IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Jace Frankson, Sababu Hodari, Geoffrey Mathis, and Jonathan Walker, on behalf of themselves and all others similarly situated,

Plaintiff(s),

vs.

Jennifer Winkelman, in her official capacity as Commissioner-Designee of the State of Alaska Department of Corrections, and the State of Alaska, Department of Corrections,

Defendant(s).

CASE NO. 3AN-23-04865CI

SUMMONS AND NOTICE TO BOTH PARTIES OF JUDICIAL ASSIGNMENT

To Defendant: State of Alaska, Department of Corrections

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Ruth Botstein, whose address is:
ACLU of Alaska Foundation, 1057 W. Fireweed Lane, Ste. 207, Anchorage, AK 99503.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge Guidi and to a magistrate judge.

☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

02/23/23
Date

By: _____
Deputy Clerk

I certify that on 02/23/23 a copy of this Summons was ☐ mailed ☒ given to
☐ plaintiff ☒ plaintiff's counsel along with a copy of the
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order
to serve on the defendant with the summons.
Deputy Clerk MB

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

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AT ANCHORAGE

Jace Frankson, Sababu Hodari, Geoffrey Mathis, and Jonathan Walker, on behalf of themselves and all others similarly situated,

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CASE NO. 3AN-23-04865CI

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TO: Plaintiff and Defendant

You are hereby given notice that:

☒ This case has been assigned to Superior Court Judge Gurdil and to a magistrate judge.

☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

02/23/2023
Date

By: _____
Deputy Clerk

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Ruth Botstein
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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Jace Frankson, Sababu Hodari, Geoffrey Mathis, and **Jonathan Walker,** on behalf of themselves and all others similarly situated, Plaintiffs, v. **Jennifer Winkelman**, in her official capacity as Commissioner-Designee of the State of Alaska Department of Corrections, and the **State of Alaska, Department of Corrections**, Defendants.	Case No. 3AN-23-04865CI

Class Action Complaint for Declaratory and Injunctive Relief

Introduction

1. Each person in the State of Alaska is guaranteed due process under Article I, § 7 of the Alaska Constitution before they can be deprived of their liberty. Individuals do not lose their due process rights

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by being sentenced to prison due to conviction of a crime, and due process protects all Alaskans against arbitrary governmental actions and agencies abusing their discretion. The Alaska Equal Protection Clause guarantees the right of similarly situated persons to be treated equally under the law. Alaska Constitution, Art. I, § 1.

2. Alaska Department of Corrections ("DOC") is an agency of the State of Alaska responsible for housing all individuals in criminal custody of the state, including convicted individuals serving criminal sentences. AS 30.30.011. DOC operates thirteen prisons and jails throughout the state and had in-facility custody of approximately 4,488 people as of January 2023.[1] According to DOC's Mission Statement, its responsibilities include providing individuals in its custody with "access to reformative programs."[2]

3. Persons in DOC custody and housed inside correctional institutions are classified by the agency as "minimum-," "medium-," or "maximum-security inmates" based on the severity of their convicted

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[1] Alaska Department of Corrections Research and Records Department, *Summary Statistics for January 2023*, available at https://doc.alaska.gov/administrative-services/research-records/population-statistics.

[2] Alaska Department of Corrections, Institutions, *Mission*, available at https://doc.alaska.gov/institutions.

offenses, their conduct within DOC custody, completion of rehabilitative programming, and other factors. Individuals classified as maximum security are subject to the most restrictions on their liberty.

4. DOC provides opportunities for less restrictive placements, which commonly include opportunities to participate in programs that further re-integration into the community. These opportunities include minimum classification, furlough, and release on electronic monitoring.

5. Minimum classification allows for the least restrictive housing and supervision within the prison system and may also make an inmate eligible for programs that allow them to spend time outside the secure confines of a prison. Programs available only to individuals with minimum classification include the opportunity to be housed at Point McKenzie Correctional Farm, which has limited staff supervision; work opportunities outside the prison; access to all educational and treatment opportunities within the facility, many of which are closed to higher-security individuals; and the ability to apply for furloughs.

6. To be eligible for minimum classification, DOC requires that an incarcerated person must be within 10 years of their "firm" release date. *See* Department of Corrections Policies & Procedures, § 700.01(A).

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7. Eligibility for minimum classification is also dependent on an incarcerated individual's "points," a calculation by DOC based on an individual's conviction, disciplinary history in prison, and other factors. Even if an individual has few enough points to be categorized as "minimum security," the Department automatically overrides their minimum-custody classification score to medium custody if the individual is more than 10 years from their "firm release date."

8. The term "firm release date" is defined by regulation and "means the date on which a prisoner is scheduled to be released, as established by statutory good time calculation, court order, or *parole board action*." 22 AAC 05.660(18) (emphasis added).

9. Furlough is an authorized leave of absence from a correctional facility designed to facilitate the reintegration of a prisoner into society. It is explicitly designed to further the goal of rehabilitation. Furlough allows individuals to return home or to live at an approved halfway house or housing facility. Individuals can be closer to their families, move about more freely, and begin integrating back into society. They can hold jobs outside of prison and earn a living wage, as opposed to the meager wages that individuals earn at prison jobs. They can attend classes and

rehabilitative programming with people other than incarcerated individuals and begin building community ties.

10. To be eligible for furlough, an incarcerated person must be within three years of their "firm release date."

11. Electronic monitoring is another form of authorized leave that has an extra layer of supervision through electronic tracking of the individual, usually through an ankle monitor. It is designed to facilitate the reintegration of the individual into society. People on electronic monitoring can, based on their approved plan with the Department of Corrections, be released to live with their families, to live at a halfway house or other transitional housing, or for a specific work opportunity. An individual must be within five years of their "firm release date" to qualify for consideration for the electronic monitoring program.

12. Most sentenced prisoners are eligible to earn statutory good time pursuant to AS 33.20.010. Following sentencing, the Department of Corrections calculates for each such prisoner a "mandatory release date," which is the date the prisoner must be released from prison if they have earned all available statutory good time. An individual's mandatory release date may be adjusted multiple times during their

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incarceration, as good time may be taken away as a penalty for misbehavior and sometimes may be earned back for good behavior.

13. Some prisoners, including Plaintiffs, are also statutorily eligible for discretionary parole pursuant to AS 33.16.090.

14. When the Parole Board grants discretionary parole, it frequently sets a parole date a few years away. Thus, for example, an individual might be granted parole at a hearing in 2020, with a specific parole date in 2023 or 2025.

15. Each Plaintiff's currently expected release date has been established by the Alaska Parole Board. For each Plaintiff, this date is earlier than their originally scheduled mandatory release date because the Parole Board determined that each Plaintiff met all of the criteria for release on discretionary parole. This new release date has replaced each Plaintiff's previously scheduled mandatory release date as the date they will be released from prison.

16. Each Plaintiff, and many others similarly situated to them, is entitled to consideration for minimum classification, furlough, and/or release on electronic monitoring because their release date, as determined by the Parole Board, is within the time prescribed for eligibility, and they meet all of the other criteria for consideration.

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17. However, when assessing Plaintiffs' eligibility for minimum classification, furlough, or electronic monitoring, Defendants refuse to recognize the new release date assigned to Plaintiffs by the Parole Board. Instead, Defendants continue to use each Plaintiff's mandatory release date as the basis for calculating eligibility for minimum classification and for transitional re-integration programming.

18. Consequently, even though each Plaintiff's current release date is within the allowable time period to be eligible for minimum classification, furlough, and/or electronic monitoring, Defendants refuse to consider Plaintiffs eligible for these opportunities. DOC's rationale is that each Plaintiff's mandatory release date is more than 10 years in the future, making them ineligible to access these less restrictive programs. But, once the Parole Board grants discretionary parole, the mandatory release date is no longer an accurate projection of the individual's date for release from prison.

19. Based on the grant of discretionary parole, each Plaintiff likely will be released years before they reach the date at which Defendants consider them eligible for minimum classification, furlough, and/or electronic monitoring. Defendants' reliance on the outdated expected release date means that Plaintiffs may never be able to access

these programs that are designed to facilitate an inmate's transition to post-prison life.

20. Plaintiffs, through this lawsuit, are not seeking any particular decision from Defendants regarding their own applications for classification, furlough, or electronic monitoring. They seek only a declaration that Defendants' interpretation of "firm release date" is unconstitutional and an order directing Defendants to treat each Plaintiff's discretionary parole date as a firm release date, such that Plaintiffs are eligible to apply and be fairly considered for minimum custody, furlough, and release on electronic monitoring.

21. DOC's denial of access by the plaintiff class to minimum classification, furlough, and/or electronic monitoring is based solely on release dates that DOC knows or should know are inaccurate. Defendants' practice of refusing to recognize each Plaintiff's actual projected release date for purposes of determining their eligibility for access to less restrictive programs that could further their likelihood of success when released violates Plaintiffs' substantive due process rights and their rights to equal protection as guaranteed by the Alaska Constitution.

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Jurisdiction and Venue

22. This is a complaint for declaratory and injunctive relief brought pursuant to AS 22.10.020(a) and (g). This Court has original jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

23. Venue is proper in this district pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

Parties

24. Plaintiff Jace Frankson is incarcerated at Defendants' Palmer Correctional Facility. Following sentencing in 1995, Defendants calculated Mr. Frankson's mandatory release date as August 9, 2034. In August 2019, Mr. Frankson was granted discretionary parole by the Parole Board effective August 9, 2024. In other words, Mr. Frankson's release date is now in 2024, not 2034.

25. Plaintiff Sababu Hodari is incarcerated at Defendants' Wildwood Correctional Complex. Following sentencing in 1996, Defendants calculated Mr. Hodari's mandatory release date as January 21, 2036. In August 2019, Mr. Hodari was granted discretionary parole by the Parole Board, effective January 21, 2026. In other words, Mr. Hodari's release date is now in 2026, not in 2036.

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26. Plaintiff Geoffrey Mathis is incarcerated at Defendants' Palmer Correctional Facility. Following sentencing in 1987, Defendants calculated Mr. Mathis's mandatory release date as May 23, 2053. In February 2020, Mr. Mathis was granted discretionary parole by the Parole Board, effective May 25, 2027. In other words, Mr. Mathis's release date is now in 2027, not in 2053.

27. Plaintiff Jonathan Walker is incarcerated at Defendants' Palmer Correctional Facility. Following sentencing in 2000, Defendants calculated Mr. Walker's mandatory release date as June 16, 2045. In February 2022, Mr. Walker was granted discretionary parole by the Parole Board effective June 17, 2025. In other words, Mr. Walker's release date is now in 2025, not in 2045.

28. Defendant Jennifer Winkelman is the Commissioner-Designee of the Alaska Department of Corrections. She is sued in her official capacity.

29. Defendant State of Alaska is a sovereign entity organized in accordance with the laws of the United States.

FACTUAL ALLEGATIONS & LEGAL BACKGROUND

30. Plaintiffs have all been categorically barred from programs that would afford them less restrictive conditions and greater

opportunities to participate in programs designed to further their successful reintegration into the community purely because of how Defendants now define "firm release date" for purposes of eligibility for these programs, relying on a legal fiction rather than the release date actually granted by the Parole Board.

A. Minimum Classification, Furlough, and Electronic Monitoring and the "Firm Release Date" Requirements

31. When a person is convicted of a crime in the state of Alaska, a judge may sentence them to serve a certain length of time in state prison. Most incarcerated persons do not serve this entire period of time; instead, most are released early on "good time credits." Such release is referred to as mandatory parole. *See* AS 33.20.040.

32. Mandatory parole dates are set on the presumption of good behavior. These good time credits may be revoked, extending the individual's time in prison up to their full sentence length. *See* 22 AAC 20.273. As with other presumptive release dates, this date is not set in stone; any incarcerated individual can lose their good time credits based on their behavior within the institution, lengthening the time they must serve beyond their presumptive release date.

33. By law, some individuals are also eligible for discretionary parole. *See* AS 33.16.090. Eligible individuals who demonstrate to the

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Parole Board that they merit early release on discretionary parole may be released even earlier than their mandatory parole date. The discretionary parole date set by the Parole Board, often several years in the future from the date parole is granted, becomes the date upon which the individual will be released from prison.

34. Minimum classification, furlough, and electronic monitoring all have minimum "time left to serve" requirements in order to qualify for these programs. To qualify for minimum classification, an incarcerated individual must be within ten years of their "firm release date."[3] Eligibility for minimum classification is also dependent on an incarcerated individual's "points." DOC calculates an individual's point score by evaluating them in several categories, including the type of offense committed that resulted in incarceration, the rehabilitative programming they have completed while incarcerated, their record of following prison rules, and other related categories. An individual must have fewer than eight points to categorically qualify for minimum custody, but the Department can override someone's point total to allow them to be in minimum custody even if they have eight or more points.

[3] *See* Department of Corrections, *Policies and Procedures*, § 700.01, available at https://doc.alaska.gov/pnp/pdf/700.01.pdf.

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Even if an individual has seven or fewer points, the Department will automatically override their minimum custody classification score to medium custody if they are more than 10 years from their "firm release date."

35. To qualify for general furlough, an individual must be within three years of their "firm release date." 22 AAC 05.321. Minimum classification is a prerequisite to being granted furlough. *Id.* To qualify for electronic monitoring, they must be within three years of their "firm release date," unless the Department grants an override based on an individual's "exceptional rehabilitative progress."[4]

36. The term "firm release date" is defined by regulation and "means the date on which a prisoner is scheduled to be released, as established by statutory good time calculation, court order, or *parole board action*." 22 AAC 05.660(18) (emphasis added).

37. In 2016, the Department of Corrections Commissioner and Deputy Commissioner issued a Memorandum declaring that, for purposes of eligibility for furlough and electronic monitoring, "firm release date" for a discretionary parolee is the date they will be released

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[4] *See* Department of Corrections, *Policies and Procedures*, § 818.10, available at https://doc.alaska.gov/pnp/pdf/818.10.pdf.

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on discretionary parole.[5] In 2018, the Department issued a Notice that the same "firm release date" interpretation would be applied to the classification process.[6] Under this interpretation, discretionary parolees qualified for minimum classification, furlough, and electronic monitoring based on their then-current scheduled release date—that is, the date they would be released from prison on discretionary parole as ordered by the Parole Board.

38. However, in 2020, the Department abruptly changed course. It began construing "firm release date" as an individual's mandatory parole date, even if the Parole Board had already overridden that date with a new discretionary parole date.[7]

B. Plaintiffs' Applications for Transitional Programs

39. Every named Plaintiff has been denied access to minimum classification, furlough, and/or electronic monitoring—programs intended to help incarcerated individuals better transition from prison

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[5] *See* Exhibit A, Alaska Department of Corrections, *Memorandum Re Parole Board Order and Firm Release Date* (Sept. 26, 2016).

[6] *See* Exhibit B, Alaska Department of Corrections, *Memorandum Re Notice of Board Action and Firm Release Date – custody level* (Feb. 9, 2018).

[7] *See* Exhibit C, Email from Alaska Probation Officer Kyle L. Thompson, Subj: Discretionary Parole Date (Feb. 12, 2020).

life into society—because of Defendants' refusal to acknowledge their Parole Board-established release date.

40. Jace Frankson has been granted discretionary parole with a release date of August 9, 2024. He is within two years of his release date, making him eligible to apply for minimum classification, furlough, and electronic monitoring. However, Defendants, in determining his "release date" for eligibility for these programs only considered his mandatory release date of 2034. Solely on this basis, Defendants denied his request for reclassification to minimum security, even though he only has two "points"—well within the threshold to qualify for minimum security. Mr. Frankson remains in medium security custody. Defendants also refuse to consider him for furlough or electronic monitoring, despite his being within three years of release, because Defendants continue to calculate his time to release using only his now-superseded mandatory release date in 2034. Because of Defendants' interpretation of "firm release date," Mr. Frankson likely will be released directly to the community without any opportunity to participate in a transitional program designed to assist him in learning skills for successful re-entry to the community.

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41. Sababu Hodari has been granted discretionary parole with a release date of January 21, 2026. His parole was granted with the condition that he complete an additional Sex Offender Treatment program, which he completed in Summer 2022. He is thus within five years of his release date, and he should be eligible to apply for minimum security classification and electronic monitoring. Mr. Hodari's "points" do fall within the "medium classification" range, but Defendants maintain an override process where individuals who are within five years of their release date can qualify for an override. Defendants often use the "override" process to classify someone as minimum security when they have proven themselves to merit a lower security placement, even if their points are higher than the minimum-classification threshold. Mr. Hodari has not been allowed to apply for an override because Defendants, in determining his "release date," only considered his now-superseded mandatory release date of 2034. If Defendants were using his Parole Board-established "release date," he could apply for an override, as he is expected to be released within five years. Mr. Hodari remains in medium security custody. Because medium-security individuals are not eligible for electronic monitoring, he has been barred from accessing the electronic monitoring program. Mr. Hodari would like

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to be able to apply for general furlough (i.e., release to his home or a halfway house, without electronic monitoring) when he is within three years of his 2026 release date, but under Defendants' current practice of considering only a person's mandatory release date – and not the incarcerated person's actual expected release date on discretionary parole – Mr. Hodari will remain classified as medium security and not be eligible to apply for a furlough before his release on discretionary parole. Because of Defendants' interpretation of "firm release date," Mr. Hodari likely will be released directly to the community without any opportunity to participate in a transitional program designed to assist him in learning skills for successful re-entry to the community.

42. Geoffrey Mathis has been granted discretionary parole with a release date of May 25, 2027. He is within five years of his release date, meaning he is eligible for minimum classification and to apply for an override for electronic monitoring. However, Defendants, in determining his "release date," only considered his mandatory release date of 2053. Mr. Mathis only has four points, well within the threshold to be classified as minimum security, but Defendants have repeatedly overridden his classification to medium security based solely on his mandatory release date being more than ten years away, ignoring the release date given to

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him by the Parole Board, which is less than five years away. Mr. Mathis remains in medium security custody. With the full support of his Institutional Parole Officer at the time, I.P.O. Parks, Mr. Mathis tried to apply for work release on electronic monitoring. But Department of Corrections officials told I.P.O. Parks and Mr. Mathis that the Department would not consider Mr. Mathis's application because the Department still considered him 31 years away from his release date. Mr. Mathis has a job lined up waiting for him if he is granted work furlough on electronic monitoring with Gittens Construction Management. Because of Defendants' interpretation of "firm release date," Mr. Mathis likely will be released directly to the community without any opportunity to participate in a transitional program designed to assist him in learning skills for successful re-entry to the community.

43. Jonathan Walker has been granted discretionary parole with a release date of June 17, 2025. Because his release date is within three years, he is eligible for minimum classification, furlough, and electronic monitoring. However, Defendants, in determining his "release date," disregarded his parole release date and only considered his mandatory release date of 2045. In fact, Department of Corrections staff

informed Mr. Walker that the Department's time and accounting system will not change his status from "Parole Eligible" to "Parole Granted" until sixty days before his actual release. During Mr. Walker's most recent classification hearing, his minimum-security score of only two points was overridden and he was classified as medium security, solely because Defendants consider him more than ten years from release. This classification also bars him from electronic monitoring and furlough, despite being within three years of his release date. He remains in medium-security custody. Because of Defendants' interpretation of "firm release date," Mr. Walker likely will be released directly to the community without any opportunity to participate in a transitional program designed to assist him in learning skills for successful re-entry to the community.

44. Each named Plaintiff has been denied access to meaningful consideration for less restrictive and more rehabilitative-oriented programming that other incarcerated individuals, those who have *not* been granted discretionary parole, are able to participate in. Because each Plaintiff likely will be released before they reach the date at which Defendants will finally consider them eligible for minimum classification, furlough, and/or electronic monitoring, it is likely that

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none of them can *ever* access these programs. None of the Plaintiffs was given a meaningful opportunity to be considered for these programs.

C. Importance of Minimum Classification, Furlough, and Electronic Monitoring to Transition and Re-Integration into Society

45. Minimum classification, furlough, and electronic monitoring serve rehabilitative purposes and also contribute to an incarcerated person's ability to successfully reintegrate into the community.

46. Minimum classification provides access to transitional programming more akin to the life incarcerated individuals will experience when they are released in a few years as compared to medium- and maximum-security classifications. Only minimum-security (also known as community custody) persons have the opportunity to be housed at Point McKenzie Correctional Farm, an open-air correctional facility where individuals can actually go outside as they please and are trusted with that level of freedom. The staff-to-inmate ratio is much lower than at other facilities, resulting in less intense supervision. This dynamic allows for individuals to experience some of the freedoms that life in normal society will provide while still in DOC custody, a much more gradual transition than going from medium custody to the street. The people housed at the Farm are also actively working at the Farm,

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gaining industrial, agricultural, and technological skills that will make them more employable upon their release.

47. Minimum custody also allows individuals to participate in DOC work programs at job sites outside the prison walls. These jobs are more similar to jobs in normal society, because the incarcerated individual can work alongside non-incarcerated workers, learn to work under different management styles other than a prison staff model, and experience what it will be like to work at a non-prison job when they are released in a few short years.

48. Minimum classification also means that all rehabilitative programming and treatment is open to that individual, including the programs that are closed to higher-security individuals. This means that *any* classes or programs offered that are designed to help teach real-world skills are open to that individual, and they can decide which classes, treatments, and programs will best fill the gaps in their real-world knowledge before they must put that knowledge to the test in outside society, without any restrictions based on classification.

49. Prerelease furlough allows for a more gradual reentry back into society, especially for individuals who have been incarcerated for a long time. All plaintiffs have been in prison for many years, and a lengthier,

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more structured transition into society will help them learn about functioning in the outside world in 2023. For example, plaintiffs like Mr. Walker were incarcerated when dial-up internet was just becoming commonplace, so learning how to navigate everyday life in the information age will be paramount to his success in the job market, family life, and his community upon release from prison.

50. Through furlough, incarcerated individuals can also reestablish family relationships and friendships that have been affected by their incarceration, especially in the wake of a pandemic that severely limited prison visitation. Plaintiffs can also begin to set up the pieces of their lives needed for success: relearning to drive, getting an updated I.D. card, setting up a bank account. Furloughs allow incarcerated individuals to do so while still under a layer of Departmental supervision.

51. Furlough, while not a guaranteed right to prisoners, is also important because it is "explicitly designed to further the goal of rehabilitation." *Hertz v. Macomber*, 297 P.3d 150, 157 (Alaska 2013); *see also* AS 33.30.101(a) ("The commissioner shall adopt regulations governing the granting of . . . furloughs to prisoners . . . for any other

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rehabilitative purpose the commissioner determines to be in the interests of the prisoner and the public.").

52. Electronic monitoring provides many of the same benefits as furlough, with the added level of DOC supervision that comes with the GPS monitoring. Individuals will get the opportunity to have a more gradual reentry into society after being in a prison setting for years, even decades. Individuals who are granted electronic monitoring often have employment lined up to begin as soon as they are released – as some of the Plaintiffs had arranged before they applied (unsuccessfully) for release on electronic monitoring. These non-prison jobs afford individuals a livable wage, much more than is paid for prison jobs, and allow the individual to experience working for and alongside non-prisoners.

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Count I
Unconstitutional Denial of Due Process

53. Plaintiffs reallege and incorporate by reference paragraphs 1 through 52, as though fully set forth herein.

54. Article I, § 7 of the Alaska Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law."

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55. Even though incarcerated individuals have no right to a particular classification or to participate in a program such as furlough or electronic monitoring, incarcerated individuals have the due process right to the "fair and impartial allocation" of DOC's resources regarding classification and the guarantee that DOC's related policies are not "arbitrary." *See McGinnis v. Stevens*, 543 P.2d 1221, 1237 (Alaska 1975). Policies that have the effect of categorically denying inmates like Plaintiffs who have been granted discretionary parole the opportunity to access minimum classification, furlough, and/or electronic monitoring, when those who have *not* earned discretionary parole are able to be considered for these programs, are arbitrary and irrational and do not further a legitimate governmental interest.

56. Defendants' actions infringe on Plaintiffs' liberty interests. The private interests at stake – access to less restrictive and more rehabilitative programs such as minimum classification, furlough, and electronic monitoring – are vital liberty interests, especially since participation in such programs entails fewer restrictions on physical liberty and more freedoms from physical detention. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (holding that the interest in "being free from physical detention from one's own government" is the "most

elemental of liberty interests"); *see also Dep't of Corr. v. Stefano*, 516 P.3d 486, 500-01 (Alaska 2022) (holding that an incarcerated person released on electronic monitoring has a liberty interest in not being returned to prison).

57. A government action violates substantive due process if it has "no reasonable relationship to a legitimate governmental purpose." *Schiel v. Union Oil Co. of Cal.*, 219 P.3d 1025, 1036 (Alaska 2009) (quoting *Premera Blue Cross v. State, Dep't of Commerce, Comty. & Econ. Dev.*, 171 P.3d 1110, 1124 (Alaska 2007) (internal quotes omitted). Defendants have no legitimate interest in denying inmates who have been granted discretionary parole an opportunity to access minimum classification and transitional programs that would help them succeed when released from prison.

58. To the contrary, Defendants have an obvious interest in ensuring that individuals who have been granted discretionary parole are not released to the streets without adequate transition but instead have an opportunity to take advantage of the programs that Defendants have put into place for the very purpose of easing inmates' transition back to life in the community. This is consistent with the constitutional goals of the Alaskan prison system, namely the right to

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rehabilitation ("reformation"), and the goals of the criminal legal system, namely "the need for protecting the public," both found in the Alaska Constitution, Article I, § 12. Victims of crime also have a constitutional right to be treated with "dignity, respect, and fairness during all phases of the criminal . . . process" under Article I, § 24. Ensuring that incarcerated individuals are well-adjusted upon release, and less likely to recidivate, advances all these goals.

59. DOC's policy in interpreting "firm release date" as not including dates of release set by the Parole Board is arbitrary even by its own standard, as it violates the letter of its *own regulation*. While 22 AAC 05.660(18) states that "parole board action" is one of the three ways that a "firm release date" is established, DOC arbitrarily ignores this. Therefore, Defendants err by interpreting "firm release date" in a way that blatantly violates the regulation.

60. Plaintiffs, through this lawsuit, are not seeking any particular decision from Defendants regarding their own applications for classification, furlough, or electronic monitoring. They ask only that Defendants' interpretation of "firm release date" be reversed and that Defendants be directed to consider their discretionary parole date as a firm release date.

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61. Without relief from this Court, Plaintiffs and others similarly situated may never be eligible for transitional programming like minimum classification, furlough, and/or electronic monitoring, even though individuals who have *not* earned discretionary parole are able to apply to access such programs.

Count II
Violation of Alaska's Equal Protection Clause

62. Plaintiffs reallege and incorporate by reference paragraphs 1 through 61, as though fully set forth herein.

63. The Alaska Constitution protects the right to equal treatment of similarly situated persons. *Pub. Emps.' Ret. Sys. v. Gallant*, 153 P.3d 346, 349 (Alaska 2007). For the purposes of applying for transitional programming, discretionary parolees and mandatory parolees are similarly situated, as they are both now in the custody of the Department of Corrections, and both are expected to be released onto supervised parole on a specific date before the end of their term of imprisonment.

64. Alaska's Equal Protection Clause is more protective than its federal counterpart. In reviewing an equal protection challenge, Alaska courts apply a three-part sliding scale approach. *Watson v. State*, 487 P.3d 568, 570-71 (Alaska 2021). The court

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considers (1) the individual interest at stake, (2) the government interest served by the challenged classification, and (3) the means-ends nexus between the classification and the government interest. *Id.* at 571. The more important the individual right at issue, the closer the relationship between the challenged classification and the government interest in the classification must be. *Id.*

65. Even if this Court were to apply the lowest level of scrutiny, DOC's differential treatment would not pass muster. The individual interest at stake is access to rehabilitative programs that promote re-entry in a less structured environment with fewer restrictions on physical liberty. The government's interest is arguably in establishing criteria for entry into transitional programs that ensure that these programs are available to people soon to be released. But there is no reasonable relationship between this goal and the policy of distinguishing between individuals expected to be released on discretionary parole and those expected to be released on mandatory parole when deciding who may access transitional programming. Any claim that such classification is reasonable because discretionary parolees might have their parole revoked before their release date fails

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because mandatory parolees *also* can have their release date revoked based on their conduct prior to that date.

66. However, the individual interest here is significant, therefore this Court should apply heightened scrutiny. More freedom from restraints on physical liberty (like being able to live at home or in a halfway house on furlough or electronic monitoring, or being housed at Point McKenzie Farm because of minimum classification) is one of the most paramount liberty interests in our democracy. Plaintiffs have been denied the opportunity to access these freedoms based solely on DOC's irrational choice to disregard release dates ordered by the Parole Board. The government's interest here is ostensibly ensuring that the individuals who are enrolled in transitional programming are those who will be released soon. But the means-ends nexus fails the "fit" requirement with such a significant individual interest at stake, because the classification does not account for the fluidity of even the mandatory release date, which can change based on lost and re-earned good time. The government cannot rely on the mandatory release date as fixed, while simultaneously treating the discretionary parole date as not fixed; therefore, the classification means do not justify the ends.

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67. Regardless of the level of scrutiny, treating these two similarly situated groups differently works against the government's interest in promoting the successful release of inmates into the community, because it ensures that one of the groups likely will *never* access the transitional programming specifically intended to enhance the prospect of successful reentry.

68. The classification fails at every level of the sliding scale test under the Equal Protection Clause and therefore violates the Alaska Constitution.

Class Allegations

69. The foregoing allegations are realleged and incorporated herein.

70. Plaintiffs seek to represent a class defined as people who are in the custody of the Alaska Department of Corrections, have been granted a discretionary parole release date in the next ten years, and have been or will be denied minimum classification, furlough, and/or electronic monitoring solely on the basis of their mandatory parole release date. The members of the class are readily ascertainable through Defendants' records.

71. Plaintiffs bring this action pursuant to Alaska Rule of Civil Procedure 23, on behalf of themselves and all other similarly-situated persons.

72. On information and belief, the class is so numerous that joinder of all members is impracticable. The class is substantially larger when future potential discretionary parolees are included.

73. There are at least several central questions of law common to the members of the proposed class. These common questions include, but are not limited to, the following:

a. Whether the Alaska Constitution's due process guarantee requires the Department of Corrections to reverse its practice of barring discretionary parolees from being considered for minimum classification, furlough, and electronic monitoring based on their mandatory parole release date instead of the discretionary parole date later set by the Alaska Parole Board; and

b. Whether the Department of Corrections' differential treatment of individuals who have been granted discretionary parole compared to other incarcerated

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individuals who are similarly situated but have not been granted discretionary parole violates the Alaska Equal Protection Clause.

74. Plaintiffs' claims are typical of the claims of the proposed class, and Plaintiffs will fairly and adequately protect the interests of the proposed class. Plaintiffs' interests do not conflict with those of other members of the proposed class, and Plaintiffs have retained competent counsel experienced in constitutional law.

Prayer for Relief

Accordingly, based on the foregoing, Plaintiffs request that this Court:

1. Issue a declaratory judgment that Defendants' refusal to use the Parole Board's establishment of a discretionary parole release date as the firm release date when determining a release date for the purposes of eligibility for minimum-custody classification, furlough, and/or electronic monitoring violates the Alaska Constitution's guarantees of due process and equal protection;

2. Order that Plaintiffs and other individuals similarly situated must be meaningfully considered for minimum-custody classification, furlough, and electronic monitoring when they apply for such

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programs, using their discretionary parole date to determine their eligibility;

3. Declare that Plaintiffs are the prevailing parties and are constitutional public interest litigants under AS 09.60.010(c);

4. Award Plaintiffs' costs and full reasonable attorneys' fees incurred in obtaining the relief sought in this proceeding; and

5. Award such other relief as this Court deems just and equitable.

Dated February 23, 2023.

Ruth Botstein (Bar No. 9906016)
Susan Orlansky (Bar No. 8106042)
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Frankson v. Winkelman
EXHIBIT A TO COMPLAINT

THE STATE of ALASKA

GOVERNOR BILL WALKER

Department of Correction

Commissioners Office

550 W 7th Avenue, Suite 18
Anchorage, AK 99501-35
Main: 907.269-73
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26 September 2016

TO: All Facility Staff and Prisoners

THRU: Dean Williams, Commissioner DW 30 Sep 16

FROM: Clare Sullivan, Deputy Commissioner

SUBJECT: Parole Board Order and Firm Release Date

I requested a legal interpretation regarding whether a future discretionary parole date should be considered a "firm release date" for purposes of furlough or EM placement. The Department of Law concluded that such parole release dates should be considered "firm release dates" for purposes of the EM and furlough programs. As such, I am directing all facilities to review those offenders with discretionary parole release dates set by the board and review them for consideration for furlough and/or electronic monitoring.

First, and as background, it has long been the practice of the Department to not consider a future parole date issued by the Parole Board to be a "firm release date" for purposes of EM release or furlough to a CRC. The reasoning behind this was that parole dates can and do change and this change would make the prisoner ineligible for EM or furlough release. For the most part however, future parole dates only change when the prisoner has not completed a precondition ordered by the Parole Board. The Board frequently sets a release date in the future but it is a conditional release as it is "preconditioned" with the completion of a program, once the preconditions are satisfied the date becomes a firm release date. If the prisoner fails to complete the program, the prisoner is not released. It was this type of situation regarding preconditions in mind that practice has been that future parole releases by the Parole Board would not be considered firm release dates for purposes of EM or furlough. If no precondition was ordered and the Board issues an order with a discretionary release date, that date shall be considered a firm release date.

If upon review, 22 AAC 05.660(18) it defines "firm release date" as including a date [illegible]

forfeiture of good time for a disciplinary or failure to complete court-ordered programs. Likewise, the Parole Release date can change if a precondition is not satisfied. If a release date changes due to discipline or programming issues, the furlough policy provides for the rescission of an approved furlough under (818(VII)(A)(7)(d). The EM policy however does not provide for rescission of an approved EM release decision and that needs to be addressed in the update of the EM policy.

Please note nothing is automatic here and the offender still needs to meet all the standard criteria for furlough or EM and the probation staff need to monitor this carefully to verify the offender has met all preconditions. If these are not met then the offender becomes ineligible at that time and the firm release date remains as the adjusted release date.

Although this is a bit long winded I feel it is important to for all to understand where we are going with this and to understand the background. To reiterate for all, future discretionary parole dates issued by the Parole Board will be considered as "firm release dates" thus making the prisoner eligible to apply for EM or furlough under the applicable policies.

Frankson v. Winkelman
EXHIBIT B TO COMPLAINT

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Corrections

Division of Institutions
Classification Unit

K. Brann Wade, P.O. V
Chief Probation Officer
Classification/CRC's/Contract Jails
1300 E. 4th Avenue
Anchorage, AK 99501
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brann.wade@alaska.gov

February 9, 2018

To: Superintendents
Institutional Probation Officers

From: Brann Wade
Chief Classification Officer

Subject: Notice of Board Action and Firm Release Date – custody level

---

In September 2016 the Commissioner and Deputy Commissioner released a memo regarding the interpretation of "firm release date" for the purposes of furlough and EM placement. We are now applying that same interpretation to the classification process.

Effective immediately any offender that is issued a future release date by the Parole Board will have that date considered as their "firm release date" making them eligible for minimum custody if that date is within ten years. The offender must still have all discretionary parole preconditions met BEFORE the parole date is used as the firm release date on their classification.

If the parole date changes or is rescinded the offender should be immediately (update/status change) reclassified if they no longer meet criteria for minimum custody based on their release date.

Cc: Clare Sullivan, Deputy Commissioner
Jake Wyckoff, Acting Director of Institutions
Sidney Wood, Acting Deputy Director of Institutions

Frankson v. Winkelman
EXHIBIT C TO COMPLAINT

Holthaus, Gloria M (DOC)

From: Thompson, Kyle L (DOC)
Sent: Wednesday, February 12, 2020 8:35 AM
To: Banachowicz, Deirdre L (DOC); Coates-Servin, Rebecca A (DOC); Dunn, Jamie D (DOC); Ferguson, Katie Y R (DOC); Gette-Shields, Erin L (DOC); Gilroy, Tricia L (DOC); Havens, Sydney Y (DOC); Holthaus, Gloria M (DOC); Humphries, Carolyn K (DOC); Kirk, Kristi A (DOC); Logan, Reid J (DOC); Lowe, Julia M (DOC); Morgan, Larry W (DOC); Ray, Susie (DOC)
Subject: FW: Discretionary Parole Date

Team-

See below regarding the fact we are NOT using the granted discretionary parole date as a "firm release date" for anything now. When answering questions from prisoners about this issue, be sure to reiterate that according to central classification office, the AKDOC is reverting back to the previous definition of a firm release date.

Thanks,

KYLE THOMPSON
Adult Probation Officer III
Alaska Department of Corrections
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Office: (907)864-8336 • Fax: (907)864-8457
kyle.thompson@alaska.gov
SAFER ALASKA
SAFELY REDUCING STATEWIDE RECIDIVISM

From: Wade, Brann (DOC) <brann.wade@alaska.gov>
Sent: Tuesday, February 11, 2020 12:06 PM
To: Martin, Pamela C (DOC) <pamela.martin@alaska.gov>; Banachowicz, Deirdre L (DOC) <deirdre.banachowicz@alaska.gov>; Dye, Timothy A (DOC) <timothy.dye@alaska.gov>; Einerson, Carol L (DOC) <carol.einerson@alaska.gov>; Ferguson, Katie Y R (DOC) <katie.ferguson@alaska.gov>; Hansen, Jasen M (DOC) <jasen.hansen@alaska.gov>; Hernandez, Arnaldo A (DOC) <arnaldo.hernandez@alaska.gov>; Hinders, Monica R (DOC) <monica.hinders@alaska.gov>; Jennetten, Joseph C (DOC) <joseph.jennetten@alaska.gov>; Keene, Jill L (DOC) <jill.keene@alaska.gov>; Lowe, Julia M (DOC) <julia.lowe@alaska.gov>; Marnon, Philip S (DOC) <philip.marnon@alaska.gov>; Newton, Karen L (DOC) <karen.newton@alaska.gov>; Reed, Rebecca L (DOC)

<sarah.angol@alaska.gov>; Johnson, Gloria J (DOC) <gloria.johnson@alaska.gov>; Conlin, Keith J (DOC) <keith.conlin@alaska.gov>; Mathews, Jessica L (DOC) <jessica.mathews@alaska.gov>; Cordle, Robert P (DOC) <robert.cordle@alaska.gov>; Webster, Daryl D (DOC) <daryl.webster@alaska.gov>; Olsen, Sheri L (DOC) <sheri.olsen@alaska.gov>; Anderson, Tomi L (DOC) <tomi.anderson@alaska.gov>; Miranda, Marianna (DOC) <marianna.miranda@alaska.gov>; Jeffords, Robert F (DOC) <robert.jeffords@alaska.gov>; McCloud, Shannon S (DOC) <shannon.mccloud@alaska.gov>; Kargas, Demetrios (DOC) <demetrios.kargas@alaska.gov>; Houser, Earl L (DOC) <earl.houser@alaska.gov>
Subject: RE: Discretionary Parole Date

The same now goes for Sentenced EM. We no longer use a granted discretionary parole date as a firm release date. The regulation is being changed. If we have offenders out under this scenario that is fine. They should NOT be returned until we have confirmation that the regulation has changed. They are ineligible to apply at this point.

Thank you,

K. Brann Wade, P.O. V
Chief Probation Officer
Classification/Furlough/EM
CRCs/Jails/ICC/Detainers
(907) 269-7425

From: Martin, Pamela C (DOC) <pamela.martin@alaska.gov>
Sent: Thursday, October 10, 2019 9:41 AM
To: Banachowicz, Deirdre L (DOC) <deirdre.banachowicz@alaska.gov>; Brown, Marcy M (DOC) <marcy.brown@alaska.gov>; Dye, Timothy A (DOC) <timothy.dye@alaska.gov>; Einerson, Carol L (DOC) <carol.einerson@alaska.gov>; Ferguson, Katie Y R (DOC) <katie.ferguson@alaska.gov>; Hansen, Jasen M (DOC) <jasen.hansen@alaska.gov>; Hernandez, Arnaldo A (DOC) <arnaldo.hernandez@alaska.gov>; Hinders, Monica R (DOC) <monica.hinders@alaska.gov>; Jennetten, Joseph C (DOC) <joseph.jennetten@alaska.gov>; Keene, Jill L (DOC) <jill.keene@alaska.gov>; Lowe, Julia M (DOC) <julia.lowe@alaska.gov>; Marnon, Philip S (DOC) <philip.marnon@alaska.gov>; Newton, Karen L (DOC) <karen.newton@alaska.gov>; Reed, Rebecca L (DOC) <rebecca.reed@alaska.gov>; Schwankl, Kristine A (DOC) <kristine.schwankl@alaska.gov>; Thompson, Kyle L (DOC) <kyle.thompson@alaska.gov>; Wallace, Joann M (DOC) <joann.wallace@alaska.gov>
Cc: Nighswonger, Zane R (DOC) <zane.nighswonger@alaska.gov>; Lyou, Chris (DOC) <chris.lyou@alaska.gov>; Thomas, Sondra L (DOC) <sondra.thomas@alaska.gov>; Traxinger, Daniel J (DOC) <daniel.traxinger@alaska.gov>; Wallace, Joann M (DOC) <joann.wallace@alaska.gov>; Wade, Brann (DOC) <brann.wade@alaska.gov>; Axelsson, Tamara S (DOC) <tammy.axelsson@alaska.gov>; Garner, Michelle M (DOC) <michelle.garner@alaska.gov>; Angol, Sarah B (DOC) <sarah.angol@alaska.gov>; Johnson, Gloria J (DOC) <gloria.johnson@alaska.gov>; Conlin, Keith J (DOC) <keith.conlin@alaska.gov>; Mathews, Jessica L (DOC) <jessica.mathews@alaska.gov>; Cordle, Robert P (DOC)

Please review your population for any offenders that are minimum custody based on their discretionary parole date. If you have any offenders that were reduced to minimum custody based on their discretionary parole date, they will need to be returned to medium custody.

Please pass on to your staff. If you have any questions, please feel free to contact me. Thanks!

Pam Martin
Deputy Chief Classification Officer
Classification Unit POIV
(907)269-7424