R bUNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT EARL HOWARD et al.

Plaintiffs, Case No. 6:21-cv-62-Orl-40EJK

v.

MELINDA N. COONROD, et al.

Defendants.
_____/

PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS COMPLAINT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

PRELIMINARY STATEMENT

Plaintiffs filed this suit challenging Defendants' operation of a parole system that fails to afford individuals serving parole-eligible life sentences for offenses committed as youths ("Juvenile Lifers") a meaningful and realistic opportunity for release as required by the Eighth and Fourteenth Amendments. Florida's parole system runs afoul of landmark decisions of the United States Supreme Court establishing that it should be "uncommon" for Juvenile Lifers to remain incarcerated for the remainder of their lives, and that youth and its attendant characteristics must be taken into account before life sentences can be imposed upon individuals under the age of 18 at the time their crimes were committed.

While the landmark Supreme Court decisions involved juveniles sentenced to life without parole (LWOP), almost every court since then has held that the same principles apply to juveniles sentenced to life with parole (LWP) where it is shown that parole policies and procedures fail to afford them a meaningful opportunity to demonstrate their maturity and rehabilitation. Compl. ¶ 5. In Florida, the criteria for release under the parole statutes—which are largely the same for youth and adult offenders and thus fail to properly consider the distinctive attributes of youth—give primary weight to the seriousness of the crime, not whether the Juvenile Lifer has demonstrated rehabilitation. The parole "hearing" lasts ten minutes. The Juvenile Lifer cannot attend the parole "hearing," is not provided counsel or experts to opine on rehabilitation, cannot cross-examine the victims or prosecutors who appear in person, and later receives only a pre-printed form order

that does not explain the basis for any decision but almost always increases the release date beyond the time recommended by the parole commission's investigator. This is not the meaningful opportunity to show rehabilitation that the Supreme Court requires.

Even within this unconstitutional system, Juvenile Lifers, including the Plaintiffs in this case who have now spent three or more decades incarcerated for offenses committed as teenagers, have made heroic efforts to demonstrate their rehabilitation. Compl. ¶¶103–49. For years, they have earned notations in their files from correction officers and Florida Commission on Offender Review ("FCOR") investigators that they deserve to be released. A Florida appellate judge wrote extensively about Plaintiff Howard's "extraordinary feat" of not receiving one disciplinary report in 25 years (now 35 years), yet the parole commission has set his presumptive parole release date at 2054, when he would be 94 years of age—well beyond his life expectancy. With only five out of over 100 Juvenile Lifers released in the last years (three of whom had counsel), Florida's process results in exactly what the Supreme Court has found should not occur: it is common, not uncommon, for Juvenile Lifers to expect to die in prison.

In their Motion to Dismiss, Defendants do not seriously contest whether Plaintiffs have adequately stated allegations to support their claims for constitutional deprivations. Nor do Defendants point to one case that is contrary to the multiple other class actions similar to this one where district court judges have denied motions to dismiss. Instead, Defendants assert a variety of legal door-

slamming measures to resist any changes to their unconstitutional processes. None of their arguments has merit.

First, while Defendants erroneously argue that *Heck v. Humphrey*, 512 U.S. 477 (1994) requires dismissal, courts in the very cases Defendants rely on have consistently rejected that argument. *Heck* only applies when the judgment sought by the plaintiff would "necessarily imply" the invalidity of his sentence. Defendants are not challenging their convictions or sentences; they are challenging Florida's parole process. Second, as to their arguments that Plaintiffs lack standing to assert their claims, it is incontrovertible that these Defendants have caused injuries to these Plaintiffs through their unconstitutional parole process and a declaratory judgment to that effect is likely to redress that harm. Third, there is no merit to the argument that Plaintiffs are subject to the exhaustion requirements of the Prison Litigation Reform Act ("PLRA"); the Supreme Court and Eleventh Circuit have repeatedly held that exhaustion applies only to prison grievance procedures. Because Florida's grievance procedures specifically exclude challenges to parole decisions, this is not an available remedy that Plaintiffs are required to exhaust. Fourth, Defendants err in arguing this action is barred by the statute of limitations. Plaintiffs respectfully request denial of Defendant's Motion to Dismiss.

LEGAL ARGUMENT

I. Plaintiffs' Constitutional Claims Pass Muster.

Contrary to Defendants' mischaracterizations, Plaintiffs do not seek postconviction relief from the duration of their life sentences. They seek to enforce

their constitutional right to a meaningful opportunity to demonstrate their rehabilitation and maturity since committing criminal offenses while juveniles over 26 years ago.

A. Plaintiffs Have Sufficiently Pleaded Defendants' Violation of the Eighth Amendment.

The United States Supreme Court has repeatedly held that juvenile offenders have a constitutionally protected right to a meaningful opportunity for release predicated on a demonstration of maturity and rehabilitation, and any violation of that right is cognizable under the Eighth Amendment's proscription against cruel and unusual punishment.[1] Plaintiffs set forth detailed allegations showing how Florida's parole system as administered by Defendants, deny them a "realistic opportunity for release based on demonstrated maturity and rehabilitation," Compl. ¶¶ 156–61; *Graham*, 560 U.S. at 75, and that such denial constitutes cruel and unusual punishment in violation of the Eighth Amendment. Compl. ¶¶ 159–60. *Miller v. Alabama*, 567 U.S. 48, 82 (2010).

[1] *See Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding, with respect to non-homicide juvenile offenders, that "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."); *Miller v. Alabama*, 567 U.S. 460, 474 (2012) (holding that juvenile, homicide offenders sentenced to mandatory minimum sentences of life without parole were entitled to the same "realistic opportunity for release based on demonstrated maturity and rehabilitation" as the nonhomicide offenders at issue in *Graham*.); *Montgomery v. Louisiana,* 136 S. Ct. 718, 736–37 (2016) (holding that the decision in *Miller* was a substantive constitutional rule of law that applied retroactively to all juvenile homicide offenders serving mandatory life-without-parole sentences). The decision this week by the Supreme Court affirmed that it was "carefully follow[ing] both *Miller* and *Montgomery*. *Jones v. Mississippi*, 593 U.S. ___ (2021) slip op. at 21.

While the constitutional adequacy of parole procedures as applied to juvenile offenders under the Eighth Amendment is a question of first impression in this Court and within the Eleventh Circuit, other federal courts have consistently recognized such a claim as legally sufficient.[2] Defendants cite no authority to the contrary.

Plaintiffs' allegations are consistent with these decisions. Plaintiffs have alleged that Defendants—acting collectively under color of state law as members of FCOR—denied them parole solely on the circumstances of the offenses that each Plaintiff committed as a youth. Compl. ¶¶ 105, 110, 115–16, 118, 122, 127–28, 130, 136, 138, 146, 149. Plaintiffs also allege that in denying them parole, Defendants did not consider Plaintiffs' youth and impetuosity at the time of the original offense, or their maturity and extensive rehabilitation while incarcerated. Compl. ¶¶ 119, 127, 136, 149; *see, e.g.*, *Flores*, 2019 WL 4572703 at *9. And at no point was

[2] *See, e.g.*, *Wershe v. Combs*, 763 F.2d 500, 506 (9th Cir. 2010) (vacating dismissal of plaintiff's Eighth Amendment claim under § 1983 alleging a parole board's denial of a meaningful and realistic opportunity for release); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1007 (N.D.N.C. 2015) ("If a juvenile offender's life sentence, while ostensibly labeled as one 'with parole,' is the functional equivalent of a life sentence without parole, then the State has denied that offender the 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' that the Eighth Amendment demands."); *Flores v. Stanford*, 18 CV 246B (VB), 2019 WL 4572703, at *9 (S.D.N.Y. Sept. 20, 2019) ("Plaintiffs plausibly allege that the manner in which defendants make discretionary parole determinations for juvenile offenders serving a maximum term of life violates the Eighth Amendment."); *Brown v. Precynthe*, Case No. 17-cv-4082, 2017 WL 4980872 (W.D. Mo. Oct. 31, 2017); *Maryland Restorative Justice Initiative v. Hogan*, Civil Action No. ELH-16-1021, 2017 WL 467731, at *15 (D. Md. Feb. 3, 2017) (distinguishing the plaintiff's cognizable claim seeking additional process required under *Graham* and the incognizable claim of direct release); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 943–44 (S.D. Iowa 2015) (denying Iowa Board of Parole defendant's motion to dismiss where plaintiff adequately pleaded that the defendant (1) failed to take into account, and had policies that failed to take into account, the plaintiff's youth and demonstrated maturity and rehabilitation in determining his eligibility for parole; and (2) based its denial of parole solely on the seriousness of the original offense).

any Plaintiff permitted to appear before Defendants personally or through counsel. Fla. Admin. Code. R. 23-21.0004(13); Compl. ¶¶ 112, 127, 137, 144. In light of these deficiencies, Plaintiffs' opportunity for release was neither meaningful nor realistic, establishing a plausible claim for relief under the Eighth Amendment.

Defendants, on the other hand, mischaracterize the U.S. Supreme Court's decision in *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017) to imply that this Court must in this case defer to the Florida Supreme Court's decisions in *Michel v. State*, 257 So. 3d 3 (Fla. 2018) and *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018), which found that Florida's parole scheme satisfied *Graham* and *Miller*'s requirements. *See* DE 24, at 14. *LeBlanc*, however, implies no such thing. The question before the Supreme Court in *LeBlanc* was whether—in deferring to the Virginia Supreme Court under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")—the federal appellate court incorrectly concluded that the state court unreasonably applied *Graham* to the legality of Virginia's geriatric release scheme. *LeBlanc,* 137 S. Ct. at 1728. The *LeBlanc* Court explicitly limited the scope of its decision to the narrow context of habeas corpus review under the AEDPA and declined to decide the merits of the incarcerated petitioner's Eighth Amendment claim. *Id.* at 1729 ("Because this case arises only in that narrow context [of habeas corpus review], the Court expresses no view on the merits of the underlying Eighth Amendment claim.") (internal quotations omitted). Given that Plaintiffs raise constitutional claims under § 1983 and not under habeas review or the AEDPA, this Court owes no such deference to the Florida Supreme Court's decisions in

Michel or *Franklin*. *See Mitchum v. Foster*, 407 U.S. 225, 242 (1972) ("The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial.").

Neither *Michel* nor *Franklin* prohibit Plaintiffs' instant claims as a matter of law because in neither case did the Florida Supreme Court consider evidence that FCOR's practices, policies, or procedures *as applied* do not comport with *Graham* and *Miller*. Compl. ¶ 68.[3] And similar to Defendants, the *Michel* and *Franklin* courts ignored the limited context in which the U.S. Supreme Court rendered its decision in *LeBlanc*. *See Michel*, 257 So. 3d at 12 (Pariente, J., dissenting) ("The plurality uses [*LeBlanc*'s] exceedingly narrow holding as a direct statement regarding United States Supreme Court precedent that *Miller* was never intended to apply to prisoners who are sentenced to life with the possibility of parole in the State of Florida."); Franklin, 258 So. 3d at 1241 (adopting the plurality opinion's holding in *Michel*). As a result, Defendants' summation of *Graham*, *Miller*, *Michel* and *Franklin* as "foreclos[ing] any claim of cruel and unusual punishment on Plaintiffs' part" rings hollow. *See* DE 24, at 17.

[3] By way of example, the *Michel* court noted that Florida's parole statute required FCOR to set a presumptive parole release date in light of information including "psychological reports" (among other things) and that this information would reflect maturity and rehabilitation as required by *Miller*. *Michel*, 257 So.3d at 7. While the statute may require psychological reports, the evidence that the *Michel* court did not have but this Court will is that FCOR's Director of Field Services has testified that since 2008 the Commission has not received any psychological reports or evaluations of the juvenile offender's maturity and rehabilitation. Compl.¶¶ 144–48.

B. Defendants' Actions Establish a Due Process Claim.

To avoid dismissal of their due process claims, Plaintiffs' Complaint must establish only: (1) the deprivation of a constitutionally protected liberty interest; (2) state action; and (3) constitutionally inadequate process. *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003).

With respect to their liberty interest, the U.S. Supreme Court recognized in *Graham* and *Miller* that juvenile offenders sentenced to life have a "categorical entitlement to demonstrate maturity and reform," to show that they are "fit to rejoin society," and to have "a meaningful opportunity for release." *Greiman*, 79 F. Supp. 3d at 945 (citing *Graham*, 560 U.S. at 79). Indeed, "that *Graham*, *Miller*, and *Montgomery* affect not only the nature of the sentence imposed on juvenile offenders but also the procedure by which their parole determinations are made is further apparent in the Supreme Court's discussion of evidence that might be used to show rehabilitation." *Brown*, 2017 WL 4980872, at *12. Further, the Supreme Court's characterization of juvenile offenders' right as an *opportunity* to demonstrate maturity and rehabilitation indicates the application of due process principles.

Multiple courts have held that categorical entitlement to procedural protections constitutes a cognizable liberty interest under the Fourteenth Amendment's Due Process Clause. *See id.*; *Flores*, 2019 WL 4572703 at *10; *Greiman*, 79 F. Supp. 3d at 945; *see also Hayden*, 134 F. Supp. 3d at 1010–11.

Their liberty interest thus established, the sufficiency of Plaintiffs' allegations is evident. Plaintiffs plead that (1) Defendants have deprived them of a constitutionally protected cognizable liberty interest in "some meaningful opportunity for release" (Compl. ¶¶ 9–10, 164); (2) Defendants, acting in their official capacities as the members of FCOR, deprived Plaintiffs of their constitutional rights while acting under color of state law (Compl. ¶¶ 27–30, 71, 163); and (3) the process by which Defendants consider their eligibility for parole denies Plaintiffs certain procedural safeguards as well as the opportunity to demonstrate maturity and rehabilitation; fails to take their youth at the time of their original offense into consideration; and bases parole decisions entirely on the original offense. Compl. ¶¶ 106–07, 112, 119, 127, 136, 149.[4] Thus, Plaintiffs have stated a sufficient claim that Defendants denied them their right to due process of law under the Fourteenth Amendment.

C. Plaintiffs Have Sufficiently Stated An Equal Protection Claim.

Plaintiffs contend that Defendants have violated their constitutional right to equal protection of the laws under the Fourteenth Amendment by denying them access to the same constitutional process and procedures provided to two other

[4] Plaintiffs have alleged that Defendants' parole process generally fails to meet the basic due process requirements of notice and an opportunity to be heard, including: the denial of Plaintiffs' right to the effective representation of counsel at parole hearings, the denial of a right to retain experts or investigators or psychological testing to show Plaintiffs' maturity and rehabilitation, the failure to require Defendants to provide adequate explanations for their parole decisions; and other inadequate procedures. Compl. ¶ 165. Plaintiffs also pleaded that they were not permitted to appear individually or through counsel before the Commission at their parole hearings, Compl. ¶¶ 112, 127, 137, 144, and that as a result of their absence, they were unable to challenge erroneous or detrimental evidence or information disclosed there. Compl. ¶¶ 106, 127, 137, 144.

groups of similarly-situated individuals: (1) those who received sentence review hearings after *Atwell* but before *Franklin*, between 2016 and 2018, and (2) those who were sentenced to LWOP as juveniles for the very same crimes after the State of Florida abolished parole in 1983 and 1994 and who are currently entitled to resentencing under the 2014 Juvenile Sentencing Statute. Compl. ¶¶ 170-71.

Plaintiffs have adequately pleaded the elements of an equal protection claim as set forth in *Sweet v. Sec'y, Dep't of Corr.*, 467 F. 3d 1311, 1318–19 (11th Cir. 2006) ("To establish an equal protection claim, a prisoner must demonstrate that (1) he is similarly situated to other prisoners who received more favorable treatment; and (2) the state engaged in invidious discrimination against him based on race, religion, national origin, or some other constitutionally protected basis.").[5] The Supreme Court has established that laws that either create suspect classifications *or* impinge upon constitutionally protected rights are subject to "searching judicial scrutiny."[6] *Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973). Here, Plaintiffs do not contend that they fall within a suspect class but instead contend that Defendants have impinged upon their constitutionally-protected liberty interest as set forth in *Graham* and *Miller*. Compl. ¶ 11.

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[5] Defendant misstate the elements of an equal protection claim under *Sweet* in arguing that Plaintiffs' claim must be dismissed for failure to allege a "suspect classification." *See* DE 24, at 20–21.

[6] Moreover, even if the law does *not* create suspect classifications or impinge upon constitutionally protected rights, Plaintiffs can still establish a violation of the Equal Protection Clause; that claim is simply subject to rational basis review as opposed to strict scrutiny review. *See Young Apartments, Inc. v. Town of Jupiter, Fla.*, 529 F.3d 1027, 1044 (11th Cir. 2008); *Dawkins v. McGrath*, CIV S-03-1643FCDEFBP, 2009 WL 5110668, at *9 (E.D. Cal. Dec. 18, 2009).

Plaintiffs have also demonstrated "discriminatory intent." A court may find discriminatory intent "even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials." *Elston v Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993). A party may establish discriminatory intent by exposing, among other things, "the nature and magnitude of the disparity itself (discriminatory impact)." *Baker v. City of Kissimmee*, 645 F. Supp. 571, 585 (M.D. Fla. 1986).

Plaintiffs have demonstrated disparate impact by alleging that juveniles sentenced to life *after* 1994 receive the constitutionally-required meaningful opportunity for review that the 2014 Juvenile Sentencing Statute provides, while juveniles sentenced *before* this date are deprived of this constitutional protection based solely on the dates of convictions. The disparate impact is substantial, Juvenile Lifers forced to rely upon Florida's parole process for release are generally expected to serve sentences almost twice as long as those Juvenile Lifers who received a judicial resentencing. Compl. ¶ 99.

D. Plaintiffs Have Sufficiently Pleaded a Sixth Amendment Claim.

The Sixth Amendment mandates that a jury must find beyond a reasonable doubt any fact—other than the fact of a prior conviction—that enhances the penalty to which a criminal defendant may lawfully be sentenced. *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000). Here, FCOR violates Plaintiffs' Sixth Amendment right by (1) raising the punishment ceiling by changing their sentences from LWP to *de facto* LWOP and (2) raising the statutory floor (extending the minimum amount

of time required to be served for capital offenses). Although all Plaintiffs have been sentenced to LWP, FCOR's actions essentially amount to a resentencing of Plaintiffs to *de facto* LWOP sentences, resulting in prison terms beyond that the Florida Legislature authorized and that the sentencing judge imposed. Compl. ¶¶ 8, 10, 78–81, 84, 88.

First, as to the punishment ceiling, the statutory maximum is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Blakely v. Washington*, 542 U.S. 296, 303–04 (2004) (internal citations omitted). The Supreme Court has held that "a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption'" or "permanent incorrigibility." *Montgomery*, 136 S. Ct. at 724-26 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)).[7] Therefore, the maximum sentence allowable for juvenile offenders who are not irreparably corrupt is one that provides a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (internal quotations omitted). As pled in the Complaint, Plaintiffs have not been provided a meaningful opportunity to obtain release and instead are facing *de facto* LWOP sentences. (Compl., ¶¶ 46, 68, 101, 174). This is unlawful.

[7] The Supreme Court this week affirmed its continued adherence to the finding in *Montgomery* that it is a violation of the Eighth Amendment and disproportionate punishment to "sentence a child whose crime reflects transient immaturity to life without parole." *Jones*, 593 U.S. ___ (2021) slip op. at 8 n. 2 (quoting *Montgomery*, 577 U.S. at 211).

Second, as to the statutory floor, the Supreme Court has held that "facts increasing the legally prescribed floor aggravate the punishment," so that those facts "must . . . be submitted to the jury and found beyond a reasonable doubt." *Alleyne v. United States*, 570 U.S. 99, 116 (2013). Defendants violate the Sixth Amendment by enhancing Plaintiffs' sentences beyond the statutory minimum on the basis of facts about the underlying crime not found by a jury. Compl. ¶ 88.[8]

Defendants contend that the Court must dismiss Plaintiffs' Sixth Amendment claim because, pursuant to *United States v. Reese*, 775 F.3d 1327 (11th Cir. 2015), the Sixth Amendment does not extend to supervised release or parole revocation hearings. DE 24, at 21–22. But this case does not involve supervised release or parole revocation hearings, so *Reese* is plainly inapplicable. This case involves *initial* parole determinations and later reconsiderations, which are different.

Florida's statutory scheme sets forth the minimum time in prison for each Plaintiff, and FCOR may not take actions that increase the minimum punishment for that offense. Plaintiffs have sufficiently stated a claim for a Sixth Amendment violation, and *Reese* does not hold otherwise. *King v. Landreman*, Case No. 19-cv-338-jdp, DE 6 (W.D. Wis. June 25, 2019) (granting Juvenile Lifers leave to proceed on claims under the Sixth Amendment).

[8] For instance, although a court sentenced Plaintiff Robert Earl Howard to life in prison with the possibility of parole after 25 years as a juvenile, Compl. ¶ 104, Defendants rejected their own investigator's recommendation and added 47 years to Mr. Howard's presumptive parole release date ("PPRD") based on aggravating factors from his original crime that were not found beyond a reasonable doubt. Compl. ¶ 106, Ex. C.

II. *Heck v. Humphrey* Does Not Bar Plaintiffs' Claims.

Under *Heck v. Humphrey*, otherwise valid claims brought pursuant to 42 U.S.C. § 1983 are *only* unavailable to prisoners if they "*necessarily* imply the invalidity of [a] . . . conviction or sentence." 512 U.S. 477, 478 (1994) (emphasis added); *see also Hill v. Snyder*, 878 F.3d 193, 207 (6th Cir. 2017). As the Sixth Circuit stated in *Hill*, "[t]he word '*necessarily*' must not be ignored—if invalidation of a conviction or speedier release would not automatically flow from success on the § 1983 claim, then the *Heck* doctrine is inapplicable." *Id.* (citing *Wolff v. McDonnell*, 418 U.S. 539, 554 (1974) (holding that § 1983 actions remain available for procedural challenges where the case's success would not necessarily result in immediate or speedier release)).

Here, Plaintiffs do not contend that their convictions or sentences are invalid or unconstitutional. They assert that Florida's parole system, processes, and procedures deny them the meaningful opportunity for release upon demonstrated maturity and rehabilitation that the Constitution requires. Compl. ¶ 9. To address this, Plaintiffs seek the same judicial review process pursuant to the 2014 Juvenile Sentencing Statute afforded to juveniles sentenced to LWOP, which would require the trial court to hold a review hearing to consider the Plaintiffs' maturation and rehabilitation to determine whether early parole release is appropriate. *See* Fla. Stat. § 921.1402 (2020). In the alternative, Plaintiffs seek this Court to require Defendants to revise Florida's current parole process to specifically account for their demonstrated maturity and rehabilitation, their youth at the time of the

original offense, and to provide a variety of other procedural protections. Under either form of relief, Plaintiffs *may* secure an earlier release than they would under the current system, but such early release would not be guaranteed. Therefore, the *Heck* doctrine is inapplicable.

The Supreme Court, as well as the courts wrongly cited by Defendants, all support the same conclusion—*Heck* does not bar Plaintiffs' § 1983 action. *See Wilkinson v. Dotson*, 544 U.S. 74, 125 (2005); *Hill*, 878 F.3d at 207; *Md. Restorative Justice Initiative*, 2017 WL 467731, at **14–15.[9]

III. Plaintiffs' Allegations Satisfy the Traceability and Redressability Requirements and They Have Standing to Sue these Defendants.

Defendants also move to dismiss Plaintiffs' claims for lack of standing, arguing that Plaintiffs have not sufficiently alleged the traceability or redressability elements as they relate to one of the two forms of requested relief that Plaintiffs are entitled to—the judicial review process that the 2014 Sentencing Statute provides to other Juvenile Lifers. Importantly, Defendants do not claim that

[9] In *Wilkinson*, when two state prisoners challenged state parole procedures in federal court under § 1983, the Supreme Court determined that their § 1983 claim did not implicate *Heck* because "if successful, the prisoners would obtain quicker or new parole hearings, and the parole board would have discretion whether or not to shorten the prisoners' terms," but "[b]ecause neither prisoner's claim would necessarily spell speedier release," relief pursuant to § 1983 was available. *Wilkinson*, 544 U.S. at 125. Similarly, in *Hill*, the Sixth Circuit found that "where the Plaintiffs do not seek direct release from prison or a shorter sentence, but instead seek an examination of the 'Defendants' policies and procedures governing access to prison programming and parole eligibility, consideration and release,' [t]his circuit has already expressly found such challenges cognizable under § 1983." *Hill*, 878 F.3d at 210. Finally, in *Maryland Restorative Justice Initiative*, the plaintiff class members alleged, pursuant to § 1983, "that Maryland's system of parole does not provide them with a realistic and meaningful opportunity for release." 2017 WL 467731, at *15. The district court recognized that it "could conclude that Maryland's parole scheme is unconstitutional without determining that plaintiffs' convictions or sentences are invalid" because "[s]uccess in this [claim] does not necessarily mean that Plaintiffs will obtain a speedier release from prison." *Id.* (quoting *Hill* and *Wershe*)).

Plaintiffs lack standing as it relates to declaring Florida's statutory parole scheme—in addition to Defendants policies, practices, and procedures—unconstitutional and to seeking relief by amending those statutes and processes. However, the U.S. Supreme Court has stated that there is "little question" that the presence of facts such as those alleged in the Complaint satisfy both traceability and redressability:

> When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or foregone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Lujan v. Defenders of Wildlife, 504 U.S. 555,561-62 (1962).

The traceability element of the standing analysis refers to the causal connection between Defendants' actions and Plaintiffs' harm. *Id.* at 560(requiring a "causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court."). Having been sentenced to life with parole, Plaintiffs' only avenue to pursue a meaningful opportunity to demonstrate rehabilitation is through the parole process that *these Defendants* administer. If Defendants were providing Plaintiffs the constitutionally required meaningful opportunity for release—for example, a parole process mirroring the constitutional process that the 2014 Juvenile Sentencing Statute provides other Juvenile Lifers—there would be no injury-in-fact. Thus, Plaintiffs' injuries are a direct result of the failure of *these* Defendants—

and no one else—to ensure that the parole policies, practices, and procedures provide Plaintiffs (and the Class) the constitutionally required process.[10]

The fact that the Florida Legislature has arguably also contributed to Plaintiffs' injuries by failing to include them within the scope of the 2014 Juvenile Sentencing Statute does not alter the fact that Plaintiffs' injuries are fairly traceable to these Defendants. Plaintiffs have adequately alleged how these Defendants have deprived them of their meaningful opportunity to prove rehabilitation and earn release; that the Legislature could but has not stepped in to redress the harm does not change the causation analysis as to these Defendants. *Loggerhead Turtle v. Cty. Council of Volusia Cty., Fla.*, 148 F.3d 1231, 1247 (11th Cir. 1998) ("[S]tanding is not defeated merely because the injury can be fairly traced to the actions of both parties and nonparties."); *BBX Capital v. FDIC*, 956 F.3d 1304 (11th Cir. 2020) (same). Rather, a plaintiff lacks standing only when the injury is "the result of the *independent* action of some third party not before the court." *Lujan*, 504 U.S. at 560 (emphasis added). That is not the case here. Defendants' failure to give Plaintiffs a meaningful opportunity to prove maturity and rehabilitation caused Plaintiffs' injuries.

As to the redressability requirement, the Supreme Court consistently focuses on whether it is "likely" (not certain or guaranteed) as opposed to merely

[10] Pursuant to Florida law, FCOR is responsible for developing and implementing objective parole guidelines upon which parole decisions are based. Compl. ¶ 30 (citing Fla. Stat. § 947.165(1) (2020)). Those guidelines are facially unconstitutional as they do not distinguish between adult and juvenile offenders, Compl. ¶¶ 8–10, and are unconstitutional as applied as they convert life with parole sentences into *de facto* life without parole sentences.

"speculative" that a plaintiff's injury will be "redressed by a favorable decision." *Id.* at 561. Plaintiffs have met that burden at the pleading stage. Plaintiffs seek a declaration that the parole process is not only unconstitutional, but also that, as applied—FCOR's unconstitutional policies, procedures, and practices have turned Plaintiffs' life with parole sentences (and those of the Class) into unconstitutional *de facto* life without parole sentences. Compl. ¶¶ 169, 174. This is a mixed question of law and fact that cannot be determined at the motion to dismiss stage. However, if Plaintiffs prevail, they will be entitled to a declaratory judgment that: the current parole process is unconstitutional; these Defendants have transformed their LWP sentences into *de facto* LWOP sentences; there is no rational reason to treat Plaintiffs and the Class differently than those sentenced to LWOP; and that Plaintiffs are entitled under the Sixth Amendment to have a judge determine whether they have been rehabilitated. Therefore, it is likely and not speculative, that a favorable decision will lead to both forms of relief sought.[11]

[11] FCOR members are appointed by Florida's Governor and the Cabinet and represented here by counsel from the Attorney General's office. It is *likely*—which is the bar set by the United States Supreme Court to evaluate redressability—that these state actors would not ignore a declaratory judgment that finds Plaintiffs and those similarly situated are entitled to the same treatment as Juvenile Lifers sentenced to life without parole. The Supreme Court has consistently found redressability satisfied where it is "likely as a practical matter" that a court finding would bring about the ultimate relief plaintiffs seek, regardless of whether other government officials not before the court can provide that relief. *Franklin v. Mass.*, 505 U.S. 788, 803 (1992) (finding that plaintiffs' action challenging census procedures which affected apportionment of Representatives could be redressed by a declaratory judgment against the Secretary of Commerce even though the Secretary only reported census results to the President and could not herself alter the apportionment; redressability was satisfied because it was "substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the district court, even though they would not be directly bound by such a determination."); *see also Utah v. Evans*, 536 U.S. 452, 463–64 (2002) (same result).

The cases that Defendants cite are inapposite. *See* DE 24, at 6 (citing *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236 (11th Cir. 2020); *Lewis v. Governor of Alabama*, 944 F.3d 1287 (11th Cir. 2019)). In both cases, the Eleventh Circuit found the plaintiffs' injuries were caused *solely* by a non-party and not the defendants. *Jacobson*, 974 F.3d at 1253 (finding no traceability because the Secretary-defendant did not do (or failed to do) anything that contributed to plaintiffs' harm); *Lewis,* 944 F.3d at 1301 (same). Here, the Complaint sufficiently alleges that these Defendants have caused Plaintiffs' harm, and traceability and redressability are easily satisfied at this stage of the proceedings. *Rose v. Raffensperger*, 1:20-cv-02921-SDG, 2021 WL 39578, at *10 (N.D. Ga. Jan. 5, 2021) (finding *Lewis* and *Jacobson* were inappropriate to apply at motion to dismiss stage where plaintiff had made sufficient allegations of standing against defendant).

IV. The PLRA Exhaustion Requirement Does Not Apply to Actions Challenging the Parole Process.

Defendants argue that Plaintiffs' challenges to the parole process should be dismissed under the PLRA for failure to exhaust available administrative remedies.[12] Specifically, Defendants contend ***without citation to any legal authority for support*** that "[a]dministrative remedies include, but are not

[12] With respect to administrative exhaustion, the PLRA provides that "No action shall be brought with respect to ***prison conditions*** under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted. Claims made about the parole process applied by these Defendants outside any prison cannot possibly amount to an action about prison conditions." 42 U.S.C. § 1997e(a) (emphasis added).

limited to, grievances with respect to prison conditions directed to the [Department of Corrections], as well as requests for rulemaking." DE 24, at 8. Defendants' suggestion that PLRA exhaustion extends beyond complying with the state's prison grievance process to filing a comprehensive rulemaking petition finds no support in the plain language of the statute and is refuted by multiple Supreme Court and Eleventh Circuit cases.

It was "beyond doubt" that Congress enacted the exhaustion requirement "to reduce the quantity and improve the quality of prisoner suits;" and that "to this purpose, Congress afforded **corrections officials** time and opportunity to address complaints internally before allowing the initiation of a federal case." *Porter v. Nussle*, 534 U.S. 516, 524–25 (2002) (emphasis added). The exhaustion requirement is meant to ensure that the "flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones v. Bock*, 549 U.S. 199, 203 (2007).

The Supreme Court has repeatedly emphasized that the boundaries of exhaustion under the PLRA are defined by a state's prison grievance process. *Jones v. Bock*, 549 U.S. 199, 218 (2007) ("Compliance with prison grievance procedures therefore is all that is required by the PLRA to 'properly exhaust.' The level of detail necessary in a grievance to comply with the grievance procedures

vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion.").[13]

Florida's inmate grievance procedures are set forth in Fla. Admin. Code. §§ 33-103.005-103.007. As Defendants acknowledge, Florida's grievance process expressly ***prohibits*** inmates from filing grievances regarding "Parole decisions" and "[o]ther matters beyond the control of the department." DE 24, at 10 n.3. This is logical because the PLRA exhaustion requirement is designed to weed out frivolous lawsuits by a prisoner complaining about prison conditions who has not followed the Department of Corrections' grievance process. It was not meant to apply to class actions such as this one with detailed allegations of systemic constitutional violations outside the purview of the Department of Corrections and which multiple other district courts have allowed to proceed. *Jones*, 549 U.S. at 203 (exhaustion requirement helps to ensure that the "flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit.").

Because Florida's grievance procedures define the grievance process required for exhaustion and specifically exclude challenges to parole decisions, there is no available administrative remedy to exhaust. *Ross v. Blake*, 136 S. Ct. 1950 (2016) (underscoring the PLRA's exception to exhaustion: "A prisoner need

[13] *Woodford v. Ngo*, 548 U.s. 81, 95 (2006) (PLRA requires exhaustion that complies with the "critical procedural rules" governing the prison grievance process); *Dimanche v. Brown*, 783 F.3d 1204, 1210 (11th Cir. 2015) (acknowledging that Florida's prison grievance procedures define what is required to meet the PLRA exhaustion requirement).

not exhaust remedies if they are not "available."); *Rahim v. Holden*, 882 F. Supp. 2d 638, 642 (D. Del. 2012) (finding that a prisoner suing a parole board for constitutional violations was not required to exhaust under the PLRA because the PLRA exhaustion requirement is limited to grievance procedures which listed parole decisions as non-grievable issues; therefore, there was no available administrative remedy to exhaust).

Because Defendants know there is no available remedy under Florida's prison grievance procedures to challenge the parole process, they instead urge the Court to extend exhaustion to encompass rulemaking petitions under Florida's Administrative Procedures Act. They cite no authority to support this unwarranted extension of the PLRA beyond the Department of Corrections' prison grievance system to one requiring a prisoner to first seek a comprehensive overhaul of parole regulations by filing a petition with an administrative law judge in a quasi-judicial process completely outside the prison grievance system. DE 24, at 8. Nor do Defendants attempt to distinguish the multiple Supreme Court and Eleventh Circuit cases that expressly acknowledge that the boundaries of exhaustion are defined solely by the state's prison grievance process.[14]

The Eleventh Circuit has defined "prison conditions" to mean "the conditions of confinement or the effects of actions by government officials on the

[14] *Bracero v. Sec'y Fla. Dep't of Corr.*, 748 F. App'x 200, 202 (11th Cir. 2018) ("To satisfy the exhaustion requirement, a prisoner must complete the administrative process in accordance with the applicable grievance procedures established by the prison."); *Halpin v. Crist*, 405 Fed. App'x 403 (11th Cir. 2010) (exhaustion defined by grievance process set forth in Fla. Admin. Code R. 33-103).

lives of persons confined in prison." *Johnson v. Breedon,* 280 F.3d 1308, 1324 (11th Cir. 2002) (relying on 18 U.S.C. § 3626(g)(2)). While undeniably broad, the Eleventh Circuit has not expressly found civil challenges to parole procedures and processes to fit within this definition of "prison conditions" so as to be subject to the PLRA's administrative exhaustion requirement. *See Jackson v. State Bd. of Pardons & Paroles*, 331 F.3d 790, 796 n.10 (11th Cir. 2003) (interpreting fee provision of PLRA where prisoner challenged changes in parole regulations but noting "[w]e render no decision as to whether Jackson's 1983 claim challenges 'prison conditions' within the meaning of 1997e(a)").

Indeed, as Defendants' Motion demonstrates, only the Eighth Circuit has applied the exhaustion requirement to individual challenges brought by prisoners involving the parole process. DE 24, at 7 (citing *Martin v. Iowa,* 752 F.3d 725 (8th Cir. 2014); *Owens v. Robinson,* 356 F. App'x 904, 904 (8th Cir. 2009) (per curiam); *Castano v. Neb. Dept. of Corr.,* 201 F.3d 1023, 1024-25 (8th Cir. 2000)).[15] None of these three brief opinions, however, outline whether the state prison grievance procedures at issue in those cases—which define the scope of PLRA

[15] Contrary to Defendants' assertion, neither *Woodford v. Ngo,* 548 U.S. 81, 93 (2006) nor *O'Connor v. Carnahan,* No. 3:09CV224/WS/EMT, 2012 WL 2201522, at *14 (N.D. Fla. Mar. 27, 2012), *report and recommendation adopted*, No. 3:09CV224-WS, 2012 WL 2317546 (N.D. Fla. June 15, 2012) involved civil actions related to parole procedures or processes, or any other parole-related matters. Defendants ostensibly included these cites to suggest there is broader case law support for their argument. There is not.

exhaustion—are similar to Florida's grievance procedures which specifically designate parole challenges as non-grievable matters.[16]

Even if there was an argument that exhaustion extends beyond the prison grievance process (there is not), this Court should deny Defendants' Motion because exhaustion is an affirmative defense and "inmates are not required to specially plead or demonstrate exhaustion in their complaints." *Jones*, 549 U.S. at 216. The Supreme Court noted that while a complaint was not required to address exhaustion, if it did and the allegations taken as true showed a failure to exhaust, then exhaustion may be a basis for failure to state a claim under Rule 12(b)(6). But that is not the case here. Plaintiffs Complaint contain no allegations of exhaustion. Instead, Defendants have improperly sought to introduce extrinsic evidence about exhaustion. DE 24, Ex. A. Because this affirmative defense is not evident from the Complaint's allegations, it is not grounds for dismissal.[17] *Md. Restorative Justice Initiative v Hogan*, 2017 WL 467731 (D. Md. Feb. 2, 2017) (denying motion to

[16] It is worth noting that in the numerous other Juvenile Lifer cases brought under § 1983, only one other case did defendants raise the argument that exhaustion under the PLRA was required. *Md. Restorative Justice Initiative*, 2017 WL 467731 at **16–19. The Court denied the motion to dismiss, finding there were factual issues on whether the parole challenges were grievable offenses under the Maryland prison grievance process.

[17] Despite Defendants' recognition that Plaintiffs are not required to plead exhaustion, they cite *Clark v. State of Ga. Pardons & Paroles Bd.*, 915 F.2d 636, 640 (11th Cir. 1990) to suggest the Court could still dismiss the Complaint based on their affirmative defense as set forth in their affidavit. First, *Clark* was decided prior to the Supreme Court's *Jones* decision which resolved an inter-circuit conflict between courts (such as the Eleventh Circuit) which required plaintiffs to plead exhaustion and those that did not. Because *Jones* clarified that dismissal is appropriate only if the exhaustion defense is undisputed based on the allegations of the complaint, that is the dismissal standard that applies and requires denial of Defendants' motion. Defendants' reliance on another pre-*Jones* decision for the assertion that it is appropriate for the Court to consider extrinsic evidence is likewise misplaced. DE 24, at 9 n.2 (citing *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990)).

dismiss in similar Juvenile Lifer case and refusing to consider defendants' extrinsic evidence on exhaustion).[18]

V. The Statute of Limitations Does Not Bar Plaintiffs' Claims.

Defendants contend that the statute of limitations bars Plaintiffs' claims. Dismissal on statute of limitations grounds is only appropriate, however, if it is clear from the face of complaint that the complaint is time-barred. *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 847 (11th Cir. 2004). That is not the case here.

A. Plaintiffs' Claims Are Subject to a Four-Year Statute of Limitations.

As there is no federal statute of limitations for § 1983 claims, district courts borrow the most analogous statute of limitations in the forum state to determine if the plaintiff's claim is timely. *See* 42 U.S.C. § 1988(a) (2018). The Supreme Court has held that for statute of limitations purposes, all § 1983 actions "should be characterized as personal injury actions." *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Further, "where state law provides multiple statutes of limitations for personal injury actions," as Florida does, "courts considering § 1983 claims should

[18] Moreover, even if Plaintiffs must ultimately prove that they have exhausted all available administrative remedies, only one class member is required to meet that standard, *i.e.*, only one class member has to exhaust administrative remedies (to the extent any are available). *See Chandler v. Crosby*, 379 F.3d 1278, 1287 (11th Cir. 2004) (PLRA exhaustion for a class can be met through "vicarious exhaustion" if one prisoner in the class has exhausted administrative remedies). Because Plaintiffs have not undertaken class discovery, it would be impossible to plead or decide the question of exhaustion at this early stage.

borrow the general or residual statute for personal injury actions." *Owens v. Okure*, 488 U.S. 235, 249–50 (1989).[19]

In Florida, the statute of limitations for personal injury actions is four years. *See* Fla. Stat. § 95.11(3)(p) (2020). Accordingly, federal courts in Florida consistently apply a four-year statute of limitations to § 1983 claims.[20]

Determining the accrual date for a § 1983 claim is a question of federal law. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). The statute of limitations for a § 1983 claim begins to run when "the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008) (citing *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987) (internal quotations omitted)).

Plaintiffs' claims accrued in 2018, when the Florida Supreme Court issued *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018). In 2016 the Florida Supreme Court held in *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016) that juveniles sentenced to LWP were not receiving a meaningful opportunity for release under Florida's parole system. Following *Atwell*, all Juvenile Lifers serving LWP sentences were entitled to file a motion in the Florida court system requesting a resentencing hearing pursuant to the 2014 Juvenile Sentencing Statute. In November 2018, however,

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[19] This disposes of Defendants' assertion that it is "unclear" which statute of limitations applies here. DE 24, at 10.

[20] *See, e.g., Hillcrest Props., LLC v. Pasco Cty.*, 754 F.3d 1279, 1281 (11th Cir. 2014); *Van Poyck v. McCollum*, 646 F.3d 865, 867 (11th Cir. 2011); *see also Smith v. Van*, 4:15CV53-RH/CAS, 2017 WL 2727101, at *3 (N.D. Fla. May 2, 2017), *report and recommendation adopted*, 4:15CV53-RH/CAS, 2017 WL 2726697 (N.D. Fla. June 22, 2017).

the courthouse door was slammed shut when the Florida Supreme Court reversed itself and held in *Franklin* that Florida's statutory parole system fulfills *Graham*'s requirement that juveniles be given a meaningful opportunity to be considered for release during their lifetime.[21] As a result of the *Franklin* decision, Plaintiffs and the class members here, who were not resentenced pursuant to the 2014 Juvenile Sentencing Statute, found themselves locked out of the courthouse and were forced to rely exclusively on the Florida parole system to seek a meaningful opportunity for release. Accordingly, Plaintiffs' claims accrued in November 2018, when they lost their right to seek judicial review of their sentences. Plaintiffs filed this action in January 2021, less than two-and-a-half years later, and therefore their claims are not barred by the four-year statute of limitations.

B. Plaintiffs' Claims Also Are Timely Under the Continuing Violation Doctrine.

Even if Plaintiffs' claims could be said to have accrued more than four years before this action was filed, the claims still are timely because the Complaint alleges that Plaintiffs have endured a series of continuing violations each time they seek parole and are denied a meaningful opportunity for release. "The continuing violation doctrine permits a plaintiff to sue on an otherwise time-barred claim when additional violations of the law occur within the statutory period." *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006). "[E]ach

[21] Notwithstanding that Franklin's presumptive parole release date was 2352.

violation gives rise to a new cause of action." *Knight v. Columbus, Ga.*, 19 F.3d 579, 582 (11th Cir. 1994).

The Complaint alleges that Florida's parole system is fundamentally flawed and, as a result, Plaintiffs' constitutional rights are violated each time they come up for review before FCOR. The Complaint includes detailed allegations at paragraphs 103-149 about each of the four named Plaintiffs, including when they became eligible for parole, when their cases were reviewed by FCOR, and how the Defendants repeatedly rejected their own investigators' recommendations and either delayed Plaintiffs' PPRDs or increased the time before the next FCOR action. At each step of the parole process, Plaintiffs have experienced a continuing injury by being deprived of their right to demonstrate rehabilitation and maturation. *Niesen v. City of Clearwater*, 8:08-CV-1599-T-30TBM, 2009 WL 1046122, at *4 (M.D. Fla. Apr. 20, 2009) ("A continuing violation is occasioned by continual unlawful acts . . . .") (citation omitted). Accordingly, Plaintiffs' claims are timely because the Complaint adequately alleges that Defendants engaged in continuing violations.[22]

Defendants contend that "each day" that goes by does not represent a continuing violation for Plaintiffs, citing *Brown v. Ga. Bd. of Pardons & Paroles*,

[22] Alternatively, at a minimum, it is not clear from the face of the Complaint that Plaintiffs' claims *are* barred by the statute of limitations, which is the applicable standard on a motion to dismiss because a statute of limitations is an affirmative defense. In *Md. Restorative Justice Initiative v. Hogan*, Juvenile Lifers brought a similar constitutional challenge against Maryland's parole system. *See* CV ELH-16-1021, 2017 WL 467731 (D. Md. Feb. 3, 2017). The district court held that it was not clear from the face of the complaint that the claims were time-barred, noting that demonstrating a continuing violation "is a fact-specific inquiry that, in my view, is premature to address at this stage of the litigation." *Id.* at 16.

335 F.3d 1259 (11th Cir. 2003). But *Brown* and the related case of *Lovett v. Ray*, 327 F.3d 1181 (11th Cir. 2003) are not controlling here. First, the inmates in those cases were seeking to remedy a prior denial of parole, whereas here Plaintiffs are seeking only prospective relief. Second, and perhaps more importantly, Plaintiffs are not challenging a one-time change and related implementation of the Florida parole rules that has continuing consequences. Rather, Plaintiffs are challenging the entire parole system, how it has evolved over time, and how FCOR exercises its discretion, applies the parole rules, and makes decisions about Plaintiffs' parole eligibility. So long as Plaintiffs are forced to seek parole under the current parole system, they are experiencing a continuing violation of their right under *Graham* and *Miller* to a meaningful opportunity to demonstrate maturity and rehabilitation. Because Defendants have subjected Plaintiffs to parole decisions within the last four years, their claims are timely under the continuing violation doctrine. *See, e.g.*, Compl. ¶ 105 (alleging that Plaintiff Howard most recently came before the Parole Commission in 2017); Compl. Ex. G (reflecting that FCOR acted on Plaintiff Peterson's parole eligibility in 2018); *see also Smith v. Shorstein*, 217 Fed. App'x 877, 881 (11th Cir. 2007) (holding that a prisoner's § 1983 claims were timely because he alleged unlawful incarceration, which was a continuing violation).

CONCLUSION

Plaintiffs request that the Court deny Defendants' Motion to Dismiss. If the Court concludes that the Motion to Dismiss should be granted in any respect, Plaintiffs request leave to amend the Complaint to cure such deficiencies.

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