UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT EARL HOWARD, DAMON PETERSON, CARL TRACY BROWN and WILLIE WATTS,

Plaintiffs,

v. **Case No: 6:21-cv-62-PGB-EJK**

MELINDA N. COONROD, RICHARD D. DAVISON and DAVID A. WYANT,

Defendants.
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ORDER

This cause comes before the Court on Plaintiffs' Motion for Class Certification (Doc. 51 (the "**Motion**")), Defendants' response in opposition (Doc. 52), and Plaintiffs' reply thereto (Doc. 54). Upon consideration, Plaintiffs' Motion is due to be granted.

I. BACKGROUND

Plaintiffs—along with at least 250 other individuals—are incarcerated in the state of Florida, serving life sentences *with* the possibility of parole for crimes committed when they were under the age of 18 years old. (Doc. 1, ¶ 1; Doc. 51, p. 15). The Eighth Amendment to the United States Constitution mandates that states affirmatively afford juveniles serving life sentences a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation." *Graham v.*

Florida, 560 U.S. 48, 75 (2010); *see also Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 208–09 (2016) (finding this new substantive constitutional rule is retroactive).

In response to this line of Supreme Court cases, Florida adopted new sentencing procedures for juvenile offenders serving life in prison. The 2014 Juvenile Sentencing Statute requires an individualized sentencing hearing to consider the offense committed along with the defendant's youth before imposing a life sentence. FLA. STAT. § 921.1401; (Doc. 1, ¶ 6). The Statute also requires a review after 15 or 25 years, depending on the severity and circumstances of the offense, where a judge must consider the defendant's maturation and rehabilitation to determine whether the sentence should be modified. § 921.1402. Here, the juvenile defendant is entitled to counsel, to attend the sentencing and resentencing, to hire experts and present evidence, to cross-examine witnesses, and to appeal the court's decision. (*Id.*).

Plaintiffs allege, however, that Florida has not yet fully remediated its parole review procedures to comply with the Eighth and Fourteenth Amendments to the United States Constitution. (*Id.* ¶¶ 4, 7–8). Plaintiffs allege that the juveniles serving life *with* parole sentences "are not being afforded the right to meaningful opportunity for release now required by the Constitution." (*Id.*). Plaintiffs allege that while juveniles sentenced to life *without* parole receive the constitutionally required "meaningful opportunity for review," the Statute is silent on whether it applies to juveniles sentenced to life *with* parole, and the State "has refused to

provide the substantive and procedural benefits of the 2014 law to the Named Plaintiffs and Class Members." (*Id.*). Instead, Plaintiffs allege that juveniles sentenced to life *with* parole may only be released "in accordance with the limited process set forth in Florida's parole statutes" that is administered by the Florida Commission on Offender Review ("**FCOR**") and is "virtually identical for adult and juvenile offenders." (*Id.* ¶ 8). In this regard, juveniles sentenced to life *with* parole are "prohibited from attending meetings where the [FCOR] determines if and when they may be released. The Parole Commissioners never speak to or even see them." (*Id.* ¶ 9). Additionally, juveniles sentenced to life *with* parole are denied an "opportunity to correct any factual inaccuracies presented to the [FCOR] . . . [and] are not entitled to counsel nor are they given the right to have experts make mental health and risk assessments and testify as to their rehabilitation." (*Id.*). Thus, Plaintiffs contend that "Florida's parole system . . . directly contradicts the mandates of the U.S. Supreme Court cases that establish that juvenile lifers have a constitutional right to be released from prison upon demonstration of maturity and rehabilitation." (*Id.* ¶ 8).

Consequently, Plaintiffs filed a five-count Complaint, and the Court dismissed the Equal Protection and Sixth Amendment counts for failure to state a claim. (Docs. 1, 43). The case proceeds on an Eighth Amendment claim pursuant to 42 U.S.C. § 1983, a Procedural Due Process Fourteenth Amendment claim pursuant to § 1983, and a declaratory judgment claim. (Doc. 43). Plaintiffs now move to certify the action as a Rule 23(b)(1)(A) or Rule 23(b)(2) class. (Doc. 51, p.

8). After Defendants' response in opposition and Plaintiffs' reply in support, the Motion is ripe for review. (Docs. 52, 54).

II. LEGAL STANDARD

"Questions concerning class certification are left to the sound discretion of the district court." *Griffin v. Carlin*, 755 F.2d 1516, 1531 (11th Cir. 1985). To certify a class action, the moving party must satisfy several prerequisites. First, the movant must demonstrate that the named plaintiffs have standing. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). Second, the putative class must meet the requirements enumerated and implied in Federal Rule of Civil Procedure 23(a). *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012). Those requirements are ascertainability, "numerosity, commonality, typicality, and adequacy of representation." *Id.* (quoting *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1188 (11th Cir. 2003)). Third, the putative class must fit into at least one of the three class types defined by Rule 23(b). *Id.*

Certifying a class involves "rigorous analysis of the [R]ule 23 prerequisites." *Vega*, 564 F.3d at 1266 (quoting *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996)). Ultimately, the burden to show that the elements required for certification are "in fact satisfied" lies with the moving party. *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1234 (11th Cir. 2016) (citing *Comcast Corp. v. Behrend*, 569 U.S. 27, 33–34 (2013)). "Of course, the district court can consider the merits 'only' to the extent 'they are relevant to determining whether the Rule 23 prerequisites'" are met. *Id.* (quoting *Amgen Inc. v. Conn. Ret. Plans & Trust*

Funds, 568 U.S. 455, 466 (2013)); *Vega*, 564 F.3d at 1266 (quoting *Valley Drug*, 350 F.3d at 1188 n.15) (noting the class certification inquiry is not a merits determination, though the Court "can and should consider the merits of the case to the degree necessary to determine whether the requirements of Rule 23 will be satisfied"). "But if a question of fact or law is relevant to that determination, then the district court has a duty to actually decide it and not accept it as true or construe it in anyone's favor." *Id.* (citing *Comcast*, 569 U.S. at 33–34).

III. DISCUSSION

Plaintiffs seek to certify the following class pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2) or Rule 23(b)(1)(A):

> All persons who (i) were convicted of a crime committed when they were under the age of eighteen; (ii) were sentenced to life in prison or a term of years exceeding their life expectancy (defined as greater than 470 months);[1] (iii) are currently in

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[1] Plaintiffs arrive at this precise length of time by relying on a U.S. Sentencing Commission report which determined 470 months is "a length consistent with the average life expectancy of federal criminal offenders given the average age of federal offenders." U.S. SENT'G COMM'N, 2020 ANNUAL REPORT AND SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 203 (2020), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2020/2020-Annual-Report-and-Sourcebook.pdf. Based on this cut-off period, Plaintiffs argue that juveniles sentenced to a term of 470 months or more are sentenced *de facto* for life. (Doc. 51, p. 13 n.8; Doc. 54, p. 6).

Plaintiffs further note that the Western District of Wisconsin applied the 470-month benchmark from the U.S. Sentencing Commission when certifying a similar class with similar underlying issues. *See King v. Landreman*, No. 19-CV-338, 2020 WL 6146542, at *2–3 (W.D. Wis. Oct. 20, 2020). The *King* court explained, "One potential objection to commonality and typicality is that the proposed class is composed of two different sets of proposed class members—those who received life sentences and those who received sentences of more than 470 months. This raises the question whether the court can resolve the claims of both types of class members together, or whether subclasses are needed. Neither side has asked the court to create subclasses, and the court concludes that they aren't necessary. Plaintiffs' theory of the case is not dependent on the precise length of the sentence. Rather, the court understands plaintiffs to be contending that prisoners who committed crimes as juveniles and receive long sentences are entitled to be considered for parole based on their maturity and rehabilitation and not on other factors such as the seriousness of their crime. The question whether

> the custody of the Florida Department of Corrections; (iv) have never been paroled; and (v) are or will become eligible for release to parole supervision but only through the parole process.

(Doc. 51, pp. 13–14 (the "**Class**")). The Court will review each of the requirements for class certification in turn.

A. Merits Consideration

The Court must first address the bulk of Defendants' response in opposition to certification. Defendants argue, in effect, that class certification should be denied because Plaintiffs will fail on the merits. (*See* Doc. 52, pp. 4–15). In Defendants' view, Florida's parole system already satisfies the constitutional minimum because it provides Plaintiffs "some meaningful opportunity" for early release, it is procedurally adequate on its own terms, and it provides for an individualized showing of current maturity and rehabilitation. (*Id.* at pp. 7, 9). Perhaps so, perhaps not. Regardless, these are merits contentions that the Court will only consider to the degree necessary to decide the underlying certification issues at this procedural juncture. *See Brown*, 817 F.3d at 1234 (citing *Amgen*, 568 U.S. 455, 466)). As such, Defendants' remonstrations—unmoored as they are from a Rule 23 hook—are otherwise irrelevant.[2] (*See* Doc. 52, pp. 4–15).

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defendants are applying the correct standard when making parole decisions is an issue that can be decided across the class." *Id.* (internal citations omitted). As such, for the purposes of certification only, the Court will assume without deciding that a sentence for a term of 470 months or greater is *de facto* for life.

[2] The Court will, of course, consider these merits arguments at the proper procedural posture.

B. Standing

A plaintiff's standing to bring and maintain a lawsuit is a fundamental component of a federal court's subject matter jurisdiction. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). To establish standing, the plaintiff bears the burden of demonstrating that he suffered an actual injury, that a causal connection exists between the injury and the defendant's conduct, and that the injury is likely to be redressed by a favorable decision. *Harrell v. Fla. Bar*, 608 F.3d 1241, 1253 (11th Cir. 2010). Prior to summary judgment, meeting these elements is not a particularly onerous task, and will be completed by asserting "general factual allegations of injury resulting from the defendant's conduct." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Only the named plaintiffs in a putative class action must demonstrate standing upon seeking certification, even while courts must eventually ensure that no relief is granted to absent class members who might later turn out not to have standing. *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1271–74 (11th Cir. 2019).

Here, the Court has already found that, based on the allegations in the Complaint, Plaintiffs have standing to bring this case, and Defendants do not raise any further objections to undercut Plaintiffs' standing. (Doc. 43, pp. 9–10; Doc. 52).

C. Rule 23(a)

"The burden of proof to establish the propriety of class certification rests with the advocate of the class." *Valley Drug Co.*, 350 F.3d at 1187. As a threshold

matter, "the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a)." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004).

1. Ascertainability

Ascertainability is an implied prerequisite of Rule 23(a). *Cherry v. Domestic Corp.*, 986 F.3d 1296, 1302; *Little*, 691 F.3d at 1304. "Before a district court may grant a motion for class certification, a plaintiff seeking to represent a proposed class must establish that the proposed class is adequately defined and clearly ascertainable." *Little*, 691 F.3d at 1304; *see also Cherry*, 986 F.3d at 1302. The Eleventh Circuit, however, does not require administrative feasibility under Rule 23(a)'s ascertainability requirement. *Cherry*, 986 F.3d at 1302–04. Instead, ascertainability requires only that the class definition avoid vague or subjective criteria so that it is adequately defined. *Id.* at 1302. Put another way, if the proposed class contains vague or subjective criteria, then the certifying court cannot ascertain who belongs in the class. *Id.*

Plaintiffs contend that the class is ascertainable because it is objectively defined such that the Court can easily determine who belongs in the Class. (Doc. 51, p. 15). In fact, Defendants have already identified through discovery exactly 272 Florida inmates who would qualify as members of the Class at the time of briefing of the instant Motion. (*Id.*). Furthermore, Defendants do not contest that the proposed class is sufficiently well-defined. (*See* Doc. 52). Thus, the Court has no trouble finding the Class to be ascertainable under Rule 23.

2. Numerosity

Numerosity requires that "the class is so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). A general rule of thumb is that more than forty members is sufficient to demonstrate that joinder is impracticable. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). While the party seeking certification need not identify the exact number of members in the proposed class, they cannot rest on "mere allegations of numerosity." *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983). Rather, the movant must provide the court with sufficient proof to support a reasoned finding that the certified class would meet the numerosity requirement. *Vega*, 564 F.3d at 1267. Here, Defendants' data provided to Plaintiffs in discovery demonstrates a class size of 272 total Plaintiffs—a number that would make joinder impracticable. (Doc. 51, p. 16). Defendants do not contest this issue, and the Court thus finds numerosity satisfied.

3. Adequacy of Representation

Adequacy of representation requires that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). Adequacy of representation refers both to the named plaintiff who intends to represent the absent class members and to the lawyers who intend to serve as class counsel. *London*, 340 F.3d at 1253. Here, Defendants do not argue that the named Plaintiffs or their Counsel will inadequately represent the Class, nor could they.

A named plaintiff is an adequate representative of the proposed class if (1) they are qualified, and (2) they have no substantial conflict of interest with the class. *Valley Drug*, 350 F.3d at 1189. A named plaintiff is qualified if they hold a basic understanding of the facts and legal theories underpinning the lawsuit and are willing to shoulder the burden of litigating on the class's behalf. *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007). At the certification stage, inquiry into a proposed representative's qualifications is not especially stringent. *See Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 727 (11th Cir. 1987) (stating that certification should only be denied for inadequate representation where the plaintiff's lack of knowledge and involvement essentially amounts to abdication of his role in the case), *cert. denied*, 485 U.S. 959 (1988). A named plaintiff will have a substantial conflict of interest which precludes them from acting as class representative when their interests are so antagonistic to the interests of the absent class members that they cannot fairly pursue the litigation on their behalf. *See Griffin*, 755 F.2d at 1533; *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 989 (11th Cir. 2016).

The named Plaintiffs here are qualified and have aligned interests with the class. First, Plaintiffs have demonstrated a basic understanding of the facts and issues in the case and have demonstrated a willingness to litigate the case for the class by stepping forward. (Doc. 1). Second, the absent members of the Class and the named Plaintiffs would all equally benefit from improved procedural protections in Florida's parole process should the case succeed.

As for class counsel, the proposed lawyers will adequately represent the class if they are "qualified, experienced, and generally able to conduct the proposed litigation." *Griffin*, 755 F.2d at 1533. This requires the court to evaluate several factors, including the work counsel has done in identifying or investigating potential claims in the action, counsel's knowledge and experience with class action litigation, counsel's knowledge and experience with the substantive law governing the class's claims, the resources available to counsel to pursue the class's claims, the quality of counsel's litigation efforts so far, and any other relevant factor speaking to counsel's ability to represent the class's legal interests. FED. R. CIV. P. 23(g)(1)(A); *see* William B. Rubenstein, *Newberg on Class Actions*, §§ 3:73–3:79 (5th ed. 2011).

Counsel from Holland & Knight and the Juvenile Law Center are eminently qualified to represent the class. Holland & Knight is a nationally recognized firm with a well-regarded class action litigation practice. (Doc. 51, p. 23). The Juvenile Law Center is an established legal and policy non-profit that advocates for juveniles. (*Id.*). Together, Counsel has extensive experience litigating complex federal civil rights issues, including several cases centered on juvenile detention. (*Id.* at p. 24). Moreover, Counsel has pledged to build on their already significant investment of time and resources as the case progresses. (*Id.* at pp. 24–25). Therefore, the Court finds the Plaintiffs and their Counsel will adequately represent the Class in this matter.

4. Typicality

Typicality demands that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). This element of certification "focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999) (quoting *Lightbourn v. Cnty. of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)), *cert. denied*, 528 U.S. 1159 (2000). The named plaintiffs' claims do not need to be identical to the claims of the absent class members, but they should "share the same essential characteristics" such that it would make sense for the plaintiffs to act as the class's representatives. *Haggart v. United States*, 89 Fed. Cl. 523, 534 (Fed. Cl. 2009) (quoting *Curry v. United States*, 81 Fed. Cl. 328, 335 (Fed. Cl. 2008)).

Here, Defendants argue that typicality is wanting because the Class Members may have availed themselves of the current procedural opportunities already available for those eligible for parole to varying extents. (Doc. 52, p. 21). This argument misses the mark because the heart of Plaintiffs' case is that Florida's procedural protections for juveniles sentenced to life with parole are wholly inadequate under the Eighth and Fourteenth Amendments. (Doc. 51, p. 22). With respect to typicality, the differing degree to which the Class Members have utilized the existing procedural mechanisms does not matter if the procedures themselves are constitutionally deficient, as Plaintiffs allege. (*Id.*). In other words, the named

Plaintiffs' role as class representatives "make[s] sense" because their claims "share the same essential characteristics" with the rest of the class: any one of the absent Class Members could raise the same claims. Their theories of constitutional harm are identical, and, most importantly, a declaration or injunction in their favor could provide a wholesale remedy for all those detainees who committed their crimes as juveniles and were then sentenced for life with the possibility of parole.

5. Commonality

Commonality requires that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(2). This prerequisite does not demand that all questions of law or fact be common among the class members, only that all members base their claims on a common contention that is "capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011). The common question of law or fact is sufficient so long as answering the question can help determine the validity of all class members' claims "in one stroke" and in a way that will "aid in the resolution of the case." *Id.* at 359. The commonality requirement is not to be confused with the predominance requirement for certifying a Rule 23(b)(3) class because commonality is satisfied by only one common question.[3] *Vega*, 564 F.3d at 1268.

Here, Plaintiffs argue that commonality is satisfied because all potential Class Members are subject to a "standardized course of conduct"—that is,

[3] The predominance requirement of Rule 23(b)(3), in contrast, refers to the class's cohesion as a whole by testing whether common questions of law and fact predominate over issues unique to each class member. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622–23 n.18 (1997).

Defendants' administration of Florida's parole policies and procedures—which does not adequately consider whether Plaintiffs have matured and rehabilitated in light of their status as juveniles when they committed their crimes in violation of the Eighth or Fourteenth Amendment. The Court finds Defendants' standardized procedural treatment of Plaintiffs creates at least two common questions which the Court can answer "in one stroke" by inspecting classwide proof. Namely, the Court can resolve whether, as a whole, Defendants' policies and practices for conducting parole review and determining parole eligibility for those who were juveniles when they committed their crimes provides a "meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation" in compliance with (1) the Eighth Amendment's cruel and unusual punishment clause and/or (2) the Fourteenth Amendment's due process clause. *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015) ("In civil rights cases, commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." (internal quotation marks omitted)).

Defendants protest that commonality is lacking because Plaintiffs' class definition impermissibly lumps together juveniles actually sentenced for life with sentenced for a set term of years equal to or greater than 470 months. (Doc. 52, pp. 20–21). However, the Court rejects this argument because it conflates the commonality requirement with the predominance requirement, which is

inapplicable here.[4] The Court can still resolve the common questions regarding Defendants' standardized course of conduct with uniform answers, using common proof for all those juveniles sentenced for life with the possibility of parole, whether *de jure* for life or *de facto* for life. Indeed, Defendants cite to no class certification decisions in support of their contention that this distinction should defeat commonality. (*See id.*). As such, the Court finds commonality satisfied. *See, e.g.*, *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1299 (10th Cir. 1999) ("Because the [commonality] requirement may be satisfied by a single common issue, it is easily met.").

D. Rule 23(b)

In addition to satisfying standing and Rule 23(a)'s four prerequisites, a plaintiff must show that the putative class they wish to certify falls into at least one of Rule 23(b)'s class types. *Amchem*, 521 U.S. at 614; FED. R. CIV. P. 23(b). Plaintiffs seek to proceed as either a Rule 23(b)(2) class or a 23(b)(1)(A) class.

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[4] Because the Court finds that answering the common questions detailed herein will "aid in the resolution of the case" for all Class Members as the Class is currently constituted, *Wal-Mart Stores*, 564 U.S. at 359, the Court will not at this time resort to creating sub-classes. However, the Court may revisit this decision, if necessary, at a later date, under its authority to amend a certified class to create sub-classes prior to final judgment. FED. R. CIV. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); FED. R. CIV. P. 23(c)(5) ("When appropriate, a class may be divided into subclasses that are each treated as a class under this rule."); *see also Parish Hosp. Serv. Dist. v. Tyco Intern., Ltd.*, 247 F.R.D. 253, 269 (D. Mass. 2008), *subsequent determination*, 262 F.R.D. 58 (D. Mass. 2008) ("Subclasses can be created after an initial grant of class certification."); *Santillan v. Gonzales*, 388 F. Supp. 2d 1065, 1071–72 (N.D. Cal. 2005), *subsequent determination*, No. C04-026862005, WL 3542661 (N.D. Cal. 2005) ("A court may certify subclasses after initial class certification.").

1. Rule 23(b)(2)

Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." FED. R. CIV. P. 23(b)(2). "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples." *Amchem*, 521 U.S. at 614; *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983) (citation omitted) ("Subsection (b)(2) was intended primarily to facilitate civil rights class actions, where the class representatives typically sought broad injunctive relief."). "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant." *Wal-Mart*, 564 U.S. at 360.

As the parties opposing the Class, Defendants have acted on grounds that apply generally to the Class through their implementation of Florida's parole review procedures in a way that Plaintiffs allege violates the United States Constitution. If Plaintiffs' suit is successful, injunctive or declaratory relief will be appropriate because the Court will be able to craft a single remedy uniformly applicable to the Class.

Defendants argue that Plaintiffs still do not satisfy Rule 23(b)(2) because of its implicit "necessity requirement." (Doc. 52, pp. 16–18). Some courts read this requirement into Rule 23(b)(2), refusing to certify when injunctive or declaratory

relief provided to the named plaintiffs would have the same benefit, force, or effect as providing relief to the class as a whole. *See* Rubenstein, *Newberg on Class Actions*, § 4:35 (5th ed. 2011) ("Many courts have rejected the necessity doctrine outright as being non-textual, noting that a need requirement finds no support in Rule 23 and, if applied, would entirely negate any proper class certifications under Rule 23(b), a result hardly intended by the Rules Advisory Committee."). "The Eleventh Circuit has never expressly stated whether it recognizes a necessity requirement." *M.R. v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 286 F.R.D. 510, 519 (S.D. Ala. 2012). At the same time, the Eleventh Circuit probes whether the "the requested injunctive and declaratory relief will benefit not only the individual [movants] but all other persons subject to the practice under attack." *United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 812 (5th Cir. 1974).[5]

Defendants argue that an injunction in favor of the named plaintiffs would redound to the benefit of all Class Members because, if granted, Defendants would discontinue the enforcement of the offending parole policies and procedures system wide. (*Id.* at p. 18). Plaintiffs point out, though, that Defendants could legally and in practice continue to treat the Class Members differently if only the named Plaintiffs receive injunctive relief. (Doc. 54, pp. 10). The Court finds that, if

[5] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

class certification is not granted but an injunction is eventually secured for the named Plaintiffs, Defendants' implicit, non-binding pledge to treat all Class Members the same is insufficient, by itself, to show that such relief is not necessary. Moreover, certifying the Class may make a greater depth of information accessible to Plaintiffs in discovery so that they can present their most favorable case on the merits with respect to Florida's parole policies and procedures. (*Id.*). In short, certifying a class is necessary to ensure all Class Members can access and benefit from any relief that the Court may grant. Therefore, the Court finds Rule 23(b)(2) satisfied.[6]

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs' Motion for Class Certification (Doc. 51) is **GRANTED**.
2. The Court hereby certifies a Class pursuant to FED. R. CIV. P. 23(b)(2) consisting of the following:

> All persons who (i) were convicted of a crime committed when they were under the age of eighteen; (ii) were sentenced to life in prison or a term of years exceeding their life expectancy (defined as greater than 470 months); (iii) are currently in the custody of the Florida Department of Corrections; (iv) have never been paroled; and (v) are or will become eligible for release to parole supervision but only through the parole process.

[6] As only one Rule 23(b) class-type need be satisfied, the Court declines to consider whether the proposed class would also satisfy the requirements of the infrequently utilized Rule 23(b)(1)(A). *See* Rubenstein, *Newberg on Class Actions*, §§ 4:1–4:2 (5th ed. 2011) (noting that (b)(2) classes are often referred to as "injunctive" classes and are usually used in "civil rights" class actions, which makes (b)(1)(A) classes "feel[] superfluous" in that context).

3. Plaintiffs Robert Earl Howard, Damon Peterson, Carl Tracy Brown, and Willie Watts are hereby certified as Representatives of the Class.
4. Counsel from the Juvenile Law Center and Holland & Knight, LLP are hereby certified as Class Counsel pursuant to Rule 23(g)(1).

DONE AND ORDERED in Orlando, Florida on March 30, 2022.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties