UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT EARL HOWARD,
DAMON PETERSON,
CARL TRACY BROWN, and
WILLIE WATTS on behalf of themselves and
all others similarly situated,

Plaintiffs,

Case No. 6:21-cv-00062-PGB-EJK

v.

MELINDA N. COONROD,
RICHARD D. DAVISON, and
DAVID A. WYANT in their official capacities,

Defendants.
_________________________________/

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

More than 250 people are currently incarcerated in Florida state prisons serving life *with the possibility* of parole ("LWP") sentences for crimes committed when they were juveniles ("Juvenile Lifers"). As this Court has already recognized, the State of Florida is constitutionally obligated to afford Juvenile Lifers a meaningful opportunity to be released from prison based on demonstrated maturity and rehabilitation. June 24, 2021 Order ("Order") [ECF No. 43] 1–2, 16–17 (citing *Graham v. Florida*, 560 U.S. 48, 75 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190, 208–09 (2016) and noting these cases "confer on juvenile offenders a constitutionally protected liberty interest in meaningful parole review" (internal quotation marks omitted)).

Robert Earl Howard, Damon Peterson, Carl Tracy Brown and Willie Watts (collectively, "Plaintiffs") are Juvenile Lifers who are serving sentences in the custody of the Florida Department of Corrections ("FDC"). Through this motion, Plaintiffs ask this Court, pursuant to Federal Rule of Civil Procedure 23, to certify a proposed class of themselves and all other similarly situated Juvenile Lifers ("Class Members") who challenge the constitutionality of Florida statutes, policies, and procedures that are uniformly applied to them by Defendants.

Rather than providing a meaningful parole review process where Plaintiffs and Class Members have a realistic opportunity to establish their right to release by a demonstration of maturity and rehabilitation—as mandated by U.S. Supreme Court precedent—Florida instead relies upon release standards that contradict this

constitutional mandate by "giv[ing] primary weight to the seriousness of the offender's present criminal offense and . . . past criminal record" and presuming that any "decision to parole an inmate . . . is an *act of grace* of the state and *shall not be considered a right*." *See* Fla. Stat. § 947.002(2), (5) (emphasis added). These standards are applied in a parole review process riddled with procedural due process deficiencies, including, among others, the disallowance of the Juvenile Lifer from even appearing, much less presenting argument, at parole release meetings. Florida's parole review system—which effectively ensures that most, if not all, Plaintiffs and Class Members will die needlessly in prison—violates the Eighth Amendment's proscription on cruel and unusual punishment and denies them the right to procedural due process and an opportunity to be heard guaranteed by the Fourteenth Amendment.

Plaintiffs bring this action to redress (a) Florida's failure to comply with the constitutional mandate for a meaningful opportunity for release based on demonstrated growth, maturity, and rehabilitation; and (b) Florida's parole review process and its denial of basic procedural due process in parole review proceedings. To be clear, this case does *not* challenge any Class Member's individual sentence, the fact or duration of his or her confinement, or whether he or she meets the standard for release. Instead, as this Court has already recognized, Plaintiffs challenge the "current policies, procedures, and customs with respect to the parole review process" and "seek a declaration that the parole process . . .

violate[s] Plaintiffs' constitutional rights by turning life with parole sentences into *de facto* life without parole sentences." Order at 9–10 (emphasis in original).

Class certification is the most judicially efficient means to ensure the appropriate remedial measures and injunctive relief are provided to Plaintiffs and Class Members whose constitutional rights have been, and will continue to be, violated by Defendants unless necessary changes are made to Florida's parole system.

FACTUAL BACKGROUND

The U.S. Supreme Court has expressly held that the Eighth Amendment to the U.S. Constitution requires states to affirmatively provide prisoners serving life sentences for crimes they committed as minors with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" and that this mandate should be applied retroactively. *Graham*, 560 U.S. at 75; *see also Miller,* 567 U.S. 460; *Montgomery*, 577 U.S. at 208–09. Although these landmark cases involved juveniles sentenced to life without parole ("LWOP"), many courts, including this one, have determined this meaningful opportunity for release also applies to Juvenile Lifers. *See Compl.* ¶ 5 (citing cases); Order at 1–2.

Florida, however, has failed to afford Plaintiffs and the other Class Members with the constitutionally required meaningful opportunity for review. In response to the Supreme Court's decisions in *Miller* and *Graham*, the State adopted new sentencing procedures in 2014 for juvenile offenders serving or facing life in prison, requiring a judge to consider the individual's maturity and rehabilitation

as criteria for release and to afford the juvenile lifers a panoply of due process rights in the parole review process. *See, e.g.*, Fla. Stat. §§ 775.082, 921.1401 ("Florida's Revised Sentencing Statutes"). Although juvenile lifers receiving the harsher sentence of LWOP are now afforded the constitutionally required meaningful opportunity for review provided by Florida's Revised Sentencing Statutes, the statutes are silent on whether this process applies to Juvenile Lifers, and the State refuses to provide the substantive and procedural benefits of those statutes to Plaintiffs and the Class Members.[1]

Instead, Juvenile Lifers, including Plaintiffs and the Class Members, may only be released from prison in accordance with the limited process set forth in Florida's parole statutes. *See* Ex. A, Laura Tully[2] Dep. Tr. 16:22–17:9, 18:23–19:8 (citing Fla. Stat. § 947.002). This parole release process, which is identical for adult and juvenile offenders, is administered by the Florida Commission on Offender Review ("FCOR") and has been uniformly applied to Plaintiffs and Class Members by Defendants, the three commissioners who comprise FCOR. *See id.*[3] FCOR does

[1] Florida's Supreme Court initially held that Florida's Revised Sentencing Statues applied to Juvenile Lifers, but subsequently abrogated its earlier decision after a change in composition of the Florida Supreme Court. *Compare Atwell v. State*, 197 So. 3d 1040, 1050 (Fla. 2016), *with Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018).

[2] Laura Tully is FCOR's Director of Field Services and appeared as FCOR's agency representative in response to Plaintiffs' Fed. R. Civ. P. 30(b)(6) subpoena. *See* Ex. A at 5:17–6:11, 7:22–9:8, 10:14–18.

[3] *See also* Ex. A at 63:18–64:12, 64:20–65:7, 73:15–74:8, 79:2–18, 81:10–18, 83:21–85:16, 86:3–5, 145:8–17, 153:11–154:25, 155:17–25 (FCOR uses the same forms for juvenile and adult offenders at all stages of the parole interview and hearing process); *id.* 60:9–23, 61:19–62:11 (same, regarding parole interview directives and guidelines); *id.* 149:13–25, 151:10–24 (same, regarding setting subsequent interview dates); *id.* 69:24–70:19 (same, regarding parole examiner training materials).

not have **any** written policy requiring Defendants to apply the required standard of maturity and rehabilitation in their parole release considerations, nor is this standard used in Defendants' customary practices or procedures. *See supra* note 3. Rather, Defendants consistently default to the criteria for release in antiquated parole statutes that "give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record," suggest that "the decision to parole an inmate . . . is an *act of grace* of the state and *shall not be considered a right*," and fail to require any consideration that these Juvenile Lifers were minors at the time of their offenses. *See* Fla. Stat. §947.002(2), (5) (emphasis added); *see also* Ex. A at 16:22–17:9, 18:23–19:8.

In addition to applying the wrong evaluative standard for release, the State's parole process also fails to afford Plaintiffs and Class Members with basic due process requirements. When FCOR conducts parole hearings, it routinely hears over 40 parole cases per day—a subset of the overall daily total of as many as 200 parole, revocation, and conditional release cases—allotting a mere five to ten minutes to determine if and when each Juvenile Lifer may be released. Ex. A at 101:14–19, 102:19–103:3, 129:3–21. Juvenile Lifers are not allowed to attend these hearings. *Id.* 91:19–21. Prosecutors and victim's families are, however, permitted to attend parole review meetings and to address Defendants. *Id.* 92:6–11.

Juvenile Lifers are not provided a meaningful opportunity to review or rebut evidence or statements presented to FCOR. *See id.* 94:14–95:23. If a Juvenile Lifer has counsel—something Florida does not provide as a right—that counsel cannot

cross-examine or respond to any evidence presented at the hearing. *Id.* 95:25–96:7. As such, Plaintiffs and Class Members have no realistic opportunity to correct any factual inaccuracies presented to Defendants or to testify as to their maturity and rehabilitation. In fact, Defendants do not speak to, interview, or otherwise interact with Plaintiffs or Class Members as part of the standard parole review process. *See id.* 34:2–18, 64:20–65:4, 126:11–128–9 (explaining commissioners evaluate cases based on evidence collected by investigators and statements provided at the hearings). Moreover, in the vast majority of cases, FCOR rejects the recommendation of its own investigators—the only FCOR representatives who actually meet with the Juvenile Lifers and the prison officials who know them best—and instead imposes much longer presumptive parole dates. *See id.* 130:5–13, 132:15–133:24.

Under these circumstances, it is not surprising that this flawed process consistently results in the denial of parole to Class Members, who were on average 16 years old when they committed their offenses, but now continue to languish in prison at ages ranging from 41 to 83 years. *See* Ex. B, FCOR Juvenile Lifer List.[4] In fact, since 2014, only 17 out of over 300 Juvenile Lifers eligible for parole have been released from prison. *See* Ex. A at 173:5–19; *see also id.* at 49:25–51:18 (as of 2016, Florida prisons held between 300 and 477 parole-eligible inmates who were convicted of offenses while juveniles).

[4] The FCOR Juvenile Lifer List was provided by FCOR in response to Plaintiffs' Rule 30(b)(6) subpoena. Ms. Tully explained the list contained all Juvenile Lifers eligible for parole as of October 2021. *See* Ex. A at 172:12–173:24.

Unless Plaintiffs and Class Members are afforded the benefits of Florida's Revised Sentencing Statutes or Florida's unlawful parole statutes and parole review processes are appropriately reformed, Plaintiffs' and the Class Members' constitutional rights will continue to be violated. Many, if not most, will likely die in prison, as their LWP sentences are effectively converted into unconstitutional *de facto* LWOP sentences. Either relief sought by this action is appropriate for class adjudication: extending the benefits of Florida's Revised Sentencing Statutes to the Class; or, in the alternative, ensuring Florida's parole system evaluates Class Members consistent with U.S. Supreme Court mandates, giving each Class Member a fair opportunity to demonstrate growth and maturity. Consequently, the case should proceed as a class action; the Court should grant Plaintiffs' Motion for Class Certification.

LEGAL STANDARD AND RULE 23 REQUIREMENTS

Class certification is a matter within courts' broad discretion. *Griffin v. Carlin*, 755 F.2d 1516, 1531 (11th Cir. 1985). Before a class may be certified, the named plaintiffs must demonstrate Article III standing and that the proposed class is ascertainable. *See Vega v. T-Mobile U.S.A. Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009); *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021). In addition, there must be a showing that the putative class meets each of the requirements in Rule 23(a), as well as at least one of those in Rule 23(b). *Vega,* 564 F.3d at 1265.

Under Rule 23(a), a putative class may only be certified if:

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

If Rule 23(a)'s requirements are met, the Court must then determine whether the proposed class fits into one of the three class types defined in Rule 23(b). Here, Plaintiffs seek certification alternatively under subsections (b)(1)(A) or (b)(2), which require respectively a showing that (1) individual actions would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (2) the party opposing the class acted on grounds that apply generally to the class. Fed. R. Civ. P. 23(b)(1)(A), (2).

ARGUMENT

Certification of a class is necessary and appropriate in this action. Plaintiffs seek injunctive and declaratory relief for a class ("Proposed Class" or "Class") of:

> 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);[5] (iii) are currently in the custody of the Florida

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[5] The U.S. Sentencing Commission 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-

> 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.

See Compl. ¶ 150.

Courts have repeatedly certified similar classes of prisoners and allowed their claims to be expeditiously handled on a class-wide basis. *See, e.g.*, *King v. Landreman*, No. 19-CV-338, 2020 WL 6146542, at *1-2 (W.D. Wis. Oct. 20, 2020) (certifying a class of Wisconsin prisoners who committed crimes as minors and are serving life sentences with the possibility of parole); *Hill v. Snyder*, 308 F. Supp. 3d 893, 912 (E.D. Mich.), *aff'd*, 900 F.3d 260 (6th Cir. 2018) (certifying a class of all individuals in Michigan Department of Corrections' custody who were convicted of first-degree murder for offenses committed when they were juveniles and are or could become eligible for parole); *Brown v. Precythe*, No. 17-CV-04082, 2018 WL 3118185, at *1-3 (W.D. Mo. June 25, 2018) (certifying a class of individuals in the custody of Missouri Department of Corrections who were sentenced to life without parole for offenses committed when they were under 18 years of age); *see also* 8 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 25:18 (4th ed. 2002) ("The class action device was specifically designed to aid the court and the parties in resolving certain difficulties common to criminal justice class suits.").

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reports-and-sourcebooks/2020/2020-Annual-Report-and-Sourcebook.pdf; *see also King v. Landreman*, No. 19-CV-338, 2020 WL 6146542, at *2 (W.D. Wis. Oct. 20, 2020) (applying the 470 month statistic from the U.S. Sentencing Commission as a "clear definition" using "objective criteria" in certifying a class of plaintiffs which included juvenile offenders sentenced to a term of years exceeding their life expectancy).

This Court should follow suit. Class certification is appropriate because, as demonstrated below, Plaintiffs have standing to bring these claims, the Proposed Class is readily ascertainable, and this action satisfies all the requirements of Rule 23(a) and at least one of the subsections of Rule 23(b).

I. Plaintiffs have standing and the Proposed Class is ascertainable.

"Prior to the certification of a class, and before undertaking any analysis under Rule 23, a district court must determine that the named representative has Article III standing to raise each class claim." *Mohamed v. Am. Motor Co.*, 320 F.R.D. 301, 309 (S.D. Fla. 2017). The Court has already determined Plaintiffs have standing. *See* Order at 10.

The Proposed Class also meets the so-called ascertainability requirement, as it is "adequately defined such that its membership is capable of determination." *Cherry*, 986 F.3d at 1304. The class definition is based on objective criteria—individuals serving LWP sentences in Florida for crimes they committed when they were juveniles and who have never been paroled—through which class membership can be readily determined. In fact, Defendants have produced in discovery a spreadsheet of presumptive Class Members listing some 272 individuals serving LWP sentences or *de facto* life sentences in Florida for crimes they committed as children and who are eligible for parole as of October 2021. *See* Ex. B. Thus, the objective Class definition criteria renders the members of the Proposed Class readily ascertainable.

II. The Proposed Class meets all Rule 23(a) requirements.

The Proposed Class likewise satisfies the Rule 23(a) hurdle because: (1) the size of the Class (over 270 individuals) makes joinder of all members impracticable; (2) the questions of law and fact raised in this action are common to all members of the Proposed Class; (3) Plaintiffs' claims and interests are aligned with and typical of those of the Class Members; and (4) Plaintiffs and their counsel will adequately and zealously represent the interests of the Proposed Class.

A. The Class is too numerous for joinder.

Rule 23(a)(1) requires the Proposed Class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). "While there is no bright-line rule, the general rule of thumb in the Eleventh Circuit is that 'less than twenty-one is inadequate, [and] more than forty adequate'" to demonstrate that joinder is impracticable and numerosity satisfied. *Mohamed*, 320 F.R.D. at 312 (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

The Proposed Class here easily clears this low hurdle. According to FCOR's own data, there are 272 people in Florida's prisons who were convicted of a criminal offense when they were under the age of 18 years old; sentenced to life in prison or a term of years exceeding their life expectancy (defined as greater than 470 months); and who are eligible for release to parole supervision as of October 2021. *See* Ex. B.

B. Common questions of law and fact apply to the Class.

The commonality requirement mandates that a class can only be certified if "there are questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). However, this part of the rule does not require that *all* the questions of law and fact raised by the dispute be common or that the common questions of law or fact "predominate" over individual issues. *Vega*, 564 F.3d at 1268. Instead, "[o]ne common question of law or fact is sufficient so long as answering the question is central to determining the validity of all of the class members' claims and will aid in the resolution of the case." *Sos v. State Farm Mut. Auto. Ins.*, No. 617CV890, 2019 WL 3854761, at *3 (M.D. Fla. May 2, 2019) (Byron, J.) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011)). Indeed, the commonality element is generally satisfied when a plaintiff alleges that "defendants have engaged in a standardized course of conduct that affects all class members." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 673 (S.D. Fla. 2011) (citations omitted). This "relatively light" burden, *Vega,* 564 F.3d at 1268, merely "requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores*, 564 U.S. at 349–50.

Here, the Class Members, all of whom are serving LWP sentences (or *de facto* life sentences) for crimes they committed as juveniles, have all been subjected to the same "standardized course of conduct"—namely, Defendants' parole review policies and procedures, which are uniformly administered to the class. The

testimony of FCOR's agency representative, Florida statutes and rules, and FCOR documents confirm this:

- Parole review is systemically based on § 947.002, Florida Statutes, which sets forth a constitutionally-improper review standard, *see* Fla. Stat. §947.002(2), (5); *see also* Ex. A at 16:22–17:9, 18:23–19:8;

- There is no policy requiring Defendants to apply the required standard of maturity and rehabilitation in their parole release consideration, nor it is used in everyday practice, *see supra* note 3;

- Florida does not afford Juvenile Lifers the right to have counsel present at parole release meetings, nor are the Juvenile Lifers themselves allowed to attend those proceedings, Ex. A at 91:19-21, 92:1-5;

- Defendants generally do not speak to or see Juvenile Lifers before the parole review proceedings, but prosecutors and victims' families are permitted to attend and to address the Defendants at the proceedings, *id.* 92:6–11;

- FCOR generally rejects the parole release recommendation of its own investigators, *see id.* 130:5–13.

And to make matters worse, Florida's uniformly administered parole review process systemically fails to consider that Plaintiffs and the other Class Members were juveniles at the time of their offenses. Instead, it is clear from Defendants' testimony and documents that Juvenile Lifers are treated the same as adult offenders in Florida's parole review process:

- Parole criteria are based on Fla. Stat. §947.002, which has no provision for juvenile offenders, Ex. A at 16:22–17:9, 18:23–19:8;

- Procedural directives for conducting parole interviews apply to all offenders and make no allowances for juvenile offenders, *id.* 60:9–23, 61:19–62:11;

- Parole examiners are armed with training materials and the Florida Administrative Code that do not distinguish between juvenile and adult offenders, *id.* 69:24–70:19;

- Setting subsequent parole interview dates is based on factors that do not account for age at conviction, *id.* 149:13–25, 151:10–151:24;
- Forms used throughout the parole process—pre-hearing investigative reports, interview acknowledgment forms, parole hearing worksheets and action documents, waiver forms, and subsequent interview reports—are all identical regardless of whether the inmate is a juvenile or adult at conviction, *id.* 63:18–64:12, 64:20–65:7, 73:15–74:8, 79:2–18, 81:10–18, 83:21–85:16, 86:3–5, 145:8–17, 153:11–154:25, 155:17–25.

The inescapable conclusion is that each of the Class Members is subjected to a standardized parole review process that treats each of them *exactly* the same as adult offenders and is otherwise fatally flawed.

Not only is Florida's parole review process uniformly applied to all Class Members, but it also results in the same constitutional injury to all of them—the lack of a meaningful opportunity for parole based on a showing of maturity and rehabilitation. Such standardized conduct and injury satisfy the commonality requirement. *See, e.g.*, *Hoffer v. Jones*, 323 F.R.D. 694, 698 (N.D. Fla. 2017) ("[E]very inmate suffers exactly the same constitutional injury when he is exposed to a single statewide [prison] policy or practice that creates a substantial risk of serious harm.") (citations omitted); *Hernandez v. County 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).

Although commonality requires only "that there be at least one issue whose resolution will affect all or a significant number of the putative class members[,]" this case presents several common issues. *Williams v. Mohawk Indus.*,

568 F.3d 1350, 1355 (11th Cir. 2009) (quotation and citation omitted). They include, among others:

- Whether Florida's laws governing parole release violate Plaintiffs' and Class Members' Eighth Amendment rights to be free of disproportionate punishment;
- Whether Defendants' policies and practices for conducting parole review and determining parole eligibility—which consider primarily the nature of the crime committed by the juvenile and the juvenile's criminal history—are contrary to the mandates of *Graham*, *Miller* and *Montgomery* and therefore violate Plaintiffs' and Class Members' Eighth Amendment and Due Process rights; and
- Whether the practices and procedures of FCOR, including denying Plaintiffs and Class Members a right to counsel and a right to be present at FCOR meetings, and the right to see and confront evidence against them, and providing only cursory review of parole requests, precludes an opportunity for Plaintiffs and Class Members to be meaningfully heard in violation of the Due Process clause.

All of these issues are "susceptible to class-wide proof." *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). And importantly, a class proceeding will provide common answers to these questions. *See Wal-Mart Stores,* 564 U.S. at 359. A declaration that Florida's laws and policies governing parole review are unlawful will result in Class Members having a meaningful parole process that affords them the constitutionally-mandated meaningful opportunity for parole based on a demonstration of maturity and rehabilitation. Thus, "[c]ommonality is satisfied here because Plaintiffs' claims present common questions of law and fact regarding Defendants' policies, practices, and customs related to parole consideration for the Proposed Class Members." *Brown*, 2018 WL 3118185, at *6 (certifying class of prisoners in Missouri serving life without parole sentences for

crimes they committed as children); *see also G.H. v. Tamayo,* No. 19CV431, 2021 WL 5150050, at *3 (N.D. Fla. Oct. 22, 2021) (commonality satisfied in action "challeng[ing] practices that are consistently applied" to children subject to solitary confinement in state detention centers); *Hughes v. Judd*, No. 12-cv-568, 2013 WL 1821077, at *23 (M.D. Fla. Mar. 27, 2013) (commonality present where plaintiffs allegedly subjected to unconstitutional conditions in jail "seek permanent injunctive and declaratory relief that would enjoin allegedly unconstitutional behavior as applied to the entire class"), *report and recommendation adopted as modified*, No. 12-cv-568, 2013 WL 1810806 (M.D. Fla. Apr. 30, 2013).

C. Plaintiffs' claims are typical of those of the Class.

Rule 23(a)(3) requires 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). The "[c]lass members' claims need not be identical to satisfy the typicality requirement; rather, there need only exist a sufficient nexus . . . between the legal claims of the named class representatives and those of individual class members to warrant class certification." *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012) (omission in original; internal citations and quotation marks omitted); *see also Prado-Steiman v. Bush*, 221 F.3d 1266, 1279 n.14 (11th Cir. 2000) ("[A] strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences."). The required nexus exists "if the claims . . . of the class and the class representative arise from the same . . . *pattern or*

practice and are based on the *same legal theory*." *Ault,* 692 F.3d at 1216 (emphasis added).

The violations alleged by Plaintiffs are typical of those suffered by the Class and stem from the systemic application of parole review laws, policies and procedures that result in constitutional harm. FCOR's own list of Juvenile Lifers, which includes the names of each Plaintiff, establishes that each of them was a juvenile at the time of his crime, was sentenced to life in prison or a term of years exceeding his life expectancy, and is eligible for parole but nevertheless remains incarcerated. *See* Ex. B. Moreover, as explained above, each Plaintiff has been subjected to and injured by the uniform application by Defendants of Florida's unlawful parole evaluation standards and practices. These characteristics are typical of those of the Proposed Class.

Moreover, Plaintiffs' constitutional legal theories are identical to those that other Class Members could assert to enjoin Defendants' unlawful practices. All Class Members have a right to the application of the correct standard for parole review and at parole release hearings—a meaningful and realistic opportunity for release based on demonstrated maturity and rehabilitation. *See Graham,* 560 U.S. at 50. All Class Members also have a right to procedural due process in the parole release evaluation process. Where, as here, Defendants violate those constitutional rights by turning life *with* parole sentences into *de facto* life *without* parole sentences, both Plaintiffs and the other Class Members share the same legal theories. Consequently, Plaintiffs' claims are typical of the claims of the entire

Class. *See, e.g.*, *Hughes*, 2013 WL 1821077, at *24 ("[T]he named Plaintiffs . . . have established that their claims are 'typical' of other class members, namely those juveniles who have been detained at the jail and treated in accordance with [the] same policies and practices[.]"); *G.H.*, 2021 WL 5150050, at *4 (typicality satisfied because the process challenged by the plaintiffs was the "same for the plaintiffs as for the class members"); *Brown*, 2018 WL 3118185, at *7 ("These claims are the same as those that could be raised by any member of the Proposed Class, and all class members share the common alleged injury of being subjected to the policies.").

D. Plaintiffs and their counsel will adequately protect the Class Members' interests.

The fourth component of Rule 23(a) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement "involves questions [1] of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and [2] of whether plaintiffs have interests antagonistic to those of the rest of the class." *Griffin*, 755 F.2d at 1533. These criteria are satisfied here.

Regarding the first prong, Plaintiffs are represented by two well-respected sets of counsel—Juvenile Law Center, a nonprofit organization advocating for the rights of youth in the juvenile and criminal justice systems; and Holland & Knight LLP, a national law firm with a strong class action practice—who are "qualified, experienced, and . . . able to conduct the proposed litigation." *Id.*

Collectively, these counselors have many years of experience in federal civil rights and class action litigation, including juvenile-specific prison litigation. Juvenile Law Center has represented plaintiffs in numerous class actions relating to the policies and practices of juvenile detention policies.[6] And Holland & Knight's lead attorneys in this matter have been counsel of record in dozens of complex class actions, including representing a class of foster care dependents bringing claims against Florida state officials for failing to provide critical mental health services.[7] Counsel is qualified to represent all Class Members in this case.

Plaintiffs' counsel have already dedicated substantial time and financial resources—including working over 2,000 attorney hours—to the investigation and prosecution of the claims at issue and will continue to do so. *See Mohamed,* 320 F.R.D. at 315 ("Counsel has also demonstrated that they will capably advocate on

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[6] Juvenile Law Center represented plaintiffs in the "Kids for Cash" class action lawsuits, *Wallace v. Powell*, No. 09-cv-00286; *Conway v. Conahan*, No. 09-cv-00291; *H.T. v. Ciavarella*, No. 09-cv-00357; and *Humanik v. Ciavarella*, No. 09-cv-00630, all in the U.S. District Court for the Middle District of Pennsylvania. These actions arose from an FBI investigation of former judges receiving monetary payments for sending youth to a private detention center. Juvenile Law Center is currently counsel of record in *J.J. v. Litscher*, No. 17-cv-00047, in the Western District of Wisconsin, involving harmful and abusive conditions in two juvenile correctional facilities, as well as in *Derrick v. Glen Mills Schools*, No. 19-cv-01541, in the Eastern District of Pennsylvania, again involving harmful and abusive conditions and practices in a juvenile residential facility.

[7] Holland & Knight's lead attorneys on this case are partners Tracy Nichols and Stephen Warren. Ms. Nichols has decades of experience, is a leader within the firm, clerked for Judge Howell W. Melton of the Middle District of Florida, and has been counsel in over three dozen class actions, including *M.E. v. Chiles*, No. 90-1008-CIV (S.D. Fla. 1990) (representing class of foster care dependents bringing claims relating to mental health services). Mr. Warren clerked for Judge Leonard Garth of the U.S. Court of Appeals for the Third Circuit, regularly represents clients in pro bono matters—including contributing to the Innocence Project and representing prisoners in Section 1983 actions—and has been counsel on over two dozen class actions. Holland & Knight founder Chesterfield Smith (1917–2003) instilled in the firm's lawyers a sense of duty to provide those in need with free legal services. The firm's pro bono work focuses on civil rights, racial justice, criminal justice reform, immigration, and the defense of children and veterans. Three percent of the firm's working hours arise from pro bono legal services.

Plaintiff's behalf, as reflected by the substantial motion practice in this action."). Accordingly, they satisfy the first prong of the adequacy requirement.

The second prong merely requires there be no major conflicts between Plaintiffs and the Class. *See Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) ("[T]he existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going to the specific issues in controversy."). Plaintiffs meet this requirement because their interests are squarely aligned with the Proposed Class. Plaintiffs and the other Class Members share a common goal – an end to Florida's unconstitutional parole statutes and policies which deny them a meaningful and realistic opportunity for parole and subject them to a process riddled with due process deficiencies. Thus, there is no major conflict or antagonistic interest between Plaintiffs and the Class. *See, e.g.*, *G.H.*, 2021 WL 5150050, at *4 ("No conflict is evident between the named plaintiffs and the class members; they all have the same interest in a constitutionally acceptable process[.]"). Accordingly, the Proposed Class satisfies not only the final, but all, Rule 23(a) requirements.

III. The Proposed Class satisfies at least one Rule 23(b) requirement.

Finally, a class must also satisfy at least one of the Rule 23(b) requirements. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Here, two independent subsections of Rule 23(b) are satisfied: 23(b)(1)(A) and (b)(2).

A. Rule 23(b)(1)(A) is satisfied.

The circumstances here meet the requirements of Rule 23(b)(1)(A), which allow for certification of a class when not doing so would create a risk of "inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class[.]" Fed. R. Civ.P. Rule 23(b)(1)(A). This subsection applies to "cases where the party is obliged by law to treat the members of the class alike . . . or where the party must treat all alike as a matter of practical necessity." *Amchem Prods., Inc.*, 521 U.S. at 614 (internal quotation marks omitted).

In light of the landmark decisions in *Graham, Miller* and *Montgomery*, the Proposed Class is entitled to uniform relief—a review process affording each Class Member a meaningful opportunity for release upon demonstration of maturity and rehabilitation. The relegation of these issues to piecemeal resolution by individual Class Members would result in duplicative litigation and potentially inconsistent determinations of the constitutional questions at the very heart of this action. Rule 23(b)(1)(A) therefore is satisfied.

B. Rule 23(b)(2) is satisfied.

Alternatively, certification is satisfied under Rule 23(b)(2). Certification is appropriate under Rule 23(b)(2) when "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). "Subsection (b)(2) was intended primarily to

facilitate civil rights class actions, where the class representatives typically sought broad injunctive relief against discriminatory practices." *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983) (citation omitted); *see also Wal-Mart Stores*, 564 U.S. at 360 (holding a class should be certified under Rule 23(b)(2) when "a single injunction or declaratory judgment would provide relief to each member of the class").

The Proposed Class in this civil rights action is a textbook example of a Rule 23(b)(2) class. Defendants have utilized an unconstitutional parole review process uniformly harming a specific class of people and the equitable relief sought would necessarily affect all members of the Proposed Class. Absent relief from this Court, all members of the Proposed Class will be subjected to the same inadequate parole review policies and procedures, and will suffer the same constitutional harms.

Because Defendants continue to act on grounds that apply to the entire Proposed Class, final injunctive relief and corresponding declaratory relief is appropriate for the Proposed Class as a whole. *See Holmes*, 706 F.2d at 1156-57 (a subsection (b)(2) class is appropriate when a single injunction or declaratory judgment would provide relief to each member of the class since it would halt the alleged wrongful actions or policies); *see also Hughes*, 2013 WL 1821077, at *25 (certifying subsection (b)(2) class of juveniles who claimed jail's policies and practices created unconstitutional conditions of confinement violating the Eighth and Fourteenth Amendments); *King*, 2020 WL 6146542, at *5 (certifying

subsection (b)(2) class of Wisconsin prisoners who committed crimes as minors and are serving life sentences with the possibility of parole).

IV. The Court Should Appoint the Undersigned as Class Counsel.

Rule 23(g)(1) provides that "unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Rule 23(g)(1)(A) outlines the factors relevant to the appointment of class counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class[.]

All of these factors weigh in favor of appointing the undersigned as class counsel. Counsel from Holland & Knight and Juvenile Law Center have already done substantial work investigating the facts and identifying the claims for the Class Members. *See supra* Section II.D. Over the last several months, Holland & Knight and Juvenile Law Center attorneys have collected and reviewed nearly 3,000 documents, interviewed persons, conducted a deposition, successfully defended against dismissal of the claims at the heart of this action, and worked over 2,000 hours of attorney time. *Id.* Both Holland & Knight and Juvenile Law Center have extensive experience handling complex class actions—with Juvenile Law Center specializing in matters on behalf of those incarcerated for offenses committed while juveniles. *See supra* notes 6–7. Both firms are committed and able to represent the Class.

Accordingly, Plaintiffs request the Court appoint as class counsel the undersigned attorneys from Holland & Knight and Juvenile Law Center.

CONCLUSION

Defendants uniformly apply the same parole process and evaluative standards—which fail to take into account maturity and rehabilitation—when considering whether to release Juvenile Lifers to parole supervision. In the wake of *Graham*, *Miller*, and *Montgomery*, this practice is clearly unconstitutional—and it must change. The Class Members deserve a meaningful opportunity for release consistent with Supreme Court precedent and the Constitution. Certifying the Proposed Class will be the most efficient route to redress this wrong.

Plaintiffs request the Court:

1. Certify this case as a class action with the following class definition: 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;

2. Appoint Plaintiffs Robert Earl Howard, Damon Peterson, Carl Tracy Brown, and Willie Watts as class representatives;

3. Appoint as Class Counsel Holland & Knight and its attorneys Tracy Nichols, Stephen P. Warren, Laura Renstrom, and Andrew Balthazor; and Juvenile Law Center and its attorneys Marsha Levick, Andrew Keats, and Katrina Goodjoint; and

4. Grant further relief that may be just and proper.

Dated: November 18, 2021.

Respectfully submitted,

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