

**IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE**

JEFFREY WAYNE HUGHES,

Petitioner,

v.

TENNESSEE BOARD OF PAROLE,

Respondent.

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Case No.: 21-0618-II

BRIEF OF PETITIONER JEFFREY WAYNE HUGHES

I. INTRODUCTION

Petitioner Jeffrey Wayne Hughes is a beneficiary of the Reentry Success Act of 2021—a new statute of statewide effect that materially alters several components of parole determinations in Tennessee. *See* TN LEGIS 410 (2021), 2021 Tennessee Laws Pub. Ch. 410 (H.B. 785). Most significantly, in a provision now codified at Tenn. Code Ann. § 40-35-503(i)(1), the Reentry Success Act of 2021 amended Tenn. Code Ann. § 40-35-503 to provide that: “Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *See id.* Thus, an inmate who qualifies under the Reentry Success Act of 2021 has a presumptive statutory right to release on parole “upon the inmate reaching the inmate’s release eligibility date” or at any parole hearing thereafter. *Id.* Further, unless the Board of Parole meets its evidentiary burden of showing “good cause” to deny an inmate release on parole at such a hearing, an inmate “must be released on parole[.]” *Id.*

Mr. Hughes’ release eligibility date is just weeks away. At last calculation, the Board of Parole listed it as “12/15/2021,” see **Exhibit #1**, though this does not include sentencing credits for August 2021 or a forthcoming 60-day sentencing credit. Thus, unless the Board holds a hearing and shows “good cause” to deny Mr. Hughes release on parole in the coming weeks, then by law, Mr. Hughes “must be released on parole . . . upon [] reaching his release eligibility date[.]” See Tenn. Code Ann. § 40-35-503(i)(1).

The Board does not intend to release Mr. Hughes on parole in the coming weeks, though.¹ Nor does the Board intend to meet—or even *attempt* to meet—its evidentiary burden of proving good cause to deny Mr. Hughes release at a hearing before he reaches his release eligibility date.² Instead, the Board intends to keep Mr. Hughes incarcerated without holding a hearing even as his release eligibility date comes and goes.³ Consequently, unless this Court intervenes before then, the Board of Parole will keep Mr. Hughes incarcerated illegally—in contravention of his statutory right to release—without affording him a hearing for nearly a year.⁴

As grounds for this approach, the Board claims that although the Reentry Success Act of 2021 became effective July 1, 2021, the Board need not comply with the law where Mr. Hughes is concerned until July 2022, since that happens to be the date when the Board scheduled Mr. Hughes’ next hearing before the Reentry Success Act of 2021 was enacted.⁵ The Board’s insistence that the Reentry Success Act of 2021—effective July 1,

¹ A.R. at 196 (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”); Ex. #2 to Pet. for Writ of Certiorari (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ A.R. at 195.

2021—does not become effective for Mr. Hughes until July 2022, however, is arbitrary, capricious, and illegal under Tenn. Code Ann. § 40-35-503(i)(1)’s plain text, which makes clear that the rights conferred by the Reentry Success Act of 2021 apply “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *Id.* The Board’s position also denies Mr. Hughes the opportunity to exercise his substantive rights at a meaningful time and in a meaningful manner as due process requires.

In light of the foregoing, Mr. Hughes petitioned the Board to afford him a hearing before his forthcoming release eligibility date in compliance with the Reentry Success Act of 2021 and in compliance with threshold principles of due process.⁶ The Board refused.⁷ Consequently, because the Board is acting illegally, and because Mr. Hughes has exhausted every administrative remedy available to him at this juncture, Mr. Hughes has no other plain, speedy, or adequate remedy at law. Accordingly, pursuant to Tenn. Code Ann. § 27-8-101, this Court should grant Mr. Hughes’s Petition for a Writ of Certiorari and order the Board of Parole to:

- i. Afford Mr. Hughes a parole hearing governed by the standards set forth in the Reentry Success Act of 2021 before his forthcoming release eligibility date; or, alternatively:
- ii. Grant Mr. Hughes release on parole upon reaching his release eligibility date pursuant to Tenn. Code Ann. § 40-35-503(i)(1) if the Board fails to demonstrate “good cause” to deny him release at a hearing before then.

⁶ A.R. at 149–203.

⁷ See Ex. #2 to Pet. for Writ of Certiorari (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

II. FACTS

In 2016, Petitioner Jeffrey Hughes “pled guilty to one count of theft over \$250,000, one count of theft between \$10,000 and \$60,000, and six counts of money laundering.” *State v. Hughes*, No. M2017-00057-CCA-R3-CD, 2018 WL 317015 (Tenn. Crim. App. Jan. 8, 2018). Mr. Hughes had no previous criminal history. *See id.* at *2 (noting that Mr. Hughes “did not have a criminal history”); *id.* at *7 (noting the trial court’s recognition that “[t]he prior criminal history of the defendant, or lack thereof, weights greatly in favor of the defendant in this case”). After a sentencing hearing, though, “the trial court imposed an effective sentence of twenty-seven years in confinement.” *Id.* at *3. Mr. Hughes has been in the custody of the Tennessee Department of Correction—where all agree that he has been a model inmate⁸—ever since.

Mr. Hughes—a loving husband and father of four children⁹—deeply regrets his “terrible mistake.”¹⁰ In July of 2020—before the Reentry Success Act was enacted and under the significantly more restrictive standards that applied at that time—Mr. Hughes was also afforded an opportunity to make parole.¹¹ In addition to receiving an outpouring of family and community support for his release,¹² an astounding—and possibly unprecedented—twenty-one (21) separate corrections officers and staff members from Mr. Hughes’ prison wrote to the Board of Parole to support Mr. Hughes’ release on parole

⁸ A.R. at 209 (“I, Counselor Tim Mooneyham, have been Jeffery Hughes 571879 counselor since 1-23-18. Offender Hughes has always been polite, courteous, and helpful. He has not received any disciplinary since incarceration and appears to be clean from drugs and alcohol. His Strong-R score is low, and he has followed all recommendations of the Strong-r.”); A.R. at 320 (“Institutional behavior – No disciplinary reports.”). *See also* A.R. at 131, lines 6–8 (“Have you had any write ups, disciplinary reports?” Mr. Hughes: “No, sir.”).

⁹ A.R. at 214-15

¹⁰ A.R. at 131, line 18.

¹¹ *See* A.R. at 115, lines 1–3 (“We’re now on the record with what is listed as an initial parole hearing for Jeffrey W. Hughes, 571879.”).

¹² A.R. at 214–51.

as well.¹³

Upon review, because Mr. Hughes had been a model inmate, was a non-violent offender, and had no previous criminal history, Mr. Hughes' hearing officer recommended that Mr. Hughes be released on parole with conditions. Specifically, Mr. Hughes' hearing officer stated:

I'm going to recommend that the board let you out on early release; however, I'm going to recommend that you complete that C-bit program prior to being released. After being released, you either do community service work until employed. Now, if you get a job right after you get out and keep it, you don't have to worry about that. The other is pay restitution as ordered by the Court.¹⁴

The Chairman of the Board of Parole voted to adopt the hearing officer's recommendation to release Mr. Hughes on parole with conditions.¹⁵ However, three other members of the Board of Parole did not¹⁶—though it bears emphasizing that their contrary decision rested upon grounds that the Reentry Success Act of 2021 has since rendered illegal.¹⁷ Accordingly, Mr. Hughes was denied release on parole, and his next

¹³ A.R. at 210 (eighteen signatures on support letter from staff members at Bledsoe County Correctional Facility); A.R. at 211 (letter from Correctional Sergeant Timothy Fisher); A.R. at 212 (letter from Correctional Officer Alfreda Seals); A.R. at 213 (letter from Bledsoe County Correctional Complex Chaplain G.A. Williams).

¹⁴ A.R. at 137, lines 6–13.

¹⁵ A.R. at 140 (“1 – Adopt” “Montgomery, R. Voted 7/23/2020” “ER-Recommend Early Release Date”).

¹⁶ A.R. at 140.

¹⁷ The three opposing members' votes to deny Mr. Hughes parole rested on two specific grounds: (1) “The release from custody at this time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law[,]” and (2) that Mr. Hughes should complete a cognitive behavioral intervention program prior to his release. *See* A.R. at 140. Under the Reentry Success Act of 2021, however, these grounds can no longer support denying Mr. Hughes parole. Specifically, the Reentry Success Act amended Tenn. Code Ann. § 40-35-503(b)(2) to provide that a finding that “[t]he release from custody at the time would depreciate the seriousness of the crime of which the incarcerated individual stands convicted or promote disrespect for the law . . . shall not be the sole basis for denying parole” absent exceptions not present here. *See* Tenn. Code Ann. § 40-35-503(b). Additionally, the Reentry Success Act of 2021 provides that that the Board cannot require that a condition or limitation be completed by an inmate prior to release on parole unless that condition or limitation is recommended by the Department of Correction. *See* Tenn. Code Ann. § 40-28-116(b); Tenn. Code Ann. § 40-35-503(i)(2)(c). Further still, if an inmate “can complete any recommended programming while on parole supervision,” Tenn. Code Ann. §

parole hearing was scheduled for “7/1/2022.”¹⁸

Less than a year after Mr. Hughes was denied parole, Tennessee enacted into law the Reentry Success Act of 2021, which dramatically overhauls parole determinations in Tennessee. As relevant here, Tenn. Code Ann. § 40-35-503(i)(1) now provides that: “Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *Id.*

Mr. Hughes will reach his release eligibility date in a matter of weeks. Accordingly, he has asserted that—as contemplated by the unambiguous text of the Reentry Success Act of 2021—he “must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *Id.* Mr. Hughes has also specifically petitioned the Board of Parole¹⁹ and appeared (through counsel) before the Board of Parole at its most recent meeting in an effort to vindicate his rights under the Reentry Success Act of 2021.²⁰ The Board denied Mr. Hughes’ petition.²¹ It has also indicated that it will not even *attempt* to meet its burden of showing “good cause” to deny Mr. Hughes release on parole until July of 2022.²² As

40-35-503(i)(2)(C), the inmate is now eligible for presumptive release, not disqualified from it. *See id.* Consequently, because the cognitive behavioral therapy recommendation came from the Board of Parole alone, *see* A.R. at 144 (listing no TDOC program needs and participation), and additionally because the class at issue can be completed in the community—including in Lawrence County, where Mr. Hughes would reside with his wife and children upon release, *see, e.g.*, Centerstone Lawrenceburg-Old Florence Road, <https://centerstone.org/locations/tennessee/facilities/centerstone-lawrenceburg-old-florence-road/> (last visited August 31, 2021); *see also* Centerstone, Our Locations, <https://centerstone.org/locations/> (last visited August 31, 2021)—the Board of Parole’s denial could not be sustained under current law.

¹⁸ A.R. at 140.

¹⁹ A.R. at 149–203.

²⁰ A.R. at 195.

²¹ *See* Ex. #2 to Pet. for Writ of Certiorari.

²² *Id.* (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

grounds for this extra-legal approach, the Board’s counsel has maintained that:

1. “The Reentry Success Act . . . does not retroactively apply such that the Board must rehear the thousands of offenders that were previously heard and declined but may be eligible under the Act upon reaching their review dates,”²³ without regard to the plain text of Tenn. Code Ann. § 40-35-503(i)(1), which provides—on a forward-looking basis—that: “Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *Id.* (emphasis added). And:

2. “the Board does not have the ability or resources necessary to identify and reconsider all of those cases, including Mr. Hughes[,]”²⁴ which is not an excuse for violating the law.

III. LEGAL STANDARD

“A writ of certiorari is the ‘procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals.’” *Garrett v. Tenn. Bd. of Parole*, No. M2019-01742-COA-R3-CV, 2021 WL 2556643, at *2 (Tenn. Ct. App. June 22, 2021) (citing *Settle v. Tenn. Dep’t of Corr.*, 276 S.W.3d 420, 425 (Tenn. Ct. App. 2008)). Tenn. Code Ann. § 27-8-101 specifically provides that:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the

²³ A.R. at 195.

²⁴ A.R. at 195.

Tennessee Rules of Appellate Procedure.

Id. Tenn. Code Ann. § 27-9-101 provides further that:

Anyone who may be aggrieved by any final order or judgment of any board or commission functioning under the laws of this state may have the order or judgment reviewed by the courts, where not otherwise specifically provided, in the manner provided by this chapter.

Id.

“Under the common law writ of certiorari, the decisions of the Board are reviewable to determine whether the Board exceeded its jurisdiction, or acted illegally, fraudulently, or arbitrarily.” *Arnold v. Tenn. Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997) (citing *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994)). Thus,

[t]he Tennessee Supreme Court has held that a common-law writ of certiorari may be used to remedy “(1) fundamentally illegal rulings; (2) proceedings inconsistent with essential legal requirements; (3) proceedings that effectively deny a party his or her day in court; (4) decisions beyond the lower tribunal’s authority; and (5) plain and palpable abuses of discretion.

Gordon v. Tennessee Bd. of Prob. & Parole, No. M2006-01273-COA-R3CV, 2007 WL 2200277, at *2 (Tenn. Ct. App. July 30, 2007) (quoting *Willis v. Tennessee Dep’t of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003)).

Of special significance here, “an agency’s interpretation of its controlling statutes remains a question of law subject to de novo review.” *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 523 (Tenn. 2013). Consequently, “an agency’s statutory interpretation is not binding on the courts.” *Id.* (citing *Nashville Mobilphone Co. v. Atkins*, 536 S.W.2d 335, 340 (Tenn. 1976); *H & R Block E. Tax Servs. v. Dep’t of Commerce & Indus., Div. of Ins.*, 267 S.W.3d 848, 854–55 (Tenn. Ct. App. 2008) (discussing why courts afford less deference to an agency’s statutory interpretations than

to an agency's interpretation of its own regulations)). Arbitrarily deferring a parole hearing for too long a period is also a decision that can be remedied via a writ of certiorari. *See, e.g., Baldwin v. Tenn. Bd. of Paroles*, 125 S.W.3d 429, 434 (Tenn. Ct. App. 2003) (“It appears to us that the Board's decision constitutes an arbitrary withdrawal of the power to parole from future Board members, and that a twenty-year deferral would undermine the very provisions of the parole statutes that empower the Board to grant parole.”).

IV. SUMMARY OF ARGUMENT

Mr. Hughes’ Petition for a Writ of Certiorari should be granted for three essential reasons:

First, the Board of Parole’s interpretation of Tenn. Code Ann. § 40-35-503(i)(1)—“a question of law subject to de novo review,” *see Pickard*, 424 S.W.3d at 523—is wrong as a matter of law, while Mr. Hughes’ interpretation is correct. Several considerations—Tenn. Code Ann. § 40-35-503(i)(1)’s unambiguous text, its legislative history and other provisions, the duty to avoid construing statutes in a manner that yields absurd results, and the Board’s proffered, atextual explanation for its interpretation—compel that conclusion. Further, if Tenn. Code Ann. § 40-35-503(i)(1)—the centerpiece of the newly-enacted Reentry Success of 2021—is interpreted correctly and as Mr. Hughes proposes, then Mr. Hughes is entitled to be released on parole upon reaching his forthcoming release eligibility unless the Board of Parole meets its burden of showing good cause to deny him release. *See id.* (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”). Significantly, because the presumptive right to release that Tenn. Code Ann. § 40-35-503(i)(1) affords to qualifying inmates is enforceable as a matter of due process, the

Board's atextual view of its obligations—if permitted to stand—would also violate the 14th Amendment.

Second, Tenn. Code Ann. § 40-35-503(i)(1) gives rise to a constitutionally protected liberty interest, and due process requires that Mr. Hughes be afforded an opportunity to vindicate his rights under Tenn. Code Ann. § 40-35-503(i)(1) at a meaningful time and in a meaningful manner. Thus, by committing to keeping Mr. Hughes incarcerated—without even *attempting* to meet its burden of showing good cause to deny him release at a hearing—for nearly ten months after he reaches his release eligibility date, the Board's erroneous and atextual interpretation of Tenn. Code Ann. § 40-35-503(i)(1) creates a constitutional conflict that must be avoided.

Third, by refusing to consider when Mr. Hughes will reach his release eligibility date despite the centrality of that fact to Mr. Hughes' rights under Tenn. Code Ann. § 40-35-503(i)(1), the Board of Parole acted arbitrarily and abused its discretion. A qualifying inmate's release eligibility date is the critical date when the statutory benefits conferred by Tenn. Code Ann. § 40-35-503(i)(1) first accrue. *See id.* ("Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing."). The Administrative Record filed in this action, however, makes clear that the Board of Parole failed to consider Mr. Hughes' release eligibility date at all. *See Collective Exhibit #2*, at 2 (in which Respondent's counsel states: "You are correct that there is no document in the record indicating Mr. Hughes' current RED. It is my understanding that no such document was included because a writ of certiorari reviews a decision of a board or agency based upon information the board or agency had at the time it made a decision."); *id.* at 4 ("Since a writ of certiorari is limited to

information the Board had at the time it made a decision, Mr. Hughes’ current RED date is irrelevant to the Court’s review of the writ.”). As a result, Mr. Hughes’ current release eligibility date is not reflected in any document filed in the Administrative Record. *See id.* Because Mr. Hughes’ release eligibility date is not only a “relevant” consideration but the *central* consideration under Tenn. Code Ann. § 40-35-503(i)(1), though, the Board acted arbitrarily and abused its discretion by failing to consider it.

V. ARGUMENT

A. THE REENTRY SUCCESS ACT OF 2021 AFFORDS QUALIFYING INMATES A PRESUMPTIVE STATUTORY RIGHT TO RELEASE ON PAROLE “UPON THE INMATE REACHING THE INMATE’S RELEASE ELIGIBILITY DATE OR ANY SUBSEQUENT PAROLE HEARING.”

1. The plain text of Tenn. Code Ann. § 40-35-503(i)(1) states that it applies “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”

For decades, Tennessee’s parole statute provided that “[p]arole is a privilege, not a right.” *Brennan v. Bd. of Parole for Tenn.*, 512 S.W.3d 871, 873 (Tenn. 2017) (citing Tenn. Code Ann. §§ 40-28-117(a)(1), 40-35-503(b)). The Board’s regulations have long reflected as much, and they continue to do so today. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2) (“Responsive to requirements of Tennessee law, the Board recognizes that parole is a privilege and not a right, and that no inmate may be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison.”).

Earlier this year, though, the General Assembly enacted the Reentry Success Act of 2021, which Governor Bill Lee signed into law as Public Chapter No. 410. A critical provision of the Reentry Success Act of 2021—which became effective July 1, 2021—amended Tenn. Code Ann. § 40-35-503 to provide that: “Notwithstanding subsection (b), **there is a presumption that an eligible inmate must be released on parole,**

except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *See* Tenn. Code Ann. § 40-35-503(i)(1) (emphasis added). Consequently, effective July 1, 2021, an inmate who qualifies under the Reentry Success Act of 2021 has a presumptive right to release on parole “upon the inmate reaching the inmate’s release eligibility date” *Id.*

Given the above provision of the Reentry Success Act of 2021, as a matter of law, it is no longer true that “parole is a privilege, not a right” for all inmates—even though the Board’s regulations continue to reflect that since-repealed standard. *See* Tenn. Comp. R. & Regs. 1100-01-01-.02(2). Instead, inmates who are eligible under the Reentry Success Act of 2021 now have a presumptive statutory right to release on parole upon reaching their release eligibility dates or at any “subsequent” parole hearing thereafter—a right that can only be denied to them “for good cause shown[.]” *See* Tenn. Code Ann. § 40-35-503(i)(1).

Tenn. Code Ann. § 40-35-503(i)(1) is not ambiguous. It states in straightforward terms that qualifying inmates enjoy a presumptive statutory right to release “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *Id.* As a result, “retroactivity” is not even relevant to the inquiry. *See id.*; *contra* A.R. at 195 (in which the Board asserts that: “The Reentry Success Act applies to parole determinations made on or after the effective date. It does not retroactively apply”). Instead, the Reentry Success Act is a forward-looking statute, and the rights that it confers attach “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” Tenn. Code Ann. § 40-35-503(i)(1).

Nor does the fact that an inmate was afforded a parole hearing under a different body of substantive law before reaching his release eligibility date constitute compliance

with Tenn. Code Ann. § 40-35-503(i)(1). *See id.* But see Ex. #2 to Pet. for Writ of Certiorari (asserting that “Mr. Hughes has already had a hearing before his Release Eligibility Date in 2020 which complies with the requirements in T.C.A. 40-35-503(d).”). Again, the rights conferred by the Reentry Success Act of 2021 attach “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” Tenn. Code Ann. § 40-35-503(i)(1). Thus, whatever occurred prior to an inmate reaching his release eligibility date—or at any previous parole hearing—is irrelevant to the substantive statutory rights that Tenn. Code Ann. § 40-35-503(i)(1) confers, which accrue “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing” instead. *See id.*

Given that the text of Tenn. Code Ann. § 40-35-503(i)(1) is not susceptible to any reasonable ambiguity, this Court need not look any further than the text of Tenn. Code Ann. § 40-35-503(i)(1) itself. *See Wallace v. Metro. Gov't of Nashville*, 546 S.W.3d 47, 52 (Tenn. 2018) (“Legislative intent is first and foremost reflected in the language of the statute. . . . When a statute’s text is clear and unambiguous, we need look no further than the language of the statute itself.”). Instead, this Court should “simply apply the plain meaning without complicating the task.” *Tenn. Dep’t of Corr. v. Pressley*, 528 S.W.3d 506, 513 (Tenn. 2017) (cleaned up). Doing so requires the Board of Parole either to hold a hearing and attempt to demonstrate good cause to deny Mr. Hughes release on parole, or else, grant Mr. Hughes release on parole upon reaching his release eligibility date. *See* Tenn. Code Ann. § 40-35-503(i)(1) (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”). Here, however, given that the Board of Parole has made clear—

repeatedly—that it will do neither,²⁵ this Court should grant Mr. Hughes’ Petition for a Writ of Certiorari and order the Board of Parole to comply with Tenn. Code Ann. § 40-35-503(i)(1)’s unambiguous statutory mandate.

2. The legislative history of the Reentry Success Act of 2021 and differences in its other provisions support the conclusion that the provisions of Tenn. Code Ann. § 40-35-503(i)(1) apply “upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”

Tenn. Code Ann. § 40-35-503(i)(1) took effect on July 1, 2021, and it applies to all “parole determinations made on or after that date.”²⁶ In keeping with this effective date, the fiscal note associated with the Reentry Success Act of 2021 predicted an immediate annual impact and an immediate and recurring annualized decrease in state incarceration expenditures—rather than staggered results or delayed cost-savings. *See, e.g.*, Fiscal note of H.B. 785/SB 768, 111th Gen. Assemb. Reg. Sess. (Tenn. 2021), <https://www.capitol.tn.gov/Bills/112/Fiscal/HB0785.pdf>, at 5 (“Pursuant to Tenn. Code Ann. § 9-4-210, 77 offenders will be released **each year** serving 913 fewer days. The annualized decrease in state incarceration expenditures is estimated to be \$5,656,418 (\$80.46 x 913 x 77) Creating a presumption that eligible inmates will be released on RED will lead to **a recurring annualized decrease** in state incarceration expenditures estimated to be \$9,630,016 (\$219,656 + \$3,753,942 + \$5,656,418).”) (emphases added).²⁷

²⁵ A.R. at 196 (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”); Ex. #2 to Pet. for Writ of Certiorari (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

²⁶ A.R. at 190.

²⁷ The Court may take judicial notice of this public record. *See Ind. State Dist. Council of Laborers v. Brukardt*, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at *8 (Tenn. Ct. App. Feb. 19, 2009), *perm. to app. denied* (Tenn. Aug. 24, 2009).

In stark contrast to other provisions of the Reentry Success Act of 2021—for instance, the mandatory reentry provision, which was restricted to inmates who were “serving a felony sentence for an offense that occurred on or after July 1, 2021”²⁸—Tenn. Code Ann. § 40-35-503(i)(1) also was not limited by the date that an offense or other event occurred. Instead, it reflects that it applies to any qualifying inmate “upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.” See Tenn. Code Ann. § 40-35-503(i)(1). This distinction carries meaning, and it provides a powerful indication that the legislature intended Tenn. Code Ann. § 40-35-503(i)(1) to function differently. Cf. *Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 560 (Tenn. 2013) (“Although legislative silence is not generally indicative of an intent not to act, . . . legislative silence in this particular context offers a strong suggestion that the legislature intended Tenn. Code Ann. §§ 29-26-121 and -122 to function differently. If the legislature had intended to punish a plaintiff's failure to comply with the requirements of Tenn. Code Ann. § 29-26-121(a)(2)(E) by requiring courts to dismiss all such cases with prejudice, the legislature could easily have done so, as it did in Tenn. Code Ann. § 29-26-122. Thus, we can only interpret the legislature's failure to mandate the same remedy for Tenn. Code Ann. § 29-26-121(a)(2)(E) violations as an indication that dismissal with prejudice for such violations is not compulsory.”).

3. The Board of Parole's contrary and atextual interpretation of Tenn. Code Ann. § 40-35-503(i)(1) would give rise to absurd results.

The Board's contrary position also creates an opportunity for patently absurd results. *But see State v. Menke*, 590 S.W.3d 455, 460 (Tenn. 2019) (“In construing statutes, Tennessee law provides that courts are to avoid a construction that leads to

²⁸ A.R. at 185; Tenn. Code Ann. § 40-35-506(a)(1).

absurd results.”). For example, under the Board’s interpretation of Tenn. Code Ann. § 40-35-503(i)(1), even if a qualifying inmate is presumptively entitled to release on parole in **2021** (because that is when he will reach his release eligibility date), the Board may deny the inmate release on parole without holding a hearing for up to *ten years*—until **2031**—as long as that happens to be when the inmate was slated to receive his next parole hearing before Tenn. Code Ann. § 40-35-503(i)(1) became effective. *See* Tenn. Code Ann. § 40-28-115(i) (“When declining, revoking, or rescinding parole, the board is authorized to set the period of time before the prisoner receives another hearing on the same offense or offenses. However, no period set by the board shall exceed ten (10) years.”).

The Board’s approach is incompatible with the text of the Reentry Success Act of 2021, however, which—again—provides in crystal-clear terms that its benefits accrue “*upon the inmate reaching the inmate’s release eligibility date or any subsequent* parole hearing.” *See* Tenn. Code Ann. § 40-35-503(i)(1) (emphases added). As a consequence, qualifying inmates are entitled to the benefits of Tenn. Code Ann. § 40-35-503(i)(1) “upon . . . reaching” their release eligibility date or at any “subsequent” hearing thereafter. *See id.* By contrast, the relevant triggering date is not—as the Board has claimed—whatever date the Board happened to select for an inmate’s next hearing before the Reentry Success Act of 2021 was enacted.

4. The Board of Parole’s contrary and atextual interpretation of Tenn. Code Ann. § 40-35-503(i)(1) is based concerns about the Board’s “resources,” rather than an effort to determine its obligations under the statute.

The Board’s contrary, atextual interpretation of Tenn. Code Ann. § 40-35-503(i)(1)—that it becomes effective for qualifying inmates whenever their next parole hearing happens to have been scheduled before the Reentry Success Act of 2021 was enacted, rather than “upon the inmate reaching the inmate’s release eligibility date,” *id.*—

also is not a serious attempt to comply with the governing law. Instead, the Board's position is grounded in its (refreshingly candid) concern that "the Board does not have the ability or resources necessary to identify and reconsider all of those cases, including Mr. Hughes"²⁹—a concern that is wholly divorced from the actual text of the statute.

There are, however, several immediate problems with the Board's "resources"-based defense to complying with Tenn. Code Ann. § 40-35-503(i)(1), three of which are detailed below:

First, the fact that complying with a law would require the Board to expend resources is not a justification for violating it, particularly when the consequences of that violation are that qualifying inmates like Mr. Hughes are incarcerated illegally in contravention of their presumptive right to release. *Cf. Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.").

Second, the Board does not actually have to "reconsider" anything. Instead, it need only apply—on a forward-looking basis—the unambiguous terms of Tenn. Code Ann. § 40-35-503(i)(1) as that provision is written. Specifically, when a qualifying inmate's release eligibility date approaches, the Board must either: (1) hold a hearing and attempt to meet its burden of showing good cause to deny the inmate release on parole; or (2) grant the inmate release on parole upon the inmate reaching his release eligibility date. The statute thus applies—on a forward-looking basis—to qualifying inmates "upon . . . reaching" their release eligibility date or at any "subsequent" parole hearing thereafter,

²⁹ A.R. at 195.

see Tenn. Code Ann. § 40-35-503(i)(1), rather than requiring the Board to look backward and reconsider denials from previous hearings.

Third, even if the Board's claim that "the Board does not have the ability or resources necessary to identify" inmates who qualify under the Reentry Success Act of 2021³⁰ were taken at face value, the Board does not even have to expend resources on what it claims to be worried that it lacks the resources to do. Specifically, § 1100-01-01-.09(1)(d) of the Rules and Regulations of the Tennessee Board of Parole contains an existing mechanism for inmates to bring their claims to the Board, rather than the other way around. *See id.* ("Upon receipt of significant new information, the Board may, on its own motion, reconsider any parole grant case prior to the release of the inmate and may reopen and advance or delay a parole date.").

Mr. Hughes, for his part, utilized this regulation to petition the Board months ago, informing the Board, in detail, that:

[P]ursuant to § 1100-01-01-.09(1)(d) of the Rules and Regulations of the Tennessee Board of Parole, this letter advises this Board of "significant new information" that warrants reconsidering Mr. Hughes' parole grant case. As you are aware, following Mr. Hughes's July 2020 parole hearing, Mr. Hughes' hearing officer recommended his early release with conditions, and Board Chairman Richard Montgomery voted to grant Mr. Hughes early release. *See* Attachment #5. Nonetheless, because three other members of this Board voted against granting Mr. Hughes parole based on the parole criteria that applied in July 2020, Mr. Hughes remains incarcerated.

Since that time, however, significant new information has come to light that warrants reconsidering this Board's denial. Specifically, as of July 1, 2021, the Reentry Success Act of 2021 takes effect, and Mr. Hughes qualifies under it. As a result, as of July 1, 2021, Mr. Hughes will be presumptively entitled to release as a matter of right at his release eligibility date absent a finding of "good cause shown" by this Board to deny such release—something that this Board has not shown to date. This information is significant, because beginning July 1, 2021, unless this Board shows good cause for denying Mr. Hughes parole, every single day that Mr. Hughes is

³⁰ A.R. at 195.

incarcerated beyond his release eligibility date—which will likely be in September 2021 based on forthcoming good time and educational credits—will be a day that he is incarcerated illegally. *See* 2021 Tenn. Pub. Acts, 410 § 12 (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”).

Further, once the Reentry Success Act of 2021 takes effect, Mr. Hughes’s parole denial in July 2020 will rest on grounds that are illegal. In denying Mr. Hughes parole, the Board provided two reasons for its decision: (1) that Mr. Hughes’ “release from custody at the time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law: T.C.A. 40-35-503(b)(2)”; and (2) that Mr. Hughes needed to complete the cognitive behavioral intervention program pre-release. *See* Offender Hearing Decision Notification (Attachment #6). The Reentry Success Act of 2021, however, renders this denial improper in at least three respects. *First*, the Reentry Success Act of 2021 allows any programming suggested in a Risk and Needs Assessment to be completed in the community when possible, and because Cognitive Behavioral Therapy is available for free in Lawrence County and throughout Tennessee, *see, e.g.,* Centerstone Lawrenceburg-Old Florence Road, <https://centerstone.org/locations/tennessee/facilities/centerstone-lawrenceburg-oldflorence-road/> (last visited June 18, 2021); *see also* Centerstone, Our Locations, <https://centerstone.org/locations/> (last visited June 18, 2021), it is both unnecessary and illegal to deny Mr. Hughes parole on this ground. *Second*, absent exceptions not relevant to Mr. Hughes, the Reentry Success Act of 2021 amends Tenn. Code Ann. § 40-35-503(b)(2) to prohibit the Board from denying parole on the sole basis that release would depreciate the seriousness of the crime. *See* 2021 Tenn. Pub. Acts, 410 § 13 (Attachment #2). *Third*, the evidentiary burden of demonstrating good cause to deny release is now the Board’s, and this Board has neither made—nor even attempted to make—this showing where Mr. Hughes is concerned. For these reasons, this Board should promptly afford Mr. Hughes a new parole hearing, which § 1100-01-01-.09(1)(d) unmistakably empowers this Board to do and due process affirmatively requires.

Given the above context, based on the significant and material changes in the governing law, effective July 1, 2021, that affect Mr. Hughes’ presumptive right to release on parole at his forthcoming release eligibility date—information regarding which I am now bringing to your attention—this letter petitions this Board to afford Mr. Hughes a parole hearing in July or August of 2021. Mr. Hughes’ next parole hearing is presently scheduled for July of 2022, which would result in nearly a year of illegal incarceration in contravention of Mr. Hughes’ affirmative right to release on parole upon reaching his release eligibility date absent good cause shown by this Board

to deny him release.³¹

At the Board's June 23, 2021 meeting, Mr. Hughes appeared—through counsel—to reiterate this claim and urge the Board to afford him a hearing.³² Mr. Hughes also transmitted further correspondence regarding his Petition on June 24, 2021.³³

In response, however, on June 25, 2021, the Board summarily denied Mr. Hughes' petition in cursory fashion without even mentioning the Reentry Success Act of 2021.³⁴ The Board has omitted that denial—and the June 24, 2021 letter that preceded it—from the Administrative Record in this case, though both correspondences are available for the Court's review at Exhibits #2 and #3 to Mr. Hughes's Petition for a Writ of Certiorari.

Given this context, the Board's actual refusal to comply with the Reentry Success Act of 2021 is evidently not attributable to the fact that "the Board does not have the ability or resources necessary to identify" inmates who qualify under the Reentry Success Act of 2021³⁵—though as noted above, such a concern would not be cognizable regardless. Instead, the Board will not comply with the law because it does not care to and cannot be bothered to do so.

B. QUALIFYING INMATES' PRESUMPTIVE STATUTORY RIGHT TO RELEASE ON PAROLE UNDER TENN. CODE ANN. § 40-35-503(i)(1) IS ENFORCEABLE AS A MATTER OF DUE PROCESS.

Inmates' presumptive right to release under the Reentry Success Act of 2021 is enforceable as a matter of due process. As the Tennessee Court of Appeals held even

³¹ A.R. at 151–52.

³² A.R. at 22; A.R. at 3, lines 11–25. Counsel notes for the record that the transcript the Board has filed of this meeting contains extensive errors, both typographical and substantive.

³³ See Ex. #3 to Pet. for Writ of Certiorari.

³⁴ See Ex. #2 to Pet. for Writ of Certiorari (asserting that "Mr. Hughes has already had a hearing before his Release Eligibility Date in 2020 which complies with the requirements in T.C.A. 40-35-503(d).").

³⁵ A.R. at 195.

before the Reentry Success Act of 2021 was enacted into law:

Although an inmate has no fundamental right or liberty interest in being released on parole prior to the expiration of his or her sentence, this Court has determined that “the Board of Paroles is obligated to follow the laws of the State of Tennessee as well as its own rules, and that inmates are entitled to whatever due process arises as a result of the proper application of the state statutes and the rules.” *Wells v. Tenn. Bd. of Paroles*, 909 S.W.2d 826, 829 (Tenn. Ct. App. 1995).

Greenwood v. Tenn. Bd. of Parole, 547 S.W.3d 207, 214–15 (Tenn. Ct. App. 2017).

There is also little doubt that affording inmates a presumptive right to release on parole under Tennessee’s parole scheme constitutes a liberty interest protected by the federal Constitution’s due process clause. Indeed, that question was settled by the U.S. Court of Appeals for the Sixth Circuit several decades ago. *See Mayes v. Trammell*, 751 F.2d 175, 179 (6th Cir. 1984) (“we hold that the overall Tennessee parole scheme, particularly rule 1100–1–1–.06 of the Rules of Tennessee Board of Parole, does create a liberty entitlement protected by the due process clause. . . . **The Tennessee parole scheme, by virtue of its ‘presumption’ of parole release and its virtual mirroring of the language of the Nebraska statute at issue in *Greenholtz*, creates such an expectation of parole release as to allow the conclusion that the Tennessee parole rules do indeed create a liberty interest.**”) (emphasis added). Thereafter, “[i]n response to the *Mayes* decision, the Board amended its rules to eliminate any liberty interest by eliminating the language that created a presumption that a resident would be released on parole when he was first eligible. The new Rule became effective on April 10, 1985.” *See Phelps v. Traugher*, 81 F.3d 161 (6th Cir. 1996).

Now, in 2021, qualifying inmates in Tennessee—including Mr. Hughes—enjoy a presumptive, due-process-protected right to release on parole absent good cause shown upon reaching their release eligibility date (or at any subsequent parole hearing) once

again. *See* Tenn. Code Ann. § 40-35-503(i)(1) (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”). And when it comes to enforcing that right, it is hornbook law that: “The essence of procedural due process is notice and an opportunity to be heard **at a meaningful time and in a meaningful manner.**” *Manning v. City of Leb.*, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003) (emphasis added).

In keeping with this constitutional due process requirement, the Board has a statutory obligation to afford inmates parole hearings at “a reasonable time” *See* Tenn. Code Ann. § 40-35-503(d)(1) (“The board of parole shall conduct a hearing within a reasonable time prior to or upon the individual’s release eligibility date to determine the individual’s fitness for parole.”). This mandatory duty is ministerial. *State ex rel. Metro. Gov’t of Nashville & Davidson Cnty. v. State*, 534 S.W.3d 928, 931 (Tenn. Ct. App. 2017) (quoting *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 220 (Tenn. 1988) (in turn, quoting *State ex rel. Millers Nat’l Ins. Co. v. Fumbanks*, 177 Tenn. 455, 151 S.W.2d 148, 150–51 (1941))). By necessity, then, for the statutory rights conferred by Tenn. Code Ann. § 40-35-503(i)(1) to be considered “at meaningful time and in a meaningful manner,” *see Manning*, 124 S.W.3d at 566, due process requires the Board to meet its burden of showing good cause to deny parole under Tenn. Code Ann. § 40-35-503(i)(1) at a hearing that is conducted, at minimum, before the inmate has reached his release eligibility date.

By contrast, the Board’s position that it may hold a hearing on whatever date the Board just happened to select for an inmate’s next hearing before Tenn. Code Ann. § 40-35-503(i)(1) became effective—without regard to when an inmate actually reaches his release eligibility date—does not plausibly afford qualifying inmates an opportunity to

vindicate the liberty interest that Tenn. Code Ann. § 40-35-503(i)(1) creates.³⁶ Consequently, in order to avoid a conflict with the Constitution, the Board’s atextual approach must be rejected in favor of the straightforward—and constitutional—text of Tenn. Code Ann. § 40-35-503(i)(1) itself. *See Bean v. McWherter*, 24 S.W.3d 325, 331 (Tenn. Ct. App. 1999) (“Where possible, the courts should adopt a reasonable construction of a statute that provides for harmonious operation of the laws and avoids a constitutional conflict.”) (citing *Fletcher v. State*, 951 S.W.2d 378 (Tenn. 1997)); *see also State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993) (“It is also our duty to adopt a construction which will sustain a statute and avoid constitutional conflict if any reasonable construction exists that satisfies the requirements of the Constitution.”) (collecting cases)).

As detailed in the following section, Mr. Hughes is among those eligible inmates who qualifies for the benefits afforded by the Reentry Success Act of 2021. Accordingly, applying the plain meaning of Tenn. Code Ann. § 40-35-503(i)(1) to this case, “there is a presumption that [Mr. Hughes] must be released on parole, except for good cause shown, upon [Mr. Hughes] reaching [his] release eligibility date or any subsequent parole hearing.” *See* Tenn. Code Ann. § 40-35-503(i)(1). Mr. Hughes’ release eligibility date is also just weeks away. Consequently, unless the Board of Parole holds a hearing in the coming weeks and demonstrates goods cause to deny Mr. Hughes release on parole at that hearing, then Mr. Hughes must be “released on parole . . . upon [] reaching [his] release eligibility date” *Id.*

³⁶ *See* A.R. at 196 (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”); Ex. #2 to Pet. for Writ of Certiorari (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

C. AS A QUALIFYING INMATE UNDER TENN. CODE ANN. § 40-35-503(i)(1), MR. HUGHES IS PRESUMPTIVELY ENTITLED TO RELEASE ON PAROLE “UPON THE INMATE REACHING THE INMATE’S RELEASE ELIGIBILITY DATE OR ANY SUBSEQUENT PAROLE HEARING.”

It is not clear at this juncture whether the Board of Parole even disputes that Mr. Hughes qualifies, substantively, for the presumption of release conferred by Tenn. Code Ann. § 40-35-503(i)(1). If Mr. Hughes’ eligibility is disputed, though, the basis for Mr. Hughes’ eligibility is detailed with specificity below.

Parole eligibility in Tennessee is determined by reference to Tennessee Code Annotated § 40-35-503. As relevant here, Tenn. Code Ann. § 40-35-503(b) establishes four grounds that may be used as a basis to deny an inmate parole:

- (1) There is a substantial risk that the incarcerated individual will not conform to the conditions of the release program;
- (2) The release from custody at the time would depreciate the seriousness of the crime of which the incarcerated individual stands convicted or promote disrespect for the law[. . . .];
- (3) The release from custody at the time would have a substantially adverse effect on institutional discipline; or
- (4) The incarcerated individual’s continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance the defendant’s capacity to lead a law-abiding life when given release status at a later time.

Id.

These considerations—and Tenn. Code Ann. § 40-35-503(b)’s instruction that “no inmate convicted shall be granted parole” if the Board finds that any of these four factors is present—remain the law for inmates who are not eligible under the Reentry Success Act of 2021. Based on the Reentry Success Act of 2021, however, for eligible inmates who qualify under Tenn. Code Ann. § 40-35-503(i), the presumption regarding release on parole is flipped, and the criteria considered are different.

Eligibility under Tenn. Code Ann. § 40-35-503(i) is determined according to the following criteria:

1. The potential parolee's conviction offense must be a Class D or E felony,³⁷ or a felony offense that is not a violent felony enumerated in Tenn. Code Ann. § 40-35-120(b);³⁸
2. With limited exceptions, the conviction offense must not be a sexual offense;³⁹
3. The potential parolee must be deemed a "low risk to reoffend or most appropriately supervised in the community" under his or her most recent, validated risk and needs assessment performed pursuant to Tenn. Code Ann. § 41-1-126;⁴⁰
4. The potential parolee must have "successfully completed the programming recommended by the department of correction based on a validated risk and needs assessment performed under § 41-1-126" or be able to "complete any recommended programming while on parole supervision;"⁴¹
5. The potential parolee must not have any Class A or Class B disciplinary infraction within a year of the potential parolee's parole hearing date;⁴² and
6. If a potential parolee's conviction is a non-prohibited sexual offense, he or she must have completed the steps of the psychological evaluation laid out in Tenn. Code Ann. § 40-35-503(c) with the statutorily required result.⁴³

³⁷ Tenn. Code Ann. § 40-35-503(i)2(A)(i) ("For purposes of this subsection (i), 'eligible inmate' means an inmate who: (A)(i) Is currently serving a sentence for a Class E or Class D felony offense; or (ii) Is currently serving a sentence for a felony that is not classified as a violent offense under § 40-35-120(b)").

³⁸ Tenn. Code Ann. § 40-35-503(h) ("Notwithstanding subsection (b), there is a presumption that an inmate convicted of a Class E or Class D nonviolent felony offense is to be released on parole upon the inmate reaching the inmate's release eligibility date unless good cause is shown as to why the inmate should not be released. As used in this subsection (h), "nonviolent felony offense" means a felony offense that does not involve serious bodily injury, as defined in § 39-11-106, or death to a victim or bystander, does not involve threats reasonably calculated to produce such results, and does not involve sexual contact or sexual penetration as those terms are defined in § 39-13-501.");

³⁹ Tenn. Code Ann. § 40-35-503(i)(2)(E).

⁴⁰ Tenn. Code Ann. § 40-35-503(i)(2)(B).

⁴¹ Tenn. Code Ann. § 40-35-503(i)(2)(C).

⁴² Tenn. Code Ann. § 40-35-503(i)(2)(D).

⁴³ Tenn. Code Ann. § 40-35-503(c).

Under the Reentry Success Act of 2021, if an inmate satisfies all of the above criteria, then “there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.” *See* Tenn. Code Ann. § 40-35-503(i)(1).

Here, Mr. Hughes satisfies all of these requirements. Accordingly, he is an eligible inmate who qualifies for the presumption of release conferred by Tenn. Code Ann. § 40-35-503(i)(1) upon reaching his release eligibility date. Several considerations support this conclusion.

First, having been convicted of theft and money laundering, *see Hughes*, 2018 WL 317015, Mr. Hughes is a non-violent offender who “[i]s currently serving a sentence for a felony that is not classified as a violent offense under § 40-35-120(b).”⁴⁴

Second, Mr. Hughes was not convicted of a sexual offense. *See Hughes*, 2018 WL 317015.

Third, under his most recent validated risk and needs assessment performed by the TDOC, Mr. Hughes was determined to be low risk to reoffend or most appropriately supervised in the community.⁴⁵

Fourth, Mr. Hughes has completed all TDOC-recommended programming⁴⁶ (in addition to maintaining impressive employment history⁴⁷) during his time in prison, and the only additional programming that has been recommended to him—which was

⁴⁴ Tenn. Code Ann. § 40-35-503(i)(2)(A)(ii).

⁴⁵ *See* A.R. at 129, lines 2–4 (“All right. Your file contains a strong or risk needs assessment completed by TDOC.”).

⁴⁶ A.R. at 119, lines 4–13.

⁴⁷ While incarcerated, Mr. Hughes has worked as a chaplain’s aid, a kitchen worker, a commercial cleaner, and a TriCore woodworker. *See* A.R. at 129.

recommended by the Board of Parole,⁴⁸ not the TDOC's risks and needs assessment⁴⁹—can be completed while on parole supervision. Specifically, the Board of Parole has asked Mr. Hughes to complete a Cognitive Behavioral Therapy class, which is available throughout Tennessee—including in Lawrence County—where Mr. Hughes would reside with his wife and children upon release. *See, e.g.,* Centerstone Lawrenceburg-Old Florence Road, <https://centerstone.org/locations/tennessee/facilities/centerstone-lawrenceburg-old-florence-road/> (last visited August 31, 2021); *see also* Centerstone, Our Locations, <https://centerstone.org/locations/> (last visited August 31, 2021).

Fifth, Mr. Hughes has not only avoided Class A or Class B disciplinary infractions within the past year; he has never had any disciplinary infractions at any time at all.⁵⁰

Sixth and finally, as detailed above, Mr. Hughes has never been convicted of a sexual offense—qualifying or otherwise—rendering that disqualifying consideration inapplicable.

Given the above, Mr. Hughes is a qualifying inmate under Tenn. Code Ann. § 40-35-503(i). Accordingly, absent good cause shown by the Board to deny him release on parole before he reaches his rapidly approaching release eligibility date, Mr. Hughes is presumptively entitled to be released on parole upon reaching his release eligibility date. *See* Tenn. Code Ann. § 40-35-503(i)(1) (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause

⁴⁸ A.R. at 140

⁴⁹ A.R. at 144 (listing no program needs and participation).

⁵⁰ A.R. at 144 (“Disciplinary Actions Past 12 Months . . . None as of 7/7/20.”); A.R. at 209 (“I, Counselor Tim Mooneyham, have been Jeffery Hughes 571879 counselor since 1-23-18. Offender Hughes has always been polite, courteous, and helpful. He has not received any disciplinary since incarceration and appears to be clean from drugs and alcohol. His Strong-R score is low, and he has followed all recommendations of the Strong-r.”). *See also* A.R. at 131, lines 6–8 (“Have you had any write ups, disciplinary reports?” Mr. Hughes: “No, sir.”); A.R. at 320 (“Institutional behavior – No disciplinary reports.”).

shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.").

The Board, however, has stated repeatedly that it will not even attempt to meet its evidentiary burden until July of 2022. *See* A.R. at 196 ("Mr. Hughes' next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law."); Ex. #2 to Pet. for Writ of Certiorari ("Mr. Hughes' next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law."). This approach, as detailed above, flagrantly violates Tenn. Code Ann. § 40-35-503(i)(1) and does not plausibly comply with the Board of Parole's statutory obligations.

Admittedly, the Board's concern about its ability to meet its burden of proof is understandable. In particular, the Board of Parole is no longer permitted to deny Mr. Hughes release on parole on the "sole basis" that granting him parole would "depreciate the seriousness of the crime of which the incarcerated individual stands convicted or promote disrespect for the law." *See* Tenn. Code Ann. § 40-35-503(2)(A). Neither can it delay Mr. Hughes' release on parole on this basis of non-validated, Board-recommended programming that Mr. Hughes can complete in the community while on parole supervision. *See* Tenn. Code Ann. § 40-35-503(i)(2)(C). Accordingly, one might be forgiven for suspecting that the Board refuses to hold a timely parole hearing or attempt to meet its burden of proof to deny Mr. Hughes release on parole under Tenn. Code Ann. § 40-35-503(i)(1) because the Board knows full well that it cannot do so.

Regardless of the Board's motivations for delay, though, the Board must either: (1) meet its evidentiary burden of showing good cause to deny Mr. Hughes release on parole before Mr. Hughes reaches his forthcoming release eligibility date, or (2) grant Mr.

Hughes release on parole once he reaches it. *See id.* If the Board maintains its refusal to even *attempt* to meet its evidentiary burden of showing good cause to deny Mr. Hughes release on parole before he reaches his forthcoming release eligibility date, though, then this Court should order Mr. Hughes released on parole upon reaching his release eligibility date as Tenn. Code Ann. § 40-35-503(i)(1) requires. *See id.* (“an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”).

D. BY REFUSING TO AFFORD MR. HUGHES A TIMELY PAROLE HEARING IN ADVANCE OF HIS RELEASE ELIGIBILITY DATE, THE BOARD OF PAROLE ACTED ARBITRARILY AND ABUSED ITS DISCRETION.

For purposes of a writ of certiorari action, “[a] decision is arbitrary if it ‘disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.’” *See, e.g., Bd. of Prof'l Responsibility v. Macdonald*, 595 S.W.3d 170, 181 (Tenn. 2020) (citing *Hancock v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 447 S.W.3d 844, 855 (Tenn. 2014) (quoting *City of Memphis v. Civil Serv. Comm'n*, 216 S.W.3d 311, 315 (Tenn. 2007))). Here, in refusing to afford Mr. Hughes a timely parole hearing in compliance with Tenn. Code Ann. § 40-35-503(i)(1), the Board of Parole has disregarded a critical fact: Mr. Hughes’ release eligibility date.

Mr. Hughes’ current release eligibility date does not appear in the Administrative Record. *See Collective Exhibit #2*, at 2 (in which Respondent’s counsel states: “You are correct that there is no document in the record indicating Mr. Hughes’ current RED. It is my understanding that no such document was included because a writ of certiorari reviews a decision of a board or agency based upon information the board or agency had at the time it made a decision.”). There is also a specific reason for that omission. The

reason is that despite the centrality of Mr. Hughes' release eligibility date to his rights under Tenn. Code Ann. § 40-35-503(i)(1), the Board of Parole erroneously contends that Mr. Hughes' current release eligibility date is irrelevant to the date when his next parole hearing must be held. *See id.* at 4 (stating that: **"Since a writ of certiorari is limited to information the Board had at the time it made a decision, Mr. Hughes' current RED date is irrelevant** to the Court's review of the writ.") (emphasis added).

The Board is wrong. By statute, unless the Board of Parole holds a hearing and meets its burden of showing good cause to deny Mr. Hughes release on parole before Mr. Hughes reaches his forthcoming release eligibility date, then Mr. Hughes "must"—not may—be released on parole upon reaching it. *See* Tenn. Code Ann. § 40-35-503(i)(1) ("Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing."). Consequently, Mr. Hughes' next parole hearing must be scheduled by reference to his forthcoming release eligibility date, and if the Board of Parole fails to meet its burden of showing good cause to deny Mr. Hughes release on parole by the time he reaches that date, then Mr. Hughes—an "eligible inmate" within the meaning of Tenn. Code Ann. § 40-35-503(i)(1)—"must be released on parole[.]" *See id.*

Accordingly, by failing to consider Mr. Hughes' release eligibility date when denying his petition for a hearing, the Board of Parole acted arbitrarily and abused its discretion. *See MacDonald*, 595 S.W.3d at 181. Mr. Hughes' Petition should be granted as a result. *See id.* *Cf. Baldwin*, 125 S.W.3d at 434 ("It appears to us that the Board's decision constitutes an arbitrary withdrawal of the power to parole from future Board members, and that a twenty-year deferral would undermine the very provisions of the

parole statutes that empower the Board to grant parole.”).

E. MR. HUGHES IS AGGRIEVED BY THE BOARD’S ACTION.

As detailed above, Mr. Hughes has a presumptive right to release on parole upon reaching his forthcoming release eligibility date, which is just weeks away. *See* Tenn. Code Ann. § 40-35-503(i)(1) (“Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate’s release eligibility date or any subsequent parole hearing.”). By law, Mr. Hughes’ right to release on parole can only be denied to him “for good cause shown” by the Board at a hearing. *Id.* The Board, however, will not hold a hearing or even attempt to meet its burden of proof until July 2022—approximately 10 months from now.⁵¹ The Board also will not grant Mr. Hughes release on parole in the interim.⁵²

As a consequence, the Board’s unlawful action will result in Mr. Hughes being incarcerated illegally for nearly a year, without a showing of good cause, in contravention of his affirmative right to release on parole upon reaching his release eligibility date. This action—which will result in a severe deprivation of Mr. Hughes’ liberty and will prevent Mr. Hughes from seeing his eldest son before he leaves for U.S. Army basic training—is unlawful. It is also premised upon an arbitrary, capricious, and illegal interpretation of Tenn. Code Ann. § 40-35-503(i)(1) that is more concerned with the Board’s “resources” than the Board’s compliance with its statutory obligations.⁵³

Mr. Hughes has exhausted all other administrative remedies available to him at

⁵¹ A.R. at 196 (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”); Ex. #2 to Pet. for Writ of Certiorari (“Mr. Hughes’ next parole hearing will be in July of 2022, and he will receive presumptive consideration for release at that time, if he meets all the requirements under the law.”).

⁵² *Id.*

⁵³ A.R. at 195.

this juncture. Given the Board of Parole’s persistent refusal to comply with the law, Mr. Hughes also lacks any other plain, speedy, or adequate remedy to vindicate his rights. Accordingly, in light of the Board of Parole’s arbitrary, capricious, and illegal actions—which are the product of an atextual interpretation of Tenn. Code Ann. § 40-35-503(i)(1) to which this Court need not accord any deference, *see Pickard*, 424 S.W.3d at 523 (“an agency’s interpretation of its controlling statutes remains a question of law subject to de novo review.”)—Mr. Hughes’ Petition for a Writ of Certiorari should be **GRANTED**.

VI. CONCLUSION

For the foregoing reasons, this Court should grant Mr. Hughes’ Petition for a Writ of Certiorari and:

1. Enter a final judgment declaring that the Board is acting arbitrarily, capriciously, and illegally by refusing to comply with the Reentry Success Act of 2021; and
2. Order the Board of Parole, at its option, to:
 - (a) Afford Mr. Hughes a parole hearing governed by the standards set forth in Tenn. Code Ann. § 40-35-503(i)(1) prior to his forthcoming release eligibility date; or, alternatively:
 - (b) Grant Mr. Hughes release on parole upon reaching his release eligibility date if the Board fails to demonstrate “good cause” to deny him release at a hearing before then.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2021, a copy of the foregoing was served via the Court's electronic filing system, via USPS mail, postage prepaid, and/or hand-delivered to the following parties:

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