

LEE BOYD MALVO,	IN THE
Appellant,	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND,	September Term 2021
Appellee.	No. 29

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### JOINT STIPULATION OF FACTS

The parties, by their respective counsel, jointly stipulate to the facts contained in the attached affidavit and supporting documentation, which the parties jointly submit are appropriate for judicial notice. In support thereof, the parties state the following:

1. Appellant Lee Boyd Malvo was sentenced to life without the possibility of parole for crimes committed as a juvenile. This Court granted Malvo's petition for writ of certiorari which raises several questions about the legality of Malvo's sentence, including questions as to the facial legality of life without parole sentences imposed on juvenile offenders.

2. Certain data regarding the number of inmates serving life sentences of various types in the custody of the Division of Corrections (“DOC”), how many of those inmates are serving sentences for offenses committed as juveniles, and demographic information regarding those inmates and the DOC population as a whole may be relevant to Malvo’s questions presented.

3. Jay E. Miller, Director of the Office of Data Development for the Maryland Department of Public Safety and Correctional Services (“DPSCS”), compiled several tables of relevant data from the DPSCS electronic database records.

4. Attached is an affidavit signed by Miller stating that the information contained in the tables is true and correct and is comprised of data taken from official records at DPSCS as a regular practice in the course of regularly conducted activities of DPSCS.

5. An appellate court may, in its discretion, take judicial notice of facts outside the record that are “capable of immediate and certain verification by resort to sources whose accuracy is beyond dispute.” *Faya v. Almaraz*, 329 Md. 435, 444 (1993) (citation omitted); *accord Dashiell v. Meeks*, 396 Md. 149, 175–76

(2006). Facts potentially susceptible to judicial notice include both “legislative facts” and “adjudicative facts,” although the difference between the two is not always “easily drawn.” *Dashiell*, 396 Md. at 175 n.6 (citation omitted). Generally speaking, legislative facts “are general facts which help the tribunal decide questions of law and policy and discretion.” *Id.* Adjudicative facts, in contrast, directly concern the immediate parties to the dispute before the court, *id.*; adjudicative facts are subject to Maryland Rule 5-201, *see* Md. Rule 5-201(a), which provides that adjudicative facts subject to judicial notice include facts that are “not subject to reasonable dispute” because they are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Md. Rule 5-201(b)(2).

6. The facts in Miller’s affidavit are drawn from the records of DPSCS, a public agency of the State of Maryland, and are undisputed. Although they are not drawn from records that are directly accessible by the public, *cf. Chaney v. State*, 397 Md. 460, 471 n.7 (2007) (taking judicial notice of that were “in the nature of official documents prepared by a State agency” which were “readily available to the public and to the Court”), the parties

submit that they are appropriate for judicial notice in the Court's discretion, under either the rubric of legislative or adjudicative facts.

7. As such, the parties stipulate to the facts presented in Miller's affidavit and the tables attached thereto, and submit this stipulation to the Court so that the Court may take judicial notice of the stipulated facts if the Court, in its discretion, deems it appropriate to do so.

Dated: November 23, 2021

Respectfully submitted,

/s/ Kiran Iyer

/s/ Carrie J. Williams

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CERTIFICATION OF WORD COUNT AND  
COMPLIANCE WITH THE MARYLAND RULES

This filing was printed in 13-point Century Schoolbook font;  
complies with the font, line spacing, and margin requirements of  
Maryland Rule 8-112; and contains 551 words.

*/s/ Carrie J. Williams*

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CARRIE J. WILLIAMS  
Assistant Attorney General  
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Counsel for Appellee

## CERTIFICATE OF SERVICE

In accordance with Maryland Rule 20-201(g), I certify that on this day, November 23, 2021, I electronically filed the foregoing “Joint Stipulation of Facts” using the MDEC System, which sent electronic notification of filing to all persons entitled to service, including Kiran Iyer, Assigned Public Defender, and Celia Anderson Davis, Assistant Public Defender, Appellate Division, William Donald Schaefer Tower, 6 Saint Paul Street, Suite 1302, Baltimore, Maryland 21202.

*/s/ Carrie J. Williams*

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**AFFIDAVIT OF JAY E. MILLER**

NOW COMES the affiant, Jay E. Miller, who states:

1. My name is Jay E. Miller. I am over 18 years of age and competent to testify.
  
2. I am employed as the Director of the Office of Data Development for the Maryland Department of Public Safety and Correctional Services (“DPSCS”). As such, I am qualified to administer the records of DPSCS.
  
3. This affidavit and the three attached data tables have been prepared at the request of counsel in the Office of the Attorney General of Maryland.
  
4. I certify that the attached tables are compilations of data that is kept in DPSCS electronic database records made at or near the time of the occurrence of the matters set forth by, or from

information transmitted by, persons with knowledge of the information, and that are made and kept as official records of DPSCS as a regular practice in the course of the regularly conducted activities of DPSCS.

5. I certify that the attached tables are true and correct representations of data in DPSCS records as of October 28–November 1, 2021, when I performed queries of DPSCS database records to create the tables.

6. According to the data presented in Table 1, there are 3,224 individual inmates in the physical custody of DPSCS's Division of Correction ("DOC") who are each serving one or more sentences of life imprisonment imposed by Maryland state courts. Table 1 categorizes these inmates by type of life sentence, by whether the inmate is a juvenile offender (*i.e.*, was under 18 years of age when the inmate committed the offense for which the life sentence was imposed), and by race of the inmate. The following notes apply to Table 1:

- a. Table 1 does not include inmates who are in the physical custody of DOC under the Interstate Corrections Compact, serving sentences imposed by courts other than Maryland state courts. Table 1 also does not include inmates who have been given

life sentences by Maryland state courts but who are not in the physical custody of DOC (see Table 2).

- b. Life sentences are categorized in Table 1 in three possible types: sentences of life without the possibility of parole (“life without parole”); wholly unsuspended life sentences with the possibility of parole (“straight life”); and partially suspended life sentences (“split life”).<sup>1</sup> The sentences are not categorized based on whether they are consecutive to or concurrent with other sentences.
- c. Some of the 3,224 inmates in Table 1 are serving more than one life sentence (the total number of life sentences for the DOC population is 3,703). In order to count an individual inmate only once despite having multiple life sentences, the following hierarchy has been used: (i) a sentence of life without parole has been chosen over a straight life sentence or a split life sentence; (ii) a straight life sentence has been chosen over a split life sentence; and (iii) a sentence imposed for an offense committed when an inmate was a juvenile has been chosen over a sentence imposed for an offense committed when an inmate was an adult.
- d. An inmate has been classified as a juvenile offender in Table 1 if DPSCS has an electronic record of the date of the inmate’s offense and that date is less than eighteen years after the inmate’s date of birth as recorded in DPSCS records. If DPSCS does not have an electronic record of the date of the inmate’s offense, the inmate has been classified as a juvenile offender if the inmate’s sentence start date or

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<sup>1</sup> There are two inmates (neither of whom is classified as a juvenile offender) classified in Table 1 as serving split life sentences who are ineligible for parole for the entire unsuspended portion of their life sentences.

sentence imposition date is less than eighteen years after the inmate's date of birth as recorded in DPSCS records.<sup>2</sup>

7. According to the data presented in Table 2, there are 44 individual inmates serving sentences of life imprisonment imposed by Maryland state courts who are not in the physical custody of DOC because they have been transferred to the physical custody of a corrections agency of another state or the federal Bureau of Prisons, pursuant to an agreement under the Interstate Corrections Compact ("ICC") or 18 U.S.C. § 5003(a), as authorized under Md. Code, Corr. Servs. §§ 8-604 & 9-306. Such inmates are colloquially referred to as "ICC Out." Table 2 categorizes these

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<sup>2</sup> DPSCS does not have an electronic record of the date of the offense for 535 of the 3,224 inmates serving life sentences listed in Table 1. Of those 535 inmates, 28 have been classified as juvenile offenders in Table 1 based on their sentence start date or sentence imposition date. Two of those 28 inmates are serving split life sentences, and the remaining 26 are serving straight life sentences; none are serving sentences of life without parole.

Of the remaining 507 inmates serving life sentences for whom DPSCS does not have an electronic record of the date of the offense and who have not been classified as juvenile offenders in Table 1 based on their sentence start date or sentence imposition date, 22 are serving sentences of life without parole. A list of these 22 individual inmates has been provided to the staff of the Criminal Appeals Division of the Office of the Attorney General to determine whether the Criminal Appeals Division has records of the dates of these inmates' offenses.

inmates by type of life sentence, by whether the inmate is a juvenile offender, and by race of the inmate. The following note applies to Table 2:

- a. Neither Table 1 nor Table 2 includes offenders who have received life sentences from Maryland state courts but who are not in the legal custody of DOC (*i.e.*, offenders who are neither in DOC's physical custody nor "ICC Out" offenders transferred to other correctional agencies to serve Maryland sentences). For instance, Table 2 does not include offenders who are in the custody of corrections agencies of other jurisdictions and who are serving sentences imposed by courts in those other jurisdictions, but who have pending detainers to serve life sentences imposed by Maryland state courts upon their release from custody on their non-Maryland sentences. Table 2 does not include these offenders because the detainer for an offender in that circumstance will be lodged with the non-Maryland jurisdiction by prosecutorial or law enforcement officials in the local Maryland jurisdiction (*i.e.*, the county or Baltimore City) in which the offender was convicted, not by DOC. DOC does not receive records regarding such an offender until the offender is released to the detainer lodged by the local jurisdiction and then transported to DOC for admission.

8. According to the data presented in Table 3, there are 14,747 individual inmates in the physical custody of DOC serving sentences of any type. For purposes of comparison to the data presented in Table 1 and Table 2, Table 3 categorizes all individual

inmates in the physical custody of DOC by whether the inmate is a juvenile offender and by race of the inmate. The 3,224 inmates serving life sentences in the physical custody of DOC who are listed in Table 1 are also included among the inmates listed in Table 3.

9. As indicated in Table 1, there are eleven inmates in the physical custody of DOC serving sentences of life without parole imposed by Maryland state courts for offenses committed as juveniles. The following notes apply to these eleven inmates:

- a. According to DPSCS's records of these inmates' sentence imposition dates, the earliest of their sentences was imposed in 1991 and the latest was imposed in 2002.
- b. The youngest of the inmates is currently 37 years of age and the oldest is 49.
- c. According to DPSCS records, all eleven inmates have served at least 20 years of their sentences. None has served more than 32 years.
- d. According to DPSCS records, all eleven inmates are men.
- e. Four of the inmates were sentenced by the Circuit Court for Prince George's County, and two were sentenced by the Circuit Court for Baltimore County; the circuit courts for Baltimore City, Charles County, Dorchester County, Howard County, and Somerset County each sentenced one of the inmates.

I SOLEMNLY AFFIRM under the penalties of perjury and upon personal knowledge that the contents of this document are true.

11/22/2021  
Date

Jay E. Miller  
Jay E. Miller  
Director, Office of Data Development  
Department of Public Safety &  
Correctional Services

**Table 1: Maryland Inmates Serving Life Sentences in DOC**

Type	Juvenile	Asian	Black	Hispanic or Latino	Native American or Alaskan Native	Native Hawaiian or Pacific Islander	Other Race	Unknown	White	Total
Life Without Parole	Y		9						2	11
Life Without Parole	N	1	240	16	3	2	5	1	86	354
Straight Life	Y	1	126	8	1	1	2		27	166
Straight Life	N	4	1331	25	5		19	6	324	1714
Split Life	Y	1	75	13	1	1	4		19	114
Split Life	N	5	659	44	4		9	6	138	865
<b>Total</b>		12	2440	106	14	4	39	13	596	3224

**Table 2: Maryland Inmates Serving Life Sentences on ICC Transfer Out**

Type	Juvenile	Asian	Black	Hispanic or Latino	Native American or Alaskan Native	Native Hawaiian or Pacific Islander	Other Race	Unknown	White	Total
Life Without Parole	Y									
Life Without Parole	N									
Straight Life	Y		2						1	3
Straight Life	N		31					2	3	36
Split Life	Y									
Split Life	N		3				1		1	5
<b>Total</b>			36				1	2	5	44

**Table 3: All Maryland Inmates in DOC**

Type	Juvenile	Asian	Black	Hispanic or Latino	Native American or Alaskan Native	Native Hawaiian or Pacific Islander	Other Race	Unknown	White	Total
All DOC	Y	2	910	63	8	4	30	3	102	1122
All DOC	N	44	9538	630	65	11	86	48	3203	13625
<b>Total</b>		46	10448	693	73	15	116	51	3305	14747