IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISON

ROBERT EARL HOWARD, et al.,

Plaintiffs,

vs. CASE NO. 6:21-cv-62-Orl-40EJ

MELINDA N. COONROD, et al.,

Defendants.
_____/

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Defendants, Melinda N. Coonrod, Richard D. Davison, and David A. Wyant, sued in their official capacities as Chair, Vice Chair, and Secretary, respectively, of the Florida Commission on Offender Review ("Commission"), submit this memorandum in opposition to Plaintiffs' Motion for Class Certification ("Motion").

Introduction

The gist of Plaintiffs' claims is that Florida inmates serving life sentences with parole eligibility for serious offenses committed when they were juveniles are being denied "some meaningful opportunity" to obtain early release by demonstrating their subsequent maturity and rehabilitation to the Commission. In effect, Plaintiffs seek to import whatever procedural benefits may apply to sentencing and re-sentencing hearings into the parole system, and thereby to transform the parole process for themselves and a select subset of the universe of inmates who are eligible for parole—a result devoid of support in Supreme Court and known federal appellate precedent.[1]

As shown below, Plaintiffs fail to carry their heavy burden to justify class certification for several reasons. Most significantly, they misconceive the Supreme Court's jurisprudence with respect to the need for "some meaningful opportunity" by which juvenile life offenders may seek early release. That need can be met in different ways, including judicial sentence review, inclusion in a geriatric release program, or

[1] Plaintiffs seek to include in a single class of "juvenile lifers" both juvenile offenders actually sentenced to life with parole and juvenile offenders sentenced to a term of years that Plaintiffs contend is the functional equivalent of life sentences—a distinction that the courts have rejected, as shown below. For the sake of convenience, for the most part only *de jure* juvenile lifers are dealt with herein; but the impropriety of certifying a class as to them applies *a fortiorari* to so-called *de facto* juvenile life offenders.

access to a state parole system. The availability of *any* such means constitutes "some meaningful opportunity."[2]

But parole is fundamentally different from sentencing and re-sentencing. Insofar as parole is sought, the burden that juvenile life offenders must meet is necessarily the same as that for *all* inmates under the Commission's jurisdiction: namely, a convincing showing of their *current* suitability for safe release into the population. That an inmate was a minor when he committed his crime may be of much significance upon his sentencing, but it is just one of many factors to be considered by the Commission in assessing his release suitability—an assessment which, by its nature, is highly individualized, fact-intensive, and dynamic, because inmates' levels of maturity, rehabilitation, and suitability for early release not only differ among them but are subject to change over time *regardless* their ages when they committed their crimes.

Plaintiffs would have the Court fashion an injunction for juvenile lifers to provide them with some amorphous battery of special advantages for demonstrating their current suitability for release, such as legal counsel, psychological experts, or any other items on Plaintiffs' wish list. But even apart from the lack of any binding precedent for such intrusions by federal courts into the parole process, there is no justification for any "one-size-fits-all" form of injunction that could reasonably apply. Because the Commission already takes maturity and rehabilitation into account for all

[2] Plaintiffs concede as much in acknowledging that "juvenile lifers receiving the harsher sentence of LWOP [life without parole] are now afforded the constitutionally required meaningful opportunity for review [provided by Florida's Revised Sentencing Statutes[,]" Motion at 4, even though those inmates are not within the Commission's jurisdiction.

parole determinations for all inmates—juvenile life offenders included—any injunction to require the Commission to do what it already is doing, or to obey the law, would run afoul of Rule 65, Fed. R. Civ. P., further undermining the appropriateness of class certification as a matter of law. Moreover, even if any legal redress were appropriate, it could be achieved most economically by the simple expedient of an injunction for Plaintiffs alone against the Commission, which would effectively bind the Commission for all similarly situated inmates.

Argument

I. THE SUPREME COURT HAS NEVER HELD THAT JUVENILE LIFE OFFENDERS ARE ENTITLED TO SPECIAL TREATMENT IN THE CONTEXT OF PAROLE.

Class certification should be denied because there is no legal basis for the Court to intrude upon Florida's parole system to require that a bundle of procedural requirements such as legal counsel and experts be provided to inmates seeking parole, regardless of whether they were sentenced for crimes committed as minors.

The line of related Supreme Court cases relied upon by Plaintiffs includes *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); and *Montgomery v. Alabama*, 136 S. Ct. 718 (2016), all of which dealt with juvenile offenders in the context of sentencing—not parole.

In *Graham*, the Supreme Court acknowledged that "[r]ecidivism is a serious risk to public safety, and so incapacitation is an important goal. See *Ewing [v. California*, 538 U.S. 11, 26 (2003)] (plurality opinion) (statistics show 67 percent of former inmates

released from state prisons are charged with at least one serious new crime within three years)." *Graham*, 560 U.S. at 72.

The *Graham* Court then held that a life-without-parole sentence for a non-homicide offense committed while the inmate was a juvenile violates the Eighth Amendment. Focusing on the difficulties of determining at the sentencing stage whether a juvenile offender is incorrigible or is capable of maturing, the Court held:

> The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. *A State need not guarantee the offender eventual release*, but if it imposes a sentence of life it must provide him or her with *some realistic opportunity* to obtain release before the end of that term.

Id. at 82 (emphasis added). The point of the ruling was that offenders who commit non-homicide offenses as juveniles must not be conclusively presumed, at the sentencing stage, to be incapable of maturation, and therefore they must be afforded "some realistic opportunity" at some future time to demonstrate that they are worthy of early release. Thus, the Court noted: "A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Id.* at 73. Consistently, the Court added: "The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law." *Id.* at 79.

Miller extended *Graham* to cover juvenile life offenders convicted of homicide, and otherwise is to the same effect in all pertinent respects. There, as in *Graham*, the focus was on the need for a "sentencer … to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty."

Miller, 567 U.S. at 479. To the same effect is *Montgomery*, in which the Court made its decision in *Miller* retroactive. Underscoring that "some meaningful opportunity" in *Graham* and *Miller* was not limited to parole eligibility, the *Montgomery* Court noted that States could opt to relitigate sentences or, instead, "to permit juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Id.* at 736. The Court further underscored that allowing such offenders access to parole systems would not entail any fundamental shift in how the systems functioned, stating:

> *Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States*, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Id. (emphasis added). Contrary to Plaintiffs' position, the *Graham* line of cases was never intended to alter parole systems, except by making certain classes of inmates eligible for parole where before they were not.

This point was again made clear in *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017). There, the Court upheld the constitutionality of Virginia's geriatric release program, which replaced its traditional parole system. *Id.* at 1727. The new program provided for convicted felons to seek early release upon either reaching age 65 with at least five years of the sentence served or reaching the age of 60 with at least 10 years of the sentence served, after which "the factors used in the normal parole consideration would apply…." *Id.* at 1728. The Court stated:

> [I]t was not objectively unreasonable for the state court to conclude that, *because the geriatric release program employed normal parole factors, it satisfied Graham's*

> *requirement that juveniles convicted of a nonhomicide crime have a meaningful opportunity to receive parole*. … Consideration of these factors *could* allow the Parole Board to order a former juvenile offender's conditional release in light of his or her "demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75.

LeBlanc, 137 S. Ct. at 1729 (emphasis added). Even Justice Ginsburg, in concurring, noted her approval of Virginia's program because "the [parole] board, when evaluating a juvenile offender for geriatric release, must consider the normal parole factors, including rehabilitation and maturity." *Id.* at 1730 (Ginsburg, J., concurring).

Significantly, none of the Supreme Court decisions in this area—and no known federal appellate court ruling—has ever suggested that parole boards should base their decisions on anything other than an inmate's current suitability for safe release into the public. Nor has any of these cases ever intimated that the Constitution requires that some inmates must be afforded special new procedural rights—to counsel, to access to experts, to face-time with parole board members, and more—in seeking to demonstrate their maturity and rehabilitation to a parole board.

In sum, there is no basis for certifying a class of juvenile life offenders. Their eligibility for parole *is* "some meaningful opportunity" for early release; and to obtain it, they must make individualized showings of current maturity and rehabilitation.

II. FLORIDA'S PAROLE SYSTEM TAKES THE MATURITY AND REHABILITATION OF ALL INMATES, JUVENILE LIFE OFFENDERS INCLUDED, INTO ACCOUNT IN MAKING PAROLE ASSESSMENTS.

By statute, Florida sets forth the main conditions of parole:

> No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison. No person shall be placed on parole until and unless the commission finds that there is reasonable probability

> that, if the person is placed on parole, he or she will live and conduct himself or herself as a respectable and law-abiding person and that the person's release will be compatible with his or her own welfare and the welfare of society. No person shall be placed on parole unless and until the commission is satisfied that he or she will be suitably employed in self-sustaining employment or that he or she will not become a public charge. The commission shall determine the terms upon which such person shall be granted parole.

Fla. Stat. § 947.18. The parole conditions include that the Commission must find that the inmate is reasonably likely to comport himself as a respectable and law-abiding person and that his release will be compatible with the welfare of society. These requirements, which are central to the concept of parole, apply to all inmates seeking parole through Florida's system regardless of their crimes, their age when they committed the crimes, and the number of years they have been incarcerated.

Plaintiffs, based on little more than their ipse dixit and allegations, would have the Court believe that the processes employed by the Commission and its personnel are inadequate, fail to delve into juvenile offenders' backgrounds, fail to allow inmates to present a full picture of their maturity and rehabilitation, fail to take into account all relevant circumstances, and turn on unduly brief hearings before the Commissioners to which the offenders are barred from appearing. These contentions are demonstrably false or misleading, as a review of pertinent statutes, rules, and the testimony of Laura Tully, the Commission's Director of Field Services who supervises its investigators, attests. (Excerpts from her deposition are attached as **Exhibit A**.)

Contrary to Plaintiffs' bogus narrative, the parole process is highly detailed and takes into account if inmates were juveniles when they committed their crimes, as well their current level of maturity and rehabilitation. The Commission's investigators

conduct multiple interviews of the inmates, provide case analyses and recommendations to the Commissioners, and conduct investigations for the Commissioners, leading to recommendations made to the Commissioners with respect to each parole eligible inmate. *See* Rule 23-21.002, Fla. Admin. Code ("F.A.C.").

As part of the investigative process, investigators evaluate an inmate's prior criminal record, taking into account prior convictions and incarcerations and other aspects, Rule 23-21.007, F.A.C., to come up with a Salient Factor Score, which is used in conjunction with the identification of the severity of the offense behavior, Rule 23-21.008, F.A.C., to identify a number of months from within the Matrix Time Range, Rule 23-21.009, F.A.C., and setting forth recommended aggravating and mitigating circumstances in order to recommend to the Commission a presumptive parole release date ("PPRD") for the inmate. Notably, juvenile offenders are subject to a separate Matrix Time Range, with a separate set of values, that provides for a lesser number of months within each comparable category in the adult Matrix Time Range, which can lead to shorter recommended PPRDs than other inmates ordinarily would receive. Tully at 27, Rule 23-21.009(6), F.A.C. Thus, contrary to Plaintiffs' assertion (Motion at 8), juvenile life offenders do not have an identical process for parole matters before the Commission, as compared to adult offenders: the Matrix Time Review is different, and the Commission is specifically required to consider youth and immaturity at the time of the offense, as well as subsequent maturity and rehabilitation.

The investigator conducts an initial interview with each inmate that entails a comprehensive collection of information from the inmate and from the Florida

Department of Corrections ("FDOC"), as well as an explanation of the parole process to the inmate. Tully at 57-65. The inmate can ask to have his attorney assist in preparing for the interview and to be present during the interview. The investigator asks the inmate if he has comments or documents to be provided to the Commissioners and further asks if he has names of individuals who might submit statements on the inmate's behalf. The inmate is apprised of how such persons may arrange to speak on the inmate's behalf. *Id.*

The investigator then completes a report, referred to as a "Rationale," that summarizes the information collected from the record, from the inmate, and from FDOC, regarding the inmate. *Id*. The Rationale includes the sentence structure; circumstances of the offense; disciplinary reports; the inmate's participation in programs such as anger management or Alcoholics Anonymous or any of the other panoply of educational, social, or other programming offered by FDOC; and FDOC staff comments. Tully at 69; Rule 23-21.006(9) & (10), F.A.C. The investigator also includes any comments that the inmate has for the Commission. Tully at 65. The Rationale is available to the inmate upon request.

The investigator formulates a recommended PPRD for the Commission. *Id*. If the recommended PPRD contemplates recommended aggravating or mitigating circumstances, the investigator must state the reasons for the aggravators and mitigators with individual particularity. Rule 23-21.010(4), F.A.C. Aggravating and mitigating factors may be considered, including factors set forth in Rule 23-21.010(5)(a), which explicitly include: "2.b. *The inmate committing the crime was of such*

a young age as to diminish his capacity to fully understand the seriousness of his action and its direct consequences." *Id.* (emphasis added). Thus, the Commissioners are required to consider factors such as youth and diminished capacity to fully understand the seriousness of the crime—factors noted by the Supreme Court in the sentencing cases discussed *supra*. *See also* Tully at 30. Other subparagraphs of the Rule similarly relate to considerations of immaturity, *see* Rule 23-21.010(5)(b)1. a., b. & d.-g., F.A.C., and require the Commission to consider the inmate's progress and his current maturity and rehabilitation, Rule 23-21.010(5)(b)2. a., e., g.-h. & j.

Contrary to Plaintiffs' implication, Commission meetings ("Meetings") are not trials; they are open public meetings. Tully at 92. Anyone may appear and submit documents to the Commission, *id.* at 92, 140, and counsel for an inmate may appear and speak on the inmate's behalf, *id.* at 91, 95-96. Each side—both the inmate's and the victim's side—is allotted 10 minutes, but the Commissioners have expanded it upon request to as much as 45 minutes. *Id.* at 190. Moreover, Plaintiffs incorrectly assert that the Commissioners allot "a mere five to ten minutes to determine if and when each Juvenile Lifer may be released." Motion at 9. Rather, staff analysts have spent "hours and hours" on some cases prior to the Meeting, and the Commissioners review all materials in the files before conducting the Meeting. Tully at 190-92.

Plaintiffs are misleading in alleging that they may not "present argument" at the Meetings (Motion at 6), since they are free to make any statements or arguments through representatives, and they also may submit letters or other documents to the Commission.

Inmates have a right to challenge their initial PPRDs through the Commission, and they may challenge subsequent reviews through the court system. Tully at 158-59.

After the Commission establishes the initial PPRDs, there are subsequent interviews at intervals of 1-7 years by the investigators (as determined case-by-case by the Commissioners), which can result in changes to the PPRDs at later Meetings. Tully at 149-50. If the Commission sets a time frame longer than 2 years, it must provide its reasons. *Id.* Juvenile offenders have on occasion received shorter time frames than adults. *Id.* at 152. There are also "extraordinary" and "effective" interviews. *Id.* at 159. At each of these interviews and the resulting consideration by the Commission, the investigator will include new information that may bear on maturity and rehabilitation. Inmates, their families, or their attorneys also may, at any time, submit information directly to the Commission. *Id.* at 95.

The FDOC is required to provide information regarding an inmate's progress. Florida law directs that FDOC shall, within a reasonable time, make available and bring to the attention of the Commission such information as is deemed important to the review of the PPRD, including, but not limited to, current progress reports, psychological reports, and disciplinary reports. Fla. Stat. § 947.174(3). Additionally, FDOC must notify the Commission if it places an inmate on a work release program. Fla. Stat. § 947.174(4).

An inmate may also be granted a special interview for any of a series of enumerated reasons, including good cause in exceptional circumstances, and FDOC may recommend that an inmate receive a special interview. Rule 23-21.014, F.A.C.

Significantly, the Commissioners begin their consideration of parole well before the Meeting, working with staff analysts who review all available information and make recommendations regarding aggravation, mitigation, and more. Tully at 11-13. Like appellate judges on a panel hearing oral argument, the Commissioners' time spent in a Meeting is the proverbial tip of the iceberg. Contrary to Plaintiffs' claim (Motion at 10), there is no evidence that the Commission rejects the recommendations of its investigators a "vast majority" of the time. Rather, such rejections occur "frequently"; there are reasons for this, due to the Commissioners' having access to information that the investigators lack. By the same token, the PPRDs approved by the Commission are sometimes shorter than recommended. Tully at 130.[3]

Inmates may obtain copies of relevant materials through public records requests, *id.* at 93-94, and they may submit rebuttals to the Commission regarding anything that was stated at a Meeting or sent to the Commission, *id.* at 95. Plaintiffs incorrectly assert (Motion at 10) that inmates cannot correct factual errors in the record, and that Commissioners do not interact with the inmates. Commission investigators solicit comments from inmates and place comments in the Rationales. Further, inmates may communicate directly to the Commissioners regarding any

[3] Commissioners and analysts also have access to information that the investigators often do not, including, in certain cases, autopsy reports, trial transcripts, police reports, incident reports, Tully at 194, as well as support letters and other information and statements provided on behalf of the inmates and input from victims, law enforcement, and prosecutors, *id.* at 116, 117. Likewise, investigators do not have the benefit of hearing the presentations made at the Commission hearings, as the Rationale is completed long before the hearing. Thus, the Commissioners may disagree with the PPRDs suggested by the investigators. *Id.* at 130. The Commissioners must provide the reasons for their decisions. *Id.* at 158-59.

subject. Commissioners must consider all of this information. The only limitation is that inmates, including Plaintiffs, may not be physically present at the Meetings.

If parole is declined, the Commission must state its reasons in an order. *Id.* at 165-66.

Inmates also may challenge parole decisions. *See State v. Michel*, 257 So. 3d 3, 7 (Fla. 2018); *Johnson v. Fla. Parole Comm'n*, 841 So. 2d 615, 617 (Fla. 1st DCA 2003) (recognizing that the Parole Commission's final orders are reviewable in circuit court through an extraordinary writ petition); *see also Parole Comm'n v. Huckelbury*, 903 So. 2d 977, 978 (Fla. 1st DCA 2005) (reviewing a circuit court's order on an inmate's petition challenging the suspension of a PPRD).

Most significantly, the Florida Supreme Court has determined that Florida's parole system provides the constitutionally required protections for juvenile offenders at the heart of the Supreme Court cases discussed earlier, stating:

> Florida's statutorily required initial interview and subsequent reviews before the Florida Parole Commission include the type of individualized consideration discussed by the United States Supreme Court in Miller. For example, under section 947.174(3), Florida Statutes, the presumptive parole release date is reviewed every 7 years in light of information *"including, but not limited to, current progress reports, psychological reports, and disciplinary reports." This information, including these individualized reports, would demonstrate maturity and rehabilitation as required by Miller and Graham.* Moreover, there is no evidence in this record that Florida's preexisting statutory parole system (i) fails to provide Michel with a "meaningful opportunity to obtain release," Graham, 560 U.S. at 75, 130 S. Ct. 2011, or (ii) otherwise violates Miller and Graham when applied to juvenile offenders whose sentences include the possibility of parole after 25 years.

Florida v. Michel, 257 So. 3d at 7 (emphasis added). *Michel*, a plurality decision, was affirmed in *Franklin v. Florida*, 258 So. 3d 1239 (Fla. 2018), where the full Court stated:

> As we held in *Michel*, involving a juvenile homicide offender sentenced to life with the possibility of parole after 25 years, Florida's statutory parole process fulfills *Graham's* requirement that juveniles be given a "meaningful opportunity" to be considered for release during their natural life based upon "normal parole factors."

Id. at 1241 (quoting *Virginia v. LeBlanc*, 137 S. Ct. at 1729).

In light of the reality of Florida's parole system, there is no basis for certifying a class because there is no cognizable injunctive relief to be afforded Plaintiffs or other juvenile life offenders. This Court cannot constitutionally indulge Plaintiffs either by agreeing to act as a super-parole board, second-guessing decisions of the Commissioners, or by certifying a class to expand the unwarranted intrusion into Florida's sovereignty over its parole processes that this suit already represents.

III. CLASS CERTIFICATION SHOULD BE DENIED BECAUSE INJUNCTIVE RELIEF WOULD BE INAPPROPRIATE OR, ALTERNATIVELY, WOULD SUFFICE IN LIEU OF CERTIFICATION.

Plaintiffs disclaim any challenge to a juvenile life offender's "individual sentence, the fact or duration of his or her confinement, or whether he or she meets the standard for release." Motion at 2. Thus, the relief at stake is an injunction by which the Court would give special parole advantages to juvenile life offenders.

"[T]he presumption is against class certification because class actions are an exception to our constitutional tradition of individual litigation." *Brown v. Electrolux Home Prod., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016). Indeed, the entire reason for the class action system is to facilitate judicial economy. *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 155 (1982). The broad discretion afforded courts to facilitate this

goal includes the power to consider factors not expressly dealt with within Rule 23. *See 7* Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1785 (3d ed. 2002) (citing *In re A.H. Robins Co., Inc.*, 880 F.2d 709, 740 (4th Cir. 1989)). These considerations often include whether certification will save judicial time, the manageability of the case if certification is offered, and whether the primary reason for the class action was the consideration of paying attorneys' expenses. *Id.* at n.19.

Even though courts considering certification have broad discretion, *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1569 (11th Cir. 1992), that discretion is not unfettered. In addition to the nondiscretionary requirement that the party invoking Rule 23 meet the four prerequisites of 23(a), *Gilchrist v. Bolger*, 733 F.2d 1551, 1555 (11th Cir. 1984), the moving party must satisfy one of the three requirements enumerated in Rule 23(b). *A&M Gerber Chiropractic LLC v. GEICO Gen. Ins. Co.*, 321 F.R.D. 688, 700 (S.D. Fla. 2017). Here, Plaintiffs (Motion at 8) rely alternatively on subsections (1)(A) or (2) of Rule 23(b), which provides that under specified conditions a class action "may" be maintained—underscoring that the courts have discretion to deny class certification even if the conditions are nominally met.

Class actions under Rule 23(b)(2) may be appropriate where the party opposing the class has acted in a manner that applies generally toward the class and final injunctive or declaratory relief is appropriate for the class as a whole. Rule (b)(2) is the mechanism commonly used for class certification for constitutional rights challenges. *See, e.g., Johnson v. City of Arcadia*, Fla., 450 F. Supp. 1363, 1378 (M.D. Fla. 1978); *Hooks v. Wainwright*, 352 F. Supp. 163, 166 (M.D. Fla. 1972).

However, Rule (b)(2) carries significant limitations, including the "need requirement." Wright & Miller, *id.* at § 1785.2. This applies where a class is unnecessary because all members would benefit from any injunction issued on behalf of a single plaintiff. *See, e.g., Access Now Inc. v. Walt Disney World Co.*, 211 F.R.D. 452, 455 (M.D.Fla.2001) ("The complexity and expense of a class action is not necessary in this case as the Plaintiffs may achieve by injunction all relief which would inure to similarly situated persons without the necessity of class certification.").[4]

Binding authority in the Eleventh Circuit holds that certification should be denied where the benefits of a class action are insubstantial as compared to an individual action, such as when relief granted to the individual would inure to the benefit of all potential class members. *See M.R. v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 286 F.R.D. 510, 519 (S.D. Ala. 2012) (denying certification where "[a]n injunction for the individual plaintiffs would amount to exactly the same relief as an injunction for an entire class because the decree sought by those plaintiffs would, by its very nature, 'run to the benefit not only of the named plaintiffs but also for all other persons similarly situated.'") (citing *United Farmworkers of Fla. Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 812 (5th Cir. 1974)).[5] The "need requirement" is

[4] *See also: Ruiz v. Robinson*, No. 1:11-CV-23776-KMM, 2012 WL 3278644, at *2 (S.D. Fla. Aug. 9, 2012) (the "vast majority of courts" view need "as an appropriate consideration" in Rule 23(b)(2) actions; "the expense, due process considerations, and burden of maintaining a class action outweigh granting class certification" where injunctive and declaratory relief "would equally benefit all members of the putative class"); *Mills v. D.C.*, 266 F.R.D. 20, 23 (D.D.C. 2010) (denying class certification because injunction against unconstitutional law would inure to benefit of all others similarly situated).

[5] Precedents of the former Fifth Circuit predating formation of the Eleventh Circuit are binding in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

commonly applied in constitutional challenges because "it can be assumed that if the court declares the statute or regulation unconstitutional then the responsible government officials will discontinue the [regulation's] enforcement." *M.R., id.* (quoting *Alliance to End Repression v. Rochford*, 565 F.2d 975, 980 (7th Cir.1977)); *see also Stanton by Stanton v. Bd. of Educ. of Norwich Cent. Sch. Dist.*, 581 F. Supp. 190, 195 (N.D.N.Y. 1983). Further, where retroactive monetary relief is not at issue and prospective benefits of injunctive relief will benefit all members of proposed class to such an extent that class certification would not further implementation of a judgment, district courts frequently decline certification. *See, e.g., Davis v. Smith*, 607 F.2d 535, 540 (2d Cir. 1978); *Markel v. Blum*, 509 F. Supp. 942, 949 (N.D.N.Y. 1981).

Plaintiffs' alternative reliance on Rule 23(b)(1)(A) does not change this analysis. While there could conceivably be separate actions by juvenile life offenders for comparable relief, none is known to be pending, any such action could be subject to transfer and consolidation with the instant action, and in any event the nature and scope of any injunctive relief ordered by any other federal court against the Commission would promptly be reported to this Court and would be subject to appeal to the Eleventh Circuit, as would any such determination by this Court. In the meantime, it is noteworthy that Rule 23(b)(1)(A) is concerned essentially with "whether individual actions would have an adverse effect on the party opposing the class[,]" Wright & Miller, *id.* at § 1773, specifically by subjecting the opposing party to inconsistent adjudications that "would preclude compliance with the judgment in each case." *Walker v. City of Houston*, 341 F. Supp. 1124, 1131 (S.D. Tex. 1971). For the

reasons stated above, the Commission is not concerned about inconsistent and incompatible injunctions being entered against it in the context at issue here.

In addition, Rule 65 requires that injunctive relief must be sufficiently specific for the putative class to qualify for certification under Rule 23(b)(2). *Maldonado v. Ochsner Clinic Found.*, 493 F.3d 521, 524 (5th Cir. 2007). Broadly framed demands for injunctive relief—*e.g.*, for "affordable" healthcare—are too imprecise for class certification.[6] Rather, Rule 65(d)(1) requires that any injunction: (1) state the reason for its issuance; (2) identify its terms with specificity; and (3) describe in reasonable detail, without reference to the complaint or other document, the precise act restrained or required. This mechanism is needed to prevent the vague injunctions that were plaguing courts and litigants; *see* G.A. Spater, *Nebulous Injunctions*, 23 Mich. L. Rev. 53 (1924). Orders that simply require defendants to obey the law or are incapable of enforcement as an operative command are invalid under Rule 65(d). *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1531 (11th Cir. 1996).

Plaintiffs fail to meet these tests. They err in asserting that the Commission does not adequately take current maturity and rehabilitation of juvenile life offenders, and their past circumstances, into account in deciding whether to grant parole. While Plaintiffs seek to impose a bundle of procedural rights for parole applicants that no

[6] *See, e.g., Palazon v. Fla. Dep't of Corrections*, No. 05-14224-CIV, 2006 WL 8433863, at *3 (S.D. Fla. Aug. 17, 2006), *R. R. adopted*, No. 05-14224-CIV, 2006 WL 8433882 (S.D. Fla. Sept. 15, 2006) (denying certification of class of hundreds of inmates allegedly refused adequate medical care, because relief would be hugely disparate according to the needs of the various class members).

federal appeals court has ever upheld, they ignore the transcendent economies that warrant denial of certification and further ignore the individualized consideration that must be afforded to each parole applicant under Florida's parole system, rendering injunctive relief inappropriate. *See, e.g., Geraghty v. U.S. Parole Comm'n*, 719 F.2d 1199, 1206 (3d Cir. 1983) (factual questions inherent in parole guidelines involve too many individual case variations to be proper for class action).[7]

IV. PLAINTIFFS FAIL TO SATISFY RULE 23(a)'S CRITERIA.

Plaintiffs further fail to meet their burdens of satisfying both Rule 23(a)(2)'s requirement of commonality of questions of law or fact and Rule 23(a)(3)'s requirement that Plaintiffs' claims be typical, warranting denial of the Motion.

Commonality is lacking because Plaintiffs incorrectly seek to recast juvenile offenders sentenced to a term of years as "juvenile lifers," thereby lumping them together with genuine juvenile lifers. The courts have rejected such a conflation of *de jure* life sentences with sentences for set time periods. *See Franklin v. Florida*, 258 So. 3d at 1241 (1000-year sentences with parole eligibility do not violate the categorical rule of *Graham*); *Hart v. Florida*, 2020 WL 7778999 (Fla. 1st DCA Dec. 31, 2020) (affirming juvenile's 50-year sentence as neither a life sentence nor its functional equivalent);

[7] Plaintiffs also request that all class members "receive the judicial resentencing protections provided and guaranteed by Florida Statutes §§ 921.1401 and 921.1402, or require Defendants to afford Plaintiffs, and all class members a meaningful opportunity to obtain release with requisite procedural protections and based upon relevant criteria that assess their degree of maturity and rehabilitation…." Cmplt. at 61 ¶ E. While the Commission cannot provide such relief in any event, and the Court is thus without jurisdiction to compel them to afford such relief, *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253-58 (11th Cir. 2020), it is significant that Plaintiffs request alternative relief that would distinguish among putative class members insofar as they are eligible for early release via judicial resentencing, a factor that could vary considerably among them.

Pedroza v. Florida, 291 So. 3d 541, 549 (Fla.), *cert. denied sub nom. Pedroza v. Florida*, 141 S. Ct. 341 (2020) (upholding 40-year sentence as not functional equivalent of a life sentence).[8] Plaintiffs' assertions concerning life expectancies so as to create a new category of so-called *de facto* life sentences is without support in binding caselaw and would impose yet more unwarranted burdens on the Commissioners and Florida's parole system.

Typicality also is lacking because putative class members may differ from Plaintiffs and one another in significant respects in terms of the extent to which they have availed—or failed to avail—themselves of the numerous existing procedural opportunities provided to them to advance their requests for parole, as shown above in considerable detail, and in whether they have sought to redress any parole decisions through requests for reconsideration or judicial review. Ultimately, parole is a highly individualized, fact-intensive process that does not lend itself to class-wide treatment.

Conclusion

For all the reasons stated above, the Motion should be denied, and no class should be certified.

[8] In order to shoehorn inmates who received sentences of 470 months (39 years and 2 months) or more into the same class with true juvenile life offenders, Plaintiffs misapply a definition for federal *adult* prisoners (serving 39 years and 2 months) that a federal commission uses to simplify its data for analysis. *See* annual-reports-and-sourcebooks/2008/appendix_A_0.pdf.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ Blaine H. Winship
Blaine H. Winship (FBN 356913)
Chief Assistant Attorney General
Complex Litigation Bureau
Glen A. Bassett (FBN 615676)
Special Counsel
John W. Turanchik (FBN 1033035)
Attorney-Assistant Attorney General
Office of the Attorney General of Florida
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 488-4872
blaine.winship@myfloridalegal.com
glen.bassett@myfloridalegal.com
john.turanchik@myfloridalegal.com
Attorneys for Defendants Melina N. Coonrod, Richard D. Davison, and David A. Wyant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Court's CM/ECF system, and thereby was served upon all parties through their counsel of record, on this 9th day of December, 2021.

Blaine H. Winship
Blaine H. Winship