

MEDICAL PAROLE-RELATED PETITIONS IN U.S. COURTS: SUPPORT FOR REFORMING COMPASSIONATE RELEASE

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Compassionate release procedures typically allow prisoners to seek early release because of serious terminal, non-terminal, and/or age-related health issues.¹ In addition to a federal procedure,² nearly

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1. See generally Sarah L. Cooper, *State Compassionate Release Approaches in the USA: A Blueprint for Discussion* (unpublished, on file with author). Note this report provides a provisional analysis of a 2017-2018 study—undertaken by researchers at Birmingham City University (supported by the Arizona Justice Project and Sandra Day O'Connor College of Law's Post-conviction Clinic) and funded by a Leverhulme Trust and British Academy Small Research Grant—to identify and unpack compassionate release procedures across the United States. It aimed to learn from, and build on, the methodological approaches, findings, and recommendations of existing literature. The report acts as a foundation from which specific issues—such as those in this Article—can be further examined.

every U.S. state has at least one compassionate release procedure.³ Across U.S. states, parole emerges as the most common method of compassionate release,⁴ often labeled “medical parole.”⁵ Medical parole procedures can vary in form. Some expressly exclude categories of prisoners based on their conviction type;⁶ others determine eligibility solely on age.⁷ Some include terminal and non-terminal illnesses as eligible conditions,⁸ whereas others apply solely to terminally ill prisoners with or without a defined life expectancy.⁹ Third parties (such as relatives and lawyers) are expressly allowed to petition on behalf of prisoners in some procedures,¹⁰ and some procedures include express time-frames to guide petitioners through

2. 18 U.S.C. § 3582(c)(1)(A)(i)(ii). Federal prisoners may apply for compassionate release (also referred to as a “reduction in sentence”) in two instances. First, they may apply if they have “extraordinary and compelling reasons,” which can relate to medical condition(s), age, family circumstances, or other reasons. Or, second, they may apply if they are aged seventy or above, have served thirty years in prison, and the Director of the Bureau of Prisons (“BOP”) determines s/he is not a danger to others. Following a process involving federal corrections and the BOP, the prisoner’s federal sentencing court (directed by U.S. Sentencing Commission guidelines) makes a final decision. *See* U.S. DEP’T OF JUST., No. 5050.50 COMPASSIONATE RELEASE/REDUCTION IN SENTENCE: PROCEDURES FOR IMPLEMENTATION OF 18 U.S.C. §§ 3582 AND 4205(G) (2019).

3. *See generally* MARY PRICE, EVERYWHERE AND NOWHERE: COMPASSIONATE RELEASE IN THE STATES (2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>; *Everywhere and Nowhere: Compassionate Release in the States, State Memos*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/> (last visited Dec. 1, 2020); Cooper, *supra* note 1 at 18-19.

4. Cooper, *supra* note 1, at 44; *see also* Nancy R. Gartner & Rolando V. del Carmen, *Releasing the Ailing and Aging: A Comprehensive Analysis of Medical Parole Legislation in the United States*, 52 CRIM. LAW BULL. 1, 1 (2016) (“Thirty-five states and the District of Columbia currently have a form of medical parole.”).

5. Cooper, *supra* note 1, at 22.

6. *See, e.g.*, LA. STAT. ANN. § 15:574.20(B)(2) (West 2018) (“Medical parole shall not be available to any offender serving a sentence for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) or an offender who is awaiting execution.”).

7. *See, e.g.*, GA. CONST. art. IV, § II, para. 2 (providing the Georgia State Board of Pardons and Paroles has the authority to “parole any person who is age 62 or older”).

8. *See, e.g.*, ARK. CODE ANN. § 12-29-404(a)(1)-(2) (West 2019) (stating that Arkansas’s Medical Parole procedure applies to both prisoners that are “[p]ermanently incapacitated” or “terminally ill.”).

9. *See, e.g.*, CONN. GEN. STAT. §§ 54-131b (West 2012), 54-131c (West 1989). Connecticut’s Medical Parole procedure applies exclusively to terminally ill prisoners, who are defined as having a terminal condition, disease, or syndrome that results in the prisoner being so debilitated or incapacitated as to be physically incapable of presenting a danger to society. A terminal condition, disease, or syndrome “includes, but is not limited to, any prognosis by a licensed physician that the inmate has six months or less to live.” *Id.*

10. *See* CONN. GEN. STAT. § 54-131e (West 2004) (providing that a “request for a medical diagnosis in order to determine eligibility for medical parole” includes the “inmate’s spouse, parent, guardian, grandparent, aunt or uncle, sibling, child over the age of eighteen years, or attorney”).

relevant processes.¹¹ Generally, decision-makers (i.e., parole board members) must evaluate medical evidence, determine a prisoner's risk to public safety, and—if appropriate—set release conditions.¹²

Numerous studies have investigated compassionate release procedures.¹³ These studies have identified various limitations in practices, including the absence of both comprehensive reporting and tracking systems and internal appeals processes¹⁴—findings that specifically motivate this paper. These absences contribute to there being limited knowledge about what issues petitioners would raise on appeal, how competent authorities would resolve those issues, and whether the approaches taken by either party would map to existing concerns about compassionate release. Thus, it is not apparent what medical parole-related issues petitioners or appellate authorities would deem fair or unfair. This lack of knowledge frustrates evaluation of existing practices and the implementation of evidence-informed reform, including recommendations made for model medical parole procedures.

One way to address this dearth of knowledge is to examine medical parole-related petitions in U.S. courts. This paper does just that. To set the scene, Part I summarizes the interplay of prisoner health(care), compassionate release, and the parole system. Part II outlines the rationale and design of our study, which sought to investigate: (1) what issues petitioners raise in medical parole-related petitions to U.S. courts; (2) how courts resolve such petitions; and (3) whether the approaches of petitioners and courts highlight existing concerns about compassionate release. Part III reports our findings. In sum, case law reveals that petitioners have raised issues concerning frustrated access to the medical parole process, the denial of medical parole, irregularities in medical parole processes, improper application of eligibility and exclusion criteria, and the provision of inadequate medical care in prison. Judges generally dismiss appeals, relying on the high standards of proof required to prove eligibility or improper parole-board decision-making; the discretionary nature of parole; standards of review that are highly deferential to parole

11. See, e.g., CAL. PENAL CODE § 3550 (West 2017) (including time limits for relevant actions).

12. See generally FAMILIES AGAINST MANDATORY MINIMUMS, NEW YORK (2018), https://famm.org/wp-content/uploads/New-York_Final.pdf (providing a useful example across all these areas, namely evaluation of medical evidence, risk to society, and attachment of release conditions).

13. See, e.g., PRICE, *supra* note 3; Marjorie P. Russell, *Too Little, Too Late, Too Slow: Compassionate Release of Terminally Ill Prisoners—Is the Cure Worse Than the Disease?*, 3 WIDENER J. PUB. L. 799 (1994); Gartner & del Carmen, *supra* note 4; Cooper, *supra* note 1.

14. See generally *infra* notes 52-63.

authorities; and a lack of properly legally postured claims. Case law also reveals a propensity for prisoners to act pro se. Overall, case law can be mapped to four thematic areas where concerns about compassionate release practices already exist, namely (1) eligibility and exclusions, (2) releasing authorities, (3) processes, and (4) support for petitioners. The authors conclude these findings further the call for reforming compassionate release to better serve both the interests of wider society and the United States' large, ageing, and medically compromised prison population.

I. PRISONER HEALTH(CARE), COMPASSIONATE RELEASE, AND PAROLE

America has a large and ageing prison population, imprisoning approximately 2.3 million adults¹⁵ with one third of prisoners expected to be aged fifty-five years or older by 2030.¹⁶ High incarceration rates (and the increased medical needs of ageing prisoners) have drawn greater attention¹⁷ to the interplays of incarceration and health(care). Following *Estelle v. Gamble*,¹⁸ federal law provides that—because a prisoner must rely on the authorities for treatment—the state has an “obligation to provide [adequate] medical care for those whom it is punishing by incarceration.”¹⁹ A “deliberate indifference”²⁰ to a prisoner’s serious illness or injury violates the Eighth Amendment’s prohibition against cruel and unusual punishment, although inadvertent or negligent failures to provide adequate care do not.²¹ There has been particular focus on how states deliver adequate healthcare to large prison populations, which are known to suffer from higher rates of disease than the general population.²² Ultimately, corrections facilities are required to engage in the complicated and expensive task of “medical management”²³ of increasing numbers of

15. WENDY SAWYER & PETER WAGNER, MASS INCARCERATION: THE WHOLE PIE 2020 (2020), <https://www.prisonpolicy.org/reports/pie2020.html> (“The American criminal justice system holds almost 2.3 million people”) (last visited Apr. 7, 2020).

16. AM. CIV. LIBERTIES UNION, AT AMERICA’S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY 5 (2012).

17. NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., THE GROWTH OF INCARCERATION IN THE UNITED STATES 203 (2014).

18. 429 U.S. 97 (1976).

19. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

20. *Estelle*, 429 U.S. at 104.

21. *Id.* at 105-06.

22. DAVID CLOUD, ON LIFE SUPPORT: PUBLIC HEALTH IN THE AGE OF MASS INCARCERATION 5 (2014).

23. Jonathan Simon, *The Return of the Medical Model: Disease and the Meaning of Imprisonment from John Howard to Brown v. Plata*, 48 HARV. L. REV. 217, 248 (2013).

prisoners with complex medical needs who need compassion.²⁴ However, despite corrections institutions serving an important role in promoting prisoner health(care),²⁵ they “too often serve as ill-equipped treatment providers of last resort for medically underserved, marginalized people.”²⁶

This situation urges stakeholders to consider what circumstances, if any, justify early release on health grounds. Despite the many distractions²⁷ that accompany this question, compassionate release is a staple of the U.S. criminal justice system. The federal government²⁸ and all but one state clearly provide for compassionate release,²⁹ and there are various examples of political will to broaden eligibility. For instance, the First Step Act of 2018³⁰ broadened compassionate release for federal prisoners, allowing applications in a relatively wide set of circumstances.³¹ The bill passed the House of Representatives (358–36)³² and the Senate (87–12)³³ by a landslide. States have seen efforts to widen compassionate release procedures too, including through establishing medical parole.³⁴

24. Robert B. Greifinger, *Is it Politic to Limit Our Compassion?*, 27 J.L. MED. & ETHICS 234, 236 (1999) (noting terminally ill prisoners are in particular need of compassion).

25. NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., *supra* note 17, at 204.

26. CLOUD, *supra* note 22, at 5.

27. Greifinger, *supra* note 24, at 234.

28. 18 U.S.C. § 3582(c)(1)(A)(i)-(ii).

29. PRICE, *supra* note 3, at 12 (“We found that 49 states and the District of Columbia provide one or more forms of compassionate release.”) Iowa is seemingly the only state absent a clearly identifiable procedure. See FAMILIES AGAINST MANDATORY MINIMUMS, IOWA (2018), https://famm.org/wp-content/uploads/Iowa_Final.pdf. Note, however, as the memo indicates, the media reports there has been a compassionate release case in Iowa, but there are no identifiable procedures.

30. 18 U.S.C. § 3631 (2018).

31. Nationally, the First Step Act, signed into federal law in late 2018, allows prisoners to circumvent a Bureau of Prisons denial of eligibility for compassionate release by appealing directly to the sentencing court. In considering a motion for a prisoner's release, the federal court may grant the relevant motion if (1) the prisoner meets specific age and term-length criteria, or (2) extraordinary and compelling reasons warrant release. Determinations of extraordinary and compelling must align with applicable policy statements issued by the U. S. Sentencing Commission. Because of this stipulation, federal courts may consider a multitude of factors including a prisoner's medical condition, age, and family circumstances. See 18 U.S.C. § 3631.

32. Final Vote Results for Roll Call 448, 115th Con., 2nd Sess., <http://clerk.house.gov/evs/2018/roll448.xml>.

33. Roll Call Vote 271, 115th Con., 2nd Sess., https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=2&vote=00271.

34. For example, there have been unsuccessful but sustained efforts to legislate for a broader compassionate release procedure in Arizona. Between 1991 and 2015, eight bills seeking to establish a medical parole procedure were introduced in the Arizona House of Representatives. These bills—in short—aimed to allow prisoners with an “incapacitating physical condition, disease or syndrome” to apply to the BOEC for release if within one year of release, parole eligibility, or (if neither of the latter two) death. See H.B. 2334, 40th Leg., 1st Reg. Sess. (Ariz. 1991); H.B. 2678, 48th Leg., 1st Reg. Sess.

Although most states have restricted or eliminated parole,³⁵ the parole system emerges as the most common method of compassionate release across U.S. states,³⁶ with specific procedures often labelled “medical parole.”³⁷ Described as “an act of grace: the dispensation of mercy by the government to an individual prisoner deemed worthy,”³⁸ and with roots in rehabilitative justice,³⁹ parole fits comfortably with the concept of compassion. In the United States, parole takes two forms: mandatory parole and discretionary parole.⁴⁰ Medical parole is generally an example of the latter, which gives a parole board—a group of ten or fewer individuals, usually political appointees⁴¹—discretion in deciding whether to release the prisoner and what post-release restrictions to impose.⁴² Experienced in reviewing evidence, evaluating cases, balancing equities, drawing conclusions, and imposing conditions, parole boards are viewed as competent authorities to make compassionate release decisions,⁴³ although broad-brush and

(Ariz. 2007); H.B. 2189, 49th Leg., 2nd Reg. Sess. (Ariz. 2009); H.B. 2688, 49th Leg., 2nd Reg. Sess. (Ariz. 2010); H.B. 2380, 50th Leg. Sess., 1st Reg. Sess. (Ariz. 2011); H.B. 2531, 50th Leg. Sess., 2nd Reg. Sess. (Ariz. 2012); H.B. 2374, 51st Leg., 2nd Reg. Sess. (Ariz. 2014); H.B. 2355, 52nd Leg., 1st Reg. Sess. (Ariz. 2015). California is another example. In 2014, a federal court ordered California to expand its medical parole program as part of the effort to reduce prison crowding. See CAL. DEP’T OF CORRS. & REHABILITATION, *Medical Parole Hearings*, <https://www.cdcr.ca.gov/bph/mpb-overview/> (last visited Apr. 7, 2020).

35. JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 65 (2003).

36. Cooper, *supra* note 1, at 44.; see also Gartner & del Carmen, *supra* note 4, at 1 (“Thirty-five states and the District of Columbia currently have a form of medical parole.”).

37. Cooper, *supra* note 1, at 22.

38. Daniel S. Medwed, *The Innocent Prisoner’s Dilemma: Consequences of Failing to Admit Guilt at Parole Hearings*, 93 IOWA L. REV. 491, 493 (2008); see also Mary West-Smith et al., *Denial of Parole: An Inmate Perspective*, 64 FED. PROB. J. 3, 3 (2000); Escoe v. Zerbst, 295 U.S. 490, 492 (1935) (“Probation or suspension of sentence comes as an act of grace to one convicted of a crime . . .”).

39. PETERSILIA, *supra* note 35, at 55. Parole is considered one part of a broader nineteenth-century penal reform trend away from punishment and toward rehabilitation.

40. Daniel M. Fetsco, *Early Release from Prison in Wyoming: An Overview of Parole in Wyoming and Elsewhere and an Examination of Current and Future Trends*, 11 WYO. L. REV. 99, 110 (2011). States using mandatory parole simply rely on a statutory formula specifying a percentage of the inmate’s sentence plus credit for good time served. If the conditions are met, the inmate is released and assigned some form of parole supervision for a specified period of time (typically the remainder of the original sentence). Discretionary parole, as its name suggests, gives a parole board discretion in deciding whether to release the inmate and what post-release restrictions to impose. See generally PETERSILIA, *supra* note 35, at 59-61.

41. PETERSILIA, *supra* note 35, at 61.

42. See Fetsco, *supra* note 40.

43. Russell, *supra* note 13, at 836.

idiosyncratic decision-making has been noted as a consequence of institutional strain.⁴⁴

Empowered to evaluate public safety and decide on early release, parole boards “occupy an influential, if little recognized, niche across the correctional landscape”⁴⁵ The use of parole to support implementation of administrative policies aimed at reducing prison overcrowding and violence demonstrates this.⁴⁶ Indeed, medical parole statutes arose as a means to reduce correctional costs,⁴⁷ with some procedures specifically established in the 1980s to address the significant number of prisoners with HIV/AIDS.⁴⁸ Notably, at the time of writing, there are calls to use compassionate release as a vehicle for alleviating pressures associated with the COVID-19 pandemic.⁴⁹

II. STUDY RATIONALE AND DESIGN

There is a growing research base about compassionate release,⁵⁰ including studies focused on identifying and analyzing existing procedures.⁵¹ These studies have raised various concerns about compas-

44. See generally West-Smith et al., *supra* note 38.

45. Edward E. Rhine et al., *The Future of Parole Release*, 46 CRIME & JUST. 279, 279 (2016).

46. PETERSILIA, *supra* note 35, at 62 (citing A. Keith Bottomley, *Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990s*, 12 CRIME & JUST. 319, 325 (1990)).

47. Gartner & del Carmen, *supra* note 4, at 2 (“To cope with tightening budgets while protecting public safety, medical parole statutes emerged as a potential means to reduce correctional costs.”).

48. *Id.* (citing John A. Beck, *Compassionate Release from New York State Prisons: Why Are So Few Getting Out?*, 27 J. OF L., MED. & ETHICS 216, 220 (1999)) (“Some of the first medical parole programs, located in New York and California, were set up in the mid-1980s to help state and local correctional facilities address the overwhelming number of inmates afflicted with HIV/AIDS.”); Editorial, *New York City Steps Up Program to Free Sick Inmates*, MIAMI HERALD, Nov. 9, 1987, at 13A.

49. See, e.g., Kevin Ring, *COVID-19 Gives Us an Urgent Argument for Compassionate Release*, THE HILL (Mar. 26, 2020), <https://thehill.com/opinion/criminal-justice/489442-covid-19-gives-us-an-urgent-argument-for-compassionate-release>; ABA Section of Civil Rights and Social Justice, *COVID-19 and the Compassionate Release of the Elderly, Infirm or High Risk*, YOUTUBE (Apr. 3, 2020), https://www.youtube.com/watch?v=tknZc4k_83Q&feature=b_title.

50. See Sarah L. Cooper, *A Case for Broadening Arizona’s Approach to Compassionate Release*, 13 L. J. SOC. JUST. 3, 9 (2020) (“There is much scholarship evaluating issues associated with compassionate release. This includes discussions around the broader relationships between incarceration and health(care); the intersection of compassion with politics and the purposes of punishment; international law standards for prisoners; health issues for specific populations (e.g., the elderly); terminal illness in the prison context; and the roles and competencies of corrections, healthcare professionals, and parole boards.”).

51. See, e.g., PRICE, *supra* note 3; Marjorie P. Russell, *Too Little, Too Late, Too Slow: Compassionate Release of Terminally Ill Prisoners—Is the Cure Worse Than the Disease?*, 3 WIDENER J. PUB. L. 799 (1994); Gartner & del Carmen, *supra* note 4; Cooper, *supra* note 1.

sionate release procedures, including a lack of appeal, reporting, and tracking systems; noting such absences can frustrate the evaluation of procedures. A 1994 study commented on a lack of the right to appeal⁵² in certain procedures and found only two states had some form of mandatory reporting requirements.⁵³ The study recommended the creation of “mechanisms by which data can be collected”⁵⁴ so that procedures can be subject to “[essential] review and evaluation.”⁵⁵ Similarly, a 2016 study suggested that, to support the undertaking of evaluation exercises, a model medical parole statute should “set reporting requirements for releasing authorities,”⁵⁶ including numbers of applications and reasons for decisions.⁵⁷ A 2018 study of all state procedures found “the majority of states do not provide prisoners denied compassionate release a means to appeal the denial.”⁵⁸ The study recommended, “the right to appeal should be guaranteed” and “[a]t best, a prisoner [should be able to] reapply after a set time.”⁵⁹ It also echoed calls for mandatory data collection after finding “[m]ore than half of the states do not track or collect any data on how many people apply for and receive compassionate release”⁶⁰ The study commented, “[k]nowing who asks for compassionate release, who is denied, and why and how those requests are decided is essential to improving outcomes”⁶¹ Such information will help shape “rational[] public policy”⁶² that aids “appropriate decisions as to medical releases into the community.”⁶³

52. Russell, *supra* note 13, at 824. (“Finally, clemency programs, even those targeted to compassionate release, may suffer from a lack of due process protections and appeal rights.”).

53. *Id.* at 832. (“Only Idaho and New York have provisions requiring that statistics be maintained and that annual reports be prepared on the program. Idaho requires reports to both of its Senate and House Judiciary Committees, including the names of released prisoners, their medical conditions, and their current status. New York’s law requires more complex case tracking.”).

54. *Id.* at 835.

55. *Id.*

56. Gartner & del Carmen, *supra* note 4, at 17.

57. *Id.* (“To facilitate the evaluation of medical parole programs, jurisdictions should set reporting requirements for releasing authorities. The statute should indicate what information the releasing authority is required to report. At a minimum, the reporting requirements should include the number of applications, referrals, and/or recommendations for the medical parole of inmates, the number of those petitions that are granted, and the number of medical parolees who are returned to custody and the reason for that return.”).

58. PRICE, *supra* note 3, at 19.

59. *Id.*

60. *Id.*

61. *Id.*

62. Greifinger, *supra* note 24, at 236.

63. *Id.*

With this in mind, strategies for investigating what petitioners and appellate authorities perceive as unfair in compassionate release procedures are required. One simple strategy is to examine an accessible and sizeable data set where such issues might be publicly aired, namely medical parole-related petitions in U.S. courts.⁶⁴ Applying standard interrogation techniques on Westlaw U.S. for references to “medical parole” in state and federal cases, the authors generated a case law data set comprised of thirty-seven cases.⁶⁵ These cases were analyzed within the context of the following research questions:

1. What issues do petitioners raise in medical parole-related petitions to U.S. courts?
2. How do courts resolve such petitions?
3. Do the approaches of petitioners and courts highlight existing concerns about compassionate release?

Part III reports the authors’ analysis of the data set.

III. RESEARCH FINDINGS

Each case was deconstructed by parties, court, citation (including year), claim(s), outcome(s), and reasoning. These details were then mapped against existing concerns about compassionate release. Subsection A reports on the first question, the types of issues raised by petitioners in medical parole-related petitions in U.S. courts. Subsection B merges the second and third questions, providing a commentary on the resolution of relevant petitions and how approaches of petitioners and judges map to existing concerns about compassionate release.

A. ISSUES RAISED IN MEDICAL PAROLE-RELATED PETITIONS

The data set shows a generally expected variation of claims and legal framing. Claims include concerns about frustrated access to the medical parole process; the denial of medical parole; irregularities in medical parole processes (generally and through the actions of individuals); improper application of eligibility and exclusion criteria; and inadequate medical care in prison.⁶⁶ Claims are framed as violations of the Eighth or Fourteenth Amendments of the U.S. Constitution, as breaches of state constitutions and laws, in furtherance of applications

64. Given it is the most common method of compassionate release, medical parole-related petitions were hypothesized to yield a sizable data set.

65. See Appendix for a full list of the cases. Note not all cases are described in this paper and that pro se categorizations are based on information available in the case report.

66. See *infra* Part III(B) for specific examples across the cases.

for habeas corpus, and as a form of injunctive relief.⁶⁷ This tapestry is, overall, unsurprising. Existing research acknowledges concerns about access to and the make-up of compassionate release processes;⁶⁸ the roles, competencies, and resources of relevant decision-makers and institutions;⁶⁹ burdensome eligibility and exclusion practices;⁷⁰ and the challenges of providing adequate medical care in prisons.⁷¹ Given that these issues naturally emerge within the context of imprisonment, framing them through reference to the Eighth Amendment and habeas corpus is unsurprising. The use of the Fourteenth Amendment as a vehicle is also predictable given the potential for the parole process to attract due process protections. Petitioners pursuing injunctive relief (i.e., a court order that medical parole be granted) is understandable in context too.

B. RESOLUTION OF PETITIONS AND MAPPING TO EXISTING CONCERNS ABOUT COMPASSIONATE RELEASE

The authors were able to map their analysis of the claims, outcomes, and reasoning involved in each case to four thematic areas of existing concern about compassionate release.⁷² This subsection reports on each theme.

1. *Eligibility and Exclusions*

Eligibility for compassionate release generally relates to serious terminal, non-terminal, and/or age-related health issues. However, many procedures exclude prisoners based on non-health related

67. *Id.*

68. *E.g.*, PRICE, *supra* note 3, at 13 (identifying “complex and time-consuming review processes” as a barrier to compassionate release).

69. *E.g.*, *id.* at 21 (recommending various forms of resource, training and support for agents and institutions); *see also* Rhine et al., *supra* note 45; Bryant S. Green, *As the Pendulum Swings: The Reformation of Compassionate Release to Accommodate Changing Perceptions of Corrections*, 46 U. TOL. L. REV. 123 (2014).

70. *E.g.*, PRICE, *supra* note 3, at 13 (identifying “strict or vague eligibility requirements and categorical exclusions” as barriers to compassionate release).

71. *See generally*, *e.g.*, CLOUD, *supra* note 22; NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., *supra* note 17; NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., HEALTH AND INCARCERATION - A WORKSHOP SUMMARY (2013).

72. Although, naturally, the themes and case categorizations can overlap. The authors made primary categorizations as appropriate in their view. *See* Appendix.

grounds, including offender categorization,⁷³ parole eligibility,⁷⁴ and minimum sentencing requirements.⁷⁵

The scope of exclusion categories has been challenged. In *Baker v. State*,⁷⁶ a challenge was made to the Alaska Special Medical Parole statute, which allowed certain “severely disabled”⁷⁷ prisoners to apply for early release.⁷⁸ The original 1995 statute excluded one group: prisoners who had been convicted of sexual abuse of a minor in the first, second, or third degree.⁷⁹ In 2003, the legislature broadened this to include other sexual assault offenses,⁸⁰ capturing Baker, who had committed an attempted sexual assault in 1984 (before the enactment of any form of special medical parole).⁸¹ Baker challenged the retrospective application of the broader exclusion to him, arguing it violated the ex post facto clause of the Alaska Constitution.⁸² Baker argued the exclusion was “so punitive in effect as to constitute [an additional] punishment.”⁸³ The court disagreed, finding that the exclusion “simply returned Baker to the position he was in at the time he committed his 1984 offense”⁸⁴ and that any challenge to the exclusion policy should be directed at the state legislature.⁸⁵

Categorical exclusions, like that in *Baker*, have been described as an obstacle to compassionate release,⁸⁶ yet a 2016 study identified them as typical, noting that there is “wide variation in the types of

73. See, e.g., CAL. PENAL CODE § 3055 (West 2017) (excluding inmates convicted of first-degree murder of a “peace officer”); N.J. STAT. ANN. § 30:4-123.51c (West 2018) (excluding inmates convicted of “violent offenses” like murder, manslaughter, and aggravated sexual assault).

74. See, e.g., CAL. PENAL CODE § 3055 (excluding inmates sentenced to life without the possibility of parole); KAN. STAT. ANN. §§ 22-3728 (West 2014) (excluding inmates sentenced to death or life without the possibility of parole).

75. See, e.g., COLO. REV. STAT. § 17-2-201 (West 2020) (setting 20-year and 10-year limits on eligibility for inmates convicted of Class 1 and Class 2 felonies, respectively); N.Y. EXEC. LAW § 259-r (McKinney 2015) (requiring inmates convicted of certain violent crimes to complete one-half of the sentence to become eligible for medical parole).

76. No. A-12661, 2017 WL 4570573 (Alaska Ct. App. Oct. 11, 2017).

77. *Baker v. State*, No. A-12661, 2017 WL 4570573, at *1 (Alaska Ct. App. Oct. 11, 2017).

78. *Baker*, No. A-12661, 2017 WL 4570573, at *1.

79. *Id.* Note, this exclusion contained one exception: if a prisoner convicted of sexual abuse of a minor under ALASKA STAT. § 11.41.434-438 had become a quadriplegic since the time of the offense or the parole or probation violation for which he was incarcerated, that person was eligible for special medical parole. *Id.*

80. *Id.* The expansion also removed any exception to the sexual abuse of a minor exclusion for quadriplegia. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at *2.

84. *Id.*

85. *Id.* at *3.

86. PRICE, *supra* note 3, at 13.

violent offenses that exclude an inmate from medical parole[.]"⁸⁷ Research urges exclusions be clearly explained⁸⁸ (such as a clear statement about whether they apply to convictions prior to the establishment of the procedure) and primarily based on a prisoner's present medical condition(s).⁸⁹ Families Against Mandatory Minimums ("FAMM") recommends "that all eligible prisoners are considered for compassionate release, notwithstanding their crime, sentence, or amount of time left to serve."⁹⁰

Procedures describe eligibility in different ways.⁹¹ Generally, however, relevant criteria tend to encompass elevated standards of proof.⁹² Courts have expressly referenced this. In *Davidson v. Maryland Parole Commission*,⁹³ for example, the petitioner sought injunctive relief mandating he be granted medical parole,⁹⁴ alleging he suffered from multiple sclerosis.⁹⁵ In rejecting the claim based on a lack of supporting evidence that the prisoner met the relevant eligibility criteria, namely to be "so debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society,"⁹⁶ the court observed "the standard is exceptionally high."⁹⁷

87. Gartner & del Carmen, *supra* note 4, at 6.

88. *Id.* at 14-15 ("It is equally important for statutes to state the reasons why an inmate is disqualified from consideration. The disqualification should be clear in the statute and references to disqualifying statutes, if any, should be included."); *see id.* at 15-16 (listing reasons for which inmates are exempt from consideration).

89. Russell, *supra* note 13, at 833 ("All terminally ill prisoners should be eligible for compassionate release. Once we are dealing with someone suffering from a terminal illness, penologic considerations are secondary. In light of current societal values addressing death with dignity, considerations of punishment, deterrence, and rehabilitation should no longer come into play. The seriousness of the crime is not deprecated if we permit the terminally ill to die outside the hostile confines of prison. This is certainly true when a predicate to release is a finding that the prisoner no longer poses a threat to society. Thus, no crimes or sentences should serve as a basis for exclusion, nor should minimum time served requirements be imposed.")

90. PRICE, *supra* note 3, at 21.

91. *See* Cooper, *supra* note 50 at 14. ("Eligibility for compassionate release generally relates to serious terminal, non-terminal, and/or age-related health issues. Non-terminal conditions are described varyingly, but typically require prisoners be subject to serious medical conditions/disabilities that significantly incapacitate them. Mental health is occasionally included. Age is referenced in various ways. Tens of procedures expressly reference "terminal" within eligibility criteria, with many including a temporal reference. These references range from that death must be 'imminent,' to that it must occur within 24 months.")

92. *Id.*

93. No. CIV.A. JFM-13-250, 2013 WL 1830097 (D. Md. Apr. 30, 2013).

94. *Davidson v. Maryland Parole Comm'n*, No. CIV.A. JFM-13-250, 2013 WL 1830097, at *1 (D. Md. Apr. 30, 2013).

95. *Davidson*, No. CIV.A. JFM-13-250, 2013 WL 1830097, at *2.

96. *Id.* at *5.

97. *Id.* at *4.

Further, there is evidence of releasing authorities applying criteria in an elevated way, particularly as it pertains to assessments concerning public safety. For example, in *In re Martinez*,⁹⁸ a quadriplegic inmate petitioned for habeas corpus, seeking review of a parole board decision to deny medical parole.⁹⁹ It was accepted Martinez met the criteria for permanent medical incapacitation, but the board relied on his history of disciplinary problems and commitment offenses to conclude he “remains a violent person who is capable of using others to carry out his threats, and that he would also be a public safety threat to those who attend him outside the prison walls.”¹⁰⁰ On review, the court sought to establish if there was some evidence¹⁰¹ to support the board’s position. It found there was not, noting “Martinez’s physical condition severely limits his ability to harm others.”¹⁰² The court granted Martinez’s parole, deferring to the board to set conditions.¹⁰³

*Jewell v. Superior Court of San Bernardino County*¹⁰⁴ provides another example. The parole board had approved Jewell for compassionate release, concluding he was terminally ill with fewer than six months to live and posed no risk to public safety.¹⁰⁵ The releasing authority—the trial court—rejected the approval, however, finding insufficient evidence of both Jewell’s life expectancy prognosis and lack of danger to public safety.¹⁰⁶ The court based the latter finding on the fact that his release plans had changed and provided possible access to alcohol.¹⁰⁷ The reviewing court noted Jewell had disproved his prognosis, but underscored there was no “dispute in the record that he is [clinically judged to be] terminally ill.”¹⁰⁸ The court also accepted Jewell habitually abused alcohol and other substances¹⁰⁹ at the time of his offenses, but it rejected that there was a reasonable possibility that his host would allow him to obtain alcohol and access a vehicle, or that he—in his weak and emaciated state—would elect to carry out such actions.¹¹⁰ To find otherwise, the reviewing court determined, would be to encourage “arbitrary, inconsistent decision-making”¹¹¹

98. 148 Cal. Rptr. 3d 657 (Cal. Ct. App. 2012).

99. *In re Martinez*, 148 Cal. Rptr. 3d 657, 659-60 (Cal. Ct. App. 2012).

100. *In re Martinez*, 148 Cal. Rptr. 3d at 663.

101. *Id.* at 658.

102. *Id.* at 673.

103. *Id.* at 679.

104. No. E065047, 2016 WL 1535879 (Cal. Ct. App. Apr. 14, 2016).

105. *Jewell v. Superior Court of San Bernardino Cty.*, No. E065047, 2016 WL 1535879, at *1 (Cal. Ct. App. Apr. 14, 2016).

106. *Jewell*, No. E065047, 2016 WL 1535879, at *1.

107. *Id.*

108. *Id.* at *3.

109. *Id.* at *4.

110. *Id.* at *5.

111. *Id.*

about risk and frustrate the intended reach of the compassionate release statute. The court ordered Jewell's release.¹¹²

The decisions in *Martinez* and *Jewell* lend support to the idea that eligibility criteria should not be unduly strict, cruel, or vague,¹¹³ and that the assessment of a prisoner's risk to public safety should be nuanced and evidence-informed, reflecting that ill health likely lessens that risk.¹¹⁴ Also, in navigating Jewell's survival beyond his original prognosis, the *Jewell* court evidenced understanding of the challenges associated with prognostication, showing alignment with concerns about over-relying on the accuracy of end-of-life predictions, including in the specific context of compassionate release.¹¹⁵ Approaching such predictions inflexibly can result in eligibility criteria being overly burdensome. Time can run out, for example. In *People v. McCarty*,¹¹⁶ McCarty had multiple sclerosis and was reported to be "paralyzed in all four extremities"¹¹⁷ requiring "total care."¹¹⁸ Medical parole was granted with the parties stipulating McCarty had an incurable disease, was expected to die within one year, and was physically incapacitated.¹¹⁹ The superior court, however, denied relief, concerned that it could not "be assured that he does not pose a threat to public safety"¹²⁰ and compassionate release would not allow for re-

112. *Id.*

113. PRICE, *supra* note 3, at 13-14 (reporting strict and vague requirements); *id.* at 21 (recommending to "[r]emove unduly strict, cruel, or otherwise unwarranted eligibility requirements").

114. *Id.* at 8 ("As prisoners age or experience declining health, their threat to public safety lessens, as do some of the justifications for continuing to hold them behind bars.").

115. Jalila Jefferson-Bullock, *Are You (Still) My Great and Worthy Opponent?: Compassionate Release of Terminally Ill Offenders*, 83 UMKC L. REV. 521, 559 (2015) (quoting Brie A. Williams et al., *Balancing Punishment and Compassion for Seriously Ill Prisoners*, 155 ANNALS INTERNAL MED. 2, 122-23 (2011)) ("Governmental entities, policy leaders, academics, and medical experts all agree that the compassionate release system is ill-constructed. According to medical professionals, compassionate release procedures need to be reformed because they are 'critically flawed' and because 'procedural barriers may . . . limit their rational application.' In their words, '[w]e argue that the medical eligibility criteria of many compassionate-release guidelines are clinically flawed because of their reliance on the inexact science of prognostication, and additional procedural barriers may further limit rational application. Given that early release is politically and socially charged and that eligibility is based largely on medical evidence, it is critical that such medical evaluation be based on the best possible scientific evidence and that the medical profession help minimize medically related procedural barriers.'").

116. No. A135608, 2013 WL 1278503 (Cal. Ct. App. Mar. 29, 2013).

117. *People v. McCarty*, No. A135608, 2013 WL 1278503, at *2 (Cal. Ct. App. Mar. 29, 2013).

118. *McCarty*, No. A135608, 2013 WL 1278503, at *2 ("He requires total care in regards to nutrition, going to the bathroom, and bathing. His prognosis is profoundly poor with no likelihood of clinical improvement.").

119. *Id.*

120. *Id.* at *3.

lease conditions.¹²¹ McCarty appealed, but died shortly after, rendering the issues raised moot.¹²²

There is evidence, however, of some reviewing courts implicitly recognizing the pliable nature of end-of-life predictions. In *New Jersey v. Alston*,¹²³ Alston was given six months to live due to cancer, triggering eligibility for medical parole. A public defender was appointed to represent him.¹²⁴ Alston's application was denied because his prognosis improved.¹²⁵ He was still terminal, but his revised prognosis exceeded six months, rendering him ineligible for medical parole.¹²⁶ The trial court noted the public defender had not had ample time to investigate, including time to collate medical evidence, but denied the relevant petition, and so Alston appealed.¹²⁷ The reviewing court remanded the case back to the trial court, finding "the changing nature of defendant's medical status and the lack of a complete investigation"¹²⁸ meant much of the information before the trial court was incomplete and outdated.

2. Releasing Authorities

Compassionate release methods include parole,¹²⁹ executive clemency/commutation,¹³⁰ reprieves,¹³¹ sentence modifications,¹³² ex-

121. *Id.* ("The court expressed concern that compassionate release, unlike medical parole, would be unconditional and without any mechanism to take McCarty back into custody.")

122. *Id.* at *1 ("Subsequent to filing this appeal, McCarty passed away in prison. We therefore dismiss his appeal as moot.")

123. No. A-1664-08T4, 2010 WL 2990898 (N.J. Super. Ct. App. Div. July 29, 2010).

124. *State v. Alston*, No. A-1664-08T4, 2010 WL 2990898, at *4 (N.J. Super. Ct. App. Div. July 29, 2010).

125. *Alston*, No. A-1664-08T4, 2010 WL 2990898, at *4.

126. *Id.*

127. *Id.* (rejecting pro se motion for a change of sentence).

128. *Id.* at *5.

129. *See, e.g.*, WYO. STAT. ANN. § 7-13-424 (West 2008) (Wyoming's "Medical Parole" procedure); ARK. CODE ANN. § 12-29-404 (West 2019) (Arkansas's procedure for "[m]edical parole for a terminal illness or permanent incapacitation"); CONN. GEN. STAT. § 54-131a (West 2004) (Connecticut's procedure for "[r]elease of an inmate on medical parole").

130. *See, e.g.*, ARIZ. REV. STAT. ANN. § 31-403 (West 2009) (granting inmates eligibility for commutation if "in imminent danger of death due to a medical condition"); 220 IND. ADMIN. CODE § 1.1-4-1.5 (West 2013) (describing Indiana's procedure for "[s]pecial medical clemency"); *Executive Clemency Process Summary*, MICH. DEP'T OF CORRS., https://www.michigan.gov/corrections/0,4551,7-119-1435_11601-223452--,00.html (last visited Oct., 27, 2019) (allowing recommendation for commutation for inmates with "a deteriorating and/or terminal medical condition").

131. *See* GA. CONST. art. IV, § II, para. II(e) (granting Georgia's parole board power to "issue a medical reprieve to an entirely incapacitated person"); 37 TEX. ADMIN. CODE § 143.34 (West 2018) (granting the Texas parole board the authority to consider applications for "medical emergency reprieve").

132. *See* DEL. CODE ANN. tit. 11, § 4217 (West 2010) (giving Delaware courts the power to modify sentences for, among other things, "serious medical illness or infir-

tended confinement with supervision,¹³³ respite programs,¹³⁴ and furloughs.¹³⁵ This diversity leads to a variety of releasing authorities. Naturally, parole authorities dominate as the relevant releasing authority in the context of this paper. There are benefits to utilizing parole authorities for compassionate release. As Russell remarks, “[t]hese panels deal with release determinations on a daily basis. They are accustomed to reviewing evidence, evaluating cases, balancing equities, and drawing conclusions. They are also well prepared to determine what conditions should be imposed in any given situation.”¹³⁶ Two issues about the operation of parole authorities, however, emerge across the case law.

The first issue is the largely discretionary nature of parole, including that parole does not necessarily attract a constitutionally protected interest. Multiple cases expressly reference this characteristic. In *Bass v. Thomas*¹³⁷ the petitioner alleged the parole board’s refusal to grant him medical parole was unconstitutional. Bass’s claim failed to identify an appropriate defendant, but nonetheless the court commented that he would not be entitled to relief because he possessed no liberty interest in parole protected by Due Process.¹³⁸ The court cited authority describing the rejection of parole as “merely a disappointment.”¹³⁹

mity”); WIS. STAT. ANN. § 302.113 (West 2013) (allowing sentence modification for “an extraordinary health condition”).

133. See, e.g., ME. STAT. tit. 34-A, § 3036-A.10 (West 2019) (including “[t]erminally ill or incapacitated” inmates in Maine’s “[s]upervised community confinement” procedure); WIS. STAT. ANN. § 302.113 (describing Wisconsin’s “[r]elease to extended supervision” procedure).

134. See W. VA. DIV. OF CORRS., WEST VIRGINIA DIVISION OF CORRECTIONS ANNUAL REPORT: FY2018 45 (2018), https://dcr.wv.gov/resources/Documents/annual_reports/WVDOC%2018%20Annual%20Report.pdf (charting releases under West Virginia’s “Medical Respite” procedure).

135. See, e.g., ARIZ. REV. STAT. ANN. § 31-233 (West 2012) (allowing inmates to seek “medical treatment not available” to them); VT. STAT. ANN. tit. 28, § 808 (West 2018) (allowing inmates to be “place[d] on medical furlough”); ALA. CODE §§ 14-14-1–14-14-7 (West 2020) (comprising a range of statutes referred to in the text as the “Alabama Medical Furlough Act”).

136. Russell, *supra* note 13, at 836.

137. No. 2:13-CV-88-WHA, 2016 WL 958906 (M.D. Ala. Feb. 18, 2016), *report and recommendation adopted*, No. 2:13-CV-088-WHA, 2016 WL 958464 (M.D. Ala. Mar. 14, 2016).

138. *Bass v. Thomas*, No. 2:13-CV-88-WHA, 2016 WL 958906, at *3 (M.D. Ala. Feb. 18, 2016), *report and recommendation adopted*, No. 2:13-CV-088-WHA, 2016 WL 958464 (M.D. Ala. Mar. 14, 2016).

139. *Bass*, No. 2:13-CV-88-WHA, 2016 WL 958906, at *3 (quoting *Damiano v. Florida Parole and Probation Commission* 785 F.2d 929, 933 (11th Cir. 1986)) (stating, “a denial of parole does not rise to the level of an Eighth Amendment violation as such action is ‘merely a disappointment rather than a punishment of cruel and unusual proportions’”).

This lack of a constitutionally protected interest is repeated in *Haughie v. Blumberg*,¹⁴⁰ where the petitioner alleged he suffered various ailments following tumor surgery. Rejecting Haughie's claim that his continued incarceration was unconstitutional, the court underlined that the Constitution "does not create a protected liberty interest in the expectation of parole."¹⁴¹ In *F.M. Simmons v. Cannon*,¹⁴² a Texas prisoner argued he should be released on Medically Recommended Intensive Supervision ("MRIS") to receive needed care.¹⁴³ Noting it lacked competence to authorize MRIS, the court underscored that, per state law, MRIS "is entirely discretionary and that Simmons has no constitutionally protected liberty interest in release on medical parole."¹⁴⁴ The position of state law also steered the decision in *Roberts v. Conley*.¹⁴⁵ In that case, it was determined that a failure to grant medical parole to a terminally ill prisoner and requiring him to serve a five-year sentence following his failure to complete an alcohol treatment program was lawful. State law, the court observed, established that parole of a prisoner with a terminal disease was discretionary.¹⁴⁶

References to parole authority discretion also appear in Eighth Amendment-based challenges. In *Reynolds v. Crawford*,¹⁴⁷ for instance, the petitioner described herself as suffering from "life threatening"¹⁴⁸ cardiomyopathy, and alleged the failure of prison officials to recommend her for medical parole violated the Eighth Amendment. In rejecting that such inaction would amount to a deliberate indifference to a prisoner's medical need, the court observed "the issuing of medical parole is a determination to be made by the parole board, and the failure to grant such parole, does not rise to the level of cruel and unusual punishment."¹⁴⁹

The second emerging issue is the highly deferential standard of review applied by courts to parole authority decision-making. Three

140. No. CV JFM-16-3201, 2016 WL 5477557 (D. Md. Sept. 29, 2016), *aff'd in part, appeal dismissed in part*, 684 F. App'x 302 (4th Cir. 2017).

141. *Haughie v. Blumberg*, No. CV JFM-16-3201, 2016 WL 5477557, at *1 (D. Md. Sept. 29, 2016), *aff'd in part, appeal dismissed in part*, 684 F. App'x 302 (4th Cir. 2017).

142. No. CIV.A. 6:08CV304, 2009 WL 1350812 (E.D. Tex. May 12, 2009).

143. *F.M. Simmons v. Cannon*, No. CIV.A. 6:08CV304, 2009 WL 1350812, at *8 (E.D. Tex. May 12, 2009).

144. *F.M. Simmons*, No. CIV.A. 6:08CV304, 2009 WL 1350812, at *8.

145. No. 2:08CV00044 ERW, 2009 WL 2170173 (E.D. Mo. July 20, 2009).

146. *Roberts v. Conley*, No. 2:08CV00044 ERW, 2009 WL 2170173, at *4 (E.D. Mo. July 20, 2009) (quoting Mo. REV. STAT. § 217.250 (2020)) ("Missouri law states that when an 'offender is afflicted with a disease that is terminal' the board of probation and parole 'in their discretion may grant a medical parole.'").

147. No. 206CV00009 ERW, 2007 WL 586800 (E.D. Mo. Feb. 21, 2007).

148. *Reynolds v. Crawford*, No. 206CV00009 ERW, 2007 WL 586800, at *1 (E.D. Mo. Feb. 21, 2007).

149. *Reynolds*, No. 206CV00009 ERW, 2007 WL 586800, at *5.

New York cases illustrate this. These cases articulate that to be usurped on review, parole authority decision-making must exhibit “irrationality bordering on impropriety.”¹⁵⁰ In *Black v. New York State Board of Parole*,¹⁵¹ the decision of a parole authority to reject a quadriplegic prisoner’s application for medical parole based not only on medical documentation but also on a review of various factors including the petitioner’s crime, criminal history, prison disciplinary record, program accomplishments and post-release plans, did not meet this standard. A similar view was taken in *Trobiano v. State of New York Division of Parole*¹⁵² where the Parole Board’s emphasis on the seriousness of the prisoner’s crime (as opposed to his failing health) was permissible within the board’s discretion. In *Ifill v. Wright*,¹⁵³ a parole commissioner’s decision to reject medical parole based on a review of relevant medical documentation, despite a recommendation from medical staff that Ifill be eligible, also did not meet the standard.

The discretionary nature of parole and highly deferential standards of review further narrow the scope of compassionate release, resulting in a *cul-de-sac* for petitioners. The case law brightly illuminates how crucial parole authority decision-making is. This arguably adds to calls for two particular research recommendations.

First, parole authorities should be further supported in their decision-making. As Rhine et al. suggest, “[t]he institutional structure and composition of parole boards should be reconstituted to ensure members possess the requisite education, expertise, and independence relative to release decision making.”¹⁵⁴ In compassionate release cases, this likely involves specific support for understanding such things as complex medical evidence, clinical practices (e.g., around diagnosis and prognosis), and healthcare operations and infrastructures inside and outside of corrections facilities. A further fostering of cross-cultural competency between parole authorities, healthcare professionals and corrections needs to be coordinated. Second, compassionate release procedures should have integrated accountability mechanisms, such as reporting and tracking systems and internal appeal processes. Such practices would generate important records of the decision-making process, improving both the ability of petitioners and parole authorities to substantiate their claims and decision-making respectively. Specifically, the latter practice would allow parole

150. *Black v. New York State Bd. of Parole*, 920 N.Y.S.2d 744, 745 (N.Y. App. Div. 2011) (quoting *Matter of Russo v. New York State Bd. of Parole*, 50 N.Y.2d 69, 77 (1980)).

151. 920 N.Y.S.2d 744 (N.Y. App. Div. 2011).

152. 728 N.Y.S.2d 269 (N.Y. App. Div. 2001).

153. 941 N.Y.S.2d 812 (N.Y. App. Div. 2012).

154. Rhine et al., *supra* note 45, at 282-83.

authorities to unpack local decisions more readily, reflecting such cases inherently often concern sensitive and changing circumstances. The need to rethink discretionary parole release generally is recognized across stakeholders, with some considering it “an auspicious time to rethink the future and functions of parole boards.”¹⁵⁵ Across their case load, parole authorities are “well positioned to play crucial roles in engineering new approaches,”¹⁵⁶ and this should include compassionate release.

3. Processes

Compassionate release processes vary. As one study found, “[t]he sheer number of individuals and entities, and/or combinations . . . charged with decision-making regarding candidates for medical parole can be staggering.”¹⁵⁷ Recommendations urge that processes be streamlined and clear.¹⁵⁸ Issues across these two points of focus emerge in the case law.

The streamlining of procedures, for example, presents in *Tatta v. State*.¹⁵⁹ Claiming, *inter alia*, that he was suffering from “several serious illnesses,”¹⁶⁰ Tatta challenged the parole board’s decision to order that he wait twenty-four months before reconsideration of his unsuccessful parole application. Despite acknowledging that Tatta suffered from “various illnesses,”¹⁶¹ the reviewing court found his claim lacked merit, noting he did not qualify for medical parole and that the parole board had properly exercised its discretionary decision-making. Research has noted that the “majority of states do not provide prisoners denied compassionate release a means to appeal the denial”¹⁶² and suggested, “the right to appeal should be guaranteed,”¹⁶³ with a prisoner at least being able to “reapply after a set time.”¹⁶⁴ The period that must elapse before a reapplication should reflect the changing and sensitive nature of ill health. The inclusion

155. *Id.* at 327.

156. *Id.* at 328.

157. Gartner & del Carmen, *supra* note 4, at 11.

158. *E.g.*, Russell, *supra* note 13, at 832-33. (“Because of the exigent nature of terminal illness, any compassionate release program should be constructed so that cases can be expeditiously processed. . . . The more complex the system, the less likely that it will be efficient in accomplishing its goal”)

159. 737 N.Y.S.2d 163 (N.Y. App. Div. 2002).

160. *Tatta v. State*, 737 N.Y.S.2d 163, 164 (N.Y. App. Div. 2002).

161. *Tatta*, 737 N.Y.S.2d at 164.

162. PRICE, *supra* note 3, at 19.

163. *Id.*

164. *Id.*

of express time limits in processes to reflect the need for expedited review is also encouraged.¹⁶⁵

Concerning clarity, case law shows prisoners raising specific issues associated with—separately—process evidence requirements and process agents. Regarding the former, *Beale v. Ward*¹⁶⁶ provides supports for the need to itemize evidence requirements. In that case, the petitioner was receiving cancer treatment. He alleged a due process violation based on the alleged destruction by an administrator of a physician's letter recommending that he be released on medical parole.¹⁶⁷ This, he argued, prevented the Oklahoma Pardon and Parole Board from considering him for medical parole.¹⁶⁸ The reviewing court identified this as a cognizable claim. This arguably presses the need for processes to include clear instructions on the handling and itemizing of evidence, a practice recommended for inclusion in model medical parole procedures.¹⁶⁹

*Poydras v. Louisiana Dept. of Public Safety and Corrections*¹⁷⁰ relates to clarity about the process agent(s) tasked with identifying eligible prisoners. In that case, the Department of Corrections was the agency given competence to make eligibility decisions,¹⁷¹ and Poydras complained about the department's refusal to refer him for consideration for medical parole.¹⁷² The reviewing court rejected the complaint for lack of appropriate legal posture.¹⁷³ Research encour-

165. See *id.* at 21 (“Establish time frames within which document-gathering, assessment, and decision-making must occur that are realistic, provide sufficient time to develop informed decisions, and are sensitive to the need for expedited review in the case of terminal illness.”); Gartner & del Carmen, *supra* note 4, at 16 (“For the process description to be even more useful, jurisdictions should state specific time limits for the consideration process and the length of the decision period from time of application to the final release decision.”).

166. No. CIV-05-253-M, 2005 WL 1322877 (W.D. Okla. June 1, 2005).

167. *Beal v. Ward*, No. CIV-05-253-M, 2005 WL 1322877, at *1 (W.D. Okla. June 1, 2005).

168. *Beal*, No. CIV-05-253-M, 2005 WL 1322877, at *1.

169. Gartner & del Carmen, *supra* note 4, at 15-16 (recommending that statutes “[l]ist and define necessary documentation for consideration” and “describe how these documents should be delivered—full report, separately as they are completed, etc.—and to whom the documents must be delivered”).

170. No. 2012 CA 1475, 2013 WL 1196587 (La. Ct. App. Mar. 25, 2013), *writ denied*, 125 So.3d 424 (La. Nov. 1, 2013).

171. *Poydras v. La. Dep't of Pub. Safety & Corr.*, No. 2012 CA 1475, 2013 WL 1196587, at *1 (La. Ct. App. Mar. 25, 2013), *writ denied*, 125 So.3d 424 (La. Nov. 1, 2013) (“[T]he Department was the entity that shall identify those inmates who might be eligible for medical parole.”).

172. *Poydras*, No. 2012 CA 1475, 2013 WL 1196587, at *2 (“In the instant matter, the petitioner's complaints concern the conditions of his confinement and the Department's refusal to refer him for consideration for medical parole.”).

173. *Id.* (“On the basis of these complaints, he alleges he is entitled to an immediate release. However, these complaints do not constitute a true request for criminal post-

ages the proactive identification of eligible prisoners.¹⁷⁴ Corrections personnel are in an unrivalled position to build familiarity with prisoners and, thus, an (albeit lay) sensitivity to any changing health status. Noting this, FAMM recommends that corrections personnel be trained to “understand eligibility criteria for compassionate release”¹⁷⁵ and be taught “how to identify eligible prisoners and make it their duty to do so.”¹⁷⁶ Naturally, however, these ideas have tensions with available expertise and resources. *Wylie v. Montana Women’s Prison*¹⁷⁷ concerns the clarity with which process agents communicate about compassionate release. Wylie alleged that the prison warden did not present her request for a medical parole hearing to the Board of Pardons and Parole.¹⁷⁸ Wylie provided her medical parole application to the prison on July 23, 2011.¹⁷⁹ On January 9, 2012, prison officials informed Wylie that her application had been denied. She requested a formal denial and on June 1, 2012 was told the prison was “trying to get the paperwork.”¹⁸⁰ On July 2, 2012, Wylie received a response from the warden indicating that her medical parole was “disapproved”¹⁸¹ because it did not meet the criteria.¹⁸² Wylie never received any paperwork from the Board of Pardons and Parole.¹⁸³ Wylie alleged the prison never sent her request for medical parole to the Board of Pardons and Parole.¹⁸⁴ The reviewing court determined a claim could proceed against the warden.¹⁸⁵ More broadly, however, *Wylie* raises questions about expediency and the need to keep process-users informed. Specifically, FAMM recommends to “[k]eep prisoners, family members, and advocates informed at each stage of the assessment and decision-making process.”¹⁸⁶

4. Support for Petitioners

Compassionate release procedures (including medical parole) involve multi-agency interactions. Across these agencies, procedures al-

conviction habeas relief since they do not attack the petitioner’s conviction or sentence.”)

174. See PRICE, *supra* note 3, at 21 (“Teach staff how to identify eligible prisoners and make it their duty to do so.”).

175. *Id.*

176. *Id.*

177. No. CV 13-53-BLG-SEH, 2014 WL 1871825 (D. Mont. May 8, 2014).

178. *Wylie v. Montana Women’s Prison*, No. CV 13-53-BLG-SEH, 2014 WL 1871825, at *9 (D. Mont. May 8, 2014).

179. *Wylie*, No. CV 13-53-BLG-SHE, 2014 WL 1871825, at *9.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. See PRICE, *supra* note 3, at 21.

low for various agents to be petitioners in compassionate release cases, including prisoners, attorneys, relatives, corrections personnel, and healthcare professionals.¹⁸⁷ Research recommends establishing further support for petitioners (especially prisoners).¹⁸⁸ This could take the shape of assisting petitioners in developing literacy about the administrative and legal context, process, and substance of compassionate release procedures. Case law suggests there are lacunas in such understanding, particularly in the context of prisoners acting pro se and attempting to raise issues associated with compassionate release.

There is evidence of prisoners struggling to follow specific directions. In *Alexander v. Grounds*,¹⁸⁹ Alexander petitioned the court to release him on medical parole. The court noted that Alexander had been expressly directed on the need to “make clear how he is in custody in violation of the Constitution or federal law”¹⁹⁰ and that he must “first exhaust state judicial remedies,”¹⁹¹ but that he had failed to do either. He had also, despite being directed to file an amended petition, filed ten motions.¹⁹² Alexander’s petition was denied for failing to present a cognizable claim.¹⁹³

Similarly, in *Austad v. Schweitzer*,¹⁹⁴ Austad—who was confined to a wheelchair—alleged, *inter alia*, a denial of due process in his medical parole hearing.¹⁹⁵ The court noted that Austad had been given the opportunity to amend his original complaint to remedy a defect in the named defendants but had failed to do so.¹⁹⁶ His civil rights claims were dismissed.¹⁹⁷ *Poydras v. Louisiana Department of Public Safety and Corrections*¹⁹⁸ provides another example. After being denied a referral for consideration for medical parole, Poydras filed a petition captioned “Application For: Criminal Post-Conviction Habeas Corpus,”¹⁹⁹ alleging various wrongdoings. Poydras was advised to pay relevant fees or apply for pauper status, which he failed to do.²⁰⁰

187. Cooper, *supra* note 1, at 35-39; PRICE, *supra* note 3, at 17 (“Quite a few states permit family members to begin the application process themselves.”).

188. See PRICE, *supra* note 3, at 21.

189. No. C 14-1928 EDL (PR), 2014 WL 5408407 (N.D. Cal. Oct. 22, 2014).

190. *Alexander v. Grounds*, No. C 14-1928 EDL (PR), 2014 WL 5408407, at *1 (N.D. Cal. Oct. 22, 2014).

191. *Alexander*, No. C 14-1928 EDL (PR), 2014 WL 5408407, at *2.

192. *Id.* at *1.

193. *Id.*

194. No. CV08-32H-DWM-JCL, 2008 WL 5416389 (D. Mont. June 12, 2008).

195. *Austad v. Schweitzer*, No. CV08-32H-DWM-JCL, 2008 WL 5416389, at *1 (D. Mont. June 12, 2008).

196. *Austad*, No. CV08-32H-DWM-JCL, 2008 WL 5416389, at *1.

197. *Id.* at *4.

198. *Poydras*, No. 2012 CA 1475, 2013 WL 1196587.

199. *Id.* at *1.

200. *Id.*

Subsequently, the commissioner noted the matter as civil, rather than criminal, since Poydras did not raise any post-conviction claims.²⁰¹ Poydras appealed, arguing, *inter alia*, this reclassification was an error.²⁰² The court disagreed, explaining:

[A]lthough the petitioner labeled his pleadings as applications for post-conviction habeas relief, Louisiana courts look beyond the caption, style, and form of pleadings to determine from the substance of the pleadings the true nature of the proceeding. Thus, a pleading is construed for what it really is, not for what it is erroneously called.²⁰³

Poydras's struggle to develop a legally substantive petition is replicated in other cases. Some petitions are expressly dismissed for wholly lacking substance. For example, in *F.M. Simmons v. Cannon*,²⁰⁴ Simmons's claim that he should be released on medical parole was described as "frivolous,"²⁰⁵ as were the claims made in *Anderson v. Thompson*,²⁰⁶ a case that involved a prisoner with an allegedly long list of health issues. In *Gross v. Buescher*,²⁰⁷ Gross's allegation that inadequate budgets demonstrated a deliberate indifference to his serious medical needs was described as "totally meritless,"²⁰⁸ as were claims made in *Foreman v. Director TDCJ-CID*.²⁰⁹ There are other examples of prisoners submitting petitions that are time barred or without exhausting administrative remedies too.²¹⁰ Further, *Aponte v. Board of Parole Commissioners*²¹¹ and *Dinkins v. Correctional Medical Services*²¹² both provide examples of courts expressly relying on their duty to show liberality toward pro se litigants²¹³ in order to resolve petitions. *Marks v. Johnson*²¹⁴ provides another example of a

201. *Id.*

202. *Id.*

203. *Id.*

204. No. CIV.A. 6:08CV304, 2009 WL 1350812 (E.D. Tex. May 12, 2009).

205. *F.M. Simmons*, No. CIV.A. 6:08CV304, 2009 WL 1350812, at *9.

206. No. CIV.A. 6:09CV244, 2010 WL 817182, at *7 (E.D. Tex. Mar. 4, 2010).

207. 791 F. Supp. 796 (E.D. Mo. 1992).

208. *Gross v. Buescher*, 791 F. Supp. 796, 798 (E.D. Mo. 1992).

209. No. 6:11CV116, 2011 WL 5080180, at *8 (E.D. Tex. July 12, 2011), *report and recommendation adopted* No. 6:11CV116, 2011 WL 5080174 (E.D. Tex. Oct. 24, 2011) (specifically stating that the petitioner's medical parole-related claim lacked merit).

210. *E.g.*, *Rodriguez v. Johnson*, No. CIV. A. G-06-0768, 2008 WL 2403722 (S.D. Tex. June 10, 2008).

211. No. 9:17-CV-0305 (GTS/DEP), 2017 WL 8780766, at *4 (N.D.N.Y. July 14, 2017) ("Construing the complaint liberally, plaintiff may also allege that he was denied medical parole release without due process.").

212. No. 06-4303 CVCNKL, 2007 WL 927742, at *2 (W.D. Mo. Mar. 23, 2007) ("Although plaintiff's allegations may not be sufficient to withstand a motion to dismiss or for summary judgment, they are sufficient, when liberally construed, to allow plaintiff to proceed at this stage.").

213. *See Nance v. Kelly*, 912 F.2d 605 (2d Cir. 1990) (per curiam).

214. No. 1:14-CV-01569-AWI, 2014 WL 7178217 (E.D. Cal. Dec. 16, 2014).

court seemingly having to read into a petition, with the court stating Marks's complaint—which it expressly noted comprised “nearly 400 pages”²¹⁵—“appear[ed] to seek medical parole.”²¹⁶

Cases also show prisoners using improper legal vehicles for raising their claim(s) or asking courts to act outside of their competence. For example, in *Madsen v. Guyer*,²¹⁷ Madsen filed a petition for a writ of habeas corpus to request that the court order the Montana Department of Corrections to place his medical parole application before the Board of Pardons and Parole. Denying the petition, the court stated, “[h]abeas corpus relief is not the appropriate remedy for challenges to an inmate’s conditions of confinement,”²¹⁸ and “[t]his Court does not direct the administration of parole applications before the Board or sit in review of the Board concerning parole and its process.”²¹⁹ *Haughie v. Blumberg*²²⁰ provides another example. Haughie challenged the decision of the Maryland Parole Commission finding him ineligible for medical parole, seeking both monetary damages and an order requiring his release on medical parole.²²¹ In dismissing the petition, the court commented on both the lack of cognizable/evidenced claims, and its lack of jurisdiction over directing state employees as requested.²²² Further, in *Polansky v. Wrenn*,²²³ a prisoner alleged a violation of due process in his medical parole proceedings, but the claim put forward was found to present “a distinct cause of action involving a different set of defendants, and issues that are largely unrelated to the claims presently pending in this action”²²⁴ and was therefore denied.

Notably, across these cases, examples of the possible material implications of these lacunas in understanding also emerge. These include petitions being dismissed with prejudice,²²⁵ prisoners losing

215. *Marks v. Johnson*, No. 1:14-CV-01569-AWI, 2014 WL 7178217, at *1 (E.D. Cal. Dec. 16, 2014).

216. *Marks*, No. 1:14-CV-01569-AWI, 2014 WL 7178217, at *1.

217. No. OP 18-0699, 2018 WL 6845237 (Mont. Dec. 27, 2018).

218. *Madsen v. Guyer*, No. OP 18-0699, 2018 WL 6845237, at *1 (Mont. Dec. 27, 2018).

219. *Madsen*, No. OP 18-0699, 2018 WL 6845237, at *1.

220. No. CV JFM-16-3201, 2016 WL 5477557 (D. Md. Sept. 29, 2016), *aff'd in part, dismissed in part*, 684 F. App'x 302 (4th Cir. 2017).

221. *Haughie v. Blumberg*, No. CV JFM-16-3201, 2016 WL 5477557, at *1 (D. Md. Sept. 29, 2016), *aff'd in part, appeal dismissed in part*, 684 F. App'x 302 (4th Cir. 2017).

222. *Haughie*, No. CV JFM-16-3201, 2016 WL 5477557, at *1-2.

223. No. 12-CV-105-PB, 2013 WL 1165158 (D.N.H. Feb. 22, 2013), *report and recommendation adopted sub nom.* *Polansky v. N.H. Dep't of Corr.*, No. 12-CV-105-PB, 2013 WL 1155429 (D.N.H. Mar. 19, 2013).

224. *Polansky v. Wrenn*, No. 12-CV-105-PB, 2013 WL 1165158, at *3 (D.N.H. Feb. 22, 2013), *report and recommendation adopted sub nom.*, *Polansky v. N.H. Dep't of Corr.*, No. 12-CV-105-PB, 2013 WL 1155429 (D.N.H. Mar. 19, 2013).

225. *E.g., Rodriguez*, No. CIV. A. G-06-0768, 2008 WL 2403722; *F.M. Simmons*, No. CIV.A. 6:08CV304, 2009 WL 1350812; *Foreman*, TDCJ-CID, No. 6:11CV116, 2011 WL 5080180.

opportunities to resolve matters more efficiently,²²⁶ and prisoners risking incurring financial penalties.²²⁷

Various recommendations for contributing to remedying gaps in understanding have been offered.²²⁸ A common thread across these ideas is the development of cross-cultural competencies, i.e., common understandings between agents involved in compassionate release procedures—who inherently have their own specific roles, training, and sensitivities. Fostering such cross-agency collaboration is of “practical importance”²²⁹ so as to limit conflicts, and to remedy the so-called “virtual black box between the initiation of consideration and the decision to release.”²³⁰

Developing such understanding is largely about signposting, creating and delivering education opportunities, and fostering collegiality, particularly as the latter relates to involving prisoners’ families in compassionate release procedures. Suggestions for reform include publicizing compassionate release information across relevant institutions, including the proactive signposting of procedure information to prisoners and families (e.g., the provision of “detailed description[s] and/or diagram[s]”²³¹ that allow agents to follow case progress, and including relevant information in prison handbooks²³²); the provision of relevant resources (e.g., ensuring application forms are stocked in prison libraries²³³); education programs (led by healthcare professionals) for criminal justice system agents (such as prisoners, corrections personnel, and parole board members) about prisoner health(care) needs and the meaning of compassionate release eligibility criteria;²³⁴ and training for healthcare professionals (led by criminal justice system professionals) about the conditions of incarceration and the pressures faced by criminal justice agencies.²³⁵ Specific recommendations for ensuring that (1) lawyers are eligible petitioners in compassionate release cases²³⁶ and (2) the right to counsel includes “all compassion-

226. *E.g.*, *Austad*, No. CV08-32H-DWM-JCL, 2008 WL 5416389 (noting that due to multiple failures by the plaintiff to amend his pleading properly, he had now lost the ability to amend his pleading without the consent of the opposing party or with leave of Court).

227. *E.g.*, *Marks*, No. 1:14-CV-01569-AWI, 2014 WL 7178217, at *3 (noting possible fee implications for petitioner).

228. *E.g.*, PRICE, *supra* note 3, at 21.

229. NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., *supra* note 71, at 29.

230. Gartner & del Carmen, *supra* note 4, at 16.

231. *Id.*

232. PRICE, *supra* note 3, at 21.

233. *Id.*

234. *See, e.g.*, NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., *supra* note 71, at 28-29.

235. *Id.*

236. PRICE, *supra* note 3, at 21.

ate release proceedings, including appeals and revocations²³⁷ also exist. Our analysis of the case law generally supports the idea that this suite of reforms should be further explored.

IV. CONCLUSION

Compassionate release procedures typically allow prisoners to seek early release because of serious terminal, non-terminal, or age-related health issues.²³⁸ These procedures, common across U.S. justice systems, generally lack comprehensive reporting and tracking systems and internal appeals processes. These absences contribute to there being limited knowledge about, essentially, what petitioners and appellate authorities perceive as unfair in the context of compassionate release. This lack of knowledge frustrates evaluation of existing practices and the implementation of evidence-informed reform.

Given medical parole is the most common method of compassionate release in the U.S, one strategy for generating knowledge—as reported in this paper—is to study medical parole-related petitions in U.S. courts. Based on the data set generated by the methods utilized in this paper, the authors suggest that such petitions can be mapped to four thematic areas where concerns about compassionate release practices already exist, namely: (1) eligibility and exclusions; (2) processes; (3) releasing authorities; and (4) support for petitioners. In sum, across these themes, case law reveals that petitioners have raised issues concerning frustrated access to the medical parole process, the denial of medical parole, irregularities in medical parole processes, improper application of eligibility and exclusion criteria, and inadequate medical care in prison. Judges generally dismiss petitions, relying on the high standards of proof required to prove eligibility and improper parole-board decision-making; the discretionary nature of parole; standards of review that are highly deferential to parole authorities; and a lack of properly legally postured claims.

Based on an analysis of relevant case law in the context of existing concerns about compassionate release practices within each thematic area, the authors suggest particular issues for further investigation include the:

1. Scope of exclusion categories (specifically the appropriateness of both categorical exemptions and retrospective applicability);

237. *Id.*

238. *See generally* Cooper, *supra* note 1.

2. Appropriateness of elevated standards of proof for eligibility (specifically in terms of evidence requirements, nuance, and flexibility);
3. Level of procedural safeguards integrated within parole procedures, specifically for medical parole cases (including internal appeal processes, and reporting and tracking systems);
4. Streamlining and clarity of processes (specifically in terms of expedited review requirements, the itemization of evidence requirements, and the responsibilities of process agents); and
5. Design and delivery of appropriate training, education, and support for agents across all institutions involved in compassionate release procedures (including a specific focus on supporting prisoners to develop and submit appropriate applications).

Generally, these ideas add relative strength to existing calls for reform across these areas and ultimately bolster the view that—to properly serve the interests of both wider society and the large, ageing, and medically compromised prison population in the U.S.—compassionate release procedures require evidence-informed investment.

APPENDIX

	Case	Pro Se	Theme
1.	Alexander v. Grounds , No. C 14-1928 EDL (PR), 2014 WL 5408407 (N.D. Cal. Oct. 22, 2014).	Yes	Support for Petitioners
2.	Anderson v. Thompson , No. CIV A 6:09CV244, 2010 WL 817182 (E.D. Tex. Mar. 4, 2010).	Yes	Support for Petitioners
3.	Aponte v. Board of Parole , No. 917CV0305GTSDEP, 2017 WL 8780766 (N.D.N.Y. July 14, 2017).	Yes	Support for Petitioners
4.	Austad v. Schweitzer , No. CV08-32H-DWM-JCL, 2008 WL 5416389 (D. Mont. June 12, 2008).	Yes	Support for Petitioners
5.	Baker v. State , No. A-12661, 2017 WL 4570573 (Alaska Ct. App. Oct. 11, 2017).	No	Eligibility and Exclusions
6.	Barker v. Owens , 277 F. App'x 482 (2008).	No	Releasing Authorities
7.	Bass v. Thomas , No. 2:13-CV-88-WHA, 2016 WL 958906 (M.D. Ala. Feb. 18, 2016), <u>report and recommendation adopted</u> , No. 2:13-CV-088-WHA, 2016 WL 958464 (M.D. Ala. Mar. 14, 2016).	Yes	Releasing Authorities
8.	Beal v. Ward , No. CIV-05-253-M, 2005 WL 1322877 (W.D. Okla. June 1, 2005).	Yes	Processes
9.	Black v. New York State Board of Parole , 920 N.Y.S.2d 744 (2011).	No	Releasing Authorities
10.	Byrd v. Commissioner of Correction , 171 A.3d 1103 (Conn. Ct. App. 2017).	No	Support for Petitioners
11.	Davidson v. Maryland Parole Commission , No. CIV.A. JFM-13-250, 2013 WL 1830097 (D. Md. Apr. 30, 2013)	Yes	Eligibility and Exclusions
12.	Dinkins v. Correctional Medical Services et al , No. 06-4303 CVCNKL, 2007 WL 927742 (W.D. Mo. Mar. 23, 2007).	Yes	Support for Petitioners
13.	F.M. Simmons v. Cannon , No. CIV.A. 6:08CV304, 2009 WL 1350812 (E.D. Tex. May 12, 2009).	Yes	Releasing Authorities; Support for Petitioners

	Case	Pro Se	Theme
14.	Foreman v. Director , TDCJ-CID, <u>TDCJ-CID</u> , No. 6:11CV116, 2011 WL 5080180 (E.D. Tex. July 12, 2011), <u>report and recommendation adopted</u> , No. 6:11CV116, 2011 WL 5080174 (E.D. Tex. Oct. 24, 2011).	Yes	Support for Petitioners
15.	Gross v. Buescher , 791 F. Supp. 796 (E.D. Mo. 1992).	Yes	Support for Petitioners
16.	Haughie v. Blumberg , No. CV JFM-16-3201, 2016 WL 5477557 (D. Md. Sept. 29, 2016), <u>aff'd in part, appeal dismissed in part</u> , 684 F. App'x 302 (4th Cir. 2017).	Yes	Releasing Authorities; Support for Petitioners
17.	Havens v. Johnson , 2012 WL 871195 (D. Colo. Mar. 13, 2012).	No	Support for Petitioners
18.	Holm v. Salmonsén , 2018 WL 5001225 (Mont. Oct. 16, 2018).	No	Support for Petitioners; releasing authorities.
19.	Ifill v. Wright , 941 N.Y.S.2d 812 (N.Y. App. Div. 2012).	Yes	Releasing Authorities
20.	In re Martinez , 148 Cal. Rptr. 3d 657 (Cal. Ct. App. 2012).	No	Eligibility and Exclusions
21.	Jewell v. Superior Court of San Bernardino County , No. E065047, 2016 WL 1535879 (Cal. Ct. App. Apr. 14, 2016).	No	Eligibility and Exclusions
22.	Madsen v. Guyer , No. OP 18-0699, 2018 WL 6845237 (Mont. Dec. 27, 2018).	Yes	Support for Petitioners
23.	Marks v. Johnson , No. 1:14-CV-01569-AWI, 2014 WL 7178217 (E.D. Cal. Dec. 16, 2014).	Yes	Support for Petitioners
24.	McGiboney v. CCA Western Properties Inc. , 2016 WL 843253 (D. Idaho Mar. 1, 2016).	No	Processes; Support for Petitioners
25.	McGiboney v. Corizon , 2019 WL 3048339 (D. Idaho July 11, 2019).	Yes	Releasing Authorities; Support for Petitioners
26.	Moore v. TDCJ , 2018 WL 4938796 (N.D. Tex. Sept. 10, 2018).	Yes	Releasing Authorities
27.	People v. McCarty , No. A135608, 2013 WL 1278503 (Cal. Ct. App. Mar. 29, 2013).	No	Eligibility and Exclusions

	Case	Pro Se	Theme
28.	Polansky v. Wrenn , No. 12-CV-105-PB, 2013 WL 1165158 (D.N.H. Feb. 22, 2013), <u>report and recommendation adopted sub nom.</u> <i>Polansky v. NH Dep't of Corr.</i> , No. 12-CV-105-PB, 2013 WL 1155429 (D.N.H. Mar. 19, 2013).	Yes	Processes; Support for Petitioners
29.	Poydras v. Louisiana Dept. of Public Safety and Corrections , 2012-1475 (La. App. 1 Cir. Mar. 25, 2013), writ denied, 2013-1214 (La. Nov. 1, 2013), 125 So. 3d 424.	Yes	Processes; Support for Petitioners
30.	Reynolds v. Crawford , No. 206CV00009 ERW, 2007 WL 586800 (E.D. Mo. Feb. 21, 2007).	Yes	Releasing Authorities
31.	Roberts v. Conley , No. 2:08CV00044 ERW, 2009 WL 2170173 (E.D. Mo. July 20, 2009).	Yes	Releasing Authorities
32.	Rodriguez v. Johnson , No. CIV. A. G-06-0768, 2008 WL 2403722 (S.D. Tex. June 10, 2008).	Yes	Support for Petitioners
33.	State v. Alston , No. A-1664-08T4, 2010 WL 2990898 (N.J. Super. Ct. App. Div. July 29, 2010).	No	Eligibility and Exclusions
34.	Tatta v. State , 290 A.D.2d 907, 737 N.Y.S.2d (2002).	Yes	Processes
35.	Trobiano v. State of New York Div. of Parole , 285 A.D.2d 812, 728 N.Y.S.2d 269 (2001).	No	Releasing Authorities
36.	Walls v. State , 158 A.3d 877 (2017).	Yes	Support for Petitioners
37.	Wylie v. Montana Women's Prison , No. CV 13-53-BLG-SEH, 2014 WL 1871825 (D. Mont. May 8, 2014).	Yes	Processes