

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL BERGAMASCHI, <i>et al.</i> , on behalf of	:	
themselves and all others similarly situated,	:	
	:	1:20-cv-2817 (CM)
Plaintiffs,	:	
	:	DEFENDANT TINA M.
- against -	:	STANFORD'S ANSWER TO
	:	AMENDED COMPLAINT
ANDREW M. CUOMO, Governor of New York	:	
State, in his official capacity, <i>et al.</i> ,	:	
	:	
Defendants.	:	
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Defendant Tina M. Stanford, by her attorney, Letitia James, Attorney General of the State of New York, hereby answers the Amended Complaint of Michael Bergamaschi and Frederick Roberson, on behalf of themselves and all others similarly situated, filed on May 12, 2020, as follows:

**PRELIMINARY STATEMENT**

1. Denies the allegations contained in paragraph 1.
2. Denies the allegations contained in paragraph 2, except admits only that pursuant to 9 N.Y.C.R.R. § 8005.7(a)(5), “[i]f the preliminary hearing officer finds that there is probable cause to believe that the alleged violator has violated one or more of the conditions of parole in an important respect, he shall direct that the alleged violator be held for further action pursuant to section 8004.3 of this Title.”
3. Denies the allegations contained in paragraph 3, except admits only that pursuant to N.Y. Exec. Law § 259-i(3)(c), within fifteen days of the execution of the parole warrant, a preliminary hearing must be held before a hearing officer who had not had “any prior supervisory

involvement over the alleged violator,” and a parole officer must establish probable cause that a violation of a parole condition in an important respect occurred at the preliminary hearing.

4. Denies the allegations contained in paragraph 4, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical parole violation” as that term is undefined, vague, and ambiguous.

5. Denies the allegations contained in paragraph 5, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical violations” as that term is undefined, vague, and ambiguous.

6. Denies the allegations contained in paragraph 6, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical violations” as that term is undefined, vague, and ambiguous.

7. Denies the allegations contained in paragraph 7, except denies knowledge or information sufficient to form a belief as to allegations pertaining to unidentified “people” as that term is undefined, vague, and ambiguous.

8. Denies the allegations contained in paragraph 8, except denies knowledge or information sufficient to form a belief as to allegations pertaining to Rikers Island and Department of Corrections and Correctional Health service.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9.

10. Denies the allegations contained in paragraph 10, except admits that Plaintiffs seek the relief described therein.

**PARTIES**

11. Denies the allegations contained in paragraph 11, except denies knowledge and information sufficient to form a belief as to Plaintiff Bergamaschi's race, age, and residency.

12. Denies the allegations contained in paragraph 12, except denies knowledge and information sufficient to form a belief as to Plaintiff Roberson's race, age, and residency.

13. Admits that Defendant Andrew M. Cuomo is Governor of New York State; the remaining allegations contained in paragraph 13 are legal conclusions to which no response is required.

14. Admits that Defendant Tina M. Stanford is the Chairperson of the New York State Board of Parole; the remaining allegations contained in paragraph 14 are legal conclusions to which no response is required.

**FACTS**

15. States that the allegations contained in paragraph 15 set forth legal conclusions as to which no response is required.

16. Denies the allegations contained in paragraph 16, except admits that Plaintiffs define the term "parole" in the Amended Complaint as set forth therein.

17. States that the allegations contained in paragraph 17 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Stanford denies the allegations contained in paragraph 17, except admits only that people on parole have conditional liberty dependent on their compliance with the conditions of their parole.

18. States that the allegations contained in paragraph 18 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Stanford denies

the allegations contained in paragraph 18, except admits only that the Board of Parole requires parolees to comply with applicable laws and regulations governing their parole.

19. States that the allegations contained in paragraph 19 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Stanford denies the allegations contained in paragraph 19, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical violations” as that term is vague, and ambiguous.

20. States that the allegations contained in paragraph 20 set forth legal conclusions as to which no response is required.

21. States that the allegations contained in paragraph 21 set forth legal conclusions as to which no response is required.

22. States that the allegations contained in paragraph 22 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Stanford denies the allegations contained in paragraph 22.

23. States that the allegations contained in paragraph 23 set forth legal conclusions as to which no response is required.

24. Denies the allegations contained in paragraph 24.

25. Admits only that Governor Cuomo issued executive orders on the dates referenced and respectfully refers the Court to those executive orders for the contents thereof.

26. Denies the allegations contained in paragraph 26.

27. Denies the allegations contained in paragraph 27, except denies knowledge and information sufficient to form a belief as to the allegations relating to criminal court proceedings in courts in New York City.

28. Denies the allegations contained in paragraph 28.

29. Denies the allegations contained in paragraph 29, except admits that Governor Cuomo held a press conference on April 1, 2020.

30. States that the allegations contained in paragraph 30 set forth legal conclusions as to which no response is required.

31. States that the allegations contained in paragraph 31 set forth legal conclusions as to which no response is required.

32. States that the allegations contained in paragraph 32 set forth legal conclusions as to which no response is required.

33. Denies the allegations contained in paragraph 33, except denies knowledge or information sufficient to form a belief as to allegations pertaining to the referenced statistics and “technical violations” and “technical parole violations” as those terms are undefined, vague, and ambiguous.

34. Denies the allegations contained in paragraph 34, except denies knowledge or information sufficient to form a belief as to allegations pertaining to the referenced statistics and “technical violations” as that term is undefined, vague, and ambiguous.

35. Denies the allegations contained in paragraph 35, except denies knowledge and information sufficient to form a belief as to the truth of the allegations pertaining to “technical violations” as that term is undefined, vague, and ambiguous, and concerning the “2018 op-ed” and “follow-up 2020 op-ed” in an unidentified publication.

36. States that the allegations contained in paragraph 36 set forth legal conclusions as to which no response is required. To the extent a response is required, Defendant Stanford denies

the allegations contained in paragraph 36, except denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning New York City jails.

37. Denies the allegations contained in paragraph 37, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical violations” as that term is undefined, vague, and ambiguous, and the “Columbia University Justice Lab report,” or the accuracy of said report.

38. Denies the allegations contained in paragraph 38, except admits only that Governor Cuomo made a public announcement regarding the potential release of some alleged parole violators due to COVID-19 and denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical violations” as that term is undefined, vague, and ambiguous, and New York City jails..

39. Denies the allegations contained in paragraph 39, except denies knowledge or information sufficient to form a belief as to allegations pertaining to “technical parole violations” as that term is undefined, vague, and ambiguous, and the referenced Mayor’s Office of Criminal Justice 2018 (“MOCJ’s”) Report, or the accuracy of said report.

40. Denies the allegations contained in paragraph 40, except denies knowledge or information sufficient to form a belief as to allegations pertaining to the MOCJ’s Report, or the accuracy of said report.

41. Denies the allegations contained in paragraph 41, except denies knowledge or information sufficient to form a belief as to allegations pertaining to unidentified “people,” “individuals,” “families,” and “parents” as those terms are undefined, vague, and ambiguous.

42. Denies the allegations contained in paragraph 42, except denies knowledge and information sufficient to form a belief as to the allegations concerning New York City jails and

Rikers Island and allegations pertaining to “technical parole violations” as that term is undefined, vague, and ambiguous.

43. Denies the allegations contained in paragraph 43, except denies knowledge and information sufficient to form a belief as to the allegations concerning the conditions of New York City jails and the unidentified “man with severe asthma.”

44. Denies the allegations contained in paragraph 44, except denies knowledge and information sufficient to form a belief as to the allegations concerning Rikers Island and the New York City Board of Corrections.

45. Denies the allegations contained in paragraph 45, except denies knowledge and information sufficient to form a belief as to the allegations concerning the undated “remarks” attributed to Defendant Governor Cuomo referenced therein.

46. Denies the allegations contained in paragraph 46, except denies knowledge and information sufficient to form a belief to the allegations concerning other jurisdictions.

47. Denies the allegations contained in paragraph 47, except denies knowledge and information sufficient to form a belief as to the allegations concerning other jurisdictions.

#### **INDIVIDUAL PLAINTIFF ALLEGATIONS**

48. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 48.

49. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 49, except admits only that Plaintiff Bergamaschi was paroled after serving approximately two years of his sentence based on his conviction of burglary in the third degree.

50. Denies the allegations contained in paragraph 50, except admits only that Plaintiff Bergamaschi was arrested on a parole warrant and taken into custody for violating five conditions of his parole.

51. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 51, except admits only that Plaintiff Bergamaschi's approved residence was a transitional shelter in Brooklyn.

52. Denies the allegations contained in paragraph 52, except denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 52 other than those relating to the Parole Board.

53. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 53.

54. Denies the allegations contained in paragraph 54.

55. Denies allegations contained in paragraph 55, except denies knowledge and information sufficient to form a belief as to the allegations concerning the state of mind of Plaintiff Bergamaschi and his wife and son.

56. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 56.

57. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 57.

58. Denies the allegations contained in paragraph 58, except admits only that Plaintiff Roberson was arrested on a parole warrant and taken into custody for violating five conditions of his parole.



59. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 59, except admits only that Plaintiff Roberson was paroled after serving more than five years of his sentence based on his conviction of burglary in the third degree.

60. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 60.

61. Denies the allegations contained in paragraph 61.

62. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 62.

63. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 63.

64. Denies knowledge and information sufficient to form a belief as to the allegations contained in paragraph 64.

#### **CLASS ACTION ALLEGATIONS**

65. Denies the allegations contained in paragraph 65, except admits that Plaintiffs purport to bring this action pursuant to the Federal Rules of Civil Procedure 23(a) and (b)(2).

65(a). Denies the allegations contained in paragraph 65(a), except denies knowledge and information sufficient to form a belief as to the allegations related to the New York City jails.

65(b). Denies the allegations contained in paragraph 65(b).

65(c). Denies the allegations contained in paragraph 65(c).

65(d). Denies the allegations contained in paragraph 65(d), except denies knowledge and information sufficient to form a belief as to the allegations related to class counsels' experience.

66. Denies the allegations contained in paragraph 66.

**JURISDICTION AND VENUE**

67. Denies the allegations contained in paragraph 67, except admits that Plaintiffs purport to proceed on the jurisdictional bases set forth therein.

68. Denies the allegations contained in paragraph 68, except admits that Plaintiffs purport to proceed on the jurisdictional bases set forth therein.

69. Denies the allegations contained in paragraph 69, except admits that Plaintiffs purport to assert that venue is appropriate under the statute cited therein.

**CLAIM FOR RELIEF**

70. Defendant Stanford repeats her responses to paragraphs 1 to 69 as if fully set forth herein.

71. Denies the allegations contained in Paragraph 71.

**PRAYER FOR RELIEF**

Denies that Plaintiffs are entitled to any of the relief requested in the “Prayer for Relief” Section of Plaintiffs’ Amended Complaint.

**DEFENSES**

**AS AND FOR A FIRST DEFENSE**

The Amended Complaint fails to state a claim for which relief can be granted.

**AS AND FOR A SECOND DEFENSE**

Defendant Stanford is entitled to sovereign immunity.

**AS AND FOR A THIRD DEFENSE**

Defendant Stanford is entitled to absolute immunity.

**AS AND FOR A FOURTH DEFENSE**

Defendant Stanford is not personally responsible for, or involved in, any acts of commission or omission alleged by Plaintiffs, and cannot be held responsible for any agents, servants, employees, or co-workers.

**AS AND FOR A FIFTH DEFENSE**

Plaintiffs' claims may be barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.

**AS AND FOR A SIXTH DEFENSE**

Any injuries or damages alleged in the Amended Complaint were caused, in whole or in part, by Plaintiffs' own culpable or negligent conduct.

**AS AND FOR A SEVENTH DEFENSE**

The action is barred, in whole or in part, by the Eleventh Amendment and the doctrine of sovereign immunity.

**AS AND FOR AN EIGHTH DEFENSE**

The injuries allegedly sustained by Plaintiffs in this action were caused in whole or in part by one or more parties for whose conduct Defendant Stanford is not responsible.

**AS AND FOR A NINTH DEFENSE**

The Court can decline to exercise jurisdiction under the Declaratory Relief Act.

WHEREFORE, Defendant Stanford respectfully prays that the relief requested by Plaintiffs be in all respects denied, and that the Amended Complaint be dismissed in its entirety, with costs and disbursements, and the granting of such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 9, 2020

LETITIA JAMES  
Attorney General  
State of New York

By:           /s/ Andrew Amer            
Andrew Amer  
Special Litigation Counsel  
Amanda Yoon  
Assistant Attorney General  
28 Liberty Street  
New York, New York 10005  
(212) 416-6127  
[andrew.amer@ag.ny.gov](mailto:andrew.amer@ag.ny.gov)  
[amanda.yoon@ag.ny.gov](mailto:amanda.yoon@ag.ny.gov)

Attorney for Defendants