

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:	
JOO LEE, AKEEM WILLS, CHARLES	:	
GAMBER, DAVID KRAH on behalf of	:	No. _____
themselves and all persons similarly situated,	:	Class Action
	:	Original Jurisdiction
<i>Plaintiffs,</i>	:	
v.	:	
	:	
38 TH JUDICIAL DISTRICT, Hon. THOMAS	:	
M. DEL RICCI, President Judge (in his	:	
official capacity), MICHAEL GORDON,	:	
Chief Adult Probation and Parole Officer (in	:	
his official capacity), MICHAEL R. KEHS,	:	
Court Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

NOTICE TO PLEAD

To: 38TH JUDICIAL DISTRICT, Hon. THOMAS M. DEL RICCI, MICHAEL GORDON,
MICHAEL R. KEHS, and LORI SCHREIBER:

You are hereby notified to file a written response to the enclosed Class Action Petition for Review within twenty (20) days from service hereof, or such other time as the Court prescribes, or judgment may be entered against you.

Dated: October 26, 2021

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THE BELOW OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

CLASS ACTION COMPLAINT ADDRESSED TO
THE COURT'S ORIGINAL JURISDICTION

INTRODUCTION

1. This action seeks to protect the constitutional rights of people on probation and parole in Montgomery County who have been deprived of due process in connection with alleged violations of terms of probation or parole. The Pennsylvania and U.S. Constitutions require the Montgomery County court and probation officials to provide a prompt preliminary hearing followed by a formal revocation proceeding before an individual's probation or parole may be revoked. However, Defendants have a custom, practice or policy of detaining people charged with probation and parole violations without conducting the initial preliminary hearing for many months and often not at all. And because Defendants wholly fail to assess whether the person should be detained pending a final hearing, many people are subject to prolonged and unnecessary

detention because of technical non-compliance issues and minor new charges, for which detention is excessive and unconstitutional.

2. Eboni El is a 41-year-old Black woman on dialysis who is suffering from end-stage kidney disease. In mid-September, 2021, Montgomery County's judicial system imprisoned Ms. El over a three-year-old marijuana possession and first-time DUI charge in Philadelphia, thereby delaying her chances of getting a life-saving kidney transplant. Song Joo Lee is a 30-year-old Asian man who missed the birth of his first child because Montgomery County detained him in August 2021 over a 2019 DUI charge in Tennessee. While detained, he cannot support his family and still has not met his daughter. Charles Gamber is a 45-year-old white man who has been detained in Montgomery County since August 2021 because he allegedly failed to complete a voluntary psychiatric program, did not take his medication as prescribed, and could not afford to pay \$100 in fines. These are three of the named plaintiffs in this class action lawsuit seeking to represent hundreds of people who are subjected to unnecessary and prolonged detention by Montgomery County's unconstitutional parole and probation-revocation system.

3. The 38th Judicial District, which administers probation and parole in Montgomery County, systematically fails to provide people it detains for alleged violations with a prompt judicial hearing, which the U.S. Supreme Court mandated nearly fifty years ago in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and *Morrissey v. Brewer*, 408 U.S. 471 (1972).

4. The 38th Judicial District's custom, practice or policy to automatically detain virtually everyone who is alleged to have violated the terms of their probation or parole, results in prolonged and unconstitutional detention. Applying such an irrebuttable presumption of detention pending a final revocation proceeding, particularly without affording any means to contest the

confinement, constitutes a separate and independent constitutional due process violation under both the Pennsylvania and U.S. Constitutions.

5. Plaintiffs Eboni El, Andrew Haskell, Sung Joo Lee, Akeem Wills, Charles Gamber and David Krah (“Plaintiffs”) bring this action on behalf of themselves and a class of similarly situated individuals (“class members”) alleging that the Honorable Thomas M. Del Ricci, Michael Gordon, Michael R. Kehs and Lori Schreiber (the “Individual Defendants”) and the 38th Judicial District in Montgomery County, Pennsylvania (together, “Defendants”) have violated, and will in the future violate, absent declaratory and injunctive relief, their Pennsylvania and federal constitutional due process rights by maintaining an unlawful custom, practice or policy of: (1) failing to provide people on probation or parole alleged to have violated supervision conditions with a prompt initial hearing (a *Gagnon I* hearing); and (2) failing to assess whether detention is necessary and appropriate pending a final revocation proceeding (a *Gagnon II* hearing).

6. Defendants’ unconstitutional conduct has caused Plaintiffs significant and irreparable injury, including deprivation of liberty, excessive detention, lost employment, lost housing, impaired family relations and deprivation of necessary medical treatment.

7. To remedy these violations, Plaintiffs, individually and as representatives of a class of current and future people under correctional supervision in Montgomery County, bring this action to compel Defendants to hold prompt, constitutionally required hearings and to conduct initial assessments of whether people on probation and parole need to be detained pending revocation proceedings. Plaintiffs seek declaratory and injunctive relief to vindicate and protect their constitutional due process rights and those of similarly situated putative class members and such other equitable or remedial relief as the Court may deem just and appropriate.

JURISDICTION AND VENUE

8. Defendants are officers of the Commonwealth government. This Court therefore has original jurisdiction under 42 Pa. Cons. Stat. § 761(a)(1), (2).

PARTIES

I. The Plaintiffs

A. Eboni El

9. Plaintiff EBONI EL is currently detained at Montgomery County Correctional Facility (“MCCF”) for alleged probation violations. She has been detained since September 14, 2021.

10. Ms. El has end-stage kidney disease, high blood pressure, and diabetes. She receives dialysis every other day and requires intensive treatment and care. Detention exacerbates her life-threatening conditions.

11. Ms. El requires a kidney transplant, but her continued detention is an obstacle to meeting with specialists to get on the transplant lists.

12. Following her 2017 convictions, Montgomery County transferred Ms. El’s probation to Philadelphia. Ms. El regularly reported until April 2018, when the Philadelphia police arrested her for misdemeanor marijuana possession and driving while intoxicated (first offense). A Philadelphia judge released her on bail and ordered her to report to Montgomery County.

13. On August 30, 2021, the Philadelphia police arrested Ms. El on a bench warrant.

14. A Philadelphia judge gave her unsecured bail on the new misdemeanor charges, finding that she was not a flight or public safety risk. On September 8, 2021, another Philadelphia judge lifted the Philadelphia probation detainer lodged against her. Yet, Defendants enforced the detainer to keep her in jail, transferring her to Montgomery County on September 14, 2021.

15. But for the detainer issued by Montgomery County, Ms. El would not be confined. She also would be receiving medical attention in connection with a possible kidney transplant.

16. Ms. El has a court date scheduled in December 2021 in Philadelphia for her new charges and to the best of her knowledge at this time, there is no hearing scheduled before a Montgomery County judge.

17. Defendants' failure to provide Ms. El with a prompt, constitutionally required probation revocation hearing, and further failure to assess the necessity of pre-revocation confinement, is unconstitutional, has deprived Ms. El of due process of law and has resulted in her loss of liberty, prevented her from getting on a transplant wait list, and caused other injury.

18. Ms. El's sworn declaration is attached at Exhibit 1 and is incorporated by reference.

B. Andrew Haskell

19. Plaintiff ANDREW HASKELL, a person on probation, is currently detained at MCCF following his arrest for an alleged misdemeanor.

20. Police arrested Mr. Haskell on April 20, 2021 and detained him at MCCF. His preliminary probation revocation hearing was initially scheduled for July 13, 2021, nearly three months into his detention. Mr. Haskell's *Gagnon I* hearing was subsequently postponed until October 2021—more than six months after his detention.

21. Defendants provided no opportunity for Mr. Haskell to argue for his release and failed to assess whether Mr. Haskell's detention was necessary and appropriate pending the revocation proceedings.

22. Mr. Haskell has three children, ages 7, 14, and 16 years old. He has not seen his children since his detention in April 2021. His detention has prevented him from helping to care

for his son who has special needs, and the loss of income has created a financial hardship for the family.

23. Mr. Haskell is a master tiler with a stable job waiting for him upon his release from detention.

24. A judge assigned Mr. Haskell a \$100.00 cash bail for his April 2021 misdemeanor case. Were it not for Defendants' probation detainer in Montgomery County, Mr. Haskell would have posted bail and would have been released from detention. Defendants' conduct has resulted in his loss of liberty and other injury.

25. On October 18, 2021, Defendants provided Mr. Haskell with his first and final revocation hearing. A judge sentenced Mr. Haskell to eight to fourteen months followed by three years of reporting probation with credit for time served. He expects to be released on November 2, 2021. Mr. Haskell accepted this guilty plea to get home to his family.

26. Mr. Haskell's sworn declaration is attached at Exhibit 2 and is incorporated by reference.

C. Sung Joo Lee

27. Plaintiff SUNG JOO LEE is currently detained at MCCF on a probation violation. He has been on probation since 2015.

28. Before his detention in Montgomery County, Mr. Lee lived in Tennessee which has supervised his probation. In 2019, police arrested Mr. Lee in Tennessee on a misdemeanor charge. On May 11, 2021, he pleaded guilty and received a sentence of 48 hours of incarceration followed by one year of probation, again supervised in Tennessee.

29. For the past two years, Mr. Lee has reported regularly to his Tennessee probation officer. On August 24, 2021, his probation officer asked him to report for a "routine check in," at

which he was arrested on a bench warrant issued by Defendants seeking to revoke his Montgomery County probation because of his 2021 misdemeanor conviction.

30. Since Mr. Lee's arrest and detention on August 24, 2021, Defendants have not scheduled the constitutionally required preliminary probation revocation hearing or assessed the need for his ongoing confinement pending final revocation proceedings.

31. On September 10, 2021, Lauren Cusak, a probation officer employed by Defendants, met with Mr. Lee by video conference while he was detained at MCCF. During this meeting, Probation Officer Cusak told Mr. Lee that the video conference served as his *Gagnon I* hearing. Neither Mr. Lee's attorney nor a judge participated in the proceedings and Defendants provided Mr. Lee with no opportunity, as they are required to do, to argue for release.

32. Defendants have failed to conduct any pre-revocation hearing before a neutral arbiter with minimum standards of due process to assess probable cause or to allow Mr. Lee to advocate for his release or present evidence on his own behalf, and have failed to conduct an assessment to justify Mr. Lee's detention pending a final revocation hearing.

33. Mr. Lee is married. His wife was seven months pregnant when he was detained in August 2021. Mr. Lee is the primary breadwinner for his family, working full time as a contractor renovating homes. Mr. Lee's employer will allow him to return to his job upon his release. Losing his income has required his family to deplete their savings to pay rent.

34. On September 28, 2021, Mr. Lee's wife gave birth to their first child, a daughter, while Mr. Lee remained in MCCF detention. Mr. Lee has not seen his wife or his newborn daughter since his detention.

35. On September 28, 2021—the same day as his daughter's birth—Mr. Lee had his first court appearance. Out of desperation to return to his family, during the hearing Mr. Lee

waived his right to *Gagnon I* and *Gagnon II* hearings and pleaded guilty to Defendants' alleged probation violations. The judge sentenced Mr. Lee to three to twenty-three months of incarceration followed by one year of reporting probation. Mr. Lee is currently serving that sentence. Defendants' failure to provide Mr. Lee with a prompt, constitutionally required probation revocation hearing is unconstitutional. Defendants' further failure to assess the necessity of pre-revocation confinement has deprived Mr. Lee of due process of law and has resulted in his loss of liberty and other injury.

36. Mr. Lee's sworn declaration is attached at Exhibit 3 and is incorporated by reference.

D. Akeem Wills

37. Plaintiff AKEEM WILLS is currently detained at MCCF for alleged probation violations. He has been held at MCCF since April 14, 2021.

38. Following his 2015 conviction, Montgomery County transferred Mr. Wills' probation to Philadelphia where he lives.

39. In March 2021, the Philadelphia police arrested Mr. Wills and charged him with two separate offenses (the unauthorized use of an automobile and drug possession with intent to deliver). Montgomery County lodged a detainer against Mr. Wills and transported him to MCCF.

40. A Philadelphia judge released Mr. Wills on recognizance on grounds that he was no risk of flight or danger to the community. But for Montgomery County's detainer, Mr. Wills would be released.

41. Since April 14, 2021, Mr. Wills has had no *Gagnon I* hearing and no opportunity to argue for his release in Montgomery County. Mr. Wills has a trial scheduled in Philadelphia on his new matter at the end of November 2021.

42. Mr. Wills receives social security disability income. Those payments ceased upon incarceration by Montgomery County.

43. Since 2015, Montgomery County has revoked Mr. Wills' probation four times, both for technical and direct violations. On each occasion, Defendants deprived Mr. Wills of a *Gagnon I* hearing, and held him for extended periods prior to providing final revocation proceedings. In 2016, Defendants detained Mr. Wills for 297 days. In 2018, Defendants detained him for 182 days. In 2020, Defendants detained Mr. Wills for 329 days. Defendants' prior detention of Mr. Wills was unlawful and deprived him of liberty without due process of law. On each occasion, the court sentenced Mr. Wills to time served followed by more probation.

44. Mr. Wills' sworn declaration is attached at Exhibit 4 and is incorporated by reference.

E. **Charles Gamber**

45. Plaintiff CHARLES GAMBER is currently detained at MCCF on a parole violation. He has been on probation since a 2013 conviction for a misdemeanor DUI. He also had a prior direct probation violation for a misdemeanor resisting arrest and disorderly conduct in 2020.

46. On April 30, 2021, he was arrested in Maricopa County, Arizona, and extradited by Montgomery County to Pennsylvania on August 13, 2021 for allegedly failing to complete a voluntary psychiatric program, for failing to take medication as prescribed, and for failing to pay approximately \$100 in fines.

47. Defendants have failed to give Mr. Gamber a *Gagnon I* hearing before a neutral arbiter with minimum standards of due process to assess probable cause or to allow Mr. Gamber to advocate for his release or present evidence on his own behalf, and have failed to conduct an assessment to justify Mr. Gamber's detention pending a final revocation hearing. When Mr.

Gamber finally had a court appearance on October 5, 2021, he waived his right to his *Gagnon I* hearing because he understood it was the fastest way to get out of jail. The judge sentenced him to seven to thirteen months in jail with credit for time served followed by a year of probation. Mr. Gamber is currently serving that sentence.

48. Defendants' failure to provide Mr. Gamber with a prompt, constitutionally required probation revocation hearing is unconstitutional, and failure to assess the necessity of pre-revocation confinement has deprived Mr. Gamber of due process of law, and has resulted in his loss of liberty and other injury.

49. Mr. Gamber's sworn declaration is attached at Exhibit 5 and is incorporated by reference.

F. **David Krah**

50. Plaintiff DAVID KRAH is currently detained at MCCF on a probation violation.

51. On September 15, 2021, he was arrested in Philadelphia for a new misdemeanor possession offense, and extradited to Montgomery County. At the time of Mr. Krah's arrest, police informed him he had a Montgomery County probation violation warrant lodged against him.

52. The Montgomery County probation arose from a 2018 misdemeanor possession of drug paraphernalia charge in which the judge sentenced Mr. Krah to one year of reporting probation. Based on the sentencing terms, Mr. Krah believed this probation ended over two years ago. As far as Mr. Krah knows, he never received a notice or letter from Montgomery County informing him that his probation was extended or that he remained on probation.

53. On the most recent September 15 charge, a Philadelphia judge assigned Mr. Krah ROR bail (release on recognizance), finding that he did not present a flight or safety risk. Therefore, the Montgomery County detainer is the only reason Mr. Krah is confined at MCCF.

54. Since his arrival at MCCF, Mr. Krah has had no hearing or opportunity to challenge the probation violation or argue for his release from jail.

55. Since Defendants detained Mr. Krah in mid-September, Defendants have failed to conduct any pre-revocation hearing before a neutral arbiter with minimum standards of due process to assess probable cause or to allow Mr. Krah to advocate for his release or present evidence on his own behalf. Defendants also failed to assess whether detention pending a final revocation hearing is appropriate and necessary.

56. Mr. Krah's sworn declaration is attached at Exhibit 6 and is incorporated by reference.

I. The Defendants

57. Defendant 38th JUDICIAL DISTRICT (the "38th District") sits in Montgomery County, Pennsylvania, is a judicial district of Pennsylvania's Unified Judicial System, and includes the Montgomery County Court of Common Pleas. In Montgomery County, the 38th Judicial District conducts *Gagnon I* and *Gagnon II* hearings.

58. Defendant THOMAS M. DEL RICCI is the President Judge of the 38th Judicial District and is charged with administrative responsibility for the functioning of the Commonwealth of Pennsylvania Courts in the 38th District. Defendant Del Ricci has decision-making authority for establishing and overseeing the Court's policies and practices for probation and county parole revocation hearings and detention practices. Upon information and belief, Defendant Del Ricci is a state actor who acts under color of state law. He is sued in his official capacity for declaratory and injunctive relief.

59. Defendant MICHAEL GORDON is the Chief Adult Probation and Parole Officer of the Montgomery County Adult Probation and Parole Department. The Adult Probation and

Parole Department is an agent of the Judges of the 38th Judicial District in Montgomery County and supervises individuals on county parole and those who are sentenced to county probation. As Chief Adult Probation and Parole Officer, Defendant Gordon is responsible for managing the supervision of all individuals on supervision who are under the Montgomery County Judges' authority. Mr. Gordon and the staff he supervises are responsible for detaining individuals who are alleged to have violated the terms of supervision. Upon information and belief, Defendant Gordon and his staff are responsible for ensuring that individuals charged with supervision violations receive a timely scheduled hearing. Defendant Gordon is a state actor who is acting under color of state law. He is sued in his official capacity for declaratory and injunctive relief.

60. Defendant MICHAEL KEHS is the Court Administrator of the 38th Judicial District. As Court Administrator, Defendant Kehs supervises and directs the Court's administrative staff, which completes the paperwork necessary for the scheduling of preliminary and final revocation hearings for the Court's docket. Upon information and belief, Defendant Kehs is responsible for the docketing and scheduling of preliminary revocation hearings. Defendant Kehs is acting under color of state law. Defendant Kehs is sued in his official capacity for declaratory and injunctive relief.

61. Defendant LORI SCHREIBER is the Clerk of Courts for the 38th Judicial District. As the Clerk of Courts, she is responsible for the maintenance of all criminal dockets and records. She supervises and directs the staff that enters scheduling and docket information in criminal cases into the Common Pleas Case Management System, the Court's computerized docketing system. Upon information and belief, the Clerk of Courts is responsible for scheduling probation revocation hearings, which are unconstitutionally delayed and deferred. Defendant Schreiber is

acting under color of state law. She is sued for declaratory and injunctive relief in her official capacity.

STATEMENT OF FACTS

62. The revocation of probation or parole is a loss of liberty that entitles people facing revocation to constitutionally required procedural and substantive due process protections. *See Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Commonwealth v. Turner*, 80 A.3d 754, 764 (Pa. 2013), *cert. denied*, ___ U.S. ___, 134 S. Ct. 1771 (2014).

63. The Court must provide people charged with violating their supervision with a “prompt” hearing, referred to as a “*Gagnon I* hearing”. At the *Gagnon I* hearing, the Court must provide notice of the alleged violations of supervision, an opportunity to appear and present evidence on their own behalf, a conditional right to confront adverse witnesses, an independent decisionmaker and a written report of the hearing. *Gagnon* 411 U.S. at 786.

64. After the *Gagnon I* hearing, the Court must then conduct a hearing within a “reasonable time” to determine whether the person under supervision violated the conditions of release, and, if so, whether that person should be committed to prison or if other steps should be taken to protect society and improve chances of rehabilitation. *Id.* at 781-82; *Morrissey v. Brewer*, 408 U.S. 471, 479-80 (1972). This final revocation hearing is referred to as a *Gagnon II* hearing.

65. The *Gagnon II* hearing must include a written notice of the claimed violations of probation or parole, disclosure of the evidence against the individual, the opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses, a neutral and detached hearing body, and a written statement by the factfinders as to the evidence relied on and the reasons for revoking probation or parole.

66. Defendants repeatedly and systemically deprive people on probation and parole, including Plaintiffs and class members, of due process through the delay or deprivation of a *Gagnon I* hearing. By means of an unlawful custom, practice or policy, Defendants regularly fail to provide people detained for alleged parole and probation violations with any *Gagnon I* hearing, much less a prompt one. Consequently, people facing revocation typically do not receive constitutionally required notice of the alleged violations of probation or parole, an opportunity to appear and to present evidence on an individual's own behalf, a conditional right to confront adverse witnesses, an independent decisionmaker, and a written report of the hearing. Thus, Defendants deprive people on probation and parole, including Plaintiffs and class members, of their fundamental rights to a prompt determination of probable cause of the alleged violation of probation or parole.

67. Additionally, and by means of an unlawful custom, practice or policy, Defendants further deprive people on probation and parole, including Plaintiffs and class members, of an assessment as to whether detention pending a final revocation hearing is necessary and appropriate.

68. In Montgomery County, denial of a prompt *Gagnon I* hearing is widespread. An analysis of publicly available information from the Administrative Office of Pennsylvania Courts ("AOPC") shows that of 3,384 detained defendants with a revocation-related resentencing between January 1, 2019 and May 18, 2021, approximately 92 percent of detainees received no preliminary revocation hearing, and Defendants detained individuals for an average of 70 days before providing any revocation hearing. Only approximately eight percent of detained defendants (280 individuals) received a *Gagnon I* probable cause hearing prior to a *Gagnon II* final revocation proceeding.

69. Defendants' unlawful custom, practice or policy of denying Plaintiffs and class members prompt *Gagnon I* hearings and detention assessments results in incarceration of individuals who are otherwise entitled to release. Defendants detain many people for alleged violations of probation and parole that are based on technical rule violations or minor new charges for which they would otherwise be released on bail, neither of which require or warrant detention, and even where other factors, such as serious medical conditions, render detention excessive and unnecessary. Parole and probation agreements in Montgomery County include technical requirements such as the requirement to: (i) notify a probation officer within 72 hours of a change in employment; (ii) notify and receive approval from a probation officer at least 72 hours in advance of travel beyond counties adjoining Montgomery County; (iii) notify a probation officer of medical treatment or psychological counseling; or (iv) notify a probation officer prior to using prescription medication or over-the-counter medication. Upon information and belief, jailed individuals have been held in prolonged detention for technical violations.

70. A prompt *Gagnon I* hearing, with minimum requirements of due process, would provide for the release of persons detained for such alleged technical violations.

71. Jailed individuals, including Plaintiffs and class members, also have been held in prolonged detention for new minor criminal violations, including misdemeanors, even where the judge handling the new charge has determined that the individual should be released on bail or other non-monetary conditions. Defendants frequently revoke probation or parole for such new criminal violations. A prompt *Gagnon I* hearing, with minimum requirements of due process, would prevent or at least minimize automatic and prolonged detention for such violations.

72. The custom, practice or policy in Montgomery County of imposing automatic and prolonged detention without affording jailed individuals a prompt *Gagnon I* hearing departs from

minimal standards of due process in Pennsylvania and throughout the United States. Defendants depart from the customs, practices or policies of supervision hearings and detention that are used in Pennsylvania.¹ Defendants also depart from the customs, practices or policies of probation and parole hearings and detention used by other states across the country and under the federal supervision system.

73. Defendants' custom, practice or policy of imposing automatic and prolonged detention without affording incarcerated individuals, including Plaintiffs and class members, a prompt *Gagnon I* hearing, and without assessing the need for detention pending a final revocation proceeding, is contrary to, and in violation of, the minimal standards of due process.

CLASS ACTION ALLEGATIONS

74. Acting in their representative capacity and to enforce the due process protections of unnamed persons, Plaintiffs bring this case as a class action on behalf of the following persons:

All individuals under the authority of Montgomery County Adult Probation and Parole Department who are now, or will in the future be, accused of committing a "Technical violation" or "Conviction violation" as defined in 204 Pa. Code §307.1(b) (2021) and who did not receive a prompt *Gagnon I* hearing, or any assessment to determine release pending final revocation proceeding that comports with minimum requirements of due process.

¹ In Pennsylvania, for example, Adams County authorizes bail to be set at a probable cause hearing pending a final revocation hearing. *See* Adams C.R.Crim.P. 708.1(D). Somerset County limits a probation detainer to 48 hours in a "clear emergency when no Judge of the court is available to make an order awarding process." Som. R.Crim.P. 708.4. Allegheny County requires probation officers to "exhaust[]" "all efforts to safely maintain the offender in the community" before a person is detained for a "lower-level" technical violation or an arrest for a non-violent offense. *See Detainer Policy*, The Fifth Judicial District of Pennsylvania, Allegheny County Adult Probation Policy Bulletin (Nov. 20, 2019).

75. This action meets the requirements of Rules 1702 and 1708 of the Pennsylvania Rules of Civil Procedure and is certifiable as a class action:

- a. The proposed Class is so numerous, and the identification of all present and future class members impossible to ascertain, that joinder of all members is impracticable.
- b. There are questions of law and fact common to the Class. Defendants owed due process protections to each class member and took actions and omissions under a common custom, practice or policy that deprived the Class of their rights to a prompt *Gagnon I* hearing and a detention assessment, which are required by both the Pennsylvania and U.S. Constitutions. Common questions of law include, without limitation: (i) whether Defendants' custom, practice or policy of automatic and prolonged detention for supervision violations violates the Due Process guarantees of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution and the Fourteenth Amendment to the U.S. Constitution; (ii) whether Defendants' policy, custom or practice of failing to provide prompt *Gagnon I* hearings violates the Due Process guarantees of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution and the Fourteenth Amendment to the U.S. Constitution; and (iii) whether Defendants' custom, practice or policy of denying people on probation and parole a detention assessment either before confinement or shortly thereafter violates the Due Process guarantees of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution and the Fourteenth Amendment to the U.S. Constitution.

- c. Plaintiffs' claims are typical of the claims of the Class because during the period at issue in this action, Plaintiffs and class members were detained following an alleged supervision violation and were harmed by Defendants' unconstitutional custom, practice or policy of failing to conduct a prompt *Gagnon I* hearing and assess whether detention is necessary and appropriate.
- d. Plaintiffs are adequate representatives of the Class because they have no interest that is in conflict with the Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent attorneys to represent the Class.
- e. Prosecution of separate actions for these violations by Defendants would create the risk of (1) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants regarding their duties to detainees under the Pennsylvania Constitution and the U.S. Constitution; and (2) adjudications by individual detainees regarding the constitutionality of Defendants' custom, practice or policy of depriving individuals of timely *Gagnon I* hearings and detention assessments would, as a practical matter, be dispositive of the interests of the class members not parties to the adjudication or would substantially impair or impede those detainees' ability to protect their interests. Therefore, this action should be certified as a class action under Rules 1702, 1708 and 1709 of the Pennsylvania Rule of Civil Procedure.

f. A Class Action is the superior method for the fair and efficient adjudication of this controversy because joinder of detainees is impracticable. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action.

76. Plaintiffs' counsel will fairly and adequately represent the interests of the Class and is best able to represent the interests of the Class under Rule 1709.

77. To Plaintiffs' knowledge, no other similar actions are pending against these Defendants in Pennsylvania.

COUNT I
(All Plaintiffs Against All Defendants)
Declaratory Judgment and Injunctive Relief
(Violations of Due Process under the Pennsylvania Constitution
For Failure to Hold a Prompt *Gagnon I* Preliminary Revocation Hearing)

78. Plaintiffs repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

79. Pennsylvania Constitution Art. 1 §§ 1, 9, and 11 protect an individual's right to procedural due process. The due process protection includes the right to a prompt and adequate hearing at the time of arrest to determine whether there is probable cause to believe that the detainee has committed a violation of parole or probation. *See Commonwealth v. Turner*, 80 A.3d 754, 764 (Pa. 2013), *cert. denied*, ___ U.S. ___, 134 S. Ct. 1771 (2014).

80. Defendants' unlawful custom, practice or policy of depriving people on probation and parole, including Plaintiffs and class members, of a prompt *Gagnon I* preliminary revocation hearing violates their rights to due process of law under the Pennsylvania Constitution.

COUNT II
(All Plaintiffs Against the Individual Defendants)
Declaratory Judgment and Injunctive Relief
(Violations of Due Process under the U.S. Constitution
For Failure to Hold a Prompt *Gagnon I* Preliminary Revocation Hearing)

81. Plaintiffs repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

82. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution bars states from depriving any person of life, liberty, or property without due process of law. The due process protection includes the right to a prompt and adequate hearing at the time of arrest to determine whether there is probable cause to believe that the detainee has committed a violation of parole or probation. *Gagnon*, 411 U.S. 778.

83. The Individual Defendants' unlawful custom, practice or policy of depriving people on probation and parole, including Plaintiffs and class members, of a prompt *Gagnon I* preliminary revocation hearing violates their rights to due process of law under the Fourteenth Amendment to the U.S. Constitution.

COUNT III
(All Plaintiffs Against All Defendants)
Declaratory Judgment and Injunctive Relief
(Violations of Due Process under the Pennsylvania Constitution
For Detaining Virtually All Persons Charged with Supervision Violations for Prolonged
Periods without a Hearing to Justify Incarceration)

84. Plaintiffs repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

85. Pennsylvania Constitution Art. 1 §§ 1, 9, and 11 protect an individual's right to due process of law.

86. Defendants' practice of automatically detaining virtually everyone charged with a supervision violation for prolonged periods results in an unconstitutional irrebuttable presumption,

in violation of due process, that everyone under supervision automatically requires incarceration following a new arrest or violation. *See Com. Dep't of Transp., Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060, 1064-1065 (Pa. 1996) (quoting *Bell v. Burson*, 402 U.S. 535, 542 (1971)).

87. Detaining Plaintiffs and class members charged with supervision violations without a hearing to justify detention pending final revocation proceedings creates a high risk of erroneous and prolonged detention in violation of individuals' procedural due process rights.

88. The prolonged incarceration of Plaintiffs and class members without a hearing to ensure that continued incarceration is necessary or rationally related to a legitimate governmental interest, and when such prolonged incarceration bears no reasonable relationship to the initial purpose of detention, is punitive and violates substantive due process.

89. Defendants' unlawful custom, practice or policy of detaining persons charged with supervision violations, including Plaintiffs and class members, without assessing whether each person should be incarcerated pending revocation or whether other steps should be taken to protect society, prevent willful flight and improve chances of rehabilitation, violates the heightened protections afforded under the Pennsylvania Constitution.

COUNT IV
(All Plaintiffs Against the Individual Defendants)
Declaratory Judgment and Injunctive Relief
(Violations of Due Process under the U.S. Constitution
For Detaining Virtually All Persons charged with Supervision Violations for Prolonged
Periods without a Hearing to Justify Incarceration)

90. Plaintiffs repeat and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

91. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects an individual's right to procedural and substantive due process. Detention of virtually all persons charged with supervision violations for prolonged periods pending final revocation

proceedings without an assessment to ensure such detention is necessary and appropriate, creates a risk of erroneous detention in violation of individuals' procedural due process rights.

92. Detaining people charged with supervision violations for prolonged periods without justification is punitive and does not bear a reasonable relationship to the initial purpose of detention, in violation of individuals' substantive due process rights.

93. The Individual Defendants' unlawful custom, practice or policy of detaining persons charged with supervision violations, including Plaintiffs and class members, without assessing whether each person should be incarcerated or whether other steps should be taken to protect society, prevent willful flight, and improve chances of rehabilitation, violates the heightened protections afforded under the Fourteenth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and a class of all similarly situated persons, respectfully request that the Court order the following relief:

- a. Declare that Defendants' custom, practice or policy of depriving persons detained for alleged parole and probation violations of a prompt *Gagnon I* hearing violates Plaintiffs' and class members' due process rights, in violation of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution;
- b. Declare that the Individual Defendants' custom, practice or policy of depriving persons detained for alleged parole and probation violations of a prompt *Gagnon I* hearing violates Plaintiffs' and class members' due process rights, in violation of the Fourteenth Amendment to the U.S. Constitution;

- c. Declare that Defendants' custom, practice or policy of failing to assess the necessity and appropriateness of detention pending a final revocation proceeding violates Plaintiffs' and class members' due process rights, in violation of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution;
- d. Declare that the Individual Defendants' custom, practice or policy of failing to assess the necessity and appropriateness of detention pending a final revocation proceeding violates Plaintiffs' and class members' due process rights, in violation of the Fourteenth Amendment to the U.S. Constitution;
- e. Enjoin Defendants from further violations of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution through the exercise of their custom, practice or policy of depriving persons detained for alleged parole and probation violations of a prompt *Gagnon I* hearing following an alleged violation of supervision;
- f. Enjoin the Individual Defendants from further violations of the Fourteenth Amendment to the U.S. Constitution through the exercise of their custom, practice or policy of depriving persons detained for alleged parole and probation violations of a prompt *Gagnon I* hearing following an alleged violation of supervision;
- g. Enjoin Defendants from further violations of Article I §§ 1, 9, and 11 of the Pennsylvania Constitution through the exercise of their custom, practice or policy of failing to assess the necessity and appropriateness of detention prior to confining Plaintiffs and class members, or shortly thereafter, pending a final revocation proceeding;

- h. Enjoin the Individual Defendants from further violations of the Fourteenth Amendment to the U.S. Constitution through the exercise of their custom, practice or policy of failing to assess the necessity and appropriateness of detention prior to confining Plaintiffs, or shortly thereafter, and class members pending a final revocation proceeding;
- i. Certify the Class, appoint the Plaintiffs as class representatives, and appoint their counsel as Class Counsel under Rules 1701-1717 of the Pennsylvania Rules of Civil Procedure;
- j. Award to the Plaintiffs and the Class their attorneys' fees and costs associated with Counts II and IV under 42 U.S.C. Section 1988; and
- k. Grant such other equitable or remedial relief as the Court deems just and appropriate.

Dated: October 26, 2021

Respectfully submitted,



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**Pro hac vice forthcoming.*

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CERTIFICATE OF COMPLIANCE

This filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Lori A. Martin

Lori A. Martin

VERIFICATION

I, Lori A. Martin, counsel for the Plaintiffs in this matter, hereby verify that the statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief. None of the parties, individually, has sufficient knowledge or information about all of the facts to verify this petition, so accordingly I verify it pursuant to Pa.R.C.P. 1024(c). I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: October 25, 2021

Signed: Lori A. Martin

VERIFICATION

I, David Krash, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 10/22/21

Signed: David Krash

VERIFICATION

I, Andrew Haskell, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

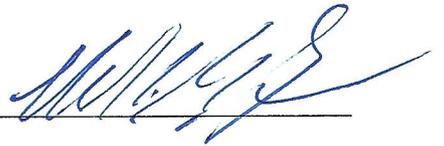
Dated: 10-22-2021

Signed: 

VERIFICATION

I, Charles Gamber, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

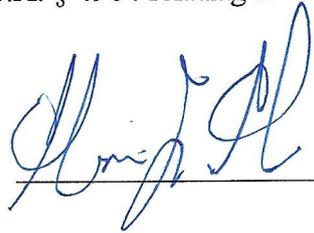
Dated: 10/22/21

Signed: 

VERIFICATION

I, Eboni El, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 10/22/21

Signed:  _____

VERIFICATION

I, Akeem Willis, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 10-22-21

Signed: Akeem Willis

VERIFICATION

I, Sung-Jin Joel Lee, verify that the facts set forth in the foregoing complaint concerning me are true and correct to the best of my information, knowledge, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: 10/22/21

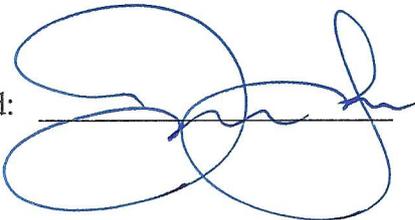
Signed: 

EXHIBIT 1

8. From 2017 through 2021, I worked as a line chef at an Upper Darby Italian restaurant six days a week. I worked despite receiving dialysis every other day—I loved cooking and being a chef.
9. Unfortunately, it became too difficult to keep working those long demanding restaurant hours while in intensive dialysis treatment. My family was worried about me. Finally, in March 2021, I applied for disability. I learned that Social Security granted my petition in August, and on September 1, my first check was due to arrive. I believe that all of my benefits including healthcare have been terminated because of my incarceration.
10. Around August 30, 2021, I was inside a store, and the Philadelphia police were checking IDs; when they saw mine, they arrested me on a bench warrant.
11. When I appeared before a Philadelphia judge, warrant gave me unsecured bail on these new charges. Then on September 8, another judge lifted the Philadelphia detainer ordered my release. But the Montgomery County detainer kept me in jail and Philadelphia transferred me to Montgomery County.
12. This Montgomery County detainer is the only thing holding me in jail.
13. Since I arrived at MCCF, I have not seen a judge. I have had no opportunity to argue for my release, to explain to a judge why I desperately need to go home to take care of my medical issues. I have had no probation hearing whatsoever.
14. I have a court date scheduled in December 2021 for my new charges. I fear I won't get to see a judge until the resolution of that new court case, but I don't know when that will be.
15. Montgomery County has not scheduled a date for this probation matter.
16. I need a kidney transplant; but can't make the phone calls necessary to schedule the appointments, can't meet with the necessary specialists, and can't get on the transplant waitlist.
17. I am worried I am going to die here. I have put in repeated sick calls to address ongoing medical issues. When I asked a guard about the sick calls, he told me, "You know what we do with your sick slips—we read them and laugh. Then we throw them in the trash." My kidney doctor has to keep changing my medications to address my worsening condition.
18. I am supposed to be on a special diet for my kidneys and diabetes—no processed foods, low phosphorus, fruits, and vegetables. I repeatedly asked for assistance with this diet, but the officials at MCCF ignore me. They give us nothing but hot dogs, bologna, and junk food—now and then, they'll give us an apple.
19. On the mornings when the guards take me to dialysis, they do not feed me breakfast before my appointment, so I arrive at dialysis starving. My dialysis takes 4 hours—receiving this four-hour treatment without any food in my stomach is excruciating.

20. I live with my sister in the house my mother left us; it's around the corner from the dialysis place and my kidney doctor.

21. If released, I would return to my home and get the care that I need to stay alive—I would get on the waitlist for a kidney transplant, eat the necessary diet necessary; and maintain my health. If I am not released, I don't know what will happen.

I, Alvin J. [Signature], declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 6th day of October, 2021 at 2:45pm (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.

Alvin J. [Signature]

EXHIBIT 2

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:	
JOO LEE, AKEEM WILLS, CHARLES	:	
GAMBER, DAVID KRAH on behalf of	:	No. _____
themselves and all persons similarly situated,	:	Class Action
	:	Original Jurisdiction
<i>Plaintiffs,</i>	:	
v.	:	
	:	
38 TH JUDICIAL DISTRICT, Hon. THOMAS	:	
M. DEL RICCI, President Judge (in his	:	
official capacity), MICHAEL GORDON,	:	
Chief Adult Probation and Parole Officer (in	:	
his official capacity), MICHAEL R. KEHS,	:	
Court Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

DECLARATION OF ANDREW HASKELL

I, Andrew Haskell, hereby declare the following is true and correct to the best of my knowledge and belief:

1. I, Andrew Haskell, am a forty-four-year-old white male.
2. I am currently in jail at the Montgomery County Correctional Facility (MCCF). I have been locked up in MCCF since April 20, 2021, when I was arrested for misdemeanor driving while intoxicated charge.
3. I had my first and final revocation proceeding on October 18, 2021. At that date, I moved immediately to sentencing and consolidated my open matter with my probation violation for a sentence of eight to fourteen months incarceration followed by three years reporting probation. With good time earned time, I expect to get out at the beginning of November.
4. I was incarcerated for nearly six months before I saw a judge. I do not believe I had a hearing to challenge the probation violation and believe I received no opportunity to argue that I should be released from jail during my revocation proceedings.

5. Locked up in April, I did not see a judge on the DUI case until July 19, 2021, when I had my bail hearing for that case and the judge found be releasable and assigned \$100 cash bail (ten percent of \$1,000).
6. I was originally put on probation because of convictions for retail theft and possession of drug paraphernalia. My underlying offenses result from my drug addiction.
7. My first *Gagnon* hearing was scheduled for July 13, but the court postponed the proceeding pending the outcome of my criminal case.
8. On October 18th, I pled guilty in order to get out of jail.
9. I have struggled with a drug addiction since I was 14 years old. I've been in and out of treatment. I am now on medication-assisted treatment, Suboxone, at MCCF. I believe I can recover from addiction with this support.
10. I have three children, all boys. They are 7, 14, and 16 years old. My 7-year-old is autistic and requires around-the-clock care. I am the primary breadwinner for my family and, along with my fiancée, the caretaker of my children. While I am in jail, my fiancée and elderly parents struggle to pay the bills and care for my children. I have not seen my children since I got put in jail in April. I want to get home so that I can take care of my children and provide for my family. There isn't a second that goes by where I don't think about them. My kids keep asking when I'm coming home. My whole family is suffering while I am away in jail.
11. I am a master tiler. I have a stable job laying marble and tile that I can return to, once I get out of jail. My employer keeps asking when I am coming home so that I can return to my job.
12. This probation detainer is the only thing keeping me in jail. My bail in the open case is only \$100. I could pay that bail and get home if it weren't for this probation detainer.
13. I want to get out of jail as quickly as possible and was took a plea deal to get out more quickly. If I weren't incarcerated, I would consider going to trial, but I know I will go home sooner if I don't contest the charges or the allegations. Every day I remain incarcerated is another day my children don't have their dad, and another day my family goes without my income.

I, Andrew Haskell, declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 21 day of October, 2021 at 9:00 (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.

Andrew Haskell

EXHIBIT 3

7. On September 10, 2021 at MCCF, I had a video conference with a probation officer, Lauren Cusak. I had never met her, but understood she was my assigned Pennsylvania PO. She sent me a paper listing the alleged violations. During the video conference, Ms. Cusak told me this video was my *Gagnon I*. It was only her and I on the call, neither my lawyer nor a judge were present—no one was present but the probation officer.
8. My family scraped together money to hire an attorney for me back when I was in Tennessee. That attorney filed an emergency motion to lift the detainer. I understand that the attorney later withdrew that motion to get me a better plea deal.
9. The first time I saw a judge was on September 28, 2021 when I appeared in court and the judge told me this was my sentencing. The judge sentenced me to three to twenty-three months of incarceration followed by one year of reporting probation. I am currently serving that sentence and hope to be released in November.
10. This has been a nightmare for me. I am married and my wife was eight months pregnant when the probation officer arrested. On August 25th, I was supposed to go with my wife to an ultrasound appointment.
11. I had no idea when I reported to my probation officer that he would arrest me and take me away from my family. I never got a chance to say good-bye to my wife. I haven't seen her or our baby since they locked me.
12. I wasn't even able to move my work truck, which my wife had to pick up from a site.
13. This Tuesday, September 28, 2021, while locked up at MCCF, my wife gave birth to our baby girl. We had a birth plan all figured out that she had to change at the last minute because of this. I wasn't able to be there for the birth. My sister had to fly to Tennessee from Maryland to help my wife. I missed the best thing that's ever happened to me, the miracle of life, my first child.
14. In addition to missing my child's birth, I lost desperately needed income. Before this arrest, I was working full time as a contractor renovating homes. I have a great boss who is holding my job for me and I can return to work upon release. I am the primary breadwinner in the family. Losing my income has meant that we have had to deplete our savings to pay our rent.
15. My wife only has six weeks of maternity leave, and my sister went to stay with her after the birth to help her out.
16. On September 28th, I waived everything and pled to everything because I am desperate to go home to my family. If I didn't have a family who needed me, I wouldn't have taken a deal for probation; I'd rather have stayed in jail longer if it meant that I could get off probation. Probation on Montgomery County is downward spiral, in the future, I could miss a single payment and they could come and lock me up again all over again.

17. Before the September 28 hearing, I wrote letters to the judge, to my probation officer. Friends and family, even my boss, wrote letters of recommendation on my behalf, all urging the judge to let me go home for the birth. Neither the probation officer or the judge paid any attention; all they saw was piece of paper with that May conviction. They gave me no chance.

18. Incarceration can ruin your life. There should be other steps to rehabilitate people than putting them in jail. All you do here is sleep, watch TV, order commissary, eat junk food, over and over. There's no rehabilitation here.

I, Sung Joo Joel Lee, declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 1st day of October, 2021 at 4am (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.

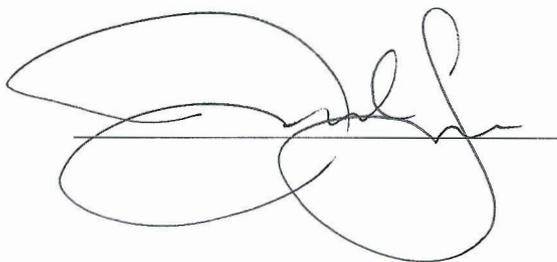
A handwritten signature in black ink, appearing to read "Sung Joo Joel Lee", is written over a horizontal line. The signature is highly stylized and cursive.

EXHIBIT 4

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:	
JOO LEE, AKEEM WILLS, CHARLES	:	
GAMBER, DAVID KRAH on behalf of	:	No. _____
themselves and all persons similarly situated,	:	Class Action
	:	Original Jurisdiction
<i>Plaintiffs,</i>	:	
v.	:	
	:	
38 TH JUDICIAL DISTRICT, Hon. THOMAS	:	
M. DEL RICCI, President Judge (in his	:	
official capacity), MICHAEL GORDON,	:	
Chief Adult Probation and Parole Officer (in	:	
his official capacity), MICHAEL R. KEHS,	:	
Court Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

DECLARATION OF AKEEM WILLS

I, AKEEM WILLS, hereby declare the following is true and correct to the best of my knowledge and belief:

1. I, Akeem Wills, am a twenty-six-year-old Black man.
2. I am currently in jail at the Montgomery County Correctional Facility (MCCF) where I have been since around April 14, 2021 because of probation revocation proceedings due to new charges in Philadelphia.
3. I have been on probation since 2015 due to a forgery conviction. Montgomery County has revoked my probation four times before, for technical violations and non-violent charges.
4. Montgomery County transferred my probation to Philadelphia, where I live, and a Philadelphia probation officer supervises my probation.
5. At the end of March 2021, I spent a couple weeks in Philadelphia’s jail after the police arrested me for two new separate charges in Philadelphia: the unauthorized use of an automobile and drug possession with intent to deliver. Montgomery County filed a detainer and brought me to MCCF around April 14, 2021.

6. The detainer is the only reason I am in jail. Philadelphia assigned me ROR (release on recognizance) and unsecured money bail for my two new cases. If it weren't for this Montgomery County detainer, I would be home.
7. Since I was jailed in MCCF on April 14th, I have not seen a judge.
8. I have not had any opportunity to argue that I should be released from jail during the revocation process.
9. I do not believe I spoke a Montgomery County lawyer until about July 2021.
10. I had *Gagnon* hearings scheduled in June, July, August, and September. However, I don't know what happened, the sheriff didn't bring me to court, and the judge continued the hearings without me.
11. I have a hearing scheduled in my one open case in Philadelphia at the end of November and a trial scheduled March 9, 2022 for my other open case.
12. A few days after my April incarceration at MCCF, I had a video conference with a probation officer. People in the jail handed me a sheet of paper with my violation charges on it. People called this a *Gagnon* I hearing. But I never saw a judge, never had a lawyer, and never heard any evidence against me. They didn't ask me any questions and didn't give me the chance to argue for my release.
13. In the four prior times incarcerated at MCCF on probation revocation charges, I don't believe I ever had a *Gagnon* I hearing. They would sometimes schedule them, but when you got into court, they went straight to sentencing.
14. Every time Montgomery County incarcerated me, they held me for several months before my final revocation hearing. In 2016, they held me for 297 days, in 2018 they held me for 182 days, and in 2020, they held me for 329 days. Each time, when I finally got into court, the judge sentenced me to time-served followed by more probation.
15. I am on social security disability income (SSDI). Every time I go to jail, they stop my payments, which makes it even harder to get back on my feet.
16. I have a good place to live with my sister and her baby when I get out of jail. She helps me make sure I am on the right path.
17. Jail has made my life really hard. It takes a lot of time away from you. I can't get anything done to make my life better while I am in here.

I, Akeem Wills, declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 21st day of October, 2021 at 8:30 (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.

Akeem Wills

EXHIBIT 5

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:	
JOO LEE, AKEEM WILLS, CHARLES	:	
GAMBER, DAVID KRAH on behalf of	:	No. _____
themselves and all persons similarly situated,	:	Class Action
	:	Original Jurisdiction
<i>Plaintiffs,</i>	:	
v.	:	
	:	
38 TH JUDICIAL DISTRICT, Hon. THOMAS	:	
M. DEL RICCI, President Judge (in his	:	
official capacity), MICHAEL GORDON,	:	
Chief Adult Probation and Parole Officer (in	:	
his official capacity), MICHAEL R. KEHS,	:	
Court Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

DECLARATION OF CHARLES GAMBER

I, CHARLES GAMBER, hereby declare the following is true and correct to the best of my knowledge and belief:

1. I, Charles Gamber, am a forty-five-old white male.
2. I have been incarcerated in Montgomery County Correctional Facility (MCCF) because of a technical parole violation since August 13, 2021.
3. Around April 30, 2021 police arrested me in Arizona put me in jail in Maricopa County, Arizona. Montgomery County extradited me to Pennsylvania on August 13, 2021.
4. I am on Montgomery County’s parole because of a 2013 conviction for a misdemeanor DUI. Since then, I had prior violations both technical and direct. A 2020 violation also led to a new conviction for a misdemeanor resisting arrest and disorderly conduct.
5. On October 5, 2021, I had my first and final revocation proceeding. The judge sentenced me to seven (7) to thirteen (13) months with credit for time served followed by one year of reporting probation.

6. I waived my right to a *Gagnon* I and did not contest the allegations because I understood this was the fastest way to get out of jail.
7. The judge gave me credit for time served and I hope to be released this week. However, I recently learned that Montgomery County will not release me without a home plan. As I am currently homeless and without an income, so I fear Montgomery County won't release me anytime soon.
8. From the time of my extradition, to my final sentencing, I never had a *Gagnon* I or an opportunity to argue for my release.
9. A few days after I was incarcerated at MCCF, I saw a parole officer via video. I received a sheet of paper that listed my violation charges on it. My understanding from people in the jail was that this was the *Gagnon* I hearing. But I never saw a judge, never had a lawyer, and never heard any evidence against me.
10. I believe that my alleged violations were for failing to complete a voluntary psychiatric program, for not taking my ADHD medication as prescribed, and failing to pay about \$100 in fines.
11. Nobody asked if I could afford to pay the fine amount, and no one asked me anything about my current financial situation.
12. I am currently homeless and receive food stamps.
13. The police arrested me on this technical parole warrant at the end of April. I have been jailed ever since. I do not have any new criminal charges.
14. I have mental health conditions for which I take medication.
15. Incarceration has been very hard for me. I have tried to make the best of it, and rely on my faith. But I feel very downtrodden. Incarceration has taken away what could have been second chances at renewing my life and getting a fresh start.

I, Charles N Coomber, declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 15th day of October, 2021 at 8:00 (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.



EXHIBIT 6

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:	
JOO LEE, AKEEM WILLS, CHARLES	:	
GAMBER, DAVID KRAH on behalf of	:	No. _____
themselves and all persons similarly situated,	:	Class Action
	:	Original Jurisdiction
<i>Plaintiffs,</i>	:	
v.	:	
	:	
38 TH JUDICIAL DISTRICT, Hon. THOMAS	:	
M. DEL RICCI, President Judge (in his	:	
official capacity), MICHAEL GORDON,	:	
Chief Adult Probation and Parole Officer (in	:	
his official capacity), MICHAEL R. KEHS,	:	
Court Administrator (in his official capacity),	:	
and LORI SCHREIBER, Clerk of Courts (in	:	
her official capacity),	:	
	:	
<i>Defendants.</i>	:	

DECLARATION OF DAVID KRAH

I, David Krah, hereby declare the following is true and correct to the best of my knowledge and belief:

1. I, David Krah, am a thirty-one-year-old Black man.
2. Currently incarcerated at the Montgomery County Correctional Facility (MCCF), I have been here since September 15th, 2021 because of proceedings to revoke my 2018 probation. I am also facing new criminal charges for possession of a controlled substance in Philadelphia.
3. In 2011, Montgomery County police arrested me for possession of drug paraphernalia. After spending time in MCCF, in 2018, a judge sentenced to one year of reporting probation. The docket for that case is CP-46-CR-0000425-2011.
4. I reported to Montgomery County probation a few times but believed my probation term ended over two years ago. As far as I know, I never received a notice or letter from Montgomery County telling me that I was still on probation or somehow in violation.

5. On September 15th, 2021, the Philadelphia police arrested me for drug possession. When the Philadelphia police arrested me, they said I had a warrant from Montgomery County. I don't understand how that is possible—my probation should have expired years ago.
6. A Philadelphia judge assigned me ROR bail (release on recognizance). But Montgomery County came and brought me from Philadelphia to MCCF. If it weren't for Montgomery County's bench warrant, I would be released.
7. I have not seen a judge for my probation violation. Since I arrived at MCCF, I had no hearing or opportunity to challenge the probation violation or argue for my release from jail.
8. My counselor told me that Philadelphia held a preliminary hearing on September 30th for my open case. Montgomery County did not take me to my Philadelphia court date; they held the hearing without me. I understand a judge remanded the case, and now I am only facing misdemeanor drug possession charges.
9. My next court date in Philadelphia is November 4th, 2021.
10. A Probation Officer Andrea Holtz (sic) told me that if I just signed some papers, they would let me go now and just give me one year of reporting probation. But I didn't do anything wrong, and I don't want to plead guilty. I told her I wanted to wait until the resolution of my new case. The PO said they won't schedule a violation hearing until after November 4th, after the resolution of my new case.
11. This detainer is the only thing holding me in custody.
12. Montgomery County has not scheduled a probation hearing for me; I have no idea when I will get to see a judge.
13. Incarceration at MCCF has been brutal—another incarcerated person violently attacked me.
14. Before my arrest, I had worked for six years at a tire shop—trading, fixing, and changing tires and rims. I also worked part-time laying concrete and doing other manual labor. I plan to return to these jobs upon my release.
15. I also have an apartment that I want to return to.
16. I have a nine-year-old son who lives in Texas, but I have not seen my son since September. Currently, he lives with my girlfriend's grandfather. Before this incarceration, I co-parented, visiting my son regularly and providing regular financial support. I can't do any of that while I am incarcerated.

17. Being separated from my son and unable to speak with him has been so painful. I am sad about missing Halloween with him and hope that I can be released in time for us to spend Thanksgiving together.
18. I could not bear to tell my son that I was incarcerated, it was too devastating.
19. I am desperate to return home to my job, my family, and my life.

I, David Krause, declare under penalty of perjury under the law of the Commonwealth of Pennsylvania, 42 Pa.C.S.A. § 6206, that the above statement is true and correct.

I gave Nyssa Taylor permission to type this statement. I reviewed this statement with Nyssa Taylor and it is true and correct.

Signed on the 21 day of October, 2021 at 9:30 (time) while incarcerated in the Montgomery County Correctional Facility in Montgomery County, Pennsylvania.

David Krause