eight-year-old prisoner in the custody of the Department of Corrections and is being housed at the Hunt Correctional Center (HCC) in St. Gabriel, Louisiana. His DOC number is 422350.

FACTS GIVING RISE TO THE CAUSES OF ACTION

1. Plaintiff was eligible for parole pursuant to La.R.S. 15:574.4, that was in effect at the time of his crime in 1988. That statute allowed for plaintiff to be parole eligible after serving twenty years and reaching the age of forty-five, often referred to as the 20/45 parole eligibility act.

2. Plaintiff was granted a parole hearing by the Board and the hearing was set for October 13, 2016. The October 13th hearing did not occur; the hearing was rescheduled for November 3, 2016.

3. On September 28, 2018, Lois LeBleu, a Probation and Parole Officer, sent properly addressed letters to Jessie McWilliams and James Hill, the mother and former husband of the victim in this case, notifying both that the Board had set plaintiff's parole hearing for November 3, 2016. The Board requires that the Probation and Parole Office file Pre-Parole Investigation report prior to every parole hearing.

4. On September 29, 2016, Lois LeBleu contacted Jessie McWilliams and conducted an interview via telephone with Ms. McWilliams for inclusion in the Pre-Parole Investigation report. Upon being informed that plaintiff had an upcoming parole hearing, Ms. McWilliams stated, "I do not think he should be allowed parole."

5. On October 4, 2016, Lois LeBleu contacted Assistant District Attorney Terry Lambright, Office of the District Attorney for the 30th Judicial District, and conducted an interview via telephone with Mr. Lambright for inclusion in the Pre-Parole Investigation report. Upon being informed that plaintiff had an upcoming parole hearing, Mr. Lambright stated, "We are strongly opposed to any early release."

6. On October 6, 2016, Lois LeBleu contacted Judge Vernon Clark, 30th Judicial District Court, and Sheriff Sam Craft, Vernon Parish Sheriff's Office, via telephone as part of the inclusion in the Pre-Parole Investigation. Upon being informed that plaintiff had an upcoming parole hearing, Judge Clark stated, "I am opposed to any early release," and Sheriff Craft stated, "Opposed."

7. On or about October 12, 2016, James Hill sent a letter to the Board in opposition to plaintiff's parole.

8. On November 3, 2016, plaintiff's parole hearing was held. At the hearing, the panel acknowledged that there was considerable opposition to parole lodged by the victim's mother and husband, the district attorney, the sentencing judge and the sheriff. A portion of Mr. Hill's letter in opposition was read into the record.

9. The three-member panel of the Board, consisting of Chairperson Sheryl Ranatza, Jim Wise and Pearl Wise, unanimously voted to grant plaintiff parole. The panel cited the following reasons for granting parole: plaintiff had been rehabilitated, he had a positive

institutional record, he had taken all possible programs available to him, he had a low LARNA score, he had an employment plan, and he had a viable residence plan. In short, in compliance with L.R.S. 15:574.4.1(B), the panel found that "there is reasonable probability that the [plaintiff] is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself."

10. Plaintiff was ordered to comply with various conditions of parole, particularly he was required to live in Texas, was required to have an approved residence plan, was required to have an approved compact application with the state of Texas, and achieve a Static 99 score. Plaintiff complied with all parole conditions. His release date was set for April 23, 2017.

11. On November 30, 2016, District Attorney Asa Skinner, 30th Judicial District, filed a request to the Board for a reconsideration of plaintiff's grant of parole.

12. On February 2, 2017, Chairperson Ranatza rejected the reconsideration request stating in a letter to District Attorney Skinner,

> The board's policy provides for a reconsideration review only in the following circumstances: 1. If there is allegation of misconduct by a Committee member that is substantiated by the record; 2. If there is a significant procedural error by a Committee member; or 3. If there is significant new evidence that was not available when the hearing was conducted. The information you provided in your letter does not meet the criteria for a rehearing. For these reasons, a rehearing for Samuel Galbraith is not warranted.

13. Some days prior to plaintiff's scheduled release date, the Board became aware of a local television news story that highlighted the Board's grant of parole. Mary Fuentes, Executive Director of the Board, informed Emalie Boyce, Deputy Executive Counsel to the Governor, that "Due to the nature of [plaintiff's] offense the family of the victim and the DA have raised a lot of negative attention." The Louisiana legislative session had just begun and Governor Edwards was pushing series of bill in an effort to reform the criminal justice system.

14. On April 20, 2017, Governor Edwards responded to media inquiries regarding plaintiff's impending release. He stated, "My staff has been in contact with the parole board today and we are looking at what options are available. We want to make sure that the process that was followed was complete and that they did everything they were supposed to."

15. In a series of emails with various persons, including Erin Monroe Wesley, Special Counsel of the Governor's Legislative Staff and lobbyists who were sheparding Governor Edwards' Criminal Justice Reform Package in the Legislature, shows that plaintiff's impeding release became a cause for alarm. Ms. Wesley was informed that "the story about [plaintiff's] impending release is causing a stir... In my ignorance I truly do not know if there is a way to prevent the scheduled release Sunday? I believe this is about to become a very problematic narrative, especially in the bills dealing with parole eligibility."

16. On April 20, 2017, Mary Fuentes reviewed plaintiff's parole file. The file contained the letters from Lois LeBleu to Ms. McWilliams and Mr. Hill notifying each of the November 3, 2016 parole hearing, and it contained the Pre-Parole Investigation Report showing that Ms. McWilliams was interviewed by Lois LeBleu on September 29, 2016 via telephone and voiced opposition to parole.

17. In the early morning of April 21, 2017, Chairperson Sheryl Ranatza was summoned to the Governor's Mansion to have a meeting with the Governor's staff regarding plaintiff's impending release. Following the meeting, Ms. Ranatza issued a press release wherein she stated that "Ms. McWilliams did receive the required notice for the November parole hearing."

18. However, Ms. Ranatza announced that plaintiff's parole was rescinded because the notification letter to Ms. McWilliams for the cancelled October hearing was addressed to

Albany, New York not Albany, Illinois. The zip code affixed to the letter was for Albany, Illinois. No attempts were made by the Board nor anyone else to determine whether or not the that letter was received by Ms. McWilliams and the letter was not returned to the Board.

19. On that same day, three days before plaintiff's release, the Board rescinded the grant of parole. The Board's "Parole Board Action Sheet," signed by Board member Jim Wise, cited the following as the reason for rescission: "There may have been technical irregularities notifying the victim's family."

20. Based upon the foregoing, the defendants knew that there was no "technical irregularities" regarding notification for the November 3, 2016 parole hearing. The defendants knew that both Ms. McWilliams and Mr. Hill received the required notice of that hearing. Thus, the sole reason relied upon by the defendants for plaintiff's parole rescission was false.

21. The Louisiana Administrative Code, Title 22, Part XI section 504 provides two reasons that may be used by the Board in rescinding a grant of parole. It states in pertinent part:

> K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee [Board] may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

22. In addition, the Board has created a policy wherein it may rescind a grant of parole based upon certain factors. These factors, found on the Board's "Parole Board Action Sheet," include reasons that a parole grantee is not actually eligible for parole or based upon the offender having not fulfilled conditions of parole. They are:

> Subject was removed from generic Board ordered SAB-W/R [Substance Abuse Program-Work Release]
> Subject refused transfer to W/R and/or SAB
> Subject is ineligible for parole (See new MPR) [Master Prison Record]

Subject has received DB Report [Disciplinary Report]
Per inmate's request
Subject was granted to OOS plans only, OOS plans were rejected [Out Of State]
Additional Sentence
Time Recalculated, New PED Date [Parole Eligibility Date]
Subject escaped from W/R and/or SAB
Subject is inappropriate for SAB-W/R because of medical reasons
Subject is ineligible for W/R because of previous escape charges
Subject is not eligible for SAB-W/R due to pending charges
Subject has a detainer – Granted to OOS Plans
Subject had a detainer at his Parole Hearing; the detainer has been dropped
Subject has a detainer, ineligible for SAB-W/R
Subject's Parole Decision is over 6 months
Other

23. The Board failed to provide Galbraith with any notice or opportunity to challenge a possible rescission of parole or to challenge the false information.

24. Galbraith became a pawn in the debates over whether persons convicted of violent offenses should be parole eligible.

25. At all times, the defendants were acting under color of state law.

CAUSE OF ACTION

Deprivation of substantive due process and procedural due process in violation of the 14th amendment to the United States Constitution and 42 Sec. 1983

26. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

27. Galbraith received notification from the Board that "[t]here may have been technical irregularities notifying the victim's family." This sole reason is not a valid reason to rescind parole, and defendants knew it is false.

28. A grant of parole is an act of discretion by the members of the Committee on Parole. The members are appointed by the governor. In Louisiana, there are many statutory rules in effect governing who may apply for parole, and at what time during their incarceration. Louisiana, unlike many states, does not provide a person a hearing on whether to rescind a grant of parole.

29. Louisiana does, however, have express provisions of law that address under what circumstances the grant of parole may be rescinded once granted. According to the Board's regulations, two reasons exist that may cause the Board to rescind a parole. 22 La. Admin. Code Pt XI, 504 (K); Board Policy Number 05.505 (M)(1)

30. Additionally, if the Board were to grant a conditional parole to an offender requiring successful completion of programs and the offender did not complete the program, rescission of the conditional parole may occur. 22 La. Admin. Code Pt XI, 711. That provision is not at issue here.

31. According to established policies of the Board at the time of plaintiff's grant of parole, a grant of parole could be rescinded based upon various factors dealing with whether or not the inmate is eligible for parole as stated on the Board's "Parole Board Action Sheet."

31. Galbraith was on notice that his grant of parole could be rescinded only if he engaged in misconduct while in custody or was ineligible for release on parole. Galbraith had a liberty interest that arose from an expectation created by state law and policy.

32. Rescinding Galbraith's grant of parole solely on the basis of a false reasons creates an atypical and severe hardship.

33. Galbraith is a model prisoner. As stated above, during his plea negotiations, District Attorney agreed allow Galbraith to plead to charges which would allow him parole eligibility after serving twenty years. He has maintained a stellar record while incarcerated; he has received only two infractions. He has been a trusted inmate counsel for a number of years and is currently a writer for the "The Walk Talk," HCC's inmate magazine. The Board recognized his accomplishments and his low-risk of re-offending when the panel unanimously granted him parole.

34. Galbraith was set to rejoin his family and work in the family's successful construction business. Following the grant of parole, Galbraith's mother retired and moved from Houston to southern Texas and his wife quit her job and moved from Dallas to southern Texas to be near him when he returned home. Galbraith purchased health insurance. Galbraith was hours away from being released via a valid grant of parole when he was denied release on false and invalid reasons.

35. The Board did not provide Galbraith with notice that his impending release was in jeopardy and did not provide him with an opportunity to be heard as to why his parole should be rescinded. Additionally, the Board refused to allow Galbraith to challenge the Board's decision and failed to reveal that the sole reason for rescinding his parole was false.

Prayer for Relief

Wherefore, plaintiff respectfully prays that this Court:

1. Issue a declaratory judgment and injunction in favor of plaintiff ordering that the November 2017 grant of parole be reinstated;

2. Issue a declaratory judgment and injunction in favor of plaintiff ordering that the Board's use of a false reason for a rescission of a grant of parole violates due process;

3. Award plaintiff costs and attorney's fees;

4. Provide such relief as the Court deems just and proper.

Dated: March 8, 2019

Respectfully submitted,

/s/ Nicholas Trenticosta
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Counsel of Record for Samuel Galbraith

CERTIFICATE OF SERVICE

I hereby certify that on the August 24, 2018, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/EFC system. Notice of this filing will be sent to Patricia Wilton, counsel for defendants, by operation of the court's electronic filing system.

s/ Nicholas J. Trenticosta
Nicholas J. Trenticosta

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*	
	*	**Case: 3:17-cv-00486-SSD-EWD**
Plaintiff	*	
VERSUS	*	
SHERYL RANATZA, Chair, Louisiana Board of Pardons	*	
Defendants	*	

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

NOW COMES Plaintiff Samuel Galbraith, through counsel, pursuant to Rule 15 of the Federal Rules of Civil Procedure, respectfully requests that the Court grant leave to file a Second Amended Complaint.

COURSE OF THE PROCEEDINGS

The original Complaint for Injunctive and Declaratory Relief was filed on July 26, 2017 and service was executed on August 1, 2017. Doc. 1. On October 16, 2017, pursuant to plaintiff's Request for Entry of Default (Doc 10) a Clerk's Entry of Default against the defendants was issued. Doc 12. The following day, October 17, 2017, the defendants filed an Answer to the Complaint (Doc. 14), a Motion to Dismiss Pursuant to FRCP 12(B)(6) by James LeBlanc (Doc. 13), and a Motion to Set Aside Clerk's Entry of Default. (Doc.15). An Amended Complaint was filed on August 27, 2018. Doc. 31. By order of this Court on February 15, 2018, trial was set for February 25, 2019. Doc. 21.

This Court set January 11, 2018 as the deadline for initial disclosures. Plaintiff received initial disclosures on February 4, 2018. Plaintiff's First Set of Documents Request and

Interrogatories were served upon defendants on February 8, 2018. Defendants served documents pursuant to that request on April 5, 2018. Plaintiff served a letter of deficiency to defendants concerning the documents on April 12, 2018. Defendant disclosed more documents on May 11, 2018. Plaintiff complained through various communications with defendant's counsel that the defendants had redacted important documents that were clearly discoverable and demanded disclosure. Following those demands, the defendants finally disclosed the unredacted documents on July 13 and 16, 2018.

A Joint Motion to Extend Deadlines (Doc. 23) was granted and the deadlines for completing discovery was reset for July 16, 2018 and the deadline for dispositive motions was reset for August 16, 2018. The joint motion was filed following plaintiff's understanding that the defendant had not fully complied with the request for documents at the first deposition of Sheryl Rantatza occurring on April 23, 2018 wherein Ms. Ranatza discussed undisclosed documents. This required plaintiff to notice of a second deposition of Ms. Rantatza which took place on June 13, 2018.

On February 12, 2019, the parties and the Court convened for a pre-trial conference in preparation of the February 25th trial. At that conference, the Court ordered defendant to file a motion to dismiss.

LAW AND ARGUMENT

Pending before this Court is defendant's motion to dismiss. (Doc. 42). Plaintiff has opposed the motion. In support, plaintiff has argued, inter alia, that the *Ex Parte Young* doctrine provides an exception to the sovereign immunity doctrine. (Doc. 45). Plaintiff argues that this Court can and should construe his complaint as requesting prospective relief. To the extend that

this Court may disagree with plaintiff's arguments, he seeks leave to file an amended complaint to cure any deficiencies that may exist.

Rule 15 of the Federal Rules of Civil Procedure declares that leave to amend "should be freely given when justice so requires." The United States Supreme Court set the relevant inquiry that a court must employ when determining whether to grant leave to amend a pleading as follows:

> If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.'

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

A. Plaintiff is entitled to amend the complaint for the following reasons.

1. The underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief.

As demonstrated in plaintiff's opposition to defendant's motion to dismiss, the regulations and policies that guide the rescission of parole have created a liberty interest. Thus, when the Board based its rescission of parole upon a verifiably false reason and one defendant knew was false, plaintiff has alleged a compelling showing that his due process rights have been violated. Plaintiff has requested relief from this Court declaring that the use of a false reason to rescind a grant of parole is unconstitutional. Even if the state has not created a liberty interest, providing a false reason as the sole reason to rescind a grant of parole violates due process.

2. There is no apparent or declared reason of undue delay, bad faith or dilatory motive on the part of plaintiff.

The deadline for filing dispositive motions was August 16, 2018. Defendant elected not to file a motion to dismiss but instead proceed to trial. Defendant noted the issue of sovereign immunity in the proposed pretrial order and proposed findings of fact, but did not move to dismiss. (Doc. 36 and 39). Plaintiff has no bad faith or dilatory motive, he accepted the defendant's apparent willingness to engage in settlement discussions and to take this case to trial for a decision on the merits after the settlement discussions failed.

3. The amended complaint will cure deficiencies and is not futile.

The Fifth Circuit has noted that the liberal standard of Rule 15 requires plaintiff should be afforded the opportunity to cure any defects of the complaint before dismissing a case.

> In view of the consequences of dismissal on the complaint alone, and the pull to decide cases on the merits rather than on the sufficiency of pleadings, district courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal.

Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 329 (5th Cir. 2002).

Granting leave to amend facilitates a decision on the merits. *Conley v. Gibson*, 355 U.S. 41, 48, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957), *abrogated by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.")

4. There will be no prejudice, let alone undue prejudice, to the defendant by granting leave to file the amended complaint.

In the joint status report, filed on January 11, 2019, (Doc. 33), defendant noted that it would be willing to participate in good faith in a settlement conference with the Court, although it did not think the case would settle. That conference did not occur and defendant chose to proceed to trial. This Court at the pretrial conference two weeks prior to trial ordered defendant

to file a motion to dismiss on jurisdictional grounds and continued the trial. Defendants will not be prejudiced by allowing an amended complaint to cure deficiencies as evidenced by its decision to proceed to trial without filing a motion to dismiss. By allowing the filing of an amended complaint, the issues will be joined for a decision on the merits.

WHEREFORE, Mr. Galbraith respectfully requests that this Court grant leave to file the Second Amended Complaint.

Respectfully submitted,

s/ Nicholas Trenticosta
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the March 8, 2019, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/EFC system. Notice of this filing will be sent to Patricia Wilton, counsel for defendants, by operation of the court's electronic filing system.

s/ Nicholas J. Trenticosta
Nicholas J. Trenticosta

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*	
	*	Case: 3:17-cv-00486-SSD-EWD
VERSUS	*	
	*	Civil Action
JAMES LEBLANC, Secretary,	*	
Louisiana Department of	*	Chief Judge Shelly D. Dick
Public Safety and Corrections,	*	
and SHERYL RANATZA, Chair,	*	Magistrate Judge Erin Wilder-Doomes
Louisiana Board of Pardons	*	

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

Defendant Sheryl Ranatza, in her official capacity as Chair of the Louisiana Board of Pardons, Committee on Parole, submits this memorandum in support of the motion for summary judgment filed contemporaneously herewith. For the reasons discussed herein, Defendant is entitled to judgment as a matter of law. Plaintiff's claims are barred for lack of subject matter jurisdiction because the State has sovereign immunity from suit under the Eleventh Amendment to the United States Constitution and further because plaintiff's exclusive remedy for seeking immediate release from custody is a properly filed and pleaded habeas petition.

I. INTRODUCTION AND FACTUAL BACKGROUND

It is a bedrock principle of law that States are immune from suit in federal court under the Eleventh Amendment unless Congress has validly abrogated the States' sovereign immunity or a State has expressly waived it. Neither of these exceptions is present in this case and sovereign immunity precludes plaintiff's claims in this matter.

Plaintiff is an offender in the custody of the Louisiana Department of Public Safety and Corrections serving a custodial sentence of 71 years for conviction of manslaughter and attempted rape as a result of his murder of Karen Hill in 1988. Pursuant to Louisiana law in effect at the time of his crime, plaintiff would be eligible for parole consideration once he served 20 years and reached age 45. The Louisiana Department of Corrections assigned plaintiff a parole eligibility date of April 23, 2017.[1] After a parole hearing in November of 2017, plaintiff was granted parole effective as of his PED, but this grant was subsequently rescinded by the Committee.

Defendant is the Chair of the Louisiana Board of Pardons, Committee on Parole ("the Committee") and is sued in her official capacity only. Plaintiff alleges a cause of action under 42 U.S.C. Section 1983 ("Section 1983") arising out of claims that he was denied due process under the Fourteenth Amendment. He asks this court to order the Committee to reinstate its grant of parole and further asks the Court to order his immediate release from custody.

Defendant respectfully contends that this Court does not have jurisdiction to hear this case because the state has sovereign immunity from this suit. Defendant further contends that the Court is not empowered to grant the remedies prayed for.

II. LAW AND ARGUMENT

A. Summary Judgment standard

Summary judgment is appropriate where there is no genuine disputed issue as to any material fact, and the moving party is entitled to judgment as a matter of law.[2] Whether a state

[1] Parole eligibility is determined by an offender's sentence. Eligibility for parole consideration is dependent on meeting certain statutory conditions and criteria. Both are closely regulated by the Legislature. Neither status confers a right or expectation of actual release, because the Legislature has given to the Committee the authority to make the final decision whether to release on parole. *Bosworth v. Whitley*, 627 So. 2d 629 (La. 1993); *see also Simpson v. Ortiz*, 995 F. 2d 606 (5th Cir. 1993) ("The Parole Commission determines a prisoner's suitability for parole, not his eligibility....")

[2] Rule 56, Federal Rules of Civil Procedure. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

defendant is entitled to sovereign immunity is a question of law.[3]

A. The Eleventh Amendment precludes jurisdiction over plaintiff's claims.

The Eleventh Amendment and attendant principle of sovereign immunity generally bar suits against the state and its agencies in federal court unless the state consents to the suit.[4] It is irrelevant whether the requested relief is equitable (i.e., declaratory or injunctive) or monetary.[5] It is well established that Louisiana has not waived its immunity from suit in federal court.[6]

Additionally, although Congress has the power to abrogate this immunity through the Fourteenth Amendment, it has not done so as to claims for the deprivation of constitutional civil rights under color of state law.[7] Accordingly, Eleventh Amendment sovereign immunity from suit applies to Section 1983 claims against the State.

Sovereign immunity from suit applies equally to state agencies. The Louisiana Committee on Parole is a part of the executive branch of state government and is an arm or agency of the state entitled to Eleventh Amendment immunity.[8]. And plaintiff's claims against Chair Ranatza are likewise precluded. A suit against a state official in her official capacity is also barred by the Eleventh Amendment since the state is the real substantial party in interest and the effect of the judgment would be to restrain the government from acting or compel it to act.[9] Further, state sovereign immunity forbids a federal court to direct State officers how to comply with State law.[10]

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[3] *Moore v. La. Bd. of Elem. & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014).
[4] *Edelman v. Jordan*, 415 U.S.651, 94 S. Ct. 1347, 39 L.Ed.2d 662 (1974). *Cozzo v. Tangipahoa Parish Council-President Gov't*, 279 F.3d 273, 280 (5th Cir. 2002).
[5] *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101–02 (1984).
[6] La. Const. Art. XII § 10; La. Rev. Stat. Ann. § 13:5106; *see also Fairley v. Stalder*, 294 F. App'x 805, 811 (5th Cir. 2008).
[7] *See Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S. Ct. 2666, 49 L.Ed.2d 614 (1976); *Quern v. Jordan*, 440 U.S. 332, 99 S. Ct. 1139, 59 L.Ed.2d 358 (1979); *Edelman v. Jordan, supra.*
[8] *See McGrew v. Texas Board of Pardons & Paroles*, 47 F.3d 158 (5th Cir. 1995); *Jones v. La. State Bd. of Parole*, 2011 U.S. Dist. LEXIS 115778 (M.D. La. Sep. 9, 2011).
[9] *Pennhurst, supra,* quoting *Dugan v. Rank*, 372 U.S. 609, 83 S. Ct. 999, 1006, 10 L. Ed. 2d 15 (1963).
[10] *See Pennhurst, supra, Doe I v. Landry*, ___ F.3d ___, No. 17-30292, 2018 WL 4501501, at *8 (5th Cir. Sept. 20, 2018).

B. *Ex Parte Young* does not apply to afford jurisdiction.

The *Ex Parte Young* doctrine provides a limited circumvention of Eleventh Amendment sovereign immunity when a plaintiff sues a state official in his official capacity for prospective relief. Inherent in the analysis and justification for the limited federal intrusion into state administration is the character of the remedy as prospective. Importantly, *Ex Parte Young* does not permit judgments against state officers declaring that they violated federal law in the past, nor does it allow a plaintiff to adjudicate the legality of past conduct.[11] But that is exactly what plaintiff asks the Court to do in this case. Plaintiff's complaint concerns a single discrete action by the Committee that occurred nearly two years ago. The relief he seeks, although purported to be prospective, is clearly entirely retroactive in nature, since he asks this court to order the Committee to reverse its prior decision and to order his immediate release from custody.

Additionally, the *Ex Parte Young* exception does not encompass pendant state law claims against state officials in their official capacity.[12] The Supreme Court has counseled that federal courts do not have jurisdiction to tell state officials how to conform their conduct to state law, stating forcefully that "it is difficult to think of a greater intrusion on state sovereignty."[13] Plaintiff has not challenged any relevant state law or regulation in this case, only a specific single action of the Committee in the exercise of its statutory duties. Thus, *Ex Parte Young* does not insulate from sovereign immunity plaintiff's allegations in this suit as to allegedly improper application of state laws or regulations.

Since neither the claims made nor the relief sought in plaintiff's suit fall within the *Ex Parte Young* exception, they are barred by sovereign immunity.

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[11] *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146, 113 S. Ct. 684, 121 L. Ed 2d 6050 (1993); *Saltz v. Tenn. Dep't of Emp't Sec.*, 976F.2d 966, 968 (5th Cir. 1992).
[12] *See Wilson v. UT Health Ctr.*, 973 F.2d 1263, 1271 (5th Cir. 1992) and *Pennhurst, supra.*
[13] *Pennhurst, supra.*

C. The Court lacks jurisdiction to grant plaintiff the remedies prayed for.

The exclusive remedy for an inmate seeking immediate or speedier release from custody, as plaintiff does herein, is a writ of *habeas corpus.*[14] The Fifth Circuit has previously made clear that a challenge to a single action as constitutionally defective also must be brought as a *habeas* claim with attendant exhaustion of state *habeas* remedies.[15]

In this case, plaintiff's claims directly implicate the lawfulness of his continued custody under his original 71-year sentence of incarceration which has a full-term date of April 20, 2068 and an anticipated "good-time" date of March 3, 2032. Thus, plaintiff's Section 1983 claims herein are *Heck*-barred.[16]

Further, it is well-recognized that Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere.[17] The Supreme Court has held that there is no federally guaranteed right to conditional release before the expiration of a valid sentence.[18] Unless state law makes parole mandatory, parole is a matter of mere possibility and does not invoke a federally protected liberty interest.[19] Louisiana law grants sole discretion to the Committee to make decisions regarding parole and does not contain mandatory language or place substantive limitations on the Committee's discretion. And the Fifth

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[14] *Skinner v. Switzer,* 562 U.S. 521, 525, 131 S. Ct. 1289, 179 L. Ed. 2d 233 (2011); *Heck v. Humphrey,* 512 U.S. 477, 481, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994); *Serio v. Members of Louisiana State Board of Pardons,* 821 F. 2d 1112, 1117 (5th Cir. 1987); *Orellana v. Kyle,* 95-50252, 65 F. 3d 29 (5th Cir. 1995), *citing Cook v. Texas Dep't of Criminal Justice Transitional Planning Department,* 37 F.3d 166, 168 (5th Cir.1994).

[15] *See Serio, supra.* By contrast, when success on a prisoner's action would not necessarily result in an immediate release from custody or a shorter stay in prison, but would instead provide a new eligibility review, an action filed under Section 1983 is appropriate. *Wilkinson v. Dotson,* 544 U.S. 74, 125 S. Ct. 1242, 161 L.Ed.2d 253 (2005). Plaintiff herein seeks only reversal of the decision to rescind and an immediate release.

[16] *Wilkinson v. Dotson, supra; see also Littles v. Bd. of Pardons & Paroles Div.,* 68 F.3d 122 (5th Cir. 1995).

[17] *Albright v. Oliver,* 510 U.S. 266, 271, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994) (quoting *Baker v. McCollan,* 443 U.S. 137, 144 n. 3, 99 S. Ct. 2689, 61 L. Ed. 2d 433, (1979)); accord *Graham v. Connor,* 490 U.S. 386, 393-94, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989); *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 816, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985); *Jackson v. City of Atlanta, TX,* 73 F.3d 60, 63 (5th Cir.), *cert. denied,* 519 U.S. 818, 117 S. Ct. 70, 136 L. Ed. 2d 30 (1996);, 775 F.2d 1349, 1352 (5th Cir.1985).

[18] *Greenholtz v. Inmates of Neb. Penal & Correctional Complex,* 442 U.S. 1, 99 S. Ct. 2100, 60 L.Ed.2 688 (1979).

[19] *Kentucky Dept. of Corrections v. Thompson,* 490 U.S. 454; 109 S. Ct. 1904, 104 L. Ed 2d 506 (1989).

Circuit has previously confirmed that Louisiana statutes governing parole proceedings do not confer a liberty interest to offenders.[20] Since offenders have no cognizable federally protected liberty interest in Louisiana state parole, the Due Process Clause does not provide a vehicle for plaintiff's Section 1983 claims in this case.

III. CONCLUSION

The plaintiff's claims in this case are barred by sovereign immunity and are not cognizable under Section 1983. This suit should be dismissed at plaintiff's cost.

RESPECTFULLY SUBMITTED:

JEFF LANDRY
ATTORNEY GENERAL

By: *s/ Patricia H. Wilton*
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Counsel for Defendant, Sheryl Ranatza

[20] In *Stevenson v. Louisiana Bd. Of Parole*, 265 F. 3d 1060 (5th Cir. 2001) (reported in full at 2001 U.S. App. LEXIS 31962), the appeals court specifically analyzed the legal effect of the "20/45" statute through which plaintiff herein became eligible for parole consideration and stated affirmatively that "[t]his statute does not contain any mandatory language requiring the Parole Board to release an inmate if certain conditions are met and does not preclude consideration of an inmate's past criminal history or the nature of his offenses of conviction."

(6)(a) The applicant presents new, reliable, and exculpatory scientific, physical, or nontestimonial documentary evidence that was not known or discoverable at or prior to trial and that, when viewed in light of all the relevant evidence, proves by clear and convincing evidence that the applicant is factually innocent of the crime for which the applicant was convicted and of any felony offense that was a responsive verdict at the time of the conviction.

(b) The conclusive evidence necessary to support a claim for actual innocence under this Subparagraph shall be new, material, and noncumulative. A recantation of prior sworn testimony without the corroborating evidence required by Subsubparagraph (a) of this Subparagraph shall not be sufficient to overcome the presumption of a valid conviction.

(c) An applicant's first claim of actual innocence pursuant to this Subparagraph that would otherwise be barred from review on the merits by the time limitations provided in Article 926 or the procedural objections provided in Article 927.8 shall not be barred if the claim is contained in an application filed on or before December 31, 2020.

(d) An unsupported allegation of innocence made in a new application filed in accordance with this Subparagraph may be denied by the trial court without the necessity of an answer or hearing and shall thereafter serve as a bar to further applications for postconviction relief in accordance with Article 927.8.

(e) An applicant who is determined to be actually innocent may not be tried again for the same crime for which the applicant was convicted. A new prosecution for a different offense based on the same facts may be instituted within the time established by Article 576.

Comments – 2019

(a) Included among the claims that may be raised in an application for postconviction relief are claims of ineffective assistance of trial and appellate counsel in violation of constitutional standards. Claims of ineffective assistance of counsel are often reserved for collateral proceedings. See *Massaro v. United States*, 538 U.S. 500, 505, 123 S.Ct. 1690, 1694, 155 L.Ed. 714 (2003). Ineffective assistance claims often depend on evidence outside the trial record. Direct appeals without expansion of the record may not be as effective as other proceedings for developing the factual basis for the claim. Appellate counsel's performance can also form the basis of a claim for ineffective assistance of counsel. See *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). See also *Woods v. Etherton*, --- U.S. ---, 136 S.Ct. 1149 (2016).

(b) The fourth ground for relief is intended to codify *State v. Counterman*, 475 So. 2d 336 (La. 1985) and its progeny.

(c) The removal of the words "and sentenced" from Subparagraph (2) of this Article is intended to make the provision consistent with prior jurisprudence. This Article continues to recognize that sentencing-related claims, including but not limited to challenges to habitual offender proceedings, are not cognizable grounds for postconviction review. See *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So. 2d 1172; *State v. Shepard*, 2005- 1096 (La.

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SAMUEL GALBRAITH	*	
	*	**Case: 3:17-cv-00486-SSD-EWD**
Plaintiff	*	
VERSUS	*	
SHERYL RANATZA, Chair, Louisiana Board of Pardons	*	
Defendants	*	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

Plaintiff, Samuel Galbraith, submits this opposition to defendant's Motion for Summary Judgment. As demonstrated below, sovereign immunity does not bar this Court from reaching the merits of plaintiff's complaint seeking equitable relief in the form of declaratory and injunctive relief.[1]

1. INTRODUCTION

In his complaint for declaratory and injunctive relief, plaintiff alleges that his rights to due process were violated by the defendant's action of rescinding his grant of parole on a false reason. Discovery has revealed confidential documents that were unavailable to plaintiff prior to filing his suit and depositions with various persons who work for the defendant that belie the sole

[1] Argument on defendant's motion is set before this Court on March 12, 2019 at 1:30. Prior to that date, plaintiff will file a motion for leave to amend his complaint. Counsel respectfully requests brief additional time to argue his motion for leave to amend.

reason defendant rescinded the grant of parole. That reason is: "There may have been technical irregularities notifying the victim's family." As shown below, the defendant knew that reason is false. False information used to rescind a parole violates due process. *See, Victory v. Pataki,* 814 F.3d 47 (2nd Cir. 2016); *Monroe v. Thigpen,* 932 F.2d 1437, 1442 (11th Cir. 1991); *Thomas v. Sellers,* 691 F.2d 487 (11th Cir. 1981).

As stated in the defendant's memorandum in support of its motion for summary judgment is appropriate if there is no genuine disputed issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Doc. 42-1 at 2. Before discussing and refuting defendant's argument that it is entitled to summary judgment in its favor as a matter of law, plaintiff lays out the material facts attendant to his entitlement to relief and then explains why defendant's argument on the law fails.

2. STATEMENT OF FACTS

Plaintiff was eligible for parole pursuant to La.R.S. 15:574.4, that was in effect at the time of his crime in 1988. Plaintiff was granted a parole hearing by the defendant and the hearing was set for October 13, 2016. The October 13th hearing did not occur; the hearing was rescheduled for November 3, 2016.

Lois LeBleu, a Probation and Parole Officer. was tasked with investigating the case in order to prepare a Pre-Parole Investigation report for the defendant's consideration plaintiff's parole hearing. As part of her mission, she was tasked with notifying relatives of the victim in the underlying crime. Thus, on September 28, 2018, Ms. LeBleu sent properly addressed letters to Jessie McWilliams and James Hill, the mother and former husband of the victim in this case, notifying both that the Board had set plaintiff's parole hearing for November 3, 2016.

On September 29, 2016, Ms. LeBleu contacted Jessie McWilliams and conducted an interview via telephone with Ms. McWilliams for inclusion in the Pre-Parole Investigation report. Upon being informed that plaintiff had an upcoming parole hearing, Ms. McWilliams stated, "I do not think he should be allowed parole."

Similarly, Ms. LeBleu was tasked with notifying the district attorney, sheriff and sentencing judge who had been involved in plaintiff's criminal prosecution. On October 4, 2016, Ms. LeBleu contacted Assistant District Attorney Terry Lambright, Office of the District Attorney for the 30th Judicial District, and conducted an interview via telephone with Mr. Lambright for inclusion in the Pre-Parole Investigation report. Upon being informed that plaintiff had an upcoming parole hearing, Mr. Lambright stated, "We are strongly opposed to any early release." On October 6, 2016, Lois LeBleu contacted Judge Vernon Clark, 30th Judicial District Court, and Sheriff Sam Craft, Vernon Parish Sheriff's Office, via telephone as part of the inclusion in the Pre-Parole Investigation. Upon being informed that plaintiff had an upcoming parole hearing, Judge Clark stated, "I am opposed to any early release," and Sheriff Craft stated, "Opposed."

On or about October 12, 2016, James Hill sent a letter to the Board in opposition to plaintiff's parole.

On November 3, 2016, plaintiff's parole hearing was held. At the hearing, the panel acknowledged that there was considerable opposition to parole lodged by the victim's family, the district attorney, the sentencing judge and the sheriff. A portion of Mr. Hill's letter in opposition was read into the record.

The three-member panel of the Board, consisting of Chairperson Sheryl Ranatza, Jim Wise and Pearl Wise, unanimously voted to grant plaintiff parole. The panel cited the following

reasons for granting parole: plaintiff had been rehabilitated, he had a positive institutional record, he had taken all possible programs available to him, he had a low LARNA score, he had an employment plan, and he had a viable residence plan.[2]

Plaintiff was ordered to comply with various conditions of parole, and complied with all of those conditions. His release date was set for April 23, 2017.

On November 30, 2016, District Attorney Asa Skinner, 30th Judicial District, filed a request to the Board for a reconsideration of plaintiff's grant of parole. That request was denied by Chairperson Ranatza. She stated in her letter to Mr. Skinner that he had failed to advance any facts that "meet the criteria for a rehearing."

Some days prior to plaintiff's scheduled release date, the Board became aware of a local television news story that highlighted plaintiff's grant of parole. Mary Fuentes, Executive Director of the Board, informed Emalie Boyce, Deputy Executive Counsel to the Governor, that "Due to the nature of [plaintiff's] offense the family of the victim and the DA have raised a lot of negative attention."

On April 20, 2017, Governor Edwards responded to media inquiries regarding plaintiff's impending release. He stated, "My staff has been in contact with the parole board today and we are looking at what options are available. We want to make sure that the process that was followed was complete and that they did everything they were supposed to."

In a series of emails with various persons, including Erin Monroe Wesley, Special Counsel of the Governor's Legislative Staff and lobbyists who were sheparding Governor Edwards' Criminal Justice Reform Package in the Legislature, shows that plaintiff's impeding

[2] In compliance with L.R.S. 15:574.4.1(B), the panel found that "there is reasonable probability that the [plaintiff] is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself."

release became a cause for alarm. Ms. Wesley was informed that "the story about [plaintiff's] impending release is causing a stir... this is about to become a very problematic narrative, especially in the bills dealing with parole eligibility."

On April 20, 2017, Mary Fuentes reviewed plaintiff's parole file. The file contained the letter Ms. McWilliams received from Lois LeBleu notifying her of the November 3, 2016 parole hearing, and it contained the Pre-Parole Investigation Report showing that Ms. McWilliams was interviewed by Lois LeBleu on September 29, 2016 via telephone and voiced opposition to parole.

In the early morning of April 21, 2017, Chairperson Ranatza was summoned to the Governor's Mansion to have a meeting with the Governor's staff regarding plaintiff's impending release. Following the meeting, Ms. Ranatza issued a press release wherein she stated that "Ms. McWilliams did receive the required notice for the November parole hearing."

However, Ms. Ranatza announced that plaintiff's parole was rescinded because the previous notification letter to Ms. McWilliams for the cancelled October hearing was addressed to Albany, New York not Albany, Illinois. The zip code affixed to the letter was for Albany, Illinois. No attempts were made by the defendant nor anyone else to determine whether or not the that letter was received by Ms. McWilliams and the letter was not returned to the defendant.

On that same day, three days before plaintiff's release, the defendant rescinded the grant of parole. The "Parole Board Action Sheet," signed by one Board member, Jim Wise, cited the following as the reason for rescission: "There may have been technical irregularities notifying the victim's family."

3. LAW AND ARGUMENT

The defendant advances two arguments in support of its motion. First, the defendant asserts that this civil rights suit is dismissible under the sovereign immunity doctrine, i.e., Eleventh Amendment immunity bars suits against a state and to its agencies even when the relief requested is declaratory or injunctive as in this case. Defendant then asserts that an exception to the sovereign immunity, the *Ex Parte Younger* exception, is not available to plaintiff because "[t]he relief [plaintiff] seeks, although purported to be prospective, is clearly entirely retroactive in nature, since [plaintiff] asks this court to order the [Board] to reverse its prior decision and to order his immediate release from custody."

Second, the defendant argues that this Court cannot grant release to plaintiff – that the only remedy is one sounding in habeas corpus. Defendant continues by arguing that the Board has unfettered discretion regarding parole and "parole is a matter of mere possibility and does not invoke a federally protected liberty interest" citing *Kentucky Dept of Corrections v. Thompson*, 109 S.Ct. 1904 (1989). Finally, defendant argues that the Fifth Circuit has previously confirmed that Louisiana statutes governing parole proceedings do not confer a liberty interest to offenders citing *Stevenson v. Louisiana Board of Parole*, 265 F.3d 1060 (5th Cir. 2001) for that blanket proposition.

Defendant's arguments fail for a number of reasons.

A. Plaintiff's Specific Prayer for Relief Is Not Determinative of This Court's Ability to Grant Relief

In this action, plaintiff specifically prayed for the following relief: Provide such relief as the Court deems just and proper. Doc. 31.

While plaintiff concedes this court cannot grant a relief urged, i.e., immediate release from custody, based upon the undisputed material facts, this Court can grant equitable relief that

is prospective. Under plaintiff's prayer to provide relief that is just and proper, this Court can and should find that rights under the Due Process Clause forbid the defendant from using false information as the sole reason for rescinding a grant of parole.

That is so because "the prayer does not control...If a plaintiff has stated a cause of action for *any* relief, it is immaterial what he designates it or what he has asked for in his prayer." *Kansas City, St. L. & C. R. Co. v. Alton R. Co.*, 124 F.2d 780, 783 (7th Cir. 1941) (citation omitted) (emphasis supplied). Rule 54, of the Federal Rules of Civil Procedure, states in pertinent part, "Every other final judgment should grant relief to which each party is entitled, *even if the party has not demanded that relief in its pleadings*." Fed. R. Civ. P. 54(c) (emphasis added). See also, § 1255Demand for Judgment—In General, 5 Fed. Prac. & Proc. Civ. § 1255 (3d ed.) ("under Rule 54(c), except in default judgment cases, the district court may grant any relief to which the evidence shows a party is entitled, even though that party has failed to request the appropriate remedy or remedies in his pleading."

In *Dotschay for Use & Benefit of Alfonso v. Nat'l Mut. Ins. Co. of D.C.*, 246 F.2d 221, 223 (5th Cir. 1957), the court reversed a district court's dismissal of a complaint. The complaint was based on the alleged breach of duty of a liability insurer to settle or compromise a claim. "The district court was of the opinion that the insured could not use for the use of the injured party, that the cause of action on the part of the insured himself did not accrue until he had satisfied the judgment against him, and since that had not been done, the court dismissed the action..." at 222. The Fifth Circuit held, in accordance with Rule 54, that "plaintiff is entitled to *any* relief which the court can grant." Id., at 223 (emphasis added). It stated, "It seems to us that the district court overlooked our liberal rule of federal practice under which the complaint is not to be dismissed because the plaintiff's lawyer has misconceived the proper legal theory of the

claim, but is sufficient if it shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for the proper relief." Id. *Hawkins v. Frick-Reid Supply Corp.*, 154 F.2d 88 "5th Cir. 1946.) ("Every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that form of relief in his pleading."); *Jamieson v. Shaw,* 772 F.2d 1205, 1208 (5th Cir.1985) ("The policy of the Federal Rules of Civil Procedure, however, is to permit liberal pleading and amendment thus facilitating adjudication on the merits while avoiding excessive formalism.") District courts in Louisiana have similarly applied the Fifth Circuit's cases. *Volvo Trucks N. Am., Inc. v. Crescent Ford Truck Sales, Inc.*, No. 07-3127, 2008 WL 506099, at 5 (E.D. La. Feb. 21, 2008) ("A complaint 'is sufficient if it shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether it asks for proper relief.'") (*citing Dotschay, supra and Hawkins, supra*); *Cain v. White*, No. 08-1015, 2009 WL 772902, at 1 (W.D. La. Mar. 20, 2009) (same); *Singleton v. Westminster Mgmt. Corp.*, No. 87-5035, 1988 WL 15560, at 2 (E.D. La. Feb. 24, 1988) (same).

B. The Ex Parte Young Exception to Sovereign Immunity Applies

As stated by defendant in its memorandum, the *Ex Parte Young* doctrine provides an exception to the Eleventh Amendment sovereign immunity bar when the relief is prospective in nature. Defendant acknowledges that the relief plaintiff seeks is "purported to be prospective." Doc. 42-1 at 4. Plaintiff seeks a ruling from this Court that the defendant be prohibited from rescinding a valid grant of parole based upon false reasons or false information.

C. Plaintiff has a Liberty Interest.

Defendant cites to *Stevenson v. Louisiana Board of Parole*, 265 F.3d 1060 (5th Cir. 2001)

(unreported) for authority that "Louisiana statutes governing parole proceedings do not confer a liberty interest to offenders." Doc. 41-2 at 6. Defendant is mistaken, and fails to grasp plaintiff's argument. Stevenson's suit was dismissed because it was frivolous. He made wild accusations of constitutional violations after he was *denied* parole.[3]

That is surely not the case here. Plaintiff was *granted* parole. Plaintiff has not argued that he has a liberty interest in receiving a grant of parole. Plaintiff's assertion that he had a liberty interest in *not having his grant of parole rescinded based solely upon a false reason.* In support, he has shown that there are policies in place that limit the reasons the Board may rescind a parole. First is the Louisiana Administrative Code, Title 22, Part XI section 504 provides two reasons that may be used by the Board in rescinding a grant of parole. It states in pertinent part:

> K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee [Board] may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

Second, the Board has created a policy wherein it may rescind a grant of parole based upon certain eligibility factors. These factors, found on the Board's "Parole Board Action Sheet," include reasons that a parole grantee is not actually eligible for parole or based upon the offender having not fulfilled conditions of parole. They are:

> Subject was removed from generic Board ordered SAB-W/R [Substance Abuse Program-Work Release]
> Subject refused transfer to W/R and/or SAB
> Subject is ineligible for parole (See new MPR) [Master Prison Record]
> Subject has received DB Report [Disciplinary Report]
> Per inmate's request
> Subject was granted to OOS plans only, OOS plans were rejected [Out Of State]
> Additional Sentence
> Time Recalculated, New PED Date [Parole Eligibility Date]

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[3] Defendant's citation to *Kentucky Dept of Corrections v. Thompson,* 109 S.Ct. 1904 (1989) is misplaced. The issue in that case was whether regulations created a liberty interest in visitation.

Subject escaped from W/R and/or SAP
Subject is inappropriate for SAB-W/R because of medical reasons
Subject is ineligible for W/R because of previous escape charges
Subject is not eligible for SAB-W/R due to pending charges
Subject has a detainer – Granted to OOS Plans
Subject had a detainer at his Parole Hearing; the detainer has been dropped
Subject has a detainer, ineligible for SAB-W/R
Subject's Parole Decision is over 6 months
Other

Clearly, it is in the defendant's discretion to rescind a grant of parole if the offender has not fulfilled the conditions of parole. For example, as shown above, if a condition of parole is to have an approved out of state living plan but the receiving state did not approve the plan, then the person did not fulfill a condition of parole and the grant of parole could be rescinded, or if a condition of parole was to complete a substance abuse program but the inmate escaped from the program, a grant of parole could be rescinded. The Board's policy does not define what "other" could be. Plaintiff argues that a sole reason for rescinding parole cannot constitutionally be a false or fabricated reason.

As demonstrated above, the defendant knew the sole reason -- "There may have been technical irregularities notifying the victim's family" – was false. The defendant knew that there was no "technical irregularities" regarding notification for the November 3, 2016 parole hearing. The Board knew that both Ms. McWilliams and Mr. Hill received the required notice of that hearing. Indeed, Chairperson Ranatza publicly stated, "Ms. McWilliams did receive the required notice for the November parole hearing."

Plaintiff has alleged that he was deprived of his rights under the Due Process Clause by the Board's decision to rescind his parole. "The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v.*

Austin, 125 S. Ct. 2384, 2393 (2005). "A liberty interest ... may arise from an expectation or interest created by state laws or policies, see, *e.g., Wolff v. McDonnell,* 94 S.Ct. 2963 (1974)." *Id.* See also *Sandin v. Conner*, 115 S. Ct. 2293, 2300 (1995) ("Following *Wolff*, we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause.")

In *Madison v. Parker*, 104 F.3d 765 (5th Cir. 1997), the Fifth Circuit, explained that "states may, under certain circumstances, create liberty interests which are protected by the Due Process Clause. [*Sandin*] held that these interests are generally limited to state created regulations or statutes which affect the *quantity* of time rather than the *quality* of time served by a prisoner." Id. 104 F.3d 765 at 767 (emphasis added). *Madison* examined whether a state's revocation of good time credits for release implicated the due process clause and found that the lower court was incorrect in failing to analyze the issue under *Wolff v. McDowell*, Id. *Madison* found that the *Sandin* Court "clearly left intact its holding in *Wolff*." *Id.*, at 769.

Here, Plaintiff has not complained about the *quality* of confinement, rather he complained about the *quantity* of time he must be confined following a grant of parole and argues he was entitled to due process in the rescission process employed by the defendant. He was on notice that his grant of parole may be jeopardized if he engaged in misconduct or if he failed to fulfill a condition of parole or any of the policy provisions. He had a legitimate expectation of being released based upon the fact that he did nothing improper to jeopardize his parole grant. None of the criteria listed in the Board's policy for rescission were involved.

The regulations and policies which guide the Board's decisions to rescind a grant of parole are clearly established and gives notice of when a proper, valid and non-arbitrary rescission may occur. The Louisiana Administrative Code, Title 22, Part XI section 504

provides two reasons that may be used to rescind a grant of parole. Neither are involved here. The Board's sound policy that allows for rescission of parole, namely the prisoner is not *eligible* for parole even though a grant of parole was given, is not relevant here. Those regulations and policies create a liberty interest that inures to the plaintiff's benefit.

D. The Use of False Information to Deny or Rescind Parole Violates Due Process

There may be situations that warrant a rescission that may not be captured in the regulation and policy so that "other" may be appropriately assigned and given a valid and true reason. That is not the case here. The defendant admitted that the required notification was sent to the victim's mother, thereby admitted that the sole reason for the rescission was in fact false.

As argued above, a liberty interest has been created by the regulations and policies of the Board concerning under what circumstances a rescission of a grant of parole may occur. Although defendant argues that "Louisiana law grants sole discretion to the Committee [on Parole] to make decisions regarding parole..." (Doc. 42-1 at 5), state law limits that discretion to whether to *grant* or *deny* parole. But, even if the defendant has sole discretion to rescind parole, or plaintiff has no liberty interest, which neither is the case, the defendant may not engage in "flagrant or unauthorized action." *Thomas v. Sellers*, 691 F.2d 487, 489 (11th Cir. 1981) (parole statutes do not "authorize state officials to rely on knowing false information in their determinations," and if the board does so, due process is violated).

In *Monroe v. Thigpen*, 932 F.2d 1437 (11th Cir. 1991), the inmate was not granted parole, unlike this case, yet he argued that his due process rights were denied because the parole board knowingly relied upon false information to deny him parole. The court held that "by relying upon false information ... the Board exceeded its authority [under the statutes] and treated Monroe arbitrarily and capriciously in violation of due process." *Id.*, at 1142. *Victory v.*

Pataki, 814 F.3d 47 (2nd Cir. 2016) (fabricating a false basis for rescinding parole violates due process). Cf. *Napue v. Illinois*, 79 S.Ct. 1173 (1959) (a prosecutor's presentation of false evidence at a criminal trial violates due process).

4. CONCLUSION

Plaintiff's complaint is properly before this Court. Summary judgment must be denied because the *Ex Parte Young* exception to sovereign immunity applies. He seeks a ruling prohibiting defendant from employing knowingly false information in the future, and because plaintiff has a liberty interest created by regulation and policy, to do so violates due process.

Respectfully submitted,

s/ Nicholas Trenticosta
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the March 4, 2018, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/EFC system. Notice of this filing will be sent to Patricia Wilton, counsel for defendants, by operation of the court's electronic filing system.

s/ Nicholas J. Trenticosta
Nicholas J. Trenticosta

APPENDIX J

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
CORRECTIONS SERVICES
OFFENDERS RELIEF REQUEST FORM

CASE NUMBER: EHCC-2017 -301

TO: SAMUEL GALBRAITH 422350 F3B
Offender's Name and Number Living Quarters

04/23/2017
Date of Incident

ACCEPTED: This request comes to you from the Wardens Office. A response will be issued within 40 days of this date.

X REJECTED: Your request has been rejected for the following reason(s):
PARDON AND PAROLE BOARD DECISIONS UNDER LOUISIANA LAW, DECISIONS OF THESE BOARDS ARE DESCRESIONARY AND MAY NOT BE CHALLENGED.

05/11/2017
Date

Lt. Col. W. Matthews
Warden's Signature or Designee