

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JANET HOLLAWAY AFRICA,)	
)	
Petitioner,)	
)	
v.)	
)	
LONNIE OLIVER, Superintendent SCI-Cambridge)		
Springs)	
)	
)	
Respondent.)	

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

I. Introduction

In 1978, Janet Hollaway Africa was arrested following a high-profile standoff between Philadelphia police and the MOVE Organization, which resulted in the death of James Ramp, a Philadelphia police officer. Ms. Hollaway Africa was one of nine MOVE members convicted of third-degree murder for the death of Officer Ramp and given a sentence of 30-100 years in prison. Forty years later, Ms. Hollaway Africa is now eligible for parole and has been repeatedly denied, despite decades of demonstrated rehabilitation, exemplary conduct in prison, and lack of risk to reoffend.

Following her most recent parole hearing in May 2018, Ms. Hollaway Africa was again denied parole. The Pennsylvania Board of Probation and Parole provided purported justifications for this denial that are flatly contradicted by the facts in the record. Therefore, the Parole Board has denied parole to Ms. Hollaway Africa based on reasons that have no rational relationship to any rehabilitative or deterrent purpose. As a result, the Parole Board has violated Ms. Hollaway

Africa's substantive due process right to be free from an arbitrary, conscience-shocking determination as to whether she should be granted parole. Petitioner has filed a habeas corpus petition seeking to have this Court enforce her Constitutional right and order the Parole Board to reverse its decision and grant her immediate parole.

II. Statement of the Case

a. Criminal Conviction

Janet Hollaway Africa was one of nine individuals (four women and five men) who were arrested and charged in relation to an incident that occurred in Philadelphia on August 8, 1978. In describing the events preceding the arrest, the U.S. District Court for the Eastern District of Pennsylvania stated:

“In the 1970's, all of them became members of an organization known as MOVE. MOVE members had disputes with their neighbors and city officials throughout the 1970's. These disputes eventually led to the events of August 8, 1978. On that day, the Philadelphia police attempted to serve arrest warrants on several MOVE members at their residence.”

Africa v. Digulielmo, Nos. 04-451, 04-449, 04-447, 04-448, 04-454, 04-453, 04-450, 2004 WL 2360419, at *1 (E.D. Pa. Oct. 19, 2004).

This attempt by the Philadelphia police to serve warrants led to a standoff and confrontation. During the altercation, one police officer was killed by gunfire, while other officers and firefighters were injured. “The trial court did not cite any evidence which indicated that the women brandished or handled firearms on August 8, 1978. The trial court also did not seriously consider whether any of the women actually shot at any police officer or fireman.” *Id.*, at *50. In May 1980, Ms. Hollaway Africa and eight co-defendants were convicted of third degree murder and a number of lesser offenses. *Id.*, at *3. In 1981, Ms. Hollaway Africa and her

co-defendants were each given a sentence of 30 to 100 years. *Id.* She has served 40 years in prison, a decade past the minimum sentence.

b. Institutional Adjustment

Ms. Hollaway Africa has not had any disciplinary infractions during her last 20 years in prison. Ex.1, Packet in Support of Parole for Janet Hollaway Africa,¹ [hereafter Parole Packet] Ex. D, Misconduct Report. Her last infraction was for having sewing needles inside of a crocheted ID holder, which was reduced to a “Class II” violation. *Id.* During the initial years of her incarceration, Ms. Hollaway Africa had some disciplinary issues, though with the sole exception mentioned above she has not had a misconduct since 1986 – 32 years ago. *Id.* at Ex. B, Report of Correctional Expert Martin Horn [Hereafter Horn Report].

Ms. Hollaway Africa has participated in numerous prosocial programs and activities throughout her incarceration. She has been active with the Canine Partners for Life (CPL) program since 2005, through which she provides round-the-clock care and training to puppies who then go on to become service dogs for individuals with physical and cognitive disabilities. Ex.1 Parole Packet, Ex. I, Program Certificates and Materials. Ms. Hollaway Africa has also regularly used arts and crafts to assist other prisoners in creating cards or drawings for people who had a sickness or death in the family, as well as creating backdrops and scrapbooks for the recipients of the service dogs trained through the program. *Id.* Additionally, she is involved in the gardening program at SCI Cambridge Springs, where she plans, nurtures, and picks vegetables. *Id.*

¹ For the convenience of the Court the complete Parole Packet in support of Janet Hollaway Africa as submitted to the Pennsylvania Board of Pardons and Parole by her counsel is included as Exhibit 1. The packet itself contained exhibits A-J, which will be referenced the same herein after identifying the Parole Packet as the source.

Throughout her incarceration, Ms. Hollaway Africa has maintained employment within the DOC. Currently she works on a laundry crew, and has previously worked as a mail runner, library worker, and maintenance crew member, among other jobs. Ex.1, Parole Packet, Ex. C, Inmate Progress Reports/Employment Record. She has consistently received positive feedback and excellent work performance reports. *Id.*

A high school graduate, Ms. Hollaway Africa has taken advantage of numerous educational and programmatic offerings in prison. She has completed over 150 hours of vocational learning, including courses in business education, word processing and excel. Ex. 1, Parole Packet, Ex. F, Education Records. In addition, she has completed a number of courses to prepare her for re-entry, including courses addressing “life skills, job preparedness and a ‘completed freedom plan.’” *Id.* In 2006, Ms. Hollaway Africa completed “Thinking for a Change,” a cognitive-behavioral course, and in 2010 she completed Violence Prevention. According to her instructor in the Violence Prevention Course, “it was evident that [Janet] put a great deal of effort into her homework as she provided insightful and well thought out responses.” Ex.1, Parole Packet, Ex. G, DC-43 Integrated Report.

c. Parole Denials 2008-2016

The Pennsylvania Board of Probation and Parole is authorized to grant parole pursuant to the general criteria that:

- (i) The best interests of the inmate justify or require that the inmate be paroled.
- (ii) It does not appear that the interests of the Commonwealth will be injured by the inmate’s parole.

61 Pa.C.S. § 6137(a)(1).

Ms. Hollaway Africa became parole eligible in 2008, and was denied a grant of parole in April 2008, June 2009, June 2010, June 2013, and May 2016. The cursory decisions denying her

parole typically included boilerplate rationales alleging that Janet minimized or denied her role in the offense and lacked remorse, as well as noting the negative recommendation by the prosecuting attorney was a key basis for denying her parole. The Parole Board has never attempted to explain to Ms. Hollaway Africa, in writing or orally, how these purported rationales indicate that the Commonwealth's interests would be "injured by the inmate's parole."

On every occasion that the Parole Board has denied her parole Ms. Hollaway Africa has been advised that at her next review by the Parole Board it "will review [her] file and consider" whether she has "maintained a favorable recommendation for parole from the Department of Corrections" and whether she has "maintained a clear conduct record." Ex. 2, Notices of Board Decision, Janet Hollaway [sic], 2008-2016. Since her first denial by the Parole Board, Ms. Hollaway Africa has maintained the favorable recommendation of the DOC and not received a single misconduct for violating prison rules. Still, she has not been granted parole.

d. May 2018 Parole Denial

Ms. Hollaway Africa saw the Parole Board again in May 2018. In preparation for her interview with the Board, she was seen by institutional psychology staff. The report found that "victim empathy seems to be present," noting that Ms. Hollaway Africa described the incident leading to her incarceration as a "very bad and sad thing," adding that it "was very painful" and that "The victim's families will be affected for generations." Ex. 3, Psychological Report. The report concluded that Ms. Hollaway Africa was "highly motivated to work", had "suitable job prospects upon release," and "appears to have a viable home plan and a robust support system. She appears to be an excellent candidate for parole." *Id.*

In addition to the favorable DOC psychological report, Ms. Hollaway Africa once again received the recommendation for parole from the DOC itself, which she has received on each

instance she has went before the Parole Board since 2008. Ex. 6, Declaration of Janet Hollaway Africa.

A report and recommendation from Correctional expert Martin Horn was also submitted on behalf of Ms. Hollaway Africa. Mr. Horn has forty-five years of experience in the corrections profession, including serving as a “parole officer, Prison Warden, Secretary of Corrections for the Commonwealth of Pennsylvania, Commissioner of the New York City Department of Correction, Commission of the New York City Department of Probation, Executive Director of the New York State Division of Parole and Executive Director of the Sentencing Commission of the New York State Unified Court System.” Ex. 1, Parole Packet, Ex. B, Horn Report.

Addressing the relevant criteria for parole, Mr. Horn’s recommendation in favor of parole was unequivocal:

Based upon my review of the records of Ms. Holloway and the knowledge and experience I have accumulated during more than 40 years working in probation, parole and prison, and years of study, I do not believe that Janet Holloway is today a threat to the community. In my estimation, her in prison behaviors exceed expectations for a person confined for almost 40 years. I do not believe that her disciplinary record is indicative of any future threat to the safety of the community. On the contrary, I see a record of growing maturity, improved judgment and decision-making, introspection, and the assumption of personal responsibility. In my opinion, Ms. Holloway can safely be released to live in the community. I believe she demonstrates the ability to live and remain at liberty without violating the law and her release would be compatible with the best interests of society.

Consistent with the Board’s requirements Ms. Holloway has maintained a good conduct record; in fact, her conduct has been exemplary. She has an adequate reentry plan providing a residence and employment. The best interests of the inmate require that Ms. Holloway, a 67-year-old woman who has served 39 years in custody justify her parole. Ms. Holloway, by her conduct has demonstrated a capacity to live within the rules and to make a contribution to the community by her behavior in prison. Her adjustment in prison is, in my experience and in my opinion, remarkable. In my professional opinion there is little or no risk that she will harm the community, rather she will be continue to be a productive, law-abiding member of the community and will remain at liberty without violating the rules of parole.

Id.

The Parole Board also received a letter recommending parole for Ms. Hollaway Africa on behalf of Philadelphia District Attorney's Office, the office responsible for the prosecution and conviction of Petitioner and her co-defendants. Written on behalf of the Philadelphia District Attorney by his First Assistant, former Philadelphia Court of Common Pleas Judge Carolyn Engel Temin, the letter reads in full:

On behalf of District Attorney Lawrence Krasner, I write to inform you and the Board that I recommend that Ms. Janet Hollaway Africa be paroled. Ms. Hollaway Africa has been in custody for 39 years and has not had a single misconduct since 1998. Her Unit Manager, Carol DeWitt, described her as an "exemplary" prisoner. Her prison record shows that she has made use of her time in custody by completing 150 hours of vocational training, she received her GED and she has completed a course in violence prevention. I have also reviewed the expert report of Professor Martin Horn, who is confident that Ms. [Hollaway] Africa has been rehabilitated. Ms. Hollaway has expressed remorse about the loss of life that occurred because of the MOVE stand off in 1978. She is now 67 years old. In short, I am confident that she will not pose a threat to the Philadelphia community to which she wishes to return.

While Ms. Hollaway Africa's crimes were very serious, her continued incarceration does not make our city safer.

Ex. 4, District Attorney of Philadelphia Letter to Parole Chairman.

With the support of the DOC, the Philadelphia District Attorney's Office, Corrections expert Martin Horn, continued compliance with all recommendations of the Parole Board, a viable home plan and a robust support system in place, Ms. Hollaway Africa was interviewed by Parole Board member Mark Koch, former state president of the Fraternal Order of Police, on May 10, 2018.

This time, Janet was again denied. The reasons given were:

YOUR MINIMIZATION/DENIAL OF THE NATURE AND CIRCUMSTANCES OF THE OFFENSE(S) COMMITTED.

YOUR LACK OF REMORSE FOR THE OFFENSE(S) COMMITTED.

THE NEGATIVE RECOMMENDATION MADE BY THE PROSECUTOR.

Ex. 5, Notice of Board Decision, Janet Hollaway [sic], May 24, 2018.

Again, Petitioner was advised that at her next review by the Parole Board they will consider whether she has maintained a favorable recommendation from the DOC and whether she has maintained a clear conduct record. *Id.* These purported justifications are belied by the record.

First, although the Parole Board alleged that Ms. Hollaway Africa minimized/denied “the nature and circumstances” of the offenses, DOC records and the content of Janet’s parole interview did not materially differ from the facts supporting her conviction, according to the federal court in its decision on a habeas corpus petition challenging the conviction. *Africa v. Digulielmo*, 2004 WL 2360419, at *1 (E.D. Pa. Oct. 19, 2004). Similarly, the assertion that she lacks remorse is contradicted by her most recent DOC psychological evaluation, prepared in anticipation of her parole hearing, and the content of her interview. Ex. 3, Psychological Report; Ex. 6, Declaration of Janet Hollaway Africa. Finally, the claim that the prosecuting attorney continued to have a negative recommendation in regard to her parole is clearly and unquestionably erroneous, as the Philadelphia District Attorney’s Office not only did not recommend against Janet being granted parole, but instead made an unequivocal recommendation *in favor* of her parole. Ex. 4, District Attorney of Philadelphia Letter to Parole Chairman. On May 10, 2018, the same date that Janet Hollaway Africa was interviewed for parole, two of her co-defendants (Janine Phillips Africa and Debbie Sims Africa) were also interviewed. While Ms. Hollaway Africa and Ms. Phillips Africa were denied parole, their co-defendant Debbie Sims Africa was granted parole on essentially an identical record. Ex. 7, Packet in Support of Parole for Debbie Sims Africa.

On June 29, 2018, counsel for Ms. Hollaway Africa wrote to the Parole Board stating that the listed justifications for denial were contradicted by the record and requested that the Board

reconsider its decision and grant parole to Ms. Hollaway Africa. Ex. 8, Letter from Counsel. In the letter, counsel requested that the Board respond within thirty days. More than three months have passed without any response.

Ms. Hollaway Africa filed this habeas petition with this Court on October 1, 2018

III. Jurisdiction and Venue

This Court has jurisdiction over this petition pursuant to 28 U.S.C. §§ 1331, 2241, 2254. Pursuant to 28 U.S.C. § 2241(d), an application for a writ of habeas corpus may be filed in the “district court for the district within which the State court was held which convicted and sentenced” the petitioner. Ms. Hollaway Africa is raising a constitutional challenge to parole denial, for which there is no available state court remedy. Therefore, she is not required to exhaust state court remedies before seeking relief from the federal court. See *Defoy v. McCullough*, 393 F.3d 439, 445 (3d Cir. 2005); *Barnes v. Wenerowicz* 280 F.R.D. 206, 216-217 (E.D. Pa. 2012).

IV. Argument

Denial of Parole for Janet Hollaway Africa was Arbitrary, Unsupported by Evidence, and Contrary to Public Interest

i. Legal Standard

The Pennsylvania Board of Probation and Parole committed a substantive due process violation by denying parole to Janet Hollaway Africa. “The core concept of due process is protection against arbitrary government action.” *Evans v. Sec’y Pa. Dep’t of Corr.*, 645 F.3d 650, 658 (3d Cir.2011) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998)). The right to substantive due process “limits what government may do regardless of the fairness of procedures that it employs.” *Boyanowski v. Capital Area Intermediate Unit*, 215 F.3d 396, 399 (3d

Cir.2000); accord *Evans*, 645 F.3d at 659; *Newman v. Beard*, 617 F.3d 775, 782 (3d Cir.2010).

“[T]he exercise of power without any reasonable justification in the service of a legitimate governmental objective” violates substantive due process. *Lewis*, 523 U.S. at 846.

“[W]hen a State adopts a parole system that applies general standards of eligibility, prisoners justifiably expect that parole will be granted fairly and according to law whenever those standards are met.” *Greenholtz v. Inmates of the Nebraska Penal and Corr. Complex*, 442 U.S. 1, 19 (1979) (Powell, J., concurring in part and dissenting in part). Thus, parole eligible prisoners “have a liberty interest flowing directly from the due process clause in not being denied parole for arbitrary or constitutionally impermissible reasons.” *Block v. Potter*, 631 F.2d 233, 236 (3d Cir. 1980). Executive action, such as a denial of parole, violates substantive due process “only when ‘it can be properly characterized as arbitrary, or conscience shocking, in a constitutional sense.’” *Lewis*, 523 U.S. at 847. A federal habeas court may grant relief on a substantive due process claim predicated upon a denial of parole “if there is [no] basis for the challenged decision.” *Barnes v. Wenerowicz*, 280 F.R.D. 206, 218 (E.D. Pa. 2012) (quoting *Hunterson v. DiSabato*, 308 F.3d 236, 246 (3d Cir. 2002)). While this Court must “remain mindful of the Board’s expertise in this area,” that is so only to the extent that “its decision is based on the evidence.” *Barnes*, 280 F.R.D. at 219. “When the Parole Board bases its decision on factors that bear no rational relationship to rehabilitation or deterrence, it transgresses the legitimate bounds of its discretion.” *Block*, 631 F.2d at 237. Reliance on “decades-old, unchanging factors” and non-specific assertions that parole applicants showed a “lack of remorse” have been recognized as arbitrary bases for parole denials by this Court. *Barnes*, 280 F.R.D. at 220.

ii. Ms. Hollaway Africa's Record of Rehabilitation and Exemplary Conduct Compels That She Be Granted Parole Grant Under the Governing Statutory Criteria

Applying the statutory scheme to the record of Ms. Hollaway Africa demonstrates that she should be granted parole. When it appears that the Commonwealth will not “be injured by the inmate’s parole” and that parole is in the interest of the parole applicant then the Parole Board is authorized to grant parole. 61 Pa.C.S. § 6137(a)(1). The record before the Parole Board was overwhelming in support of granting Ms. Hollaway Africa parole. Petitioner has been misconduct free for 20 years, only had one minor misconduct in 32 years, maintained the recommendation for parole from the DOC since 2008, and during her last appearance before the Board garnered the emphatic support of corrections expert Martin Horn and Philadelphia District Attorney Lawrence Krasner. To deny parole in the face of such a record, and to do so without articulating *any* plausible basis for how the Commonwealth would be injured, constitutes an unconstitutional “exercise of power without any reasonable justification in the service of a legitimate governmental objective.” *Lewis*, 523 U.S. at 846.

“[R]eintegrating offenders into society and deterring future criminal conduct” are the intended “purpose and policies underlying the parole system.” *Block*, 631 F.2d at 237 (citing *Greenholtz*, 442 U.S. at 8; *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972)). That Ms. Hollaway Africa has lived in the high-stress, often volatile and unpredictable prison setting for 40 years without committing another criminal offense during that time, and that she has not even received a misconduct for the slightest rule infraction for the last two decades are the strongest and most meaningful indicators of her ability to successfully reintegrate into society without engaging in criminal conduct. This record led Martin Horn to conclude that “I do not believe her disciplinary record is indicative of any future threat to the safety of the community.” Ex. 1, Parole Packet, Ex.

B, Horn Report. Emphasizing this point, Horn noted that Ms. Hollaway Africa had “demonstrated a capacity to live within the rules and to make a contribution to the community”; that her adjustment in prison has been “remarkable”; that she presents “little or no risk” of harming the community, but instead will “continue to be a productive, law-abiding member of the community and remain at liberty without violating the rules of parole.” *Id.*

Citing her disciplinary record, the opinion of Martin Horn, the support letter from her Unit Manager, and the extensive vocational, educational, and rehabilitative programming she has completed, Philadelphia District Attorney’s Office stated that it is “confident that she will not pose a threat to the Philadelphia community to which she wishes to return,” and that “her continued incarceration does not make our city safer.” Ex. 4, District Attorney Letter to Parole Chairman.

Mr. Horn and District Attorney Krasner’s recommendations support the long-standing recommendation Ms. Hollaway Africa had consistently received from the DOC, which as an agency is tasked with holding her in custody and supervising her daily routine and conduct in prison for 40 years. Since 2008, Ms. Hollaway Africa has appeared before the Parole Board on 6 occasions, and each time she has had the recommendation of the DOC. Ex. 6, Dec. of Hollaway Africa. Additionally, this year the DOC psychological report prepared in advance of her parole hearing found that Ms. Hollaway Africa possessed “victim empathy” and was “an excellent candidate for parole.” Ex. 3, Psychological Report.

As noted by Justice Powell one year after the events that ultimately led to Petitioner’s conviction in this case, “[W]hen a State adopts a parole system that applies general standards of eligibility, prisoners justifiably expect that parole will be granted fairly and according to law whenever those standards are met.” *Greenholtz*, 442 U.S. at 19. This has not been the case with

Ms. Hollaway Africa, who has complied with all the recommendations of the Parole Board for the past decade, “demonstrated a capacity to live within the rules and to make a contribution to the community” for decades, and obtained recommendations from the DOC, a leading national correctional expert, the prosecuting attorney’s office, and numerous DOC staff, formerly incarcerated people she has mentored, and members of her family and community. Ex. 1, Parole Packet, Ex. A, Letters In Support of Parole. Petitioner’s record of demonstrated rehabilitation and law-abiding conduct has been ongoing for such a remarkable duration as to constitute *ipso facto* evidence requiring a grant of parole pursuant to the Parole Board’s statutory criteria for effectuating the “purpose and policies of the parole system.” *Block*, 631 F.2d at 237.

In Ms. Hollaway Africa’s case, the Board made a decision based “on factors that bear no rational relationship to rehabilitation or deterrence,” as Petitioner has a record far above and beyond what is necessary to demonstrate her ability and willingness to abide by the law. Thus, the Board “transgress[ed] the legitimate bounds of its discretion” and its decision must be reversed. *Block*, 631 F.2d at 237.

Further, perceived “minimization” of one’s role in the conduct giving rise to the criminal conviction, lack of remorse, or the negative recommendation of the prosecuting attorney are not statutorily sufficient reasons for denying parole. Instead, only factors that demonstrate an “appear[ance] that the interests of the Commonwealth will be injured by the inmate’s parole” are lawful statutory grounds for denying parole. 61 Pa.C.S. § 6137(a)(1).

iii. Parole Board’s Purported Bases for Denial Are Erroneous and Lack Record Support

The Parole Board’s denial not only failed to give proper weight to Janet’s exemplary record, but relied on reasons that were either lacking in record support or were demonstrably false.

This Court is only bound to defer to the Parole Board to the extent that “its decision is based on the evidence.” *Barnes*, 280 F.R.D. at 219. The Parole Board cannot fabricate grounds for denial lacking in record support, as it has manifestly done here. The Parole Board’s putative bases for denying Ms. Hollaway Africa parole do not withstand scrutiny. One reason, that she received a negative recommendation from the prosecuting attorney, is an inexcusable misrepresentation that undermines the credibility of the entire proceeding. The other two reasons are boilerplate allegations that are directly contradicted by the DOC Psychological Report as well as the attached Declaration of Janet Hollaway Africa concerning her parole interview. *See* Ex. 6, Dec. of Hollaway Africa

First, it belies credulity that the Parole Board was not aware that the District Attorney for Philadelphia County had determined that Janet “will not pose a threat to the Philadelphia community to which she wishes to return” and that “her continued incarceration does not make our city safer.” Ex. 4, District Attorney Letter to Parole Chairman. Yet, incredibly, the Parole Board denied her parole based on flagrantly erroneous information, claiming that the prosecuting attorney opposed her parole. Ex. 5, Notice of Board Decision, Janet Hollaway [sic], May 24, 2018. Counsel for Petitioner requested that the Parole Board correct the matter and reconsider the application for parole in light of the impermissible use of an erroneous basis for denial. Ex. 8, Letter from Counsel. The Parole Board has ignored this request. The Third Circuit has held that denying parole on the basis of “an inaccurate factual predicate” is impermissible. *Gambino v. Morris*, 134 F.3d 156, 162 (3d Cir. 1998) (factual error an “invalid basis” for parole denial); *Campbell v. U.S. Parole Commission*, 704 F.2d 106, 109 (3d Cir. 1983) (Parole “Commission may not base its judgment as to parole on an inaccurate factual predicate.”).

Second, the assertion that Petitioner minimized and/or denied the nature and the circumstances of the offense(s) [sic] committed is the same boilerplate assertion that has been copied verbatim on each of Ms. Hollaway Africa's previous parole denials. Not once was Ms. Hollaway Africa informed which facts in question she minimized or denied, whether these secret facts pertained to the "nature" or the "circumstances" of the offense(s), and how these minimized and/or denied facts render her parole – after 40 years without *any* instance of violence or criminality on her DOC record, including 20 years without violating any prison rules – injurious to the interests of the Commonwealth.

The Parole Board did have access to the DOC Psychological Report, wherein Ms. Hollaway Africa reportedly indicated she did not have a weapon on the day in question and in fact received no weapons charges. Ex. 3, Psychological Report. She also indicated she was in the basement when the police officer was shot. *Id.* This is corroborative of what the Eastern District of Pennsylvania Federal Court found in 2004: "The trial court did not cite any evidence which indicated that the women brandished or handled firearms on August 8, 1978. The trial court also did not seriously consider whether any of the women actually shot at any police officer or fireman." *Africa*, 2004 WL 2360419, *15. Further, as Ms. Hollaway Africa indicates in the attached Declaration, she informed Parole Board interviewer Mark Koch that she regrets not leaving the home when ordered to by the police, and now recognizes that if she had done that the incident would not have escalated. Ex. 6, Declaration of Janet Hollaway Africa. It is not clear what information the Parole Board has been demanding that Ms. Hollaway Africa admit or acknowledge for the past decade. Such a vague, boilerplate ground for parole denial, lacking as it is in any specifics or substance whatsoever, is wholly insufficient for determining that granting parole to Janet Hollaway Africa would present any type of risk or injure the interests of the

Commonwealth in the least bit when viewed in light of the totality of the record before this Court.

Finally, Ms. Hollaway Africa has repeatedly expressed remorse for the loss of life that occurred on August 8, 1978. As indicated in the DOC Psychological Report, “Victim empathy seems to be present.” Ex. 7, Psychological Report. She told the Parole Board interviewers the exact same thing: Ex. 6, Declaration of Janet Hollaway Africa.

In sum, not one of the purported bases for the Parole Board’s decision stands up to scrutiny. As there remains “[no] basis for the challenged decision,” *Barnes*, 280 F.R.D. at 218, it “can be properly characterized as arbitrary, or conscience shocking, in a constitutional sense.” *Lewis*, 523 U.S. at 847.

iv. Grant of Parole to Debbie Sims Africa Underscores Arbitrary Nature of Parole Denial to Identically-Situated Petitioner

“Assessment of substantive due process claims is necessarily context-specific.” *Barnes*, 280 F.R.D. at 218 (citing *Lewis* 523 U.S. at 85-51; *Evans*, 645 F.3d at 660). This is a rare instance where the context of Petitioner’s parole application involves three essentially identical co-defendants seeking parole and receiving inexplicably disparate treatment. Janet, Janine, and Debbie Africa were arrested at the same incident, convicted of the same charges, on the basis of nearly identical facts and all received identical sentences. The three women spent their incarceration in the same prisons with strikingly similar institutional adjustment, have all been misconduct free for more than 20 years, and received the recommendations of the DOC, Martin Horn, and District Attorney Krasner. Ex. 7 Debbie Sims Africa Parole Packet. Yet, underscoring the arbitrariness of Janet and Janine’s parole denial, Debbie Sims Africa was granted parole based on a record that was not qualitatively different from her co-defendants.

Even in regard to the Parole Board's claims regarding Ms. Hollaway Africa's attitude about the "nature and circumstances of the offense(s)" and whether she was sufficiently remorseful, there is no meaningful distinction for the purposes of parole between Janet Hollaway Africa and Debbie Sims Africa – except that one was granted parole, the other denied. Ms. Hollaway Africa's assertions that she 1) did not handle a weapon, 2) was in the basement of the house when the officer was shot, 3) regrets not leaving the house when initially ordered to do so by the police, and 4) that she feels sincere remorse for the loss of life that occurred are essentially identical to the statements of her co-defendant Debbie Sims Africa during the same DOC psychological evaluation and the subsequent Parole Board interview in May 2018. Ex. 9, Declaration of Debbie Sims Africa.

The Parole Board's treatment of the prosecuting attorney's letters also demonstrates arbitrary behavior that amounts to a substantive due process violation. The letters from District Attorney Lawrence Krasner to the Parole Board regarding Ms. Sims Africa and Ms. Hollaway Africa included remarkably similar language and were unequivocally positive recommendations for parole for both women. Yet, the Parole Board referenced the "negative recommendation made by the prosecuting attorney" as a justification for Ms. Hollaway Africa's parole denial, while citing the "positive recommendation made by the prosecuting attorney" as a reason to grant parole to Ms. Sims Africa. Ex. 10, Notice of Board Decision, Debbie Sims Africa, June 13, 2018. Here, the Parole Board reviewed two letters that were nearly indistinguishable in substance, and came to contradictory assessments as to whether they were "positive" or "negative." These conflicting results based on virtually identical evidence demonstrate a striking lack of consistency that exemplifies the Parole Board's arbitrary exercise of its discretion.

V. Conclusion

In conclusion, the Pennsylvania Board of Probation and Parole has violated the substantive due process rights of Janet Hollaway Africa by denying her parole contrary to the statutory criteria, without any rational basis to rehabilitation, and relying on factually incorrect information. This parole denial is arbitrary, capricious and shocking to the conscience. Janet Hollaway Africa therefore respectfully requests that this Court grant her petition for a writ of habeas corpus, vacate the May 2018 decision of the Parole Board and order the Commonwealth of Pennsylvania to release her from custody.

Date: October 1, 2018

Respectfully Submitted,

/s/ Bret Grote
Bret Grote
ABOLITIONIST LAW CENTER
P.O. Box 8654
Pittsburgh, PA 15221

/s/ Brad Thomson
Brad Thomson
PEOPLE'S LAW OFFICE
1180 N. Milwaukee Ave.
Chicago, IL 60642
(773) 235-0070
*Pro Hac Vice**

*Pursuant to Motion Submitted
Herewith