No. 23-10858

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

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

APPELLANTS' OPENING BRIEF

JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
Telephone: 215-625-0551
Marsha L. Levick
mlevick@jlc.org
Andrew R. Keats*
akeats@jlc.org
Tiara J Greene*
tgreene@jlc.org
*Admitted *pro hac vice*

HOLLAND & KNIGHT LLP
701 Brickell Avenue, Ste. 3300
Miami, FL 33131
Telephone: 305-374-8500
Tracy Nichols
tracy.nichols@hklaw.com
Stephen P. Warren
stephen.warren@hklaw.com
Christopher N. Bellows
christopher.bellows@hklaw.com
Ilene L. Pabian
ilene.pabian@hklaw.com
HOLLAND & KNIGHT LLP
200 South Orange Ave., Ste. 2600
Orlando, FL 32801
Tel: (407) 244-5103
Jamie Billotte Moses, FBN 9237
jamie.moses@hklaw.com

Attorneys for Plaintiffs-Appellants

Case No.: 23-10858-C *Robert Earl Howard, et al v. Melinda N. Coonrad, et al*.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rules 26.1-1 and 26.1-2 of the Rules of the United States Court of Appeals for the Eleventh Circuit, undersigned counsel for Appellants Robert Earl Howard, Damon Peterson, Carl Tracy Brown, and Willie Watts on behalf of themselves and all others similarly situated give notice of the following trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal:

Bassett, II, Glen Allen, Counsel for Appellees

Bellows, Christopher, Counsel for Appellants

Brown, Carl Tracy, Appellant

Byron, Honorable Judge Paul G., United States District Court Judge

Coonrod, Melinda N., Appellee

Davison, Richard D., Appellee

Disare, Monica Grace, Former Counsel for Appellants/Plaintiffs

Goodjoint, Katrina, Former Counsel for Appellants/Plaintiffs

Greene, Tiara, Counsel for Appellants

Gregg, Robert, counsel for Appellees

Holland & Knight LLP, Counsel for Appellants

Case No.: 23-10858-C *Robert Earl Howard, et al v. Melinda N. Coonrad, et al*.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Howard, Robert Earl, Appellant

Juvenile Law Center, Counsel for Appellants

Keats, Andrew, Counsel for Appellants

Levick, Marsha L., Counsel for Appellants

Moody, Ashley, Attorney General of Florida

Moses, Jaime Billotte, Counsel for Appellants

Nichols, Tracy, Counsel for Appellants

Pabian, Ilene, Counsel for Appellants

Peterson, Damon, Appellant

Renstrom, Laura, Counsel for Appellants

Warren, Stephen, Counsel for Appellants

Watts, Willie, Appellant

Winship, Blaine H., Former Counsel for Appellants/Plaintiffs

Wyant, David A., Appellee

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ *Christopher N. Bellows*
Christopher N. Bellows

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested because the Class Members, whose underlying crimes were committed when they were children under the age of eighteen, are facing life sentences that will almost certainly see them die in prison absent the reform of an unconstitutional parole system that denies them a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

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JURISDICTIONAL STATEMENT

Plaintiffs brought the underlying action pursuant to 42 U.S.C. § 1983, the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States; and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*. The District Court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. The District Court issued summary judgment in favor of Defendants on February 17, 2023, disposing of all parties' claims and defenses. Plaintiffs filed their Notice of Appeal on March 20, 2023. This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

I. Whether the State of Florida's parole policies, practices, and procedures violate the Class Members' well-established Eighth and Fourteenth Amendment rights to a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

STATEMENT OF THE CASE

This is a class action brought by Plaintiffs on behalf of themselves and approximately 170 individuals currently incarcerated in the state of Florida who were sentenced to life *with* parole for crimes committed when they were under the age of 18 ("JLWP"; individuals referred to as "Juvenile Lifers"). In theory, these individuals should have an opportunity for parole. In practice, however, these Juvenile Lifers are serving *de facto* life *without* parole sentences ("JLWOP") which are unconstitutional under U.S. Supreme Court precedents established in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana,* 577 U.S. 190 (2016). The parole policies, practices, and procedures of the Commissioners of the Florida Commission for Offender Review ("Commissioners," "FCOR," or "Defendants") deny Class Members their rights to a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Defendants apply the same cursory review process to Juvenile Lifers as they do to adults—a minutes-long parole hearing that Class Members cannot attend, cannot confront witnesses, and cannot correct factual inaccuracies. And like adults, they are not assessed based on their maturity and rehabilitation but almost solely on the offense they committed decades ago. In fact, half of the Class Members were *penalized* for being children at the time of their offenses and given substantially later dates before they could be considered for parole release. Because Commissioners give primary weight to the seriousness of the crime,

it is uncommon—rather than common as U.S. Supreme Court precedent guides—that Class Members are ever paroled, even those with stellar institutional records. The uncontroverted factual review of all Class Members' records shows that they will be, on average, in their 90s (assuming they live that long) and will have served roughly 75 years in prison before they even have an opportunity to be considered for release. This parole process for Juvenile Lifers—whom the U.S. Supreme Court has repeatedly recognized are constitutionally different from adult lifers—is patently unconstitutional.

I. COURSE OF PROCEEDINGS

Plaintiffs filed their Complaint in the Middle District of Florida alleging violations by FCOR of the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution on January 8, 2021. (Doc. 1, pp. 55-60 [A88-93]).[1] On June 25, 2021, the District Court denied in part Defendants' Motion to Dismiss. (Doc. 43, p. 1 [A279]). In its Order, the District Court agreed that "the constitutional protections recognized by *Graham, Miller*, and *Montgomery* apply to parole proceedings for juvenile offenders serving a maximum term of life imprisonment," and that these cases "confer on juvenile offenders a constitutionally protected liberty interest in meaningful parole review." (*Id.* at 15-17 [A293-95] (internal quotation omitted)). The District Court

[1] Citations to the record are made using the following format: (Doc. __, p. ___ [A__]). The "Doc." citation refers to the document entry number from the electronic docket of 6:21-cv-00062-PGB-EJK in the Middle District of Florida, as well as the page number generated by the district court's electronic filing system. The "[A__]" citation refers to the pagination of the Appellants' Appendix to Initial Brief.

found "that Plaintiffs have sufficiently pleaded Eighth Amendment violations," and "due process violations." (*Id.*)[2] After Plaintiffs moved for class certification, on March 30, 2022, the District Court certified a class consisting 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); (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.

(Doc. 58, p. 18 [A610]). The parties filed cross-motions for summary judgment in September 2022. (Doc. 96, p. 1 [A612]; Doc. 104, p. 1 [A2287]). Despite the overwhelming evidence submitted by Plaintiffs documenting the parole system's unconstitutional treatment of the class, the District Court granted summary judgment in favor of the Defendants on February 17, 2023. (Doc. 136, p. 17 [A3416]). Plaintiffs timely appealed. (Doc. 140 [A3129]).

[2] The District Court, however, dismissed Plaintiffs' Sixth Amendment and equal protection claims. (Doc. 43, pp. 20, 23 [A298, A301]). Plaintiffs do not appeal that ruling.

II. STATEMENT OF FACTS

A. The Four Named Plaintiffs Were Sentenced To JLWP Before Florida Banned Parole In 1994; They Have Since Demonstrated Exceptional Maturity And Rehabilitation

These are but four of the roughly 170 Juvenile Lifers trapped by Florida's parole system. Since the establishment of its juvenile courts in 1951, Florida has required all children charged with an offense punishable by death or life imprisonment to be charged and tried as adults once an indictment is returned. Fla. Stat. Ann. § 985.56 (2007); Fla. Stat. Ann. § 985.225 (1997); Fla. Stat. Ann. § 39.022 (1990); Fla. Stat. Ann. § 39.02(5) (1951). Courts sentencing juvenile offenders like Plaintiffs and Class Members did not and could not take into account the factors attendant to youth that would only later become mandated by the Supreme Court. In 1994, Florida abolished parole for homicide offenses. Fla. Stat. Ann. § 775.082(1) (1994); 1994 Fla. Sess. Law Serv. Ch. 94-228 (S.B. 158). Prior to the abolition of parole in Florida, there were only two possible penalties for juvenile offenders who were convicted of capital murder: the death penalty or life with the possibility of parole after no fewer than 25 years. Fla. Stat. Ann. § 775.082 (1994); 1994 Fla. Sess. Law Serv. Ch. 94-228 (S.B. 158). Meanwhile, because of the way the Florida parole system works, despite Plaintiffs having served well beyond their minimum twenty-five years in prison, none of them have yet to have a hearing in which they have actually been considered for release to parole—and that is the norm for the entire Class.

1. Plaintiff Robert Earl Howard

In 1981, Plaintiff Robert Earl Howard was 17 years old and in 11th grade when, under the influence of an older co-defendant, he engaged in a robbery that resulted in the victim being killed. (Doc. 104-8, p. 1 [A2871]). For the murder, Mr. Howard was sentenced to life in prison with the possibility of parole after 25 years. (*Id.*)

Mr. Howard's record in prison has been exemplary. He earned his GED, and, beginning in 1991, was selected to work for PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.)—a nonprofit enterprise which trains eligible individuals in vocational skills to prepare them for re-entry into communities as productive citizens. (Doc. 1-5, p. 2 [A140]). Being selected for the PRIDE program is a highly sought-after position and is only awarded to those who have earned the trust of correction officers who select the participants. As of 2020, Mr. Howard has earned over 18 certificates that would qualify him for jobs outside the walls of prison. (*Id.*)

In addition to completing numerous job-training courses to position him to live a productive life outside of prison, Mr. Howard also completed numerous self-betterment courses in anger management, life skills, AA, AIDS awareness, yoga, and substance abuse. (*Id.*)

In over 35 years, Mr. Howard has not received a single disciplinary report. (Doc. 104-8, p. 17 [A2887]). As his classification officer stated in a letter to Defendants in 2010:

> During my years as a classification officer, I have not seen many individuals as dedicated to rehabilitation as inmate Howard. He always carries himself in a positive manner, respects both officer and inmate alike, and he continuously betters himself by learning new trades and participating in self-betterment programs.

(Doc. 1-5, p. 2 [A140]) Citing over two dozen credits and accomplishments Mr. Howard had achieved, his classification officer concluded by recommending that Mr. Howard be paroled. (*Id.*; *see also* Doc. 1-6, pp. 2-3 [A142-43]). Despite his impressive record of demonstrated maturity and rehabilitation, each time the Commission has met on Mr. Howard's case it has focused almost exclusively on the facts of the crime and ignored his impressive record. (Docs. 104-8, pp. 6, 11, 15, 18 [A2876, 2881, 2885, 2888]). For instance, at his first in-person interview in 2005, FCOR's Investigator noted that Mr. Howard had been free of any disciplinary reports for twenty years at the time and recommended that the date for considering whether he would be paroled, the "Presumptive Parole Release Date" ("PPRD") be set for 2015. (*Id.* at 2 [A2872]). The Parole Commission, examining the same set of facts, rejected the Investigator's recommended PPRD date of 2015, and added 47 years to the 25 years Mr. Howard had served. (*Id.* at 6 [A2876]). The two-page form recording the Commission's action listed only aggravating factors based on his original crime and made no mention of any mitigating factors or his stellar institutional conduct in the past 25 years. (*Id.*)

Mr. Howard's current PPRD and earliest prospect for release is 2054. (*Id.* at 18 [A2888]). He will not be considered for release until he is 91 years old and will have

served 74 years in prison.

2. Plaintiff Damon Peterson

At the age of 16, Plaintiff Damon Peterson and two other 16-year-old boys attempted a robbery. (Doc. 104-16, p. 6 [A3143]). When a scuffle ensued, Mr. Peterson panicked and shot the victim before driving away. (*Id.*) The victim died from the gunshot wound. (*Id.*) Mr. Peterson later confessed and agreed to plead to life in prison with the possibility of parole in 25 years. (*Id.*)

During the roughly 30 years he has been in prison, Mr. Peterson has been a model prisoner with only a few disciplinary reports, with the last disciplinary report occurring over 10 years ago. (*Id.*) However, Mr. Peterson's maturity and rehabilitation were disregarded by Defendants who instead gave primary weight to the seriousness of the offense.

At his Initial Interview, when Mr. Peterson had served some 25 years, the Investigator who met with and interviewed Mr. Peterson recommended a PPRD of April 2027. (*Id.* at 1 [A3138]). The Commission rejected its Investigator's recommendation and added another 33 years to the PPRD, setting it for 2060. (*Id*. at 2 [A3139]). The determination was based almost entirely on facts relating to the crime. (*Id.*)

At his current PPRD and therefore earliest prospect for release, Mr. Peterson would be 84 years of age and would have spent 67 years in prison.

3. Plaintiff Carl Tracy Brown

In 1988, at age 16, Plaintiff Carl Tracy Brown was with two friends (age 15 and 21) when he shot and killed someone during a robbery. (Doc. 104-4, p. 4 [A2703]). Following a jury trial, Mr. Brown was convicted of first-degree murder, armed robbery and armed burglary. (*Id.*) For the murder conviction, he was sentenced to life with parole. (*Id.*)

In the 32 years he has been incarcerated, Plaintiff Brown ***has not had a single recorded disciplinary report***. (*Id.* at 5 [A2704]). He has held a variety of jobs while in prison including as an education aide, working in the library, and in the carpentry shop for over 19 years. (*Id.*)

At his Initial Interview to set his PPRD in 2016, the Investigator noted that Mr. Brown had received above average work ratings in all the work positions he held. (*Id.*) He also noted a classification officer's comment that Mr. Brown "is not a problem, as evidenced by his disciplinary record." (*Id.*) The Investigator recommended a PPRD of 2023. (*Id.* at 1 [A2700]). However, the Commission rejected this recommendation and focused solely on "aggravating factors" which all stemmed from the original crime. The Commission added nine additional years to the PPRD recommended by the Parole Examiner with a date in 2032 when Mr. Brown will be 60 years of age. (*Id.*)

4. Plaintiff Willie Watts

In 1980, at age 17, Plaintiff Willie Watts, came under the influence of an older half-brother (age 33) and another older friend (age 19). (Doc. 104-19, p. 1 [A3198]) During an armed robbery of a convenience store, one of Mr. Watts' co-defendants raped and shot a clerk outside of Mr. Watts's presence. (Doc. 104-21, p. 1 [A3210]) The clerk survived. Mr. Watts was convicted of armed robbery and kidnapping and sentenced to life with parole. (*Id.*)

After an initial period of adjustment to prison life at age 17, Plaintiff Watts began to turn his life around. He became religious and completed his GED. (Doc. 104-19 at 2 [A3199]) He completed multiple vocational courses and received a coveted spot working with PRIDE Industries to learn skills he could use to support himself in a life outside prison. He completed all the self-help and growth courses offered by the State. (*Id.*)

Mr. Watts has not received a Disciplinary Report for the last 15 years. (*Id.*)

Nevertheless, when the Commission reviewed his case in March 2015 it set his PPRD for January 2064. (Doc. 104-20, p. 7 [A3209]). Despite being reviewed on four separate occasions since his last disciplinary report, and despite Investigators recommending reductions totaling roughly 10 years, Mr. Watts' PPRD remains unchanged; he will be 104 years of age on that date.[3] (*Id.* at 3-7 [A3205-9]). Internal

[3] Defendants challenged Mr. Watts' status as a Class Member and the District Court

FCOR notes reflect that Commissioners incorrectly believed Mr. Watts was the rapist. Since he was not able to participate in the FCOR hearing or see all information considered, Mr. Watts was not able to correct this blatantly wrong assumption. (Doc. 104-21 pp. 1, 3 [A3210, A3212]).

B. The U. S. Supreme Court Recognizes Fundamental Differences Between Juvenile And Adult Brain Development And Behavior

Beginning in 2005, the United States Supreme Court issued a series of rulings that relied on psychology and brain science research to conclude that juveniles are "categorically less culpable than the average criminal," *Roper v. Simmons*, 543 U.S. 551, 567, 578 (2005) (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)) (abolishing the death penalty for people who are under 18 at the time of their offense), and therefore deserve "***some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation***," *Graham v. Florida*, 560 U.S. 48, 75 (2010) (abolishing JLWOP for non-homicide offenses) (emphasis added); *see also Miller v. Alabama*, 567 U.S. 460, 489 (2012) (abolishing mandatory JLWOP for homicide); *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016) (recognizing that *Miller* established a new

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indicated that Plaintiffs did not challenge the assertion. (Doc. 136, p. 1 n.1 [A3400]). Plaintiffs laid out the facts establishing Mr. Watts' membership in the Class in their Complaint, and described relevant facts related to Mr. Watts in their Motion for Summary Judgment. (Doc. 1, pp. 48-52 [A81-85]; Doc. 104, pp. 12-14 [A2298-2300]). Defendants offered zero support for the bald assertion that Mr. Watts should not be considered a member of the Class, thus there was nothing to rebut. (Doc. 112, p. 19 [A3372]). He meets the definition for Class Membership. Moreover, as he was convicted of non-homicide offenses, under *Graham*, it is unconstitutional for him to be incarcerated for the rest of his life.

substantive constitutional rule that applied retroactively).

The research relied upon by the Supreme Court and detailed in Plaintiffs' expert report by Prof. Elizabeth Cauffman,[4] begins with the central fact that the human brain's pre-frontal cortex is not fully mature until approximately age 25. (Doc. 104-3, p. 8 [A2359]). Due to their underdeveloped brains, "adolescents are unable to regulate their emotions effectively (as the pre-frontal cortex is responsible for such self-regulatory behavior)." (*Id.*) Adolescents exhibit poor decision-making, heightened impulsivity, and an inability to think long-term or effectively evaluate risks. (*Id.* at 8-9 [A2359-60]). Risky behavior becomes increasingly common during this period, peaking in late adolescence before ultimately declining (reflecting what is known as "the age crime curve"). (*Id.*)

The presence of peers has also been shown to affect the brain structures that regulate behavioral, emotional, and cognitive processes, which is consistent with studies that show that adolescents are highly influenced by peer pressure. (*Id.* at 11 [A2362]). Studies demonstrate that in the presence of peers, adolescents value more immediate rewards over long term benefits and therefore engage in greater risk taking.

[4] Prof. Cauffman is a Professor in the Department of Psychological Science in the School of Social Ecology at the University of California, Irvine and holds courtesy appointments in the School of Education and the School of Law. She is a social scientist whose research addresses the intersection between adolescent development and juvenile justice. Her findings were incorporated into the American Psychological Association's *amicus* briefs submitted to the U.S. Supreme Court in *Graham* and *Miller*. (Doc. 104-3, p. 6 [A2357]).

(*Id.* at 15 [A2366]).

Fortunately, the most important feature of adolescence, especially with regard to its impact on criminal behavior, is that it is a transitory phase of human development. This is borne out by the seminal "Pathways to Desistance" study, which tracked 1,300 serious youthful offenders and found that most of the youth, despite being serious felony offenders, did indeed desist from crime as they matured; less than 10 percent of the participating youth persisted in high-level offending after 7 years. (*Id.* at 16 [A2367]).

C. In Response to the Supreme Court's Ban on Mandatory JLWOP Sentences, The Florida Legislature Enacted The 2014 Juvenile Sentencing Statute, Leading To The Release Of 78 Percent Of All Juvenile Lifers Who Received A Judicial Resentencing.

When the state of Florida abolished parole in 1994, it replaced it with mandatory life without parole ("LWOP") sentences. In response to the Supreme Court precedent finding such mandatory LWOP sentences to be unconstitutional, in 2014 the Florida Legislature enacted Chapter 2014–220, Laws of Florida, specifically sections one, two, and three, which were codified in sections 775.082, 921.1401, and 921.1402 of the Florida Statutes (**the "2014 Juvenile Sentencing Statute"**), to remedy Florida's unconstitutional sentencing scheme.

Section One provided new statutory penalties for juvenile offenders convicted of capital felonies with eligibility for judicial review for most offenders after 15, 20,

or 25 years, depending on the severity and circumstances of the offense. Fla. Stat. Ann. § 775.082.

Section Two set forth new procedures for the individualized sentencing hearing that is required before a juvenile may be sentenced to life imprisonment. Fla. Stat. Ann. § 921.1401. Before imposing a life sentence or a term of years equal to life, the sentencing court is ***required to consider*** not only the crime and its impact on the victim's family but also mitigating factors related to the defendant's age, background, family and community environment, peer pressure, the possibility of rehabilitation, and the effect of "immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense." Fla. Stat. Ann. § 921.1401(2).

Section Three provided guidelines for subsequent mandatory judicial review of a juvenile offender's sentence and for the possible sentence modification if he or she is deemed reasonably fit to reenter society. Fla. Stat. Ann. § 921.1402. As part of the judicial review, ***the sentencing court is required to consider*** whether the juvenile lifer:

- demonstrates maturity and rehabilitation
- remains at the same level of risk to society
- was a relatively minor participant in the criminal offense
- has shown sincere remorse
- was of an age, maturity and psychological development at the time of the offense that affected his or her behavior

- has completed a GED or other technical, vocational or self-rehabilitation program
- was a victim of sexual, physical or emotional abuse before committing the offense
- provides the results of any mental health assessment, risk assessment or evaluation as to rehabilitation.

Fla. Stat. Ann. § 921.1402(6). The sentencing court ***is also required to*** modify the juvenile offender's sentence if it determines "that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society." Fla. Stat. Ann. § 921.1402(7). At both sentencing and review hearings a juvenile offender is entitled to counsel, has the right to hire experts to make mental health, rehabilitation and risk assessments, has the right to attend the hearing, and has a right of appeal. Fla. Stat. Ann. § 921.1402(5); (Doc. 104-22, pp. 4-5 [A3219-20]).

In 2015, the Florida Supreme Court held that the 2014 Juvenile Sentencing Statute would apply retroactively to any juvenile offender serving an LWOP sentence in Florida. *Falcon v. State,* 162 So. 3d 956, 953-64 (Fla. 2015). In 2016, the Florida Supreme Court held that the 2014 Juvenile Sentencing Statute would also apply to prisoners serving JLWP sentences—the Class Members here—after finding that Florida's parole system violated *Miller*. *Atwell v. State*, 197 So. 3d 1040, 1050 (Fla. 2016). Two years later, however, following a change in the composition of the Court, the Florida Supreme Court receded from its *Atwell* decision in *State v. Michel*, and then directly reversed the *Atwell* opinion in *Franklin v. State*. *State v. Michel*, 257 So. 3d 3,

6-7 (Fla. 2018); *Franklin v. State*, 258 So. 3d 1239, 1241 (Fla. 2018) (per curiam). Thus, *Atwell* was in effect for only two years.

During the two-year "*Atwell* Window," almost all Juvenile Lifers, including most of the Class Members, petitioned for resentencing hearings under the 2014 Juvenile Sentencing Statute. (*See* Doc. 104-22, pp. 3-4 [A3218-19]; Doc. 104-3, p. 28 [A2379]). As a result, state courts held resentencing hearings for 125 Juvenile Lifers, of which 98 were subsequently released (a 78 percent release rate), 6 were released after their sentences were converted to a term of years, and only 3 Juvenile Lifers were resentenced to life in prison. (Doc. 104-3, p. 28 [A2379]; *see also* Doc. 113, p. 6 [A3379]). Juvenile Lifers released during the *Atwell* Window were on average 52 years old at the time of their release and had served approximately 35 years in prison. (Doc. 104-3, p. 28 [A2379]).

The *Atwell* Window closed before many Juvenile Lifers serving JLWP sentences had their petitions for resentencing heard in court. The order in which these petitions were heard was arbitrary without any prescreening, prioritizing, or "cherry-picking" of petitions. (Doc. 104-22, p. 4 [A3219]). Accordingly, there was no legal strategy for screening out problematic cases that offered less favorable chances for release. (*Id.*) Importantly, there are no facts in the record showing any meaningful difference between those 125 JLWPs who received a resentencing hearing as opposed to those

who did not; the 170 Class Members who did not receive a rehearing before the *Atwell* Window shut were simply on the wrong side of the calendar. (*Id.*)

In contrast to the 98 Juvenile Lifers released during the *Atwell* window, those relegated to review in the Florida parole system have little hope of ever being released. Since 2012, only 24 Juvenile Lifers have been paroled (a paltry average of just two per year). (Doc. 113, p. 6 [A3379]). As the record makes clear, without the benefit and application of the requirements of the 2014 Juvenile Resentencing Statute, the 170 Class Members whose only hope for release is the Parole Commission are likely to die in prison without receiving their constitutionally required meaningful opportunity for release.

D. The Florida Parole System Is A Quasi-Sentencing Scheme Focused Almost Exclusively On The Original Offense And It Treats Juvenile Lifers Almost Identically To Adult Offenders

While Florida's parole system dates back to 1941, the current system applicable to the Class of establishing a PPRD began in 1996. (Doc. 104-2, p. 6 [A2324]). After serving their mandatory minimum of twenty-five years in prison, Class Members go through an Initial Interview to establish their PPRD—the date when they will finally have a hearing—the Effective Interview—to determine whether they will be authorized for release to parole. Between the Initial and Effective Interviews, Class Members have Subsequent Interviews every two to seven years to determine if any change should be made to their PPRD. Fla. Stat. Ann. §§ 947.16; 947.172; 947.174;

947.1745; (Doc. 113, p. 2 [A3375]).

The Florida parole statute requires the FCOR Commissioners to apply objective parole criteria that will "***give primary weight to the seriousness of the offender's present criminal offense and the offender's past criminal record***." The law makes clear that the decision to parole an inmate "***is an act of grace of the state and shall not be considered a right***." Fla. Stat. Ann. § 947.002(2), (5) (emphasis added); (Doc. 113, p. 2 [A3375]).[5] The policies, protocols, procedures, and criteria used for setting and reviewing a PPRD and for authorizing parole release are the same for Juvenile Lifers as for adult offenders, with the lone exception of the Youthful Offender Matrix adopted in 2014 (but never retroactively applied). (Doc. 113, p. 3 [A3376]).

PPRDs are calculated using a matrix scoring process to determine a baseline number of months by combining a salient factor score and an offense severity rating. Fla. Admin. Code. R. 23-21.007; 23-21.008; (Doc. 113, p. 3 [A3376]). Under the salient factor scoring, which is an "indices of the offenders' present and prior criminal behavior," points are assessed for prior criminal convictions, prior incarcerations, total time imposed for prior incarcerations, number of parole/probation violations, and number of prior escapes or attempted escapes. (Doc. 113, p. 2 [A3375]); Fla. Admin. Code. R. 23-21.007. Severity of offense behavior ranges from a misdemeanor to

[5] Defendants all acknowledge that they give primary weight to the original offense in making parole decisions. (Doc. 104-10, pp. 18-20 [A2295-97]); Doc. 104-9, pp. 5-6, 13-14 [A28954-95, A2902-03]); Doc. 104-5, pp. 8-10 [A2720-22]).

capital felony. Fla. Admin. Code. R. 23-21.009.

The higher the saliency factor score, the more months are added to the PPRD in the matrix. *Id.* Similarly, more serious offenses result in scores at the top of the range of the matrix. *Id.* Defendants ***may, but are not required*** to either add or subtract from the matrix's recommended PPRD by applying aggravating or mitigating factors. *Id.*; Fla. Admin. Code R. 23-21.010. Of the eight examples listed as potential mitigating factors a commissioner may apply, only one relates to the unique status of Juvenile Lifers and their age at the time of the offense. Fla. Admin. Code R. 23-21.010(5)(b)(1)(b).[6]

Prior to 2014, Florida's Parole System Imposed Harsher Criteria on Juveniles than on Adults

Prior to 2014, FCOR used the same matrix for establishing PPRDs for both adult and juvenile offenders. Also, prior to 2014, the salient factor score had a confounding additional provision wherein juvenile offenders received additional points (*i.e.*, additional time) for their age at the time of the offense if they were under eighteen, which could add up to five more years to the initial PPRD. (Doc. 113, p. 3 [A3376]). This "Juvenile Penalty Provision" which lengthened the PPRD time period for juvenile offenders is in direct contravention of the U.S. Supreme Court precedent which states unequivocally that Juvenile Offenders have a reduced level of culpability and a greater

[6] Nevertheless, unlike aggravating factors, mitigating factors are never specifically identified or assigned a specific number of months to reduce a PPRD.

likelihood of rehabilitation with maturity. *See supra* Section II.B. Over half of all Class Members had their PPRDs set prior to 2014, and therefore were given longer PPRDs. (Doc. 104-3, p. 21 [A2372]).

In 2014, the Juvenile Penalty Provision was eliminated and a Youthful Offender matrix was adopted. (Doc. 113, p. 3 [A3376]). The Youthful Offender matrix had a lower number of months added to PPRDs compared to the Adult Offender matrix based on the relevant salient factor score. Fla. Admin. Code. R. 23-21.009. However, it had no impact on how many additional months could be and are regularly added for aggravating factors. Fla. Admin. Code. R. 23-21.010. No changes to mitigating factors were made and they continued to be discretionary. *Id*. ***Importantly***, ***FCOR never applied the Youthful Offender Matrix retroactively to reduce the PPRDs of those JLWPs who had their PPRDs set under the pre-2014 matrix, which had the punitive Juvenile Penalty Provision***. (Doc. 133, p. 3 [A3376]).[7]

The process for setting the PPRD—the date when parole will first be considered—begins near the end of the prisoner serving the 25-year minimum mandatory period, when an assigned FCOR Investigator meets with the prisoner for an

[7] Apart from the Youthful Offender Matrix, FCOR's parole guidelines do not require that Defendants consider the hallmark features of youth in relation to the offense committed and the youth's subsequent growth, maturity, and rehabilitation. (*See* Doc. 104-6, p. 3 [A2793]; Doc. 104-5, pp. 17, 20-22 [A2729, A2732-34]; Doc. 104-9, p. 13 [A2902]).

Initial Interview. (*Id*.). The Investigator is the only FCOR member who meets with the prisoner at any point during the parole process. (Defendants never meet with prisoners in connection with the parole process or hearings.) (*Id.*) The Investigator prepares a recommended PPRD based on the salient factor score, offense severity rating, and any relevant aggravating and mitigating factors. (*Id*.) The Investigator reviews the recommended PPRD with the prisoner during the interview, and then submits a written report and recommendation to the Commission in the form of an "Investigator Rationale." (*Id.* at 4 [A3377]).

The Investigator Rationale is the primary narrative prepared by an FCOR employee describing the underlying offense and the Class Member's institutional conduct and program participation. (*Id.*) The Investigator Rationale is only a recommendation to the Commissioners and is non-binding. (*Id.* at 3). In fact, the Commissioners routinely set PPRDs that differ from the Investigator's recommendation, more often by adding more time, not less. (Doc. 104-3, p. 22 [A2373]).

Commissioners review the information provided by the FCOR Investigator as well as other information the Investigator did not have access to, including autopsy reports, statements from victims or prosecutors, and other information relating to the original offense. (Doc. 113, p. 6 [A3379]). The primary avenue for an inmate to know what information is being submitted to the Commissioners is to make a public records

request and pay any required costs. (*Id.* at 4 [A3377]).

In the past, FCOR received comprehensive psychological evaluations prepared by staff psychologists at the Florida Department of Corrections ("FDOC"), but that practice stopped in 2009.[8] (*Id.* at 5 [A3378]). Currently, the Commissioners receive from FDOC only a perfunctory mental health "grade" for Class Member's in the form of a number score—ranging from 1 to 5. (*Id.*) Defendants themselves are unsure what the score means, how it is determined, or by whom. (Doc. 104-9, pp. 43-44 [A2933]; Doc. 104-5, p. 46 [A2771]; Doc. 104-10, pp. 31-32 [A3008-09]).

Defendants generally meet weekly in publicly-noticed meetings and consider over 200 cases in each meeting. Doc. 113, p. 4 [A3377]). Of the 200 cases, some 20-40 relate to parole decisions. (*Id.*; Doc. 46, p. 4 [A306]).

No counsel, mitigation experts, or psychologists are provided at state expense to prisoners to assist them in the parole process. (Doc. 113, p. 4 [A3377]). If a prisoner has counsel, that counsel would be limited to ten minutes to speak and could not cross-examine or rebut statements made by others. (*Id.*) While the Commissioners deliberate individually prior to Commission meetings, they can only discuss a case with each other at their publicly-noticed Commission meetings. (*Id.*) After each side has an

[8] In 2012, FCOR asked the Florida Legislature to provide funding for three psychologists to resume this practice stating that "it is critical that Commissioners be provided a detailed and thorough mental health status report prior to making a risk assessment and parole decision." (Doc. 113, p. 5 [A3378]). The funding was never provided.

opportunity to speak, the Commissioners' discussion, scoring, and decision-making to set the PPRD happen in a matter of minutes. (*Id.* at 5 [A3378]). The Commissioners also set the time for the next stage in the parole process, called the Subsequent Interview.[9]

Defendants do not consider parole release during Subsequent Interviews, only whether the additional time they tacked on to the 25-year minimum mandatory when setting the PPRD should be increased or decreased (Doc. 104-6, pp. 37-38 [A2827-28]; *see also* Doc. 104-9, pp. 55-57 [A2942-44]; Doc. 104-7, pp. 4, 21-25 [A2845, A2862-66]). As in the Initial Interview, the Investigator reviews the prisoner's institutional file for new information, discusses it with the prisoner, and orally advises the prisoner of his or her proposed recommendation. Fla. Admin. Code R. 23-21.013. Also, as in the Initial Interview, at the Subsequent Interview the Investigator writes up a Rationale setting forth his or her recommendation and submits it to the Commissioners but does not provide a copy to the inmate. *Id.* The process is the same for Juvenile Lifers as for adult lifers and the criteria for modifying the PPRD is the same.

Regardless of the good or even exemplary institutional conduct of Juvenile

[9] Defendants may extend the time until the next Subsequent Interview up to seven years, and in the vast majority of cases do so based solely on reasons related to the original offense. (Doc. 104-3, p. 22 [A2373]); Fla. Stat. Ann. § 947.174; (Doc. 104-5, p. 58 [A2783]).

Lifers, the seriousness of the underlying offense is always used as a valid basis for the Commission to refuse to reduce the PPRD at a Subsequent Interview. (Doc. 104-5, p. 56 [A2781]; Doc. 104-10, p. 55 [A3032]). While the Commissioners do not consider the absence of any disciplinary reports—a clean disciplinary record—to be a valid basis for reducing a PPRD, they do consider even a minor infraction as sufficient to extend the inmate's PPRD. (Doc. 104-5, pp. 23, 57 [A2735, A2782]; Doc. 104-9, p. 41 [A2930]; Doc. 104-10, p. 53 [A3030]). FCOR Chair Coonrod testified that she would not categorize reductions of greater than five years on Subsequent Interviews a common occurrence. (Doc. 104-5, pp. 59-60 [A2784-85]).

When prisoners reach their PPRD they are entitled to an Effective Interview, ***which is the first time they are actually considered for release***. The purpose of the Effective Interview is to set an Effective Parole Release Date ("EPRD")— the actual date for release to parole—if the Commissioners determine a prisoner is eligible for release. (Doc. 104-5, p. 3 [A2715]). If the Commissioners determine a prisoner is ineligible for parole, they will either extend the PPRD or suspend the PPRD altogether. (Doc. 104-9, pp. 64-65 [A2966-67]; Doc. 104-7, pp. 4-5 [A2845-46]). The Commissioners do not have any standards, rules, or policies for determining whether to extend or suspend a PPRD when they decline to authorize parole during the Effective Interview. It is up to their discretion. (Doc. 104-9, p. 65 [A2967]). If those serving LWP sentences are denied an EPRD, then the matter is put back on the docket and an

Extraordinary Interview is later conducted. (Doc. 104-6, pp. 44-45 [A2834-35]).

E. Professor Cauffman's Review Of Class Member Records Confirms Plaintiffs And Class Members Have Been Denied A Meaningful Opportunity For Release Under Florida's Parole System

Plaintiffs' expert, Prof. Cauffman, reviewed the following records for ***each*** Class Member: the summary of FCOR actions taken with regard to each Class Member since 1982; the PPRD dates established for each Class Member; publicly available data from the Corrections Offender Network; and the most recent review by FCOR, which generally included a report from the FCOR Investigator and the two-page form documenting FCOR's actions. (Doc. 104-3, p. 20 [A2371]).

While Defendants retained a statistician as an expert, Defendants' expert did not undertake a similar review of the records of each Class Member. (Doc. 104-23, p. 5 [A3231]). Instead, Defendants' expert produced a report tallying the total number of Juvenile Lifers granted parole going back to 1943. (Doc. 104-18, pp. 28-34 [A3191-97]). Accordingly, Prof. Cauffman's assessments of the current dates before parole will even be considered for Class Members is uncontradicted.

As a result of her review of each Class Member's files, Prof. Cauffman concluded that Class Members are approximately 53.2 years old on average (range 42 to 69 years) and have been incarcerated for an average of 35 years. (Doc. 104-3, p. 20, [A2371]). Some 27-32 percent of the Class Members have served at least 40 years in prison. (*Id*.) Among Prof. Cauffman's key findings was:

> If all Class Members were to be released on the PPRD that was set by FCOR during their most recent interviews, the Class members will have served approximately 74.4 to 75.8 years.... and they will be approximately 92.6 years old at the time of release (if they were to live that long).

(*Id*.)

It is appropriate to consider a Class Member's PPRD as the ***earliest*** potential release date, because even though Defendants have the ability to reduce or move up the PPRD in the Subsequent Interviews, Prof. Cauffman's analysis shows that FCOR instead extended the PPRDs for the vast majority of the Class, and only reduced them in 7.7 percent of cases. (*Id.* at 29 [A2380]).

Prof. Cauffman also assessed how many Class Members had PPRDs set under the pre-2014 matrix (which applied the Juvenile Penalty provision and added salient factor points, equaling up to 5 additional years, to those who were youthful offenders). She found 93 Class Members (over half of the Class) had Initial Interviews and their PPRDs set before July 2014. (Doc. 104-3, p. 21 [A2372]).

In setting the initial PPRD, Professor Cauffman found that FCOR added substantial time to the 25-year minimum mandatory before parole would even be considered. On average, Defendants added 47 years for aggravating factors related to the initial offense while nothing is indicated for mitigating factors. (*Id.*) Prof. Cauffman noted that she saw no documentation in the records that the Commissioners assigned an actual number of months to reduce any Class Member's PPRD at the Initial Interview stage due to mitigating factors. (*Id.* at 21-22 [A2372-73]). She noted the use

of a generic statement that the Commission "did consider mitigation," but she found no example where mitigation factors were ever assigned a value (as is done with aggravating factors) or used to subtract months. (*Id.*)

Prof. Cauffman also determined that Defendants almost never accepted the FCOR Investigator's recommended PPRD for Class Members. (*Id.* at 22 [A2373]). In 58 percent of the Initial Interviews for Class members, FCOR chose a PPRD that was on average 207 months (17.25 years) later than the date recommended by the Investigator. (*Id.*)

She also noted that almost all of the Class Members (88 percent) are scheduled for their next interview with FCOR in seven years. (Doc. 104-3, p. 22 [A2373]). In all cases, FCOR cited factors related to the original offense as the primary reason for the seven-year delay until the next review. (*Id.*)

To determine whether FCOR extends or reduces the PPRD in Subsequent Interviews, Prof. Cauffman reviewed the information provided for 81 Class Members whose most recent FCOR interview was at the subsequent interview stage. (*Id.*)

Prof. Cauffman found that only 7 of the 81 Class Members achieved a reduction in their PPRDs at the subsequent interview stage, and only by an average of 2.3 years. (*Id.* at 23 [A2374]). If these 81 Class Members maintain the current PPRD schedule following subsequent interview stage, they would, on average, serve approximately 90 years in prison and be 108 years old at the time of release. (*Id.* at 22 [A2373]).

Only 14 Class Members are at the Effective Interview stage. (*Id.* at 23 [A2374]). Prof. Cauffman noted that in four cases, the Investigator recommended parole but Defendants did not accept the recommendation. (*Id.* at 24 [A2375]). Defendants' listed reasons for rejecting parole did not mention unsatisfactory institutional conduct but instead cited the need to complete programming, judicial objection, and unsatisfactory release plan. (*Id.*) Nearly all of the 14 Class Members at the Effective Interview stage had reached their PPRD with the mean average time beyond the PPRD being 15 years. (*Id.* at 26 [A2377]). Prof. Cauffman identified 7 Class Members at the Extraordinary Interview stage who had suspended PPRDs. (Id. at 24 [A2375]). All seven had passed their PPRD dates by 12 to 33 years, with the mean being 22 years. (*Id.*)

In one case, an Investigator recommended parole, but FCOR rejected it, citing institutional conduct that occurred between 1977 and 2000, even though the individual had no documented Disciplinary Reports for the past twenty years (2000-2019). (*Id.* at 25 [A2376]). Defendants also cited factors related to the initial offense as factors relating to its decision to deny parole. (*Id.*) In summary, for those 21 Class Members who reached their PPRD (at the Effective and Extraordinary Interview stages), Parole Investigators recommended parole in five cases. FCOR rejected all of those recommendations. (*Id.* at 24-25 [A2375-76]).

III. STANDARD OF REVIEW

The appellate court "review[s] a grant of summary judgment de novo, applying the same standard as the district court" and "must view all of the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *Newcomb v. Spring Creek Cooler Inc.,* 926 F.3d 709, 713 (11th Cir. 2019) (citations and internal quotations omitted). Summary judgment is appropriate only "where 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)).

SUMMARY OF THE ARGUMENT

The District Court was correct in finding, both on Defendants' Motion to Dismiss and on Summary Judgment, that the Eighth Amendment, as interpreted by the U.S. Supreme Court in *Miller* and *Montgomery*, applies equally to Juvenile Lifers serving JLWOP and JLWP sentences. As the District Court correctly found, parole systems, including Florida's, must afford Class Members a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

However, the District Court wrongly concluded on Summary Judgment that the Florida parole system meets the constitutional standard applicable to Juvenile Lifers serving JLWP sentences. The facts here are not in dispute. As the record makes clear, the Florida parole system falls woefully short of the standard laid out by the Supreme Court. The opportunity provided for Class Members to obtain release is neither meaningful nor is it based on any demonstration of maturity or rehabilitation. Instead,

the parole system operates as a quasi-sentencing scheme that ensures that Class Members will not receive any opportunity for release until most of them are in their 90s and have served roughly 75 years, if they live that long. The Florida parole system is operating in violation of the Eighth and Fourteenth Amendments to the U. S. Constitution.

ARGUMENT

I. THE EIGHTH AMENDMENT GUARANTEES TO CLASS MEMBERS A MEANINGFUL OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION

In the first of the U.S. Supreme Court cases to find juvenile offenders constitutionally different from adults, *Roper v. Simmons*, the Court held that the Eighth and Fourteenth Amendments to the U.S. Constitution forbid the imposition of the death penalty on people who were under 18 years old at the time of their offenses. 543 U.S. 551, 578 (2005). Relying on established social science research, common sense, and international consensus, the Court concluded that juveniles are "categorically less culpable than the average criminal." *Id.* at 567 (quoting *Atkins v. Virginia*, 536 U.S. 304, 316 (2002)).

Five years later, the Supreme Court ruled in *Graham v. Florida* that the Eighth Amendment prohibits the imposition of LWOP on juveniles who commit a non-homicide offense. 560 U.S. 48, 82 (2010). The *Graham* Court reiterated the differences between juveniles and adults identified in *Roper*, pointing out that "developments in

psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "the parts of the brain involved in behavior control" and juveniles' greater "capacity for change." *Id.* at 68, 74. These differences, the Court found, make children "less deserving of the most severe punishments." *Id.* at 68 (citing *Roper*, 543 U.S. at 569). The Court concluded that states must give juvenile non-homicide offenders "***some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation***." *Id.* at 75 (emphasis added).

In 2012, the Supreme Court held in *Miller v. Alabama* that a mandatory LWOP sentence for persons under 18 at the time of their crimes—regardless of the nature of the crime (homicide or non-homicide)—constitutes cruel and unusual punishment under the Eighth Amendment. 567 U.S. 460, 489 (2012). The Court concluded that statutorily-mandated LWOP sentences, such as the one in Florida at the time, for juveniles who commit murder "pose[] too great a risk of disproportionate punishment" because of "the great difficulty" in distinguishing between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, ***and the rare juvenile offender whose crime reflects irreparable corruption***." *Id.* at 479-80 (emphasis added) (quoting *Roper*, 543 U.S. at 573).

The Court held that before imposing an LWOP sentence on a juvenile offender, a court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. The

Court added that, after considering how children are different, LWOP sentences for juveniles should be "uncommon" because of "children's diminished culpability and heightened capacity for change." *Id.* at 479.

In 2016, in *Montgomery v. Louisiana*, the Supreme Court held that *Miller*'s prohibition on mandatory LWOP for juveniles should be applied retroactively because it established a new substantive constitutional rule. 577 U.S. 190, 212-13 (2016). The Supreme Court explained that because *Miller* "determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile offender whose crimes reflect irreparable corruption,'" life without parole therefore was "an unconstitutional penalty for 'a class of defendants because of their status'—[that is], juvenile offenders whose crimes reflect the transient immaturity of youth." *Id.* at 734 (first quoting *Miller*, 567 U.S. at 479-80, then quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)).

The Court concluded by recognizing "that children who commit even heinous crimes are capable of change" and therefore "must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." *Id.* at 736-37. While the *Montgomery* Court acknowledged that a State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders, it recognized that such a remedy required a parole process that "ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a

disproportionate sentence." *Id.* at 736.[10]

While the Supreme Court has yet to address the application of the Eighth Amendment to the parole process for Juvenile Lifers, the vast majority of lower courts that have, including the District Court below, have determined that the Eighth Amendment applies with equal force to parole proceedings. (Doc. 43, p. 15 [A293]; Doc. 136, p. 19 [A3418] ("'The constitutional protections recognized by *Graham*, *Miller,* and *Montgomery* apply to parole proceedings for juvenile offenders serving' imprisonment for life because the same logic applies with equal force even though the line of cases following *Graham* primarily dealt with sentencing." (quoting *Flores v. Stanford*, 18CV2468, 2019 WL 4572703, at *8 (S.D.N.Y. Sept. 20, 2019)))); *Wershe v. Combs*, 763 F.2d 500, 505-06 (6th Cir. 2014) (vacating district court's dismissal of Eighth Amendment claim alleging a parole board's denial of a meaningful and realistic opportunity for release); *Flores*, 2019 WL 4572703, at *9 ("[T]he Eighth Amendment right in question attaches at the parole stage."); *Funchess v. Prince,* No. 142105, 2016 WL 756530, at *5-6 (E.D. La. Feb. 25, 2016) (observing that the low rate of favorable recommendations for parole and clemency do not provide a meaningful opportunity for release); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 943-44 (S.D. Iowa 2015) (finding *Graham* applied outside the sentencing context because State "must" give juvenile

[10] In its most recent decision on the matter, the Supreme Court found that while a sentencing judge did not have to provide their reasoning for imposing a life without parole sentence so long as it was discretionary, the Court expressly upheld *Miller* and *Montgomery* as binding law. *Jones v. Mississippi*, 141 S. Ct. 1307, 1321 (2021).

offenders a meaningful opportunity to obtain release through demonstrated maturity and rehabilitation and that could only be determined by the parole board who alone had authority to grant release); *Diatchenko v. Dist. Att'y for Suffolk Dist,* 27 N.E.3d 349, 365 (Mass. 2015) ("[T]he parole hearing acquires a constitutional dimension for a juvenile homicide offender because the availability of a meaningful opportunity for release on parole is what makes the juvenile's mandatory life sentence constitutionally proportionate."); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015) (failure to consider children's diminished culpability and heightened capacity for change during parole process wholly fails to provide petitioner with any meaningful opportunity for release).[11]

II. FLORIDA'S PAROLE SYSTEM FAILS TO PROVIDE CLASS MEMBERS THE CONSTITUTIONALLY MANDATED MEANINGFUL OPPORTUNITY FOR RELEASE BASED ON DEMONSTRATED MATURITY AND REHABILITATION.

The Supreme Court made clear that a meaningful opportunity for release requires a system whereby all but the "***rarest*** of juvenile offenders" whose crimes reflect 'irreparable corruption,' should secure early release rather than serving a

[11] By contrast, the courts that determined that the Supreme Court cases applied only to sentencing involved either plaintiffs who already had *Miller*-compliant resentencing hearings and had been resentenced, or parole systems that focused their evaluations on maturity, rehabilitation and youth specific factors, and provided the opportunity for release starting between 15-25 years and offering parole review every year. *See United States v. Sparks*, 941 F.3d 748, 753-54 (5th Cir. 2019); *Bowling v. Dir., Va. Dep't of Corr.*, 920 F.3d 192, 194-95, 198-99 (4th Cir. 2019); *United States v. Morgan*, 727 Fed. Appx. 994, 995-96 (11th Cir. 2018); *Brown v. Precythe*, 46 F.4th 879, 887 (8th Cir. 2022).

lifetime in prison. *Montgomery*, 577 U.S. at 208-09 (emphasis added); *see also Jones*, 141 S. Ct. at 1315 n.2 (quoting *Montgomery*, 577 U.S. at 211). The Meriam-Webster Dictionary defines "meaningful" as "purpose[ful]" and "significant."[12] The opportunity for release afforded by the Florida parole system is anything but meaningful. The Florida parole system provides the opposite of a meaningful opportunity for release because only the rarest juvenile offender is actually released—regardless of his or her maturation and rehabilitation. Instead, the vast majority of Class Members will die in prison before even reaching the first hearing that would actually consider their release.

A. Class Member Parole Records Prove That Class Members Will On Average Serve About 75 Years And Will Be In Their 90s When Released, If They Live That Long

Florida's PPRD-based parole system is unique among parole systems that have received Eighth Amendment scrutiny. Rather than a system that evaluates prisoners for release typically once the mandatory minimum is reached, Florida's PPRD system acts as a quasi-sentencing and sentence review system where, after prisoners serve their 25-year minimum mandatories, FCOR is authorized to impose an additional "sentence" on these Class Members that is twice the minimum mandatory before Commissioners will even consider a release to parole. While other parole systems, such as in *Sparks*, *Bowling*, and *Brown*, are designed to consider possible release at every

[12] *See Meaningful*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/meaningful (last visited June 30, 2023).

hearing, that opportunity is not available to Class Members until they reach their PPRDs—which are on average set after 75 years of incarceration and long past their life expectancies.

As a result of her review of the Class Member files provided by FCOR as well as publicly available information, Prof. Cauffman concluded that Class Members on average have already been incarcerated for 35 years, while some 27-32 percent of the Class Members have served at least 40 years in prison. (Doc. 104-3, p. 20 [A2371]). The District Court defined *de facto* life sentences in its Class Certification Order as sentences over 470 months, just shy of 40 years. (Doc. 58, pp. 5-6 n.1 (A597-58]). Based on their current PPRDs when they will first be considered for parole, Class members will have served approximately 75 years and will be approximately 92 years old at the time of their earliest likely release (if they were to live that long). (Doc. 104-3, p. 20 [A2371]). This is well beyond the life expectancy of these Class Members and transforms their JLWP sentences into *de facto* and unconstitutional life without parole sentences.[13]

[13] (*See* Doc. 1-9, pp. 2-3 [A151-52] (discussing shortened life expectancy of prisoners)). Incarceration also greatly shortens life expectancy. (*Id.*) Courts across the country have agreed that a term-of-years sentence can be a *de facto* life sentence, in violation of the Eighth Amendment. *See, e.g.*, *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016) ("*Miller* makes clear that a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation."); *State v. Booker*, 656 S.W.3d 49, 52-53 (Tenn. 2022) (holding that mandatory life sentences of 51 years violates the Eight Amendment). In *State v. Null*, after reviewing the extensive history of youth sentencing, including the

The theoretical possibility that these PPRDs will be shortened in any meaningful way based on Subsequent Reviews is illusory and contradicted by the record. As the record shows, it is far more likely that PPRDs will be *extended* at a Subsequent Interview, so the current projections are actually conservative. Prof. Cauffman's analysis shows that for those at the Subsequent Interview stage, FCOR actually ***extended*** the PPRDs for the plurality of the Class Members, and only reduced them in 9.7 percent of cases. (Doc. 104-3, p. 23 [A2374]). Prof. Cauffman found that only seven of the 81 Class Members who have reached the Subsequent Interview stage achieved a reduction in their PPRDs, and even then only by an average of 2.3 years. (*Id*.) Indeed, if just these 81 Class Members maintain the current PPRD schedule following their Subsequent Interviews, they will serve approximately 90 years in prison and be 108 years old at the time of release. (*Id.* at 22 [2373]). Defendants, who should know exactly how many times they actually reduce a PPRD, were only able to point to three specific instances where a PPRD was reduced. (Doc. 96-2, pp. 1-4 [A905-08]). The merely theoretical likelihood of a reduction stands in sharp contrast to the factual record and, contrary to the District Court's suggestion, is not significant or meaningful with respect to Plaintiffs' legal claims.

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growing body of science highlighting the diminished culpability of youth, the Iowa Supreme Court held that an aggregate mandatory minimum sentence over 52.5 years is unconstitutional. *State v. Null*, 836 N.W.2d 41, 76 (Iowa 2013). Certainly, no court has found that setting parole eligibility after 90 years of age passes constitutional muster under *Miller*.

Moreover, the factual record shows that even once the PPRD is reached at the Effective and Extraordinary review stages, Class Members are not released but instead enter a "suspended" state of interminable incarceration. Nearly all of the 14 Class Members at the Effective Interview stage had already reached their PPRD with the mean average time beyond the PPRD being 15 years. (Doc. 104-3, p. 26 [A2377]). Additionally, of the seven Class Members at the Extraordinary Interview stage who had suspended PPRDs, all seven were past their PPRD by an average of over 20 years. (*Id.* at 24 [A2375]). None of these statistics are in dispute.

Compared to the constitutionally compliant system the Florida Legislature enacted pursuant to the 2014 Juvenile Resentencing Statute for juveniles serving JLWOP sentences, the lack of a meaningful opportunity for Class Members' release under Florida's unconstitutional parole system becomes even more apparent. During the *Atwell* Window—when the Florida Supreme Court briefly required resentencing hearings for all Juvenile Lifers—98 Juvenile Lifers out of the 125 who received hearings, were released, or 78 percent. (Doc. 104-3, p. 28 [A2379]). *Atwell*-released individuals averaged 52 years of age at the time of release, and averaged 35 years of incarceration, post-offense. (*Id.*) By comparison, since *Miller* was decided in 2012, only 24 Juvenile Lifers have been released under the Florida parole system, for a comparable release rate of 5.3 percent. (Doc 103-2, p. 7 [2232]).[14] By any measure,

[14] Prof. Cauffman calculated the parole release rate by including the 98 Juvenile Lifers released through judicial resentencing during the same time period.

five percent is not a significant or meaningful opportunity for release.[15]

The District Court's dismissal of this vast disparity in release rates was wrong. With nothing in the record to support it, the District Court hypothesized that the "strongest" cases were the ones heard during the *Atwell* Window, and then cited this mere speculation to justify the shockingly low number of Juvenile Lifers released to parole since 2012. (Doc. 136, pp. 22-23 [A3421-22]). The record belies the District Court's conjecture. According to Roseanne Eckert, a Coordinating Attorney for the Florida Juvenile and Resentencing Review Project at the FIU College of Law who tracked the progress of the *Atwell* Defendant cases, whether a particular petitioner had a resentencing hearing was essentially random. Whether and when a case was heard depended on the amount of time required to investigate the case, the judge assigned to the sentence review, and the defense lawyers' caseload. (Doc. 104-22, p. 8 [A3219]). Importantly, all of the Class Members and *Atwell* JLWPs were convicted of homicide and there is nothing in the record to indicate any significant differences between those Juvenile Lifers who were fortunate enough to have a judicial resentencing before the

[15] The District Court cited 246 Juvenile Lifers who have been paroled since 1943 according to data compiled by Defendants' expert. (Doc. 136, p. 22 [A3421]). Defendants' expert recognized, however, the common-sense conclusion that this historical data is irrelevant to evaluating the constitutionality of the current system (which adds on average another 50 years to the 25-year minimum mandatory before parole will even be considered). That system has only been in place since 1996. (*See* Doc. 104-18, p.12 [A3175]). How Florida administered parole decades ago is irrelevant to this case. Releases since *Miller* in 2012 are the only accurate measure, and legally relevant picture, of the current state of parole for Juvenile Lifers in Florida.

Atwell Window closed and those who did not.

The 78 percent release rate through judicial resentencing also shows how a meaningful review process can significantly alter outcomes and ensure compliance with *Miller* and *Montgomery*. During the *Atwell* Window, Juvenile Lifers had appointed counsel and received judicial hearings, where they appeared in person and were able to retain and submit expert testimony and evidence, had access to all available documents and could cross examine the testimony and evidence submitted against them. The judge was required by statute to make findings based on a list of factors reflecting the unique characteristics of youth, their impact on the underlying offense, and the Juvenile Lifer's demonstrated maturity and rehabilitation. *See supra* Statement of the Case, Section II.C.

By contrast, the current parole process in Florida is devoid of any significant due process. Class Members never get to meet or address the Commissioners who are determining their fate, and they have no right to counsel or experts. (Doc. 113, pp. 3-4 [A3376-77]). There are no psychological evaluations. (*Id*. at 4-5 [A3377-78]). The Class Members have to submit public records requests and pay fees merely to get access to documents (including the Investigator's Rationale which is provided free to victims), but do not get transcripts of proceedings. (*Id*. at 4 [A3377]). The only FCOR employee they meet with, the Investigator, has very little impact on the Commission's PPRD and parole decisions and their recommendations are typically ignored. (*Id*. at 3

[A3376]; Doc. 104-3, p. 22 [A2373]). The Commissioners, due to a packed schedule of hearings, give each Class Member's case just minutes before rendering their decisions, and their decisions are based almost entirely on the original offense and past criminality as opposed to maturity and rehabilitation. (Doc. 113, pp. 2, 4-5 [A3375, A3377-78]).

Releasing approximately two Class Members per year or reducing the PPRDs of a handful by a few years hardly constitutes a meaningful opportunity for release, as required by Supreme Court precedent.

B. Class Members' "Opportunity" For Release Is Not Based On Any Demonstration Of Maturity Or Rehabilitation

Florida's parole laws expressly ignore the Eighth Amendment's requirement that Class Members have a right to a meaningful opportunity for release based on demonstrated maturity and rehabilitation. The Florida Legislature has provided that parole "is an act of grace of the state and shall not be considered a right." Fla. Stat. Ann. § 947.002(5). Florida's parole statute further provides that "[n]o person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison." Fla. Stat. Ann. § 947.18. This statute forecloses the opportunity for Class Members to demonstrate maturity and rehabilitation to secure an early release. And that is precisely the point, as parole decisions are based on parole guidelines which require that primary weight be given to the seriousness of the prior offense and prior criminal record. Fla. Stat. Ann. § 947.002(2).

All Defendants admit that they follow these Florida statutory directives by giving primary weight to the seriousness of the offender's underlying criminal offense and past criminal record. (Doc. 104-10, pp. 18-20 [A2295-97]); Doc. 104-9, pp. 5-6, 13-14 [A28954-95, A2902-03]; Doc. 104-5, pp. 8-10 [A2720-22]). The District Court's conclusory assertion that such directives do not foreclose *consideration* of other factors, including youth, and that Defendants have indicated they *consider* youth, among other things (Doc. 136, p. 22 [A3421]), does not cure the constitutional error. The possibility that youth can be or *is considered*, or that maturity and rehabilitation *are considered*, even if true, still fails the meaningful opportunity test. The Eighth Amendment requires that maturity and rehabilitation and the defining characteristics of youth drive the parole process for juvenile offenders, including those convicted of homicide. Moreover, because Defendants quantify only the number of months they add as aggravation but do not do so with respect to any mitigation they might have considered, there is no way to determine what weight Defendants assign such mitigation or even if it was in fact considered. (Doc. 104-3, p. 21-22 [A2372-73]). Defendants have also admitted they know very little about the applicable Supreme Court cases, that they have no knowledge or training related to the applicable scientific research, and thus have no reason in theory or practice to treat Class Members differently. (*See, e.g.*, Doc 108-2, pp. 19-22 [A3279-82]). Meanwhile, at every stage of the parole process—from salient factor scoring and the relevant matrix time range,

to the application of aggravating factors and establishing the PPRD, to decisions not to reduce PPRDs at Subsequent Interviews despite excellent institutional conduct, to pushing the interval between Subsequent Reviews to seven years, and then to ultimately denying parole release—the original offense consistently and repeatedly dictates FCOR's decision making. Fla. Admin. Code. R. 23-21.009; (Doc. 104-3, pp. 21-25 [A2372-76]).

Additionally, Defendants readily admit their parole process is the same in almost every regard for Class Members as it is for adult offenders, with the exception of the Youthful Offender Matrix that was applied to less than half the Class. The District Court wrongly found the matrix to be evidence of a meaningful system based on maturity and rehabilitation. (Doc. 136, p. 21 [A3420]). It is not. First, as Prof. Cauffman found, 93 Class Members (over half the Class) had Initial Interviews and their PPRDs set before the introduction of the Youthful Offender Matrix. (Doc. 104-3, p. 21 [A2372]). Thus, 93 Class Members had the Juvenile Penalty provision applied when their PPRDS were set and none of them have had their PPRDs reset since. Second, the Youthful Offender Matrix is only part of the calculation of Class Members' PPRDs. The matrix time range is actually a smaller contributor to the overall length of time set under the PPRD calculation. Prof. Cauffman found that FCOR assigned approximately 13 years of additional incarceration (in addition to the 25 years minimum mandatory) based on the matrix, 47 years for aggravating factors related to

the initial offense, and 11 years based on institutional conduct occurring prior to the Initial Interview. (*Id*.) Those aggravating factors are treated the same for Class Members as for adult offenders, and they do not take into account maturity, rehabilitation or the unique characteristics of youth.

There is one mitigating factor for the consideration of youth in connection with the original offense. Fla. Admin. Code R. 23-21.010(5)(b)(1)(b). There is no requirement that it be considered, however, and there is no evidence that if it is considered it has any impact at all in the PPRD or parole decisions of the Commission. While the Commissioners claim they consider youth, their records demonstrate they never quantify the impact of that factor. (Doc. 104-3, p. 21-22 [A2372-73]). Given that PPRDs are set beyond a Class Member's expected lifetime, it is obvious that whatever weight is given to such mitigation, it clearly had no relevant impact. Simply stated, Florida's parole process does not meet the basic requirements of the Eighth Amendment to provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

III. FLORIDA'S PAROLE PROCESS DOES NOT PROVIDE CLASS MEMBERS DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

The Fourteenth Amendment mandates that no state deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. "A due process claim requires three elements: (1) the deprivation of a constitutionally

protected liberty interest; (2) state action; and (3) constitutionally inadequate process." (Doc. 136, p. 24 [A3423]) (citing *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)).

The first two elements are not in dispute. First, "[s]tate action is not at issue here." *Id*. Second, as the District Court correctly found, the Supreme Court has conferred "on juvenile offenders a constitutionally protected liberty interest in meaningful parole *review*." *Id.* (quoting *Flores*, 2019 WL 4572703, at *10); *see also Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 777 (Iowa 2019); *Md. Restorative Just. Initiative v. Hogan,* No. ELH-16-1021, 2017 WL 467731, at *21 (D. Md. Feb. 3, 2017). This liberty interest is to "provide the juvenile offender with substantially more than a *possibility* of parole or a 'mere hope' of parole; it creates a categorical entitlement to 'demonstrate maturity and reform,' to show that 'he is fit to rejoin society,' and to have a 'meaningful opportunity for release.'" *Greiman*, 79 F. Supp. 3d at 945 (quoting *Graham*, 560 U.S. at 79). If it is determined that a juvenile offender has in fact demonstrated maturity and rehabilitation, "parole or work release is required as a matter of law." *Flores,* 2019 WL 4572703, at *10 (quoting *Bonilla,* 930 N.W.2d at 777).

A. Due Process Requires That Class Members Have A Meaningful Opportunity For Release Based On Demonstrated Maturity And Rehabilitation

The crux of the inquiry is what process is due. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("Once it is determined that due process applies, the question remains what process is due."). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Supreme Court in *Eldridge* held that due process generally requires consideration of (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation by existing procedures and the value of additional safeguards; and (3) the Government's interest. *Id*. at 334-335. Essentially the test requires the balancing of the plaintiff's interests against those of the state. *See Bonilla*, 930 N.W.2d at 775.

Here, the Class Members have a protected interest in not dying in prison, which is what they face without a parole process that provides them a meaningful opportunity for release upon demonstrating maturity and rehabilitation.

Florida's parole process fails to meet even the minimum requirements of due process. These include an opportunity to be heard; disclosure of evidence against an individual; the opportunity to present witnesses and documentary evidence; a neutral and detached hearing body; and a written statement regarding the evidence relied upon

by the factfinders. *Morrissey*, 408 U.S. at 489. Under current Florida parole policies and procedures, Class Members do not have an opportunity to be heard. (Doc. 113, p. 4 [A3377]). Defendants do not meet with or speak to class members. (*Id*.) Class members are not provided counsel or the opportunity to cross-examine or rebut statements made by others during hearings. (*Id*.) Class Members can only access documents through public records requests at their own expense. (*Id*. at 3-4 [A3376-77]). Additionally, only a boilerplate Commission action form is provided after the hearing, for which they cannot access a transcript, that does not include all the information relied upon in a parole decision. (*Id*. at 2-4 [A2275-77]). This makes it impossible for Class Members to adequately rebut Commission decisions, challenge or correct inaccuracies in the record, or learn what they need to do to earn release.

As it relates to the third *Eldridge* factor, the government has an interest in ensuring that it is not releasing dangerous individuals back into society, but that is exactly why the Supreme Court has repeatedly held that youthful offenders must be treated differently than adult offenders. *See supra* Section I. Class Members are not claiming that they have the right to be released. Instead, they are asking for a parole process that properly considers their unique attributes as youthful offenders and that allows them to demonstrate their maturity and rehabilitation.

B. Florida's Parole Process Does Not Provide Adequate Judicial Review

The District Court ruled that "the concomitant availability of state remedies… ensures the process available to the class is adequate." (Doc. 136, p. 25 [A3424]). This is not accurate. The available judicial remedies do not ensure an adequate process because they do not "correct whatever deficiencies exist and . . . provide . . . whatever process is due." *Cotton v. Jackson*, 216 F.3d 1328, 1331 (11th Cir. 2000).

The District Court cites *Ogburia v. Cleveland*, 380 F. App'x 927, 929 (11th Cir. 2010) and *Narey v. Dean*, 32 F.3d 1521, 1527 (11th Cir. 1994) which properly held that due process violations do not exist where there are adequate state remedies. (Doc. 136, pp. 25-26 [A3424-25]). However, these cases are not applicable here. First, both cases rely on *McKinney v. Pate*, 20 F.3d 1550, 1563 (11th Cir. 1994). In *McKinney*, the parole process itself was not in question as the plaintiff received adequate pre-deprivation due process in the form of written notice of the charges against him, an explanation of the parole board's evidence against the plaintiff, and "with the assistance of counsel, he had the opportunity to present his side of the story through witnesses, evidence, and argument." *McKinney*, 20 F.3d at 1561. Thus, because McKinney had in fact received pre-deprivation due process, he was due nothing more than an adequate post-deprivation remedy. *Id.*; *see also Ron Grp., LLC v. Azar*, 574 F. Supp. 3d 1094, 1113 (M.D. Ala. 2021).

McKinney relied on *Parratt v. Taylor*,[16] where the Supreme Court recognized that post-deprivation remedies can satisfy Due Process only where an adequate post-deprivation remedy is available. *Parratt v. Taylor*, 451 U.S. 527, 538 (1981). The cases cited by the Court recognized "either the necessity for a quick action by the state or the impracticality of providing any meaningful pre[-]deprivation process." *Id.* at 539. It also made clear that the absence of pre-deprivation due process is permitted *only* where parties will have the meaningful opportunity to be heard before the ultimate deprivation, that "at some time a *full* and *meaningful* hearing will be available." *Id.* at 541 (emphasis added). Lastly, *Parratt* was not a case where the plaintiffs challenged the procedures themselves as inadequate nor was there "any contention that it was practicable for the state to provide a pre[-]deprivation hearing." *Id.* at 543. Here it is.

Ogburia and *Narey* follow *McKinney* and *Parratt,* which are also distinguishable from this case in two ways. First, the state employees in *Ogburia* and *Narey* received the minimum requirements of due process *prior* to the deprivation of their liberty interest. *See Ogburia*, 380 F. App'x at 929; *Narey*, 32 F.3d at 1527. In *Ogburia*, a terminated state university employee was advised of the charges against him in writing, was able to provide detailed written responses, including exhibits, denying the allegations against him, and was able to orally deny allegations and present

[16] *Parratt v. Taylor* was also overturned on the grounds that the "Due Process Clause is simply not implicated by a *negligent* act …causing unintended" deprivation. *Daniels v. Williams*, 474 U.S. 327, 328 (1986).

his side of the story. 380 F. App'x at 929. Similarly, the demoted state employee in *Narey* was given a list of the charges against him, a lengthy discussion of the evidence, and had an opportunity to present his side of the story. 32 F.3d at 1527. Here, unlike *McKinney, Narey*, and *Ogburia*, as outlined above, the Class Members do not receive even minimal due process before being denied parole, or receiving a PPRD that continuously extends their sentence without the opportunity to demonstrate maturity and rehabilitation.

Second, unlike the Class Members in this case, the *Narey*, *Ogburia, and McKinney* plaintiffs had adequate post-deprivation state remedies. *McKinney*, 20 F.3d at 1563; *Narey*, 32 F.3d at 1527-28; *Ogubria*, 380 F. App'x at 929. Here, by contrast, the Class Members have no such options available to them. Class Members may challenge their PPRDs through a writ of mandamus. *See Griffith v. Fla. Parole & Prob. Comm'n*, 495 So. 2d 818, 819-20 (Fla. 1986); *Young v. Fla. Comm'n on Offender Rev.*, 225 So. 3d 940, 941-42 (Fla. Dist. Ct. App. 2017). Mandamus is, however, a narrow remedy designed to "compel a public officer to perform a duty." *Johnson v. Fla. Parole. Comm'n*, 841 So. 2d 615, 617 (Fla. Dist. Ct. App. 2003) (internal quotation omitted). At this review, the circuit court determines if the reasons provided by the Commission are "facially valid, supported by the record, and authorized by statute and rule." *Barreiro v. Fla. Comm'n on Offender Rev.*, 164 So. 3d 1249, 1251 (Fla. Dist. Ct. App. 2015) (internal quotation omitted). This does not leave room for courts to address

the adequacy of the process itself, but instead asks if the process in place was followed. This kind of review—which allows prisoners to challenge their individual parole decisions under the existing process—is wholly inadequate to obtain systemic relief and/or policy and practice changes that will affect future conduct. *See Stone v. Ward*, 752 So. 2d 100, 101-02 (Fla. Dist. Ct. App. 2000). The other remedy—a re-review of Defendants' parole decisions—requires individuals to go back in front of the same body, subjecting Class Members to the same process they are challenging. Fla. Stat. Ann. § 947.173; Fla. Stat. Ann. § 947.165. These remedies will not "correct whatever deficiencies exist" and "provide plaintiff with whatever process is due." *Cotton*, 216 F.3d at 1331.

Because available state remedies can neither correct the deficiencies in the parole process nor address the alleged unconstitutionality of that system, and the Class Members have suffered a substantial loss of liberty without a meaningful opportunity to demonstrate maturity and rehabilitation, Plaintiffs have established that Florida's parole process is inadequate and violates the due process clause of the Fourteenth Amendment.

CONCLUSION

For the reasons stated herein, Plaintiffs urge this Court to overturn the decision of the District Court and find that Florida's parole process violates Plaintiffs' rights under the Eighth and Fourteenth Amendments to the U.S. Constitution.

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Respectfully submitted,

HOLLAND & KNIGHT LLP
701 Brickell Ave., Suite 3300
Miami, FL 33131
Tel: (305) 374-8500

/s/ *Christopher N. Bellows*
Christopher N. Bellows, FBN 512745
christopher.bellows@hklaw.com
Tracy Nichols, FBN 454567
tracy.nichols@hklaw.com
Stephen P. Warren, FBN 788171
stephen.warren@hklaw.com
Ilene L. Pabian
ilene.pabian@hklaw.com

HOLLAND & KNIGHT LLP
200 South Orange Ave., Suite 2600
Orlando, FL 32801
Tel: (407) 244-5103
Jamie Billotte Moses, FBN 9237
jamie.moses@hklaw.com

JUVENILE LAW CENTER
1800 John F. Kennedy Blvd.
Ste. 1900B
Philadelphia, PA 19103
Tel: (215) 625-0551
Marsha Levick, PA No. 22535
mlevick@jlc.org
Andrew R. Keats, NY Bar No. 5037528*
akeats@jlc.org
Tiara J. Greene, PA Bar No. 318526*
tgreene@jlc.org
*Admitted *pro hac vice*

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Eleventh Circuit Rule 32-4, this document contains 12,546 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: July 10, 2023

/s/ *Christopher N. Bellows*
Christopher N. Bellows

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on July 10th, 2023, I electronically filed the foregoing with the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ *Christopher N. Bellows*
Christopher N. Bellows